SECTION A

ORAL PROCEEDINGS CONCERNING INTERIM MEASURES OF PROTECTION

PUBLIC SITTINGS

held at the Peace Palace, The Hague, on June 30th and July 5th, 1951, the President, M. Basdevant, presiding

SECTION A

PROCÉDURE ORALE CONCERNANT LES MESURES CONSERVATOIRES

SÉANCES PUBLIQUES

tenues au Palais de la Paix, La Haye, les 30 juin et 5 juillet 1951 sous la présidence de M. Basdevant, Président

MINUTES OF THE SITTINGS HELD ON JUNE 30th AND JULY 5th, 1951

YEAR 1951

ELEVENTH PUBLIC SITTING (30 VI 51, 10.30 *a.m.*)

Present : President BASDEVANT ; *Vice-President* GUERRERO ; *Judges* ALVAREZ, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir ARNOLD MCNAIR, KLAESTAD, BADAWI, READ, HSU MO ; *Registrar* HAMBRO.

Also present :

For the United Kingdom of Great Britain and Northern Ireland :
Sir Eric BECKETT, K.C.M.G., Q.C., Legal Adviser, Foreign Office.
The Right Honourable Sir Frank SOSKICE, Q.C., M.P., Attorney-General.
Professor H. LAUTERPACHT, Q.C., Professor of international law at the University of Cambridge.
Mr. A. K. ROTHNIE, Eastern Department, Foreign Office.
Mr. H. A. P. FISHER, Counsel.
Mr. D. H. N. Johnson, Assistant Legal Adviser, Foreign Office.

In opening the hearing, the PRESIDENT stated that the Court was meeting to consider the request for the indication of interim measures of protection, filed on June 22nd, 1951, by the Government of the United Kingdom of Great Britain and Northern Ireland against the Empire of Iran, in the Anglo-Iranian Oil Company, Limited, case, which had been brought before the Court by Application of the Government of the United Kingdom dated May 26th, 1951.

He called upon the Registrar to read, in the original text, the interim measures of which the indication was requested by the United Kingdom Government.

The REGISTRAR read the relevant text of the request [1].

The PRESIDENT stated that on the day on which the request for the indication of interim measures of protection was filed, a telegram was sent by the Registrar of the Court to the Minister for Foreign Affairs of Iran, in order to transmit to him the submissions of the request. In addition, and on the same date, a copy *in extenso* of the request was addressed to him by air mail.

Furthermore, the Parties had been duly notified, by telegram dated June 23rd, of the date fixed for the opening of the present hearing.

The Government of the United Kingdom of Great Britain and Northern Ireland was represented by :

[1] See pp. 51-53.

PROCÈS-VERBAUX DES SÉANCES TENUES LES 30 JUIN ET 5 JUILLET 1951

ANNÉE 1951

ONZIÈME SÉANCE PUBLIQUE (30 VI 51, 10 *h.* 30)

Présents : MM. BASDEVANT, *Président ;* GUERRERO, *Vice-Président ;* ALVAREZ, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, sir ARNOLD MCNAIR, MM. KLAESTAD, BADAWI, READ, HSU MO, *juges ;* M. HAMBRO, *Greffier.*

Présents également :

Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord :
Sir Eric BECKETT, K. C. M. G., Q. C., jurisconsulte du Foreign Office.

Le très honorable sir Frank SOSKICE, Q. C., M. P., *Attorney-General.*
Le professeur H. LAUTERPACHT, Q. C., professeur de droit international à l'Université de Cambridge.
M. A. K. ROTHNIE, Eastern Department, Foreign Office.
M. H. A. P. FISHER, avocat.
M. D. H. N. JOHNSON, conseiller juridique adjoint, Foreign Office.

Le PRÉSIDENT, ouvrant l'audience, déclare que la Cour se réunit pour examiner la demande en indication de mesures conservatoires, déposée le 22 juin 1951, par le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord contre l'Empire d'Iran, dans l'affaire de l'Anglo-Iranian Oil Company, Limited, qui avait été introduite devant la Cour par une requête du Gouvernement du Royaume-Uni en date du 26 mai 1951.

Il prie le Greffier de donner lecture, dans le texte original, des mesures conservatoires dont l'indication est demandée par le Gouvernement du Royaume-Uni.

Le GREFFIER donne lecture des passages pertinents de la demande [1].

Le PRÉSIDENT rappelle que le jour même du dépôt de la demande en indication de mesures conservatoires, un télégramme a été envoyé par le Greffier de la Cour au ministre des Affaires étrangères de l'Iran, aux fins de lui communiquer les conclusions de ladite demande. En outre, et à la même date, copie *in extenso* de la demande a été adressée au ministre par lettre-avion.

D'autre part, les Parties ont été dûment avisées par télégramme du 23 juin de la date fixée pour l'ouverture de l'audience.

Le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est représenté par :

[1] Voir pp. 51-53.

Sir Eric BECKETT, K.C.M.G., Q.C., Legal Adviser, Foreign Office, as Agent;

assisted by:

The Right Honourable Sir Frank SOSKICE, Q.C., M.P., Attorney-General,

Professor H. LAUTERPACHT, Q.C., Professor of international law at the University of Cambridge,

Mr. H. A. P. FISHER, Member of the English Bar,

Mr. D. H. N. JOHNSON, Assistant Legal Adviser of the Foreign Office, as Counsel.

The Minister for Foreign Affairs of Iran had communicated to the Court a telegram dated June 29th, 1951, in which he stated the reasons for which his Government considered that the Court should reject the request for the indication of interim measures of protection.

The President called upon the Agent of the Government of the United Kingdom, or if he preferred, upon his Counsel.

Sir Eric BECKETT said that Sir Frank Soskice would address the Court on behalf of the United Kingdom.

Sir Frank SOSKICE submitted the statement reproduced in the annex [1].

(The Court adjourned from 1 p.m. to 3.30 p.m.)

