

THE ANGLO-IRANIAN OIL DISPUTE

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I. FACTUAL BACKGROUND

1. *The Anglo-Iranian Oil Company, Ltd.*

In remote antiquity, sun worshippers told fables about eternal jets of flame, and built temples to mark the places where natural gases seeped from the desert of Persia. William Knox D'Arcy, an oil prospector, identified their seepages as geologic indications of the presence of oil deposits. On May 28, 1901 he obtained an exclusive concession from the Persian government for the exploration and exploitation of the petroleum deposits of Persia, covering the whole of Persia, except five provinces in the north,¹ which were within the Russian sphere of influence.² The oil exports and all properties used in the development of the concession were exempted from all taxes and customs duties.³ The project was to be subject to the supervision of an Imperial Commissioner.⁴ Only Persian subjects were to be employed, except the technical staff such as the managers, engineers, borers and foremen.⁵ D'Arcy undertook to pay a fixed annual due of 2,000 tomans and a variable due equal to 16 per cent of the annual net profits.⁶ An arbitration clause was provided for the settling of any dispute that might arise between the parties.⁷ Finally, on the expiration of the concession, which was to be of 60 years duration, all the properties used by the concessionaire were to

¹ Article 6 of the concession mentions the five border provinces of Azerbaijan, Ghilan, Mazenderan, Astarabad, and Khorassan. See memorandum attached to the letter from the Persian Government to the Secretary General of the League of Nations (January 18, 1933), C.43.M.17.1933.VII.

² The Anglo-Russian Convention of 1907 formally divided Persia into three zones or spheres of influence—the northern for Russia, the southern for England, and a neutral zone in between. Of course the parties, who had not even consulted Persia, reiterated their respect for Persia's territorial integrity.

³ Article 7 of the concession.

⁴ Article 9, *id.*

⁵ Article 12, *id.*

⁶ Articles 4 and 10, *id.*

⁷ Article 17, *id.*, "In the event of the 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 resulting therefrom, 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."

become the property of the Persian government, free of charge.⁸ D'Arcy paid £20,000 for the concession.

After heavy expenditures without commercial results, for several years, by the Concessions Syndicate, which was formed by D'Arcy in 1903 in conjunction with the Burmah Oil Company, a rich field was discovered at Masjid-i-Sulaiman in 1908. In 1909, the Anglo Oil Company, Ltd. was formed in London and took over the original D'Arcy concessions. By 1912 the Abadan refinery was completed, and has since become the world's largest, producing 500,000 barrels per day. Because a heavy industry requires large capital investments, the Company soon was in need of more capital. This was subscribed by the British government in 1914, which was then, as now, anxious to insure fresh and steady supplies of oil. The Company assured itself a ready market by signing a long term contract to supply the British Admiralty with fuel oil. Today the British government controls the Company through ownership of 52.55 per cent of its voting stock. The progressive increase of production⁹ pushed the profits of the Company to astronomical figures.

In 1921, a former sergeant in the Cossack division of the Persian army, who with the aid of two British officers had risen to be commander of the division, seized power by a bloodless coup d'état,¹⁰ and in 1925 started the present ruling dynasty—the Pahlevi. He was a fierce nationalist, resenting bitterly the attempt of the British in 1919 to convert Persia into a British protectorate.¹¹ So instead of being grateful, he kicked the British in the face: he withdrew the note-issuing privileges of the Bank of Persia (a British institution); nationalized the British-owned telegraph and telephone system; and in November 27, 1932, he cancelled the D'Arcy concession. He had many complaints against the company; among the more significant are the following: (1) that the concession had been obtained under pressure, while the Persian government was ignorant of the value of the oil properties;¹² (2) that the Company had unfairly

⁸ Article 15, *id.*

⁹ 1913—81,000 tons; 1938—10,000,000 tons; 1947—20,517,000 tons.

¹⁰ The British officers were Colonel Smythe and General Sir Edmund Ironside. For a vivid account of the career of Reza Shah Pahlevi, see Gunther, John, *Inside Asia*, 1939, Chapter XXI.

