

## ANGLO-IRANIAN OIL CO. CASE (PRELIMINARY OBJECTION)

### Judgment of 22 July 1952

The Anglo-Iranian Oil Company case had been submitted to the Court by the United Kingdom Government on May 26th, 1951, and had been the subject of an Objection on the ground of lack of jurisdiction by the Government of Iran.

By nine votes against five, the Court declared that it lacked jurisdiction. The Judgment was followed by a separate opinion by Sir Arnold McNair, President of the Court, who, while concurring in the conclusion reached in the Judgment, for which he had voted, added some reasons of his own which had led him to that conclusion. The Judgment was also followed by four dissenting opinions by Judges Alvarez, Hackworth, Read and Levi Carneiro.

On July 5th, 1951, the Court had indicated interim measures of protection in this case, pending its final decision, stating expressly that the question of the jurisdiction of the merits was in no way prejudged. In its Judgment, the Court declared that the Order of July 5th, 1951, ceased to be operative and that the provisional measures lapsed at the same time.

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The Judgment begins by recapitulating the facts. In April, 1933, an agreement was concluded between the Government of Iran and the Anglo-Iranian Oil Company. In March, April and May, 1951, laws were passed in Iran, enunciating the principle of the nationalisation of the oil industry in Iran and establishing procedure for the enforcement of this principle. The result of these laws was a dispute between Iran and the Company. The United Kingdom adopted the cause of the latter, and in virtue of its right of diplomatic protection it instituted proceedings before the Court, whereupon Iran disputed the Court's jurisdiction.

The Judgment refers to the principle according to which the will of the Parties is the basis of the Court's jurisdiction, and it notes that in the present case the jurisdiction depends on the Declarations accepting the compulsory jurisdiction of the Court made by Iran and by the United Kingdom under Article 36, paragraph 2, of the Statute. These Declarations contain the condition of reciprocity, and as that of Iran is more limited, it is upon that Declaration that the Court must base itself.

According to this Declaration, the Court has jurisdiction only when a dispute relates to the application of a treaty or convention accepted by Iran. But Iran maintains that, according to the actual wording of the text, the jurisdiction is limited to treaties subsequent to the Declaration. The United Kingdom maintains, on the contrary, that earlier treaties may also come into consideration. In the view of the Court, both contentions might, strictly speaking, be regarded as compatible with the text. But the Court cannot base itself on a purely grammatical interpretation: it must seek the interpretation which is in harmony with a natural and reasonable way of reading the text, having due regard to the intention of Iran at the time when it formulated the Declaration. A natural and reasonable way of reading the text leads to the conclusion that only treaties subsequent to the ratification come into consideration. In order to reach an opposite conclusion, special and clearly established reasons would be required: but the United Kingdom was not able to produce them. On the contrary, it may be admitted that Iran had special reasons for drafting her Declaration in a very restrictive manner, and for excluding the earlier treaties. For, at that time, Iran had denounced all the treaties with other States relating to the régime of capitulations; she was uncertain as to the legal effect of these unilateral denunciations. In such circumstances, it is unlikely that she should have been willing on her own initiative to agree to submit to an international court disputes relating to all these treaties. Moreover, the Iranian law by which the Najlis approved and adopted the Declaration, before it was ratified, provides a decisive confirmation of Iran's intention, for it states that the treaties and conventions which come into consideration are those which "the Government will have accepted after the ratification".

The earlier treaties are thus excluded by the Declaration, and the United Kingdom cannot therefore rely on them. It has invoked some subsequent treaties: namely those of 1934 with Denmark and Switzerland, and that of 1937 with Turkey, by which Iran had undertaken to treat the nationals of those Powers in accordance with the principles and practice of ordinary international law. The United Kingdom claims that the Anglo-Iranian Oil Company has not been treated in accordance with those principles and that practice; and in order to rely on the above-mentioned treaties, though concluded with third parties, it finds itself on the most-favoured-nation clause contained in two instruments which it concluded with Iran: the treaty of 1857 and the commercial

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convention of 1903. But the two latter treaties, which form the sole legal connection with the treaties of 1934 and 1937, are anterior to the Declaration: the United Kingdom cannot therefore rely on them, and, consequently, it cannot invoke the subsequent treaties concluded by Iran with third States.

But did the settlement of the dispute between Iran and the United Kingdom, effected in 1933 through the mediation of the League of Nations, result in an agreement between the two Governments which may be regarded as a treaty or convention? The United Kingdom maintains that it did: it claims that the agreement signed in 1933 between the United Kingdom and the Company had a double character: being at once a concessionary contract and a treaty between the two States. In the view of the Court, that it not the case. The United

Kingdom is not a party to the contract, which does not constitute a link between the two Governments or in any way regulate the relations between them. Under the contract, Iran cannot claim from the United Kingdom any rights which it may claim from the Company, nor can it be called upon to perform towards the United Kingdom any obligations which it is bound to perform towards the Company. This juridical situation is not altered by the fact that the concessionary contract was negotiated through the good offices of the Council of the League of Nations, acting through its rapporteur. The United Kingdom in submitting its dispute with Iran to the League Council, was only exercising its right of diplomatic protection in favour of one of its nationals.

Thus the Court arrives at the conclusion that it lacks jurisdiction.