Sir Frank SOSKICE continued and completed the statement reproduced in the annex [2].

The Court rose at 5.50 p.m.

(Signed) BASDEVANT,
President.

(Signed) E. HAMBRO,
Registrar.

TWELFTH PUBLIC SITTING (5 VII 51, 3.30 *p.m.*)

Present: President BASDEVANT; *Vice-President* GUERRERO; *Judges* ALVAREZ, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir ARNOLD MCNAIR, KLAESTAD, BADAWI, READ, HSU MO; *Registrar* HAMBRO.

Also present:

For the United Kingdom of Great Britain and Northern Ireland:

His Excellency Sir PHILIP NICHOLS, K.C.M.G., M.C., His Britannic Majesty's Ambassador at The Hague;

[1] See pp. 401-413.

[2] „ „ 413-425.

Sir Eric BECKETT, K. C. M. G., Q. C., jurisconsulte du ministère des Affaires étrangères,
comme agent ;

assisté par :

Le très honorable sir Frank SOSKICE, Q. C., M. P., *Attorney-General,*

le professeur H. LAUTERPACHT, Q. C., professeur de droit international à l'Université de Cambridge,
M. H. A. P. FISHER, membre du barreau anglais,
M. D. H. N. JOHNSON, jurisconsulte adjoint au ministère des Affaires étrangères,
comme conseils.

Le ministre des Affaires étrangères de l'Iran a fait tenir à la Cour un télégramme, en date du 29 juin 1951, dans lequel il expose les motifs pour lesquels son gouvernement estime que la Cour devrait rejeter la demande en indication de mesures conservatoires.

Le Président donne la parole à l'agent du Gouvernement du Royaume-Uni ou, s'il le préfère, à son conseil.

Sir Eric BECKETT annonce que sir Frank Soskice prendra la parole au nom du Royaume-Uni.

Sir Frank SOSKICE présente l'exposé reproduit en annexe [1].

(L'audience, interrompue à 13 heures, est reprise à 15 h. 30.)

Sir Frank SOSKICE poursuit et termine l'exposé reproduit en annexe [2].

L'audience est levée à 17 heures 50.

Le Président de la Cour,
(Signé) BASDEVANT.

Le Greffier de la Cour,
(Signé) E. HAMBRO.

DOUZIÈME SÉANCE PUBLIQUE (5 VII 51, 15 *h.* 30)

Présents : MM. BASDEVANT, *Président ;* GUERRERO, *Vice-Président ;* ALVAREZ, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, sir ARNOLD MCNAIR, MM. KLAESTAD, BADAWI, READ, HSU MO, *juges ;* M. HAMBRO, *Greffier.*

Sont présents également :

Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord :
Son Exc. sir PHILIP NICHOLS, K. C. M. G., M. C., ambassadeur extraordinaire et plénipotentiaire de Grande-Bretagne à La Haye ;

[1] Voir pp. 401-413.
[2] » » 413-425.

Mr. D. H. N. JOHNSON, Legal Adviser (Research), Foreign Office ;
Mr. J. P. GARRAN, Counsellor, British Embassy, The Hague ;

Mr. R. W. SELBY, First Secretary, British Embassy, The Hague.

The PRESIDENT, in opening the hearing, stated that the Court had met for the reading of the Order which it had made on the Request for Interim Measures of Protection, presented by the Government of the United Kingdom of Great Britain and Northern Ireland on June 22nd, 1951, in the proceedings instituted by the Application of that Government, dated May 26th, 1951, against the Imperial Government of Iran concerning the Anglo-Iranian Oil Company.

In accordance with the provisions of Article 58 of the Statute, the Parties had been duly notified of the reading of this Order at the present hearing.

An official copy of the Order would be handed to the Representative of the Government of the United Kingdom who was present in Court.

The President added that the Court had decided that the English text of the Order would be the authoritative text, but that he would read the French text.

The President read the French text of the Order [1].

He called upon the Registrar to read the operative part of the Order in English.

The REGISTRAR read the relevant text.

The PRESIDENT stated that Judges Winiarski and Badawi, declaring that they were unable to concur in the Order of the Court, had appended to the Order the joint statement of their dissenting opinion.

The President declared that the hearing was closed.

The Court rose at 4 p.m.

(Signed) BASDEVANT,
President.

(Signed) E. HAMBRO,
Registrar.

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[1] See *Reports of Judgments, Advisory Opinions and Orders 1951*, p. 100 (Sales No. 64).

M. D. H. N. JOHNSON, conseiller juridique adjoint ;
M. J. P. GARRAN, conseiller à l'ambassade de Grande-Bretagne à La Haye ;
M. R. W. SELBY, premier secrétaire à l'ambassade du Royaume-Uni à La Haye.

Le PRÉSIDENT, ouvrant l'audience, annonce que la Cour se réunit pour le prononcé de l'ordonnance rendue par elle sur la demande en indication de mesures conservatoires, qu'a présentée le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, le 22 juin 1951, dans l'instance introduite par requête de ce gouvernement, à la date du 26 mai 1951, contre le Gouvernement impérial de l'Iran, à propos de l'Anglo-Iranian Oil Company.

Il rappelle que, conformément aux dispositions de l'article 58 du Statut, les Parties ont été dûment prévenues qu'il serait donné lecture de l'ordonnance au cours de la présente audience.

Une expédition officielle de l'ordonnance est remise entre les mains du représentant du Gouvernement du Royaume-Uni, présent à l'audience.

Le Président ajoute que la Cour a décidé que le texte anglais de l'ordonnance ferait foi; il en donnerait lecture en français.

Le Président donne lecture, en français, du texte de l'ordonnance [1].
Il invite le Greffier à donner lecture, en anglais, du dispositif.

Le GREFFIER procède à cette lecture.

Le PRÉSIDENT indique que MM. Winiarski et Badawi, n'étant pas en mesure de se rallier aux dispositions adoptées par la Cour dans l'ordonnance, ont joint à celle-ci l'exposé de leur opinion dissidente.