¹¹ See Badeu, J. S., *East and West of Suez*, 1943, Headline Series No. 39, Foreign Policy Association, New York. Excerpts published in Sprout and Sprout, *Foundations of National Power*, 1945, Princeton University Press, New Jersey, pp. 288-310. At p. 302—“ . . . in 1919 Great Britain succeeded in having a pro-British ministry come to power, under which a treaty of support was concluded with England. By the terms of this treaty, Britain would have a predominant place in Persian affairs. Her advisers would assist in government, her capital and engineers build railroads, her officers train the army, her financial experts reorganize the customs.” This treaty was never ratified by the Persian Parliament, or Majlis.

¹² See the translation of the Note sent on December 12, 1932 by His Highness, Ali Khan Foroughi, Persian Minister for Foreign Affairs, to Mr. Hoare, His Britannic Majesty's Minister at Teheran, Official Journal of the League of Nations, February, 1933, at page 300-301.

calculated the amount of royalties, deducting huge sums for reserves and subsidies to subsidiaries of the parent Company;¹³ (3) that the Company had withheld payment of the annual dues and royalties;¹⁴ (4) that the cost of oil in Persia itself was prohibitive.¹⁵ The real reason was that Persia desired a greater share in the profits of the Company. Up to that time, Persia had received a total of about £11,000,000 in royalties, and had also benefitted from the £22,000,000 spent by the Company in Persia chiefly for laborers' wages. But it appeared that the British government had derived about £40,000,000 in taxes alone from the Company and its oil exports.¹⁶ Persia calculated that if instead of royalties, the government had levied the ordinary taxes, it would have received about £20,000,000.

The Company protested violently and the British government cited the Persian government to appear before the Council of the League of Nations. There M. Benes was appointed Rapporteur to try to bring about agreement between the parties. M. Benes, with great tact and skill succeeded. On April 29, 1933, a new contract was signed by the Persian government and the Company. The area of the concession was reduced, the Company to select the 100,000 square miles it desired by December 31, 1938.¹⁷ All the Company's imports of "anything necessary exclusively for the operations of the Company" and all exports of oil were exempted from all taxes and customs duties.¹⁸ The royalties were fixed at four shillings per ton of oil sold by the Company; a further sum equal to 20 per cent of the net profits, after £671,250 had been set aside as reserves or paid as dividends to the stockholders, was to be paid by the Company, the

¹³ See Memorandum from the Imperial Government of Persia, par. 27(d); C.43. M.17.1933.VII; also the letter of Lumley and Lumley, legal advisers to the Persian government, dated July 27, 1921, Official Journal of the League of Nations, February 1933, at page 296-297.

¹⁴ See translation of a note addressed by the Persian Ministry for Foreign Affairs to His Britannic Majesty's Minister at Teheran (September, 1917) No. 12187/1539.

¹⁵ See translation of the note of December 12, 1932, Official Journal of the League of Nations, February 1933, at page 302.

¹⁶ This was denied by Sir John Simon, who argued Britain's case before the Council of the League of Nations.

M. Davar—With regard to the £40,000,000 which I mentioned as being the profits received by the United Kingdom, I found this sum mentioned in a work by Mr. Winston Churchill, who was at one time Chancellor of the Exchequer.

Sir J. Simon—If I may interrupt, I would point out that the figure given in the book is an estimate of what might possibly be the ultimate receipts of the United Kingdom Government.

Third Meeting (January 26, 1933) Official Journal of the League of Nations, February, 1933, p. 210.

¹⁷ Article 2, Agreement Between the Imperial Government of Persia and the Anglo-Persian Oil Company, Limited, Made at Teheran on April 29, 1933 (document C.257.M.133.1933.VII). Official Journal of the League of Nations, December, 1933, p. 1653 (Annex 1467).

