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On May 1, 1951, Iranian legislation enacting the so-called nationalization of the oil industry in Iran received the imperial assent. Thus was set in motion the increasingly bitter course of events whereby Iran has practically cut herself off from the western world. A not insignificant element in these events is the abortive effort of the British to deal with the problem through the International Court of Justice. On July 5, 1951, the United Kingdom obtained an order from the Court designed to maintain the status quo pending further judicial proceedings.¹ In the subsequent course of these proceedings the U.K. made certain requests going to the merits of the case and was met by Iran's refusal to recognize the jurisdiction of the Court. This had the effect of suspending

the proceedings on the merits and the controversy over jurisdiction was argued. These arguments were concluded on June 23, 1952. On June 26, Iran, severely hurt economically, and with the fields shut tight, conceded its inability to sell oil abroad since nationalization. Faced with this situation the Court held: it did not have jurisdiction for want of Iran's consent under her Declaration of 1932 made pursuant to Article 36, paragraph 2, of the Statute of the International Court. Anglo-Iranian Oil Co. Case (Jurisdiction), Judgment of July 22, 1952: I. C. J. Reports 1952, p. 93.

The jurisdiction of the Court in disputes between states is based on the consent of the states and is in no way "compulsory." Article 36 of the statute provides for "compulsory" jurisdiction in the sense that by appropriate Declaration a state can agree prior to any specific dispute to accept jurisdiction to the extent that the other party accepts "the same obligation." Both the United Kingdom and Iran had filed such Declarations, Iran's being most pertinent in this dispute because it was narrower in scope than that of the U.K. Iran's Declaration is ambiguous, the key parts, translated from the original French, reading:

"[Iran accepts compulsory jurisdiction per Article 36, paragraph 2] in any disputes arising after ratification of the present declaration with regard to situations or facts relating directly or indirectly to the application of treaties or conventions accepted by [Iran] and subsequent to the ratification of this declaration."

The Court established that in dealing with this "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 it accepted the compulsory jurisdiction." The first question receiving the benefit of these standards was Iran's intention in using the words "subsequent to the ratification of this declaration." The Court concluded that this referred to "treaties or conventions," contrary to the U.K.'s contention that it referred to "situations or facts." In so doing the Court asserted this was the more reasonable construction, and, further, that such was the intent of Iran, as evidenced by the fact that Iran was at the time in the midst of shedding itself of the capitulatory regime imposed upon it by a variety of treaties which it had unilaterally denounced, the restrictions in the Declaration being designed to keep these old treaties from the International Court. The Court also felt free to refer to Iranian legislation which had put such a meaning on the Declaration. While both the historical situation and the legislation can be considered relevant evidence of Iran's "subjective" intent, it seems clear that the legislation should

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5 I.C.J. Reports 93 at 103 (1952).
6 Id. at 104.
have had no evidentiary value. The problem is Iran's intent as conveyed to the other adherents to the Court's jurisdiction, and it would seem that no state is required to take notice of another's internal legislation in ascertaining that intent.\(^7\)

Even assuming that the Declaration relates only to treaties or conventions accepted subsequent to the ratification of the Declaration, an ambiguity persists in the meaning of the words, "relating directly or indirectly." The U.K. was relying primarily on the most-favored-nation clauses of its treaties with Iran of 1857 and 1903,\(^8\) long anterior to the Declaration, but meaningless unless given substance by treaty between Iran and some third party—in this case Denmark—there being a treaty made in 1934 providing for reciprocal treatment of their nationals "as regards their persons and property, in accordance with the principles and practice of ordinary international law."\(^9\) The Court very summarily decided that the phrase, "relating directly or indirectly," merely modified the words, "situations or facts," dismissing the idea that a given factual situation could relate "indirectly" to a treaty. The other viewpoint is that the present dispute related "indirectly" to the treaty with Denmark through the most-favored-nation clauses of the treaties with the U.K. It seems clear that had the Court desired to go the other way this is the point at which it could have done so most easily. It apparently based its decision entirely on "the natural and reasonable way of reading the text," and well it might have ignored the question of Iran's intent. The desire of Iran to avoid litigation on the capitulatory treaties could not have been prejudiced by the interpretation urged by the U.K.\(^10\) This general argument was the principal basis of the dissents of Judges Hackworth and Read. Their development is persuasive and to the author, at least, compelling. Hackworth observes: "It is in [the Danish treaty] and not in the most-favored-nation clause that the substantive rights of British nationals are to be found. Until that treaty was concluded, the most-favored-nation clauses . . . were but promises. They related to rights 'in futuro.' There was a right to claim something but it was an inchoate right."\(^11\)

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\(^7\) "It is certain that France cannot rely on her own legislation to limit the scope of her international obligations." Free Zones Case, Perm. Ct. Int. J., Order, Dec. 6, 1930, Ser. A, No. 24, p. 12: 2 HUDSON, WORLD COURT REPORTS 448, 490 (1935). See also 5 HACKWORTH, INTERNATIONAL LAW 166 et seq., and 252, 253.

\(^8\) I.C.J. Reports 93 at 108 (1952).

\(^9\) Ibid.

\(^10\) As Judge Read points out, at 147, Iran herself did not view the most favored nation treaties as prejudicial to her efforts to be free of the capitulatory regime. Assuming that the substantive rights in question must still come from a treaty subsequent to the 1932 Declaration, surely Iran would not then negotiate any such treaty providing for capitulatory rights, and it is equally clear that such rights are not "in accordance with the principles and practice of ordinary international law," as the Danish Treaty provides. See the discussion in 2 HYDE, INTERNATIONAL LAW 849 et seq. (1945).

\(^11\) I.C.J. Reports 93 at 140-141 (1952).
The only remaining issue of substance was disposed of with the Court's decision that any tacit inter-state\textsuperscript{12} agreement arising out of the concession dispute of 1933 was not a "treaty or convention" within the terms of Iran's Declaration. At the time Iran had attempted to cancel the D'Arcy concession and the U.K. had referred the case to the Council of the League of Nations. Subsequently the dispute, and the present concession agreements, had been worked out under the good offices of a Rapporteur appointed by the Council, the text of the Concession Contract appearing in the report of the Rapporteur declaring an end to the dispute. The U.K. had argued that the peculiar circumstances of this arrangement had given rise to a tacit "treaty" obligation to respect the contract.

Although the Court pursued what was obviously the more cautious course it is regrettable that it did so in view of the immense prestige latent in a successful solution of this dispute.\textsuperscript{13}

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\textsuperscript{12} I.e., "international," as distinguished from the concession agreement proper which was not between states but a state and a national of another state.

\textsuperscript{13} The United Kingdom's permanent member of the Court, Sir Arnold McNair, concurred with the majority in a separate opinion but disputed the admissibility as evidence of the Iranian legislation interpreting the declaration. The two dissents of prime interest were those of Hackworth and Read noted above, although Judge Alvarez, Chile, provided an interesting discussion of a "new international law." Judge Levi Carniero, Brazil, went on to consider the merits to some extent in his dissent, concluding that Iran, in failing to provide adequate compensation for the expropriation, had committed a denial of justice and hence a breach of international law.