Le Président déclare que la session est close.

L'audience est levée à 16 heures.

Le Président de la Cour,
(Signé) BASDEVANT.

Le Greffier de la Cour,
(Signé) E. HAMBRO.

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[1] Voir *Recueil des Arrêts, Avis consultatifs et Ordonnances 1951*, p. 100 (n° de vente 64).

ANNEX TO THE MINUTES
ANNEXE AUX PROCÈS-VERBAUX

STATEMENT BY SIR FRANK SOSKICE

(COUNSEL FOR THE GOVERNMENT OF THE UNITED KINGDOM)
AT THE PUBLIC SITTING OF JUNE 30th, 1951

[Public sitting of June 30th, 1951, morning]

May it please the Court.

Before I begin to state the grounds on which the Government of the United Kingdom is asking the Court to indicate interim measures, I wish to express to the Court the appreciation which the Government of the United Kingdom feels for the prompt steps which you have taken in conformity with the Rules of Court to assemble and consider our Request. I need not labour the point that the Request for Interim Measures which we have made is indeed of the greatest urgency. The Court will have read in our Request of the situation which actually exists at the moment in Iran, and I shall have at a later stage in my speech to recite further facts and incidents which have occurred since the Request was filed.

The Court will recall that the Government of the United Kingdom, in the Application which it made to the Court on 26th May 1951, reserved the right to request the Court, in accordance with Article 41 of the Statute of the Court, to indicate any provisional measures which ought to be taken to protect the right of the Government of the United Kingdom that its national, the Anglo-Iranian Oil Company, Limited, should enjoy the rights to which it is entitled under the concession granted by the Iranian Government in 1933. The Government of the United Kingdom did not at that time think it proper to make such a request to the Court, because it still hoped that a settlement by agreement might be reached between the Iranian Government and the Anglo-Iranian Oil Company. The Company agreed to send a special delegation to Tehran for conversations with the Iranian Government, and the Iranian Government had agreed to receive this delegation. The Government of the United Kingdom wished to do nothing which could possibly prejudice the conversations and reduce the chances of reaching a settlement. The Company's delegation arrived in Tehran on 11th and 12th June, and the conversations began immediately. At an early stage, however, it became apparent that the Iranian Government was not prepared even to discuss an agreed settlement but merely insisted that the Company should accept the oil nationalization law of 1st May 1951, referred to in paragraph 4 of the United Kingdom Application, and should co-operate in carrying out its terms without any alteration at all. As the Court will appreciate, the Company was unable to accede to such a proposal, since in the first place it is its contention (as it is the contention of the Government of the United

Kingdom) that the 1933 Convention cannot be annulled or altered except with the agreement of the Company or under the terms of the Convention, and that the annullment or alteration which the Iranian Government has purported to enact by the oil nationalization law is a breach of the Convention and contrary to international law; and in the second place, even if the Company was prepared to agree in principle to some form of nationalization, it could not agree to, or co-operate in executing, an enactment which refers to the Company as the "Former Anglo-Iranian Oil Company" and purports to dispossess it forthwith of its property and undertaking. The Iranian Government was not prepared, however, to continue the conversations with the Company on any other basis and the negotiations therefore terminated on 19th June. It was then apparent that there was no possibility by negotiation of persuading the Iranian Government to refrain from proceeding with the execution of the oil nationalization law and taking steps in relation to the property and the undertaking of the Anglo-Iranian Oil Company in Iran which might irreparably damage such property and prejudice the Company. In these circumstances the Government of the United Kingdom has no alternative but to lodge an immediate request that the Court should indicate interim measures of protection.

The Court will recall that in its Application of 26th May, the Government of the United Kingdom asked the Court to declare that the Iranian Government is under a duty to submit the dispute between itself and the Anglo-Iranian Oil Company to arbitration, and to comply with any award of the arbitral tribunal. Alternatively, the Government of the United Kingdom asked the Court to declare that the putting into effect of the Iranian Oil Nationalization Act, in so far as it purports to effect a unilateral annulment or alteration of the terms of the Convention, would be an act contrary to international law for which the Iranian Government would be internationally responsible and that by rejecting arbitration in accordance with the Convention, the Iranian Government has committed a denial of justice against the Company contrary to international law. Further, the Government of the United Kingdom asked the Court to declare that the Convention cannot lawfully be annulled or its terms altered by the Iranian Government otherwise than by agreement with the Company or as provided in the Convention, and lastly to award satisfaction and indemnity for acts committed by the Iranian Government contrary to international law. The right of the Government of the United Kingdom for the protection of which the Court is now asked to indicate provisional measures is the right that its national, the Company, should be treated in accordance with international law and should have the full benefit of its rights under the Convention. The Government of the United Kingdom seeks, pending the decision of the merits of its Application, to secure that no action should be taken by the Iranian Government capable of exercising a prejudicial effect in regard to the execution of a decision in favour of the United Kingdom. The present actions and threats of the Iranian Government are such that if they continue they may render it impossible or at the least very difficult to execute a judgment in favour of the United Kingdom.

It may be for the convenience of the Court if, at the outset, I give a short account of the facts which have led us to make the present

request. As the Court will know, the Concession Convention of 1933 was concluded between the Iranian Government and the Anglo-Iranian Oil Company after negotiations carried out in Tehran. These negotiations were instituted following on the cancellation by the Iranian Government of a previous concession and the submission by the Government of the United Kingdom of the dispute arising therefrom to the Council of the League of Nations. The concession was operated for many years after 1933 and any differences which arose were settled by negotiation between the Iranian Government and the Company. In 1948 conversations took place with a view to concluding a supplemental agreement to take account of certain changes in the economic situation since 1933, and in July a supplemental agreement was signed under which the royalties and other sums payable to the Iranian Government were to be greatly increased. This agreement could not come into effect until it had been approved by the Iranian Parliament. No decision was taken on the agreement prior to the dissolution of Parliament in July 1949. A new Parliament was convened in February 1950 which in June 1950 referred the agreement to a parliamentary commission reported against the agreement and in January 1951 the Majlis confirmed the report of the commission. In March 1951 the chairman of the commission (who is now the Prime Minister of Iran) proposed that the oil industry throughout Iran should be nationalized. In March the Majlis instructed the commission to study the question of nationalization and on the 26th April the commission approved the text of a Bill giving immediate effect to the principle of nationalization. The Bill was passed substantially in the terms proposed and became law on the 1st May.