¹⁸ Article 6, *id.*

total amount being guaranteed to be not less than £750,000 per year,¹⁹ with 5 per cent interest in case of delay of payment by the Company.²⁰ In return for the tax exemption, the Company undertook to pay 9 pence for each of the first 6,000,000 tons of oil produced, and 6 pence for each ton in excess of 6,000,000 tons. This for the first fifteen years; for the next fifteen years, the rates were to be one shilling and 9 pence respectively. The rates thereafter were to be agreed upon.²¹ The total duration of the contract was 60 years, i.e., until 1993,²² at the end of which, the Company's properties were to be turned over to the Persian government free.²³ An elaborate arbitration clause was provided, too elaborate perhaps for the prompt settlement of a dispute of real gravity.²⁴ Persia solemnly promised that the concession would not be cancelled or altered "either by general or special legislation in the future, or by administrative measures, or any other acts whatever of the executive authorities,"²⁵ unless it was declared cancelled for non-fulfillment of the Company's obligations by the Arbitration Court.²⁶

By the standards of 1933, the new agreement, from Persia's viewpoint, was a spectacular success; for Reza Shah Pahlevi had grabbed the British lion by the throat and shook, until the sterling flowed. Persia's royalties jumped from £306,872 in 1931 to more than £2,000,000 in 1934. For Britain, it was no more than a hard bargain; for under the new contract, the British government still got more revenue from the Company in taxes alone than the Persian

¹⁹ Article 10, par. I, *id.*

²⁰ Article 10, par. VI, *id.*

²¹ Article 11, *id.*

²² Article 26, par. 1, *id.*

²³ Article 20, par. II, *id.*

²⁴ Article 22, B . . . 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 60 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 proper case) to nominate a sole arbitrator, to be chosen from persons qualified as above mentioned, and, in this case, the difference shall be settled by this sole arbitrator.

²⁵ Article 21, par. 3, *id.*

²⁶ Article 26, par. 2, *id.*

government from all its sources of income.²⁷ As production figures rose, so did Persia's royalties. For the next fifteen years, there was no trouble between Persia and the Company.

In 1948, England was suffering from postwar inflation.²⁸ Sir Stafford Cripps, then Chancellor of the Exchequer, asked British corporations to hold down dividends to help combat inflation. Since his order would cut sharply into Iran's royalties, the Company, anticipating a protest from Teheran, offered to revise the 1933 contract. The Chairman of the Board of Directors, Sir William Fraser, succeeded in negotiating a temporary compromise, subject to the approval of the Majlis (Iran's Parliament). The compromise provided for a sharp raise of Iran's royalties, in effect a 50-50 division of the Company's profits. For example, under the new terms, the 1948 royalties would have amounted to £18,700,000 as compared to the £4,000,000 for 1947. The offer seemed extraordinarily generous.²⁹ But it was interpreted by the Majlis as an admission that the old rates had been too low and that the Company had been cheating the Iranians. The Majlis' reaction, motivated by powerful nationalistic sentiments, was quick and drastic. General Razmara became premier and discreetly withdrew the Company's offer of compromise before it could be voted upon. The incident fanned the latent resentment against the British. Fanatical nationalist groups, like the Fadayan Islam (Crusaders of Islam) and the National Front (a 12-man clique that controls the 106-man Majlis) began agitating for the immediate nationalization of the oil industry. Razmara took a more realistic view. He opposed nationalization on the ground that it would mean the closing down of the industry as Iran did not have the technological personnel needed to operate the concession, and that in turn meant unemployment and the loss of revenues urgently needed for the 7-year development program of Iran.³⁰ He also knew that the resulting social disorder would give Iranian Communists their chance to take over the government. For this, Razmara was assassinated by a fanatic member of the Fadayan Islam, last March, 1951. Within a few hours of his death, the Majlis' petroleum committee voted unanimously for the nationalization measure. Hussein Ala was named premier.

²⁷ See Hilyer, Vincent, "Uneasy Iran," *Saturday Evening News Magazine*, July 21, 1951.

²⁸ For facts on the events immediately preceding the present dispute, see *Time Magazine*, specifically the issues for January 8, February 5, March 26, April 9, April 23, May 7, May 14, May 21, May 28, June 4, June 11, June 25, and July 2, all of 1951.

²⁹ In 1943, the Creole Petroleum Corp., a subsidiary of the Standard Vacuum Oil Co. (New Jersey) concluded a contract with the Venezuelan government guaranteeing the latter 50 per cent of its annual profits. The Arabian-American Oil Co. entered into a similar agreement with Ibn Saud of Saudi Arabia. The American companies had learned their lesson when President Cardenas of Mexico expropriated English and American oil holdings in 1938. On the Mexican expropriation of American oil properties, see 1 Hyde, *International Law*, pp. 720-722.