The events which followed up to the 21st June 1951 are set out in the appendix to the Request for the Indication of Provisional Measures, which was presented on the 22nd June, and I need not repeat them. Since that Request was filed the course of events has been as follows. I give them chronologically. They all show the Iranian Government enforcing its oil nationalization law, ousting the Company from control, requiring the Company's employees to become servants of the National Iranian Oil Company, the British personnel declining to be transferred in this manner, oil production dropping and indeed the beginning of the consequences which were foreshadowed in the United Kingdom Government's request of the 22nd June.

On June 13th, the Company's general manager was asked by the temporary board of management of the National Iranian Oil Company for a statement of export sales proceeds from 20th March 1951 to 11th June 1951, and to hand over to the temporary board 75 % of all cash received from the Iranian undertaking after 11th June.

On 13th June, the temporary board issued a Press advertisement in the Tehran Press calling on all persons importing Iranian oil to deal only with that board henceforward.

On 19th June, at a meeting with the temporary board, the Company was required to re-engage employees whom the Company had previously discharged for subversive activities.

On 20th June, decrees were passed by the Persian Council of Ministers to the following effect:

(a) No operational instructions issued by the Anglo-Iranian Oil Company management should be valid unless countersigned by the temporary board.
(b) Persian officials should take over the installations of the Kermanshah Petroleum Co., Ltd. (a subsidiary of Anglo-Iranian Oil Company), at Kermanshah and Naft-i-Shah in West Persia.
(c) Persian officials were to assume the supervision of the Anglo-Iranian Oil Company's Tehran Office and its sales organisation in Persia.
(d) The Anglo-Iranian Oil Company information departments in Persia should be closed.
(e) The name of the National Iranian Oil Company should take the place of the name of the Anglo-Iranian Oil Company on all Company name boards in Iran.
(f) All Anglo-Iranian Oil Company revenues received from internal sales in Iran should be deposited in Government accounts.

On 21st June, a large crowd of persons forced their way into the Anglo-Iranian Oil Company's principal office at Tehran, destroyed a large electric sign on the premises bearing the Anglo-Iranian Oil Company's name; another crowd demolished the signboard of an Anglo-Iranian Oil Company's sub-office in Tehran, and other crowds in Tehran obliterated the Anglo-Iranian Oil Company's monogram sign on certain of its road oil tankers.

On the same day, Persian police forcibly closed the sub-office at Tehran rented by the Anglo-Iranian Oil Company for the use of its information department and stopped all postal mail to and from that sub-office.

On 21st June, the oil Company's name board was removed by the police from its general office at Khorramshahr.

On the same day, the Company's general manager (Mr. Drake) received letters addressed to him personally by the temporary board of the National Iranian Oil Company containing instructions which included the following:

(a) To refrain from granting leave to members of his staff.
(b) To inform all concerned that orders issued by the Anglo-Iranian Oil Company were not valid without countersignature by the National Iranian Oil Company managing board.
(c) To dissolve the Anglo-Iranian Oil Company Information Department at Abadan.
(d) To delete the name "Anglo-Iranian Oil Company" on all installations in South Iran.
(e) To hand over the proceeds of all sales of oil in Iran to the local Government office representing the Persian Ministry of Finance.

On the 21st June, a Bill was presented to the Majlis with "double urgency" against persons engaging "treacherously or with ill-intent in activities in connection with the operation of the Persian National Oil Industry". The text of the Bill is as follows:

> "For a year from the date of approval of this law, any persons engaging treacherously or with ill-intent in activities in connection with the operation of the Persian National Oil Industry, resulting in cutting oil pipelines or rendering unserviceable refineries or facilities or transport of oil, or causing fire in oil wells or oil-storage

tanks or causing destruction of railway lines, railway tunnels, railway bridges or rolling stock, shall be condemned to penalties ranging from temporary imprisonment with hard labour to execution. The same penalties will be applied to instigators and accomplices as to those actually committing the crime. These offences shall be dealt with by military courts."

It will be noted that the penalties under this Bill range from imprisonment with hard labour to the death penalty, and that offences under the law are to be dealt with by military courts. The fact that it is a "double urgency" Bill means that it may be debated and passed at one sitting of the Majlis. According to the latest reports it is likely that the Bill will be debated on Sunday, 1st July.

On the night of the 21st/22nd June, the Anglo-Iranian Oil Company printing works at Abadan were forcibly seized on behalf of the Persian Government delegation and the printers were compelled by threats to print certain forms of receipt which were then removed by persons acting on behalf of the temporary board. These receipts contained an acknowledgement that oil received on board tankers was received from the National Iranian Oil Company, the consignee being responsible for payment of the purchase price. The Persian authorities demanded receipts in this form from masters of oil tankers in port at Abadan for oil exports with the threat that, if they did not sign these documents in respect of cargoes loaded by them, port clearance would be refused. The general manager refused to comply but authorized the issue by ships' captains of token receipts indicating the amount of oil exported in each case. Subsequently, on the same or the following day, a compromise was reached between the general manager and the Persian authorities whereby the receipts demanded by the latter would be endorsed in the following sense :

"While I do not admit on behalf of my principals any implications in the above receipt that the National Iranian Oil Company has any title to the oil nor do I admit any liability on the part of the consignees to make payment for a particular shipment, I certify that the above quantity has been shipped as stated."