³⁰ The program was drafted by the Overseas Consultants, Inc., something similar to the Beyster Report of 1947 for Philippine rehabilitation and industrialization.

Three weeks after the shooting, the 106 members of the Majlis voted, to a man, for the approval of the expropriation bill. The bill provided for an interim period of three months for the study of the means of actually taking over the oil properties. Both the Shah and the premier were opposed to the bill, and hoped that the three month period would cool down anti-British feelings. Meanwhile, the British government sent a note to Teheran strongly protesting that the nationalization was illegal, as violative of the 1933 agreement, which the Iranian government had promised not to cancel unilaterally, and reiterated the 1949 offer of 50 per cent of the Company's profits. Britain's position in denying Iran's right to nationalize her oil industry was rather anomalous, since she herself had nationalized her basic heavy industries, and even the Bank of London.

The extreme nationalists also demanded the nationalization of American oil holdings in Bahrein Island. Previously, in August 28, 1949, Iran had sent notes to both England and the United States asserting that Bahrein was an inseparable part of Iran, and that all agreements concerning Bahrein's oil were invalid unless negotiated with the Iranian government.³¹ However, it appears that Iran has not exercised effective sovereignty over Bahrein for about 150 years. Although in 1869, Britain expressly recognized Iran's sovereignty over the island, since 1880 Bahrein has been virtually a British protectorate by virtue of a treaty concluded with the Sheik of Bahrein.

The Tudeh (Iranian Communist Party) by inciting riots and strikes, kept up the fever of nationalization throughout the three month interim. Premier Ala was threatened with assassination should he attempt to reverse the nationalization program. In turn, Ala had a bill passed by the Majlis proclaiming martial law in seven areas of Southern Iran. The British ambassador told Iran that Britain reserved the right to act as she saw fit to protect British lives and property. A brigade of paratroopers was sent to Cyprus, 900 miles from Abadan "to stand by for trouble." The British cruiser "Gambia" was ordered to Abadan, and five other warships remained within easy range of the troubled area. Whereas two decades ago, such saber-rattling might have cowed Iran, now it only aroused more bitter resentment. As a counter-move, Iran deliberately played Russia against Britain, dangling the threat of the Russo-Iranian Treaty of 1921.³²

³¹ See *Encyclopedia Britannica Book of the Year, 1949*. Also the letter from the Persian government to the Secretary-General of the League of Nations (October 14, 1932) protesting the issuance by the Indian Post Office of stamps surcharged "Bahrein Islands" as a "further encroachment upon Persia's sovereignty over the Bahrein Islands." (C. 751. M. 351. 1932. VII). *Official Journal of the League of Nations*, January, 1933, p. 119. Also the letter of Persian Minister of Foreign Affairs to the British Minister at Teheran (July 23, 1930) protesting the negotiations with the Sheik of Bahrein for oil concessions. (C. 433. M. 196. 1930. VII.)

³² Article 6 of which provided that if a third party should use Persia as a base of operations against Russia, "the U.S.S.R. shall have the right to advance its troops into the Persian border." Last November 3, 1950, Iran concluded a trade agreement

Ala finally resigned and Dr. Mossadeq, head of the Nationalist Front, replaced him. Britain then announced that she would take the dispute to the International Court of Justice. The Company sent a representative to the Mejlis oil committee for conference. Iran assured the Company of compensation, amounting to 25 per cent of its current oil revenues. The trouble is that Iran not only lacks money to pay this, but cannot even raise the \$60,000,000 needed annually for operating expenses.³³ Iran wants British technical assistance to run the industry without any strings attached; on the other hand, the British are willing to do so only in exchange for the continuance of at least part ownership. Iran gave the Company a virtual ultimatum to help her take over and get ready to do it within 3 days, and to deliver 75 per cent of their oil profits since March 20, 1951. Britain backed down, and Foreign Secretary Morrison publicly announced that Britain accepted some form of nationalization, in principle. The United States ambassador Grady intervened and asked Mossadeq to give the British two more days.