On the 23rd June, the Persian authorities demanded an oil receipt in the following terms :

"National Iranian Oil Company Receipt for Shipments of Oil.
I, the undersigned, Captain of ss. . . . . have received at Abadan, as per bill of lading No. . . . . tons of oil for the account of . . . . . and delivery to . . . . . at destination port . . . . . .

Signed. . . . . .
Master."

In reply to this demand the general manager of the Company was empowered to authorize signature of such receipts provided the following words were added : "I have signed this receipt without prejudice to the right of the Anglo-Iranian Oil Company." This endorsement was subsequently refused by the Persian authorities.

On the same day, the 23rd June, a number of letters were addressed personally to the Anglo-Iranian Oil Company's general manager, Mr. Drake, by the temporary board of directors of the National Iranian Oil Company. One of these letters claimed that Mr. Drake had not complied with a previous requirement, to which he had allegedly agreed, to set up an office to deal with the export of oil products, including the collection of receipts from tankers carrying oil. This letter went on to call attention to the fact that, on the 22nd June, tankers had either refused to give the required receipt or had wished to make certain reservations therein which, it was contended, rendered the receipt invalid ; it was claimed that "this policy can mean nothing but ill-intentions and sabotage" and that if any delay occurred in export operations and if tankers refused to take delivery of oil, the general manager would be held responsible. The allegation that the general manager had agreed to set up such an office is, in point of fact, quite groundless.

The remaining letters addressed to Mr. Drake on the 23rd June purported to give instructions :

(a) Nominating two Persians not in the Company's service to supervise the Anglo-Iranian Oil Company's information department (described as "The former propaganda department") on behalf of the National Iranian Oil Company managing board.

(b) Directing that certain rail tank-cars of the Persian State Railway, normally used at the Anglo-Iranian Oil Company's discretion for the carriage of oils to Central Persia, should be filled immediately with oil products.

(c) Directing application for oil cargoes to be made by all incoming tankers to the National Iranian Oil Company Board, and requiring an undertaking to sign without endorsement the National Iranian Oil Company form of receipt for oils exported.

On the same day, the 23rd June, the sales manager at Tehran was instructed by the Persian Government to hand over to the National Iranian Oil Company all cash received from sales of oil in Persia and was later forced to comply with this demand.

On the 24th June, similar directions were given to the distribution managers at Ahwaz, Abadan and Masjid-i-Sulaiman.

On the 25th June, the general manager, Mr. Drake, received a letter from the temporary board of management referring to an enquiry previously made whether he was willing to continue service under the supervision of the board, and warning him that if he did not reply by 8 a.m. on the 28th June and also facilitate the activities of the temporary board, he would be regarded as having resigned and would be replaced by a nominee of the board.

On the same day, the 25th June, a further letter was received addressed to the general manager by the temporary board of management of the National Iranian Oil Company stating *inter alia* that no cheques might be issued by the Anglo-Iranian Oil Company unless countersigned by accountants nominated by the temporary board.

On the same day, the 25th June, Mr. Drake, the general manager, had an interview with the temporary board, at which the board refused to withdraw their letter charging him with sabotage. In the circumstances, and in view of the terms of the Bill which I have read to the Court, the general manager left the country.

Again on the same day, the 25th June, a large number of British registered tankers were prevented from sailing from Abadan with cargoes of oil unless they signed receipts in a form which was unacceptable to the Anglo-Iranian Oil Company.

On 26th June, 13 tankers loaded with oil cargoes had to be instructed to pump their cargoes ashore as otherwise the Iranian authorities announced their intention of detaining them.

On 26th June, again the Customs authorities at Abadan refused to allow certain aviation spirit storage to be refilled and in consequence pumping of further supplies of this spirit to Basra in Iraq by the Anglo-Iranian Oil Company's pipeline had to be stopped.

On 26th June, Persian soldiers were stationed on the jetty at Abadan, which is used for conveying from the Anglo-Iranian Oil Company's workshops on shore to ships in port machinery which has been undergoing necessary repairs, and also marine stores necessary for the working of the ships ; these soldiers interfered with the handling of this material and with the movement of Anglo-Iranian Oil Company employees.

At 9.25 in the morning on 28th June, five members of the temporary board entered the office of the Anglo-Iranian Oil Company's general manager at Khorramshahr and informed his deputy that they were taking over the offices. The general manager's deputy was accordingly obliged after protest to leave the offices in the hands of the Persian authorities ; his staff were also in consequence obliged to leave the building, from which they normally discharge their duties.

Mr. President and Members of the Court, I have now set out the facts as they have unfolded themselves to date. I would now like to turn to the legal principles and address an argument to the Court on some principles of jurisprudence which may seem to have a relevance in this connection.

The Government of the United Kingdom have been compelled to make this Request for Interim Measures of Protection at a stage at which the Court has not yet determined whether it has jurisdiction to entertain the Application submitted on 26th May.

I will, therefore, first address myself to the question whether the Court should indicate provisional measures without having previously determined that it has jurisdiction to try the case on the merits.

We have, Mr. President and Members of the Court, given careful consideration to this question. In our submission there is no doubt whatsoever that that question must be answered in the affirmative. It must be answered in the affirmative having regard to the previous jurisprudence of the Court in this matter; to the practice of other international tribunals ; and to the unanimous view of writers who have investigated this question. There are, in addition, in my submission, the strongest practical reasons to support this view.

It will be convenient, Mr. President and Members of the Court, if, in the first instance, I recall the jurisprudence and the pronouncements of the Court on the subject. On 8th January 1927, the President of the Court issued an order for interim measures of protection in the case between Belgium and China arising out of the denunciation of the Treaty of 1865 between those two countries. At the time when the order was made, China had not expressly accepted the jurisdiction of the Court. In making the order, the President indicated : *"provisionally, pending the final decision of the Court in the case submitted by the Application of November 25th, 1926—by which decision the Court will either declare*

itself to have no jurisdiction or give judgment on the merits....", the various measures of protection. In the second Order in the same case, the Court once more put on record the fact that the Order for Interim Measures of Protection was made independently of the question whether the Court had jurisdiction to deal with the case on the merits. It recalled "that the present suit has been brought by unilateral application and that, as the time allowed for the filing of the Counter-Case has not expired, the respondent *has not had an opportunity of indicating whether he accepts the Court's jurisdiction in this case*". That is at page 10 of the record.

Another case in which an order relating to interim measures of protection was made before the Court accepted jurisdiction on the merits was that made on 11th May 1933 in the case concerning the *Administration of the Prince von Pless* (Series A/B, No. 54, at page 153). The last recital preceding the operative part of the Order was as follows:

> "*Whereas, furthermore, the present Order must in no way prejudge either the question of the Court's jurisdiction to adjudicate upon the German Government's Application Instituting Proceedings of May 18th, 1932, or that of the admissibility of that Application.*"

Professor Hudson instances the Order made in this case as substantiating the proposition that the Court's jurisdiction to indicate provisional measures is not dependent upon a previous determination as to its jurisdiction on the merits (*Permanent Court of International Justice*, 2nd edition 1943, p. 425, No. 12). The comment of the late M. Hammarskjöld, the Registrar and subsequently Judge of the Court, on the case—as an example of an order of interim protection prior to determination of jurisdiction on the merits— is worthy of quotation.

After explaining that the particular Order made in that case could in the circumstances be regarded as the equivalent of an interim protection order, he continued as follows (I hope the Court will excuse my imperfect French accent; but I think it will be more convenient if I cite from the original text):

> "L'exposé des motifs de l'ordonnance explique qu'en rendant celle-ci, « la Cour entend ne préjuger en rien la question de sa propre compétence ». Elle a donc confirmé la doctrine selon laquelle elle peut, le cas échéant, indiquer des mesures conservatoires avant d'avoir constaté que le fond de l'affaire rentre dans sa jurisdiction ...." (*Zeitschrift für ausländisches öffentliches Recht und Volkerrecht*, V (1935), p. 19.)

Finally, the concluding "recital" in the case concerning the *Polish Agrarian Reform and the German Minority* (Interim Measures of Protection, Series A/B, No. 58) indirectly shows that jurisdiction in the matter of interim measures is independent of assumption of jurisdiction on the merits. There the Court dismissed the request of the German Government for the indication of interim measures of protection for the reason that the request was too wide. Its decision, however, in that case was expressed to be "irrespective of the question whether it may be expedient for the Court in other cases to exercise its power to act *proprio motu*, and without in any way prejudging the question of its own jurisdiction to adjudicate upon the German Government's application instituting

proceedings" (p. 179). M. Hammarskjöld, in the article to which I have just referred, treated that Order as illustrating the principle that the indication of interim measures is independent of the question of jurisdiction. Professor Hudson expresses the same view in his treatise on the Court (*op. cit.*, p. 425, No. 12), decided by the Mixed Arbitral Tribunals which illustrate the same principle of the independence of interim protection from any previous positive affirmation of jurisdiction. I will not give a detailed account of these cases, and, with your permission, Mr. President, I will confine myself to drawing your attention to the relevant passages in one of the most instructive cases in this group, namely, that of *Count Hadik-Barcoczy* v. *Czech State*, decided on the 31st January 1928, by the Hungarian-Czechoslovak Mixed Arbitral Tribunal. This was an action for the restitution of land which had been expropriated by Czechoslovakia in pursuance of a scheme of agrarian reform. Pending a decision on the merits, the plaintiff asked the Court to issue an injunction restraining the defendant, (1) from altering the legal condition of the property and in particular from alienating it; (2) from subjecting the property to measures of forced administration. On October 17th, 1927, the president of the Tribunal issued a provisional injunction, pending the formal hearing of both parties. At the hearing it was contended by Czechoslovakia that the grant of an injunction would prejudge the question of the jurisdiction of the Court. The Tribunal rejected that contention, and I will, if I may, cite from the Tribunal's statement of the principles applicable:

> "Il suffit que son incompétence ne soit pas manifeste, évidente. Il est clair que dans ce cas le tribunal ne pourrait entrer en matière: .... L'État défendeur prétend que cet article" (i.e. the relevant article of the Rules of Procedure of the Tribunal) "n'est point applicable en l'espèce; les demandeurs, au contraire, répondent qu'ils sont en bon droit pour l'invoquer. *La question est ouverte*, et le tribunal peut aborder l'examen de la demande de mesures conservatoires, sans préjuger la question de compétence, en gardant au contraire toute sa liberté pour se prononcer sur ce point, lorsque l'instruction de la demande sera terminée et après clôture des débats. Il peut et doit réserver l'égalité des parties sur ce point. Or, refuser de prendre des mesures conservatoires pour le seul motif qu'une demande exceptionnelle d'incompétence a été déposée, serait ouvrir une voie bien simple à toute partie qui voudrait éviter qu'il soit pris contre elle des mesures conservatoires, et ce serait rendre absolument illusoire la faculté assurée au tribunal par l'article 33 de son règlement. Il suffirait à la partie défenderesse, qui se sentirait gênée, d'introduire une exception d'incompétence pour empêcher ainsi le tribunal d'assurer pendant la durée du procès la conservation de l'objet du litige ou d'une façon générale l'égalité des parties en cours du procès.
>
> Ainsi le tribunal peut et doit, dans l'espèce, s'abstenir avec soin, en vérifiant la légitimité d'une demande de mesures conservatoires, d'entrer dans l'examen des moyens invoqués par les parties pour ou contre sa compétence au fond." (*Revue générale de Droit international public*, Vol. 35, 1928, p. 65.)

I should perhaps point out to the Court that Article 33 to which reference is made in this passage conferred on the Tribunal in one

respect a somewhat wider jurisdiction with regard to interim orders than Article 41 of the Statute of this Court, in that it was competent for the Tribunal under Article 33 to make such an order before filing the application instituting proceedings. But I submit that this difference does not materially affect the statement of principle.