At Teheran, the Company's negotiators offered this compromise procedure. Britain would give all its Iranian assets, worth one billion dollars, to an Iranian-owned company. The new company would then contract with an operating concern to manage the production, which concern would be directed by a joint British-Iranian Board. The Company would pay Iran \$28,000,000 immediately, and \$8,400,000 per month until the new agreement was concluded. This offer was rejected by the oil committee. In desperation, Britain sought recourse to the International Court of Justice.

On July 5, 1951, the Court issued an order providing that pending the decision of the Court on the question of its jurisdiction,³⁴ each of the parties should insure that no action is taken which might prejudice the rights of the other, or which might aggravate or extend the dispute. It also suggested that the parties establish a Board of Supervisors, with two members from each party and a fifth member from a neutral country, which could reach a new agreement on the future management of the Company. Iran answered by withdrawing

with Russia. The 1921 treaty also provided for the renunciation of Persia's debts to Tzarist Russia, cancelled all former Russian concessions in Northern Persia, abolished the Capitulations providing for extraterritoriality for Russian subjects, turned over to Persia all Russian state and church property in the country, and reopened the Caspian Sea to joint navigation. (See Sprout and Sprout, *op. cit.*, p. 302.)

³³ On Iran's obligation to pay compensation, see 1 Hyde, *International Law*, 711 *et seq.* "It is significant, however, that even in such situations (i.e. war), the taking or destruction of alien property is acknowledged by claims commissions, as well as by governmental authorities, to beget a duty to compensate . . . There is in fact much material which inspires the contention that when judicial opinion imposes payment of full compensation within a reasonable time, as a condition to be satisfied by a requisitioning state on account of its action in time of war, the expropriation of alien-owned property in time of peace cannot lawfully be effected on lighter terms."

³⁴ Article 36, par. 6, Statute of the International Court of Justice, "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

her accession to the compulsory jurisdiction of the Court; Britain in turn declared that she would appeal to the Security Council under article 94 of the Charter of the United Nations³⁵ for enforcement of the order of the Court.

2. *Significance of the dispute in international relations.*

The total oil production of the Company is about 700,000 barrels a day. This is more than a third of the entire production of the Middle East (Iran, Iraq, Saudi Arabia, and Syria) and about 10 per cent of the world's production. Iran alone supplies about 3/4 of the needs of the Atlantic Pact nations. The United States herself, though she produces about 6 million barrels daily, imported 38 million barrels of Iranian oil in 1949. This was so, in spite of the fact that the United States has 32 per cent of the known world's reserves of oil, because she is drawing very heavily on her reserves to meet the demands of the domestic market and of mobilization. The United States therefore cannot by herself make up for the requirements of Western Europe, also in the process of mobilization, in case Iran's oil is lost to the latter. Considering that oil is one of the "great essentials" of modern warfare, and the present relations between Russia and the Western Powers, and considering further that Russia covets Iran's oil herself,³⁶ the significance of Iran's actions and apparent tendency to align herself with the Soviet bloc³⁷ is clear and grimly unmistakable.

An equally dark possibility is presented by Iran's strategic geographical position. Russian control of Iran would mean the possible severance of the "inner sea route" of England, a vital communications and food supply line (Gibraltar-Malta-Suez-Aden-Indian Ocean).³⁸ It would also mean the outflanking of India from the west and a warm water outlet for Russia, an historic aim of Russia's foreign policy since Peter the Great. Russia is deeply interested in bringing Iran within her orbit, since Iran constitutes a possible invasion route into Central Russia, a fact amply demonstrated in the last war by the Persian Gulf Command of the United States Army. Conversely, England is concerned with preventing Iran from joining the Communist nations, since Iran, together with Afghanistan, is a

³⁵ Article 94, par. 2. "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."

³⁶ For a discussion of the Iranian Question of 1946, ultimately rooted in Russia's desire for Iran's oil, see United Nations Yearbook 1946-1947. For a comprehensive summary of the factual background of this Question, see Collier's Encyclopedia (1950), Vol. XI, p. 117 *et seq.*

³⁷ It is noteworthy that while the Voice of America and British Broadcasting Corporation broadcasts are banned, the TASS (Soviet News Agency) is allowed to operate freely.