There are other cases decided by the Mixed Arbitral Tribunals which illustrate and affirm the same principle. These are, and I will just cite their names: *Ungarische Erdgas Aktiengesellschaft* v. *État roumain* decided on 4th July 1925, by the Roumanian-Hungarian Mixed Arbitral Tribunal; *Frédéric Henri* v. *Société Rheinische Stahlwerke*, decided on 30th October 1920 by the Franco-German Mixed Arbitral Tribunal; *Diebolt* v. *Société Österreichischer Verein et État autrichien*, decided on 26th March 1925 by the Franco-Austrian Mixed Arbitral Tribunal; *The Gramophone Co., Ltd.*, v. *The Deutsche Gramophon Aktiengesellschaft and the Polyphonwerke Aktiengesellschaft*, decided on 17th January, 25th March and 29th March 1922 by the Anglo-German Mixed Arbitral Tribunal; *Frauenverein Szanotuly* v. *Polish State*, decided on 4th March 1925 by the Polish-German Mixed Arbitral Tribunal, and *Tiedemann* v. *État polonais*, decided on 21st May 1923 by the Polish-German Mixed Arbitral Tribunal.

I will not, Mr. President, quote from the judgments in these cases, because it would take me too long to do so. Perhaps I might, however, venture particularly to draw the Court's attention to the case of *Frauenverein Szanotuly* v. *Polish State* in which the principle is clearly expressed.

The Court will find a statement of the effect of the decision of the Mixed Arbitral Tribunals in this matter in the following passage in Dr. Dumbauld's book on interim measures of protection:

> "Another important principle emphasized in the jurisprudence of the Mixed Arbitral Tribunals is that in order to grant interim measures it is not necessary to decide whether the tribunal has jurisdiction in the main proceedings on its merits, but it suffices that *prima facie* there is a possibility of a decision in favour of the plaintiff and the tribunal's lack of jurisdiction is not manifest." (*Interim Measures of Protection* (1932), p. 144.)

In the same work, Dr. Dumbauld states the principle as being of general application. He says:

> "5. Equally fundamental is the rule that the principal proceedings *(Hauptsache)* are in no wise affected by interim measures. The action in chief and the action with a view to security are altogether independent of each other. In rendering its final judgment the Court is not bound by its interlocutory decisions, and may disregard it entirely.
>
> 6. Consequently jurisdiction to grant protection *pendente lite* is not dependent upon jurisdiction in the principal action. From this it follows that interim measures may be granted before a plea to the jurisdiction is disposed of; and that one court may provide a remedy *pendente lite* in aid of an action of which another court has cognizance" (at p. 186).

The author of another book on the same subject, published in 1932, expresses the same view even more clearly. I refer to the monograph,

in German, of Dr. Niemeyer, entitled *Provisional Orders of the World Court. Their Object and Limits.* He rejects emphatically the view that a decision on jurisdiction is necessary before the Court can make an order for interim protection. He says:

> "This would necessitate an exhaustive examination of the case; it would make necessary an examination of the evidence. In brief, the exact situation would arise which must be avoided: a protracted argument which would waste time, which would deprive the provisional measures both of their true character and of their urgency, and which would prejudge the eventual outcome of the final decision which is in no way connected with the object of provisional measures. A provisional order given in that way would achieve only a negligible degree of its intended effectiveness. It is, therefore, clear that, for reasons of practical convenience, there is no room for an examination of the question of jurisdiction on the merits in connection with a request for interim protection." (P. 70.)

In the latest edition, published in 1943, of his treatise on the Permanent Court of International Justice, Professor Hudson summarizes the legal position as follows:

> "Nor is jurisdiction to indicate provisional measures dependent upon a previous determination of the Court's jurisdiction to deal with the case on the merits." (At p. 425.)

I may add, Mr. President and Members of the Court, that there is, so far as I am aware, no writer who has on this question expressed a view differing from that which I am now submitting to the Court.

Quite apart from the opinions expressed by writers on the subject, there are, I submit, Mr. President, the strongest practical reasons to support the view which I have presented to the Court. To concede to a party the right to ask, before any interim order can be made, for a decision on the question of jurisdiction—a matter which, as the experience of the Court has shown, may necessitate weeks, if not months, of oral and written pleadings—would altogether frustrate the object of the request for interim measures of protection. Undoubtedly, it is conceivable that a party may abuse the right to ask for interim measures by asking for them in a case in which it is apparent that the Court has no jurisdiction on the merits. If that were to happen, the Court would find means to discourage any such abuse of its process. It may wish to satisfy itself that there is a *prima facie* case for the exercise of its jurisdiction. There is no such difficulty in the present case. Both Parties have accepted the obligations of the Optional Clause of Article 36 of the Statute of the Court. In these circumstances, I submit that there can be no doubt that there is, at the very least, a *prima facie* case that the Court has jurisdiction. The principle that the decreeing of interim relief is not dependent on a decision as to jurisdiction is recognized in the municipal law of many countries. As such, it may be regarded in the language of Article 38 of the Statute of the Court as a general principle of law recognized by civilized States, and Dr. Dumbauld, to whose monograph I have already referred, lists writers who show the extent to which this principle has become embodied in the laws

of various countries (*op. cit.*, p. 186, Note 5). May I sum up my argument on this aspect of the case by submitting that my contention is amply supported by the practice of the Court and other international tribunals; by opinions of publicists; and by considerations of convenience and of common sense, and of the general principles of law which the Statute prescribes as one of the sources of law to be applied by the Court.