³⁸ See Fifield, Russell H., and Percy, G. Etzel, *Geopolitics in Principle and Practice*, 1944, Ginn and Co., p. 149. Also Fawcett, C.D., *A Political Geography of the British Empire*, 1933, Ginn and Co., chap. 1-2.

buffer zone for the security of India. In 1941, England's and Russia's interests were coincident, and they joined hands and occupied Iran to prevent her from joining the Axis powers.

In fine, geostrategy³⁹ and geonomics⁴⁰ have dictated that the affairs of Iran cannot be regarded as purely local or domestic. At least two great powers have important stakes of national interest in Iran. Essentially, it is this fact that gives the Iranian oil dispute an international character, at least from the viewpoint of world power politics, if not from International Law.

II. *Legal Aspects of the Dispute—Jurisdiction of the International Court of Justice.*

The United Kingdom in February 5, 1930 acceded to the compulsory jurisdiction of the Permanent Court of International Justice, under the Optional Clause provided in article 36 of the Statute of the Court.⁴¹ In February 28, 1940, she renewed her accession,⁴² which is still in force under article 36, paragraph 5, of the Statute of the International Court of Justice, the conditions being: "reciprocity, for 10 years and thereafter until notice of termination, over all disputes arising after February 5, 1930, with regard to situations or facts subsequent to the same date, other than:

1. 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;

2. Disputes with the government of any other member of the League (United Nations) 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;

3. Disputes with regard to questions which by international law, fall exclusively within the jurisdiction of the United Kingdom:

4. Disputes arising out of events occurring at a time when His Majesty's Government in the United Kingdom was involved in hostilities.

Subject to the condition that the United Kingdom reserves the right to require that proceedings in the Court shall be suspended as to any dispute submitted to the Council of the League of Nations (Security Council)."

On September 19, 1932, Iran recognized the compulsory jurisdiction of the Permanent Court of International Justice,⁴³ with the

³⁹ For further discussion on this aspect, see Simonds, Frank H., and Emeny, Brooks, *The Great Powers in World Politics*, 1939, American Book Co., pp. 74, 77, 131.

⁴⁰ On this aspect, see Frey, John W., *Petroleum in War and Peace*, in Renner, George T. and Associates, *Global Geography*, 1944, Thomas Y. Crowell and Co., p. 260 et seq., 596, 602.

⁴¹ Official Journal of the League of Nations, January, 1933, p. 14-15.

⁴² Department of State Bulletin, Vol. XXIV, No. 616—April 23, 1951.

⁴³ Official Journal of the League of Nations, January, 1933, p. 17; the text may also be found in the United Nations Yearbook, 1946-1947, p. 610.

following conditions: "reciprocity, for 6 years and thereafter until notice of termination, as to situations or facts relating directly or indirectly to the application of treaties or conventions accepted by Persia, with the exception of:

1. disputes relating to the territorial status of Persia, including those concerning the rights of sovereignty of Persia over its islands and ports;
2. disputes in regard to which the Parties have agreed or shall agree to have recourse to some other method of peaceful settlements;
3. disputes with regard to questions which, by international law, fall exclusively within the jurisdiction of Persia.

Subject to the condition that Persia reserves the right to require that proceedings in the Court shall be suspended in respect of any dispute which has been submitted to the Council of the League of Nations (Security Council)." Notice of termination was given by Iran last July 7, 1951.

Because of the present impossibility of determining the precise arguments submitted by the parties, and because of the basic similarity of the present dispute to that of 1933 and the consequent probability that the same arguments might still be applicable, a summary is here made of the contentions of each party concerning the jurisdiction of the League of Nations and of the Permanent Court of International Justice.⁴⁴ There are two important things to be remembered: first, that the 1933 dispute was presented to the Council of the League, not to the Permanent Court of International Justice, while the present dispute is pending before the International Court of Justice, not the Security Council nor the General Assembly; second, that though Persia in 1933 denied the jurisdiction of the Council, she in fact submitted to its jurisdiction, while today she has withdrawn her recognition of the Court's compulsory jurisdiction.

In 1933, when Britain threatened to cite Persia before the world Court, Persia denied that the Court had jurisdiction, relying on the terms of its accession. Specifically, Persia claimed: first, that the dispute did not refer to any treaty or convention accepted by her, since it involved a contract with a private individual, the Anglo-Persian Oil Company, Ltd., not a contract between sovereign states; second, that the dispute fell under the third class of reserved disputes. These points were not dealt with by Sir John Simons, who presented the British case. With reference to the present dispute, it should be recalled that Britain, through ownership of 52.55 per cent of the voting stock of the Company, actually controls it. If the separate corporate personality of the Company is disregarded, it will be seen that Britain is the real party in interest.⁴⁵

⁴⁴The proceedings before the Council may be found in the Official Journal of the League of Nations, February, 1933, pp. 197-210, 252; July, 1933, p. 827; December, 1933, p. 1606.

⁴⁵Article 34, par. 1, Statute of the International Court of Justice, "Only states may be parties in cases before the Court."

Before the Council, Britain argued that, since the Company was a British subject, she had the right to complain of the international wrong perpetrated by the unilateral act of Persia. Persia answered that for Britain to be able to present as an inter-state dispute what was simply one between Persia and a private individual, she must plead the right to diplomatic protection. Diplomatic protection presupposes: (a) a violation of international law, and (b) previous exhaustion of municipal remedies. Neither of these two conditions was present, Persia contended. There was no violation of international law, but merely a unilateral denunciation of a contract for non-fulfillment, falling within the sphere of civil law. There had been no exhaustion of municipal remedies, since the Company never had previous recourse to either the arbitration procedure outlined in the concession, nor to Persian courts. Britain had brought the dispute directly to the Council.

Britain attempted to answer the above points: (a) that "writers of repute in international law" agree that where a government, by executive or legislative action, takes a course incompatible with the terms of a concession it has granted to a foreigner, that is a violation of international law;⁴⁶ that the world court had ruled previously that respect for the acquired rights of foreigners forms part of International Law;⁴⁷ that a precedent had been set in the case between the United States and Salvador, where the World Court had said—"It is abhorrent to the sense of justice to say that one party to a contract, whether such party be a private individual, monarch, or government of any kind, may arbitrarily, without hearing and without impartial procedure of any sort, arrogate the right to condemn the other party to the contract . . ." and confiscate all his rights under it.

As to (b), Britain claimed that though the principle was correctly stated by the Persian representative, it did not apply in this case, because, as far as arbitration was concerned, that remedy was destroyed by Persia itself in its act of cancelling the contract in its entirety; and that, as to the Persian courts, the action of the government and of the Majlis, which enacted a law confirming the unilateral cancellation, precluded any possibility of the Company being

⁴⁶ The United States of America, on behalf of International Fisheries Co. v. United Mexican States (Lauterpacht, Ann. Digest, 1931-1932, Case No. 142, p. 273) held that the cancellation of a concession could not be regarded as being prima facie a violation of International law calculated to bring the case within the exception laid down in the North American Dredging Co. case (Annual Digest, 1925-1926, Case No. 218) and that "if every non-fulfillment of a contract on the part of a government were to create at once the presumption of an arbitrary act, which should therefore be avoided, governments would be in a worse situation than that of any private person, a party to any contract . . ."

⁴⁷ 1 Hyde, International Law, p. 712. "The alien acquirer of immovable property, as well as the state of which he is a national must be deemed to anticipate that the territorial sovereign may see fit to avail itself of its broad right to regulate and control the use of whatever is necessarily fixed in its domain, and that in so doing, it need not compensate the owner for losses resulting from such action . . ."

able to obtain a remedy therein. Municipal remedies had been exhausted because they had been destroyed by Persia.

This last point Persia tried to rebut by saying that the Company should have first gone to a Persian court to enforce the arbitration clause, so that the court would have been compelled to determine the validity of the unilateral cancellation. If it was valid, no arbitration would be necessary; if invalid, Persia would have submitted to arbitration. The "law" mentioned by Sir Simon was not a law, but merely a vote of confidence for the Cabinet, Persia's government being parliamentary in form. In the present dispute, the nationalization was effected by statute; so that unless Persian courts have the power of judicial review, they would be bound by the statute and recourse to them vain.