Mr. President and Members of the Court, having referred to the question of jurisdiction, I propose now to discuss the effect of the decision of the Permanent Court of International Justice as showing the general principles governing the indication of interim measures of protection. In discussing these decisions, I would remind the Court that a certain caution is necessary because the Rules of the Permanent Court of International Justice were altered from time to time and only in one case, namely the case of the *Electricity Company of Sofia and Bulgaria (Interim Measures of Protection)*, Series A/B, No. 79, decided in 1939, did the Permanent Court of International Justice render a decision on the basis of rules similar to Article 61 of the Rules of the International Court of Justice. In particular, I would point out that before 1931 it was possible for an order for interim measures of protection to be made without the parties being heard and even by the President himself, if the Court was not sitting. Since 1931 it has been necessary for the parties at least to be given an opportunity to be heard, and the power of the President to make orders for interim measures of protection himself has been removed, although the President has still been left with the power to "take such measures as may appear to him necessary in order to enable the Court to give an effective decision" (Article 61 (3) of the Rules of the Court). These changes are not without importance. The result of restricting the power to order interim measures to the full Court and of requiring the parties at least to be given an opportunity to be heard has been, I submit, to place the jurisdiction of the Court, with regard to matters of interim measures, on a wider basis.

The first request to the Permanent Court of International Justice asking for interim measures of protection came from Belgium in 1926. On November 25th of that year Belgium filed an Application Instituting Proceedings against China in the case of the *Denunciation of the Treaty of November 2nd, 1865, between Belgium and China* (Series A, No. 8), and included in her Application a request that the Court should "indicate, pending judgment, any provisional measures to be taken for the preservation of rights which may subsequently be recognized as belonging to Belgium or her nationals" (page 5). On the 8th January 1927, the President made an order protecting the rights of Belgium in regard to three matters, namely treatment of nationals, protection against sequestration of property and shipping, and judicial safeguards. The President stated that "the object of the measures of interim protection contemplated by the Statute of the Court is to preserve the respective rights of the parties, pending the decision of the Court" (page 6). In his view the rights in question were "those reserved to Belgium and to Belgian nationals in China, by the Treaty of November 2nd, 1865, in addition to those resulting from non-treaty law" (pp. 7-8), and these rights might be prejudiced by certain actions on the part of the Chinese Government.

The ground on which the President in this case based the finding that the rights of Belgium and Belgian nationals were prejudiced was that, in the event of an infraction of these rights, "such infraction could not be made good simply by the payment of an indemnity or by compensation or restitution in some other material form". In principle it is arguable that if rights are infringed in such a manner that the infraction can be made good by indemnity or by compensation or restitution in some other material form, when the Court has rendered its decision, then there is no need for relief *pendente lite*. On the other hand, to take this view is to take an extremely limited view of the institution of interim protection in international law.

I would submit that President Huber himself did not act on this view when he made the Order in the *Sino-Belgian* case, an order in which he indicated protection against sequestration or seizure of property and shipping—injuries which of their very nature can be "made good simply by the payment of an indemnity or by compensation or by restitution in some other material form". Moreover, this view may have been proper at a time when, as was the case before 1931, the Court, and even the President alone, had the power to indicate interim measures without the parties being heard, but it is no longer proper now that interim measures may be indicated only by the full Court and only after both parties have been given an opportunity to be heard. Indeed, the Permanent Court of International Justice itself, in the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 79) to which I shall refer later, has taken the view that it is in no way bound by such a restrictive interpretation of its powers under the Statute.

[Public sitting of June 30th, 1951, afternoon]

Mr. President and Members of the Court. When the Court rose this morning I was citing authority upon the principles on which the Court exercises its jurisdiction with regard to the grant of interim relief.

The second case involving the question of interim measures of protection which came before the Permanent Court of International Justice was the case concerning the *Factory at Chorzów (Indemnities)*, Series A, No. 12. On 8th February 1927, Germany submitted an application instituting proceedings concerning reparation which, she claimed, was due from Poland by reason of the attitude adopted by the Polish Government towards the Oberschlesische and Bayerische companies at the time it took possession of the nitrate factory at Chorzów, which attitude the Court had already, in its Judgment No. 7 dated 25th May 1926 (Series A, No. 7), declared to have been contrary to the Geneva Convention of 1922. In its Judgment No. 8 dated 26th July 1927 (Series A, No. 9), the Court decided that it had jurisdiction in the case and laid down the well-known rule that "it is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the Convention itself" (page 21).

On 14th October 1927, the German Agent submitted a request for an interim measure of protection claiming that the principle of com-

pensation had already been recognized and that only the maximum sum to be paid by Poland was still in doubt. The German Agent further argued that "unless payment be immediate, the amount of the damage and of the compensation would considerably increase, and seeing that the prejudice caused by a further delay would actually be irreparable, the German Government considers that an interim measure of protection whereby the Court would indicate to the respondent government the sum to be paid immediately, as a provisional measure and pending final judgment, is essential for the protection of the rights of the parties, whilst the affair is *sub judice*". That is a quotation from page 6.

The German claim failed, and it is important to see why it failed. It failed because, as the Court pointed out (page 10), "The request of the German Government cannot be regarded as relating to the indication of measures of interim protection, but as designed to obtain an interim judgment in favour of a part of the relief formulated in the Application." Now, in some municipal systems of law (such as those of France, the Netherlands, Italy, Spain and the Latin-American countries), the plaintiff in a case has the right to go before a Court and ask for an interim judgment in favour of his claim. Further, under these municipal systems of law, the possibility of obtaining an interim judgment of this sort is almost the only form of relief *pendente lite* which is open to the plaintiff. This, however, as was recognized by the Permanent Court of International Justice in the case concerning the *Factory at Chorzów (Indemnities)*, Series A, No. 12, was not the system prescribed by the Statute of that Court, as the Statute of that Court, like the Statute of the present Court, spoke of "provisional measures which ought to be taken *to preserve the respective rights of either party*". This phrase, as interpreted by the Court in the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 79), means that, pending the decision of the Court on the merits of the case, the parties must "abstain from any measure capable of exercising a prejudicial effect in regard to the decision to be given". The United Kingdom Government wishes to make it absolutely clear that it is not asking the Court to deliver an interim judgment in favour of any part of the claims formulated in its Application; it is merely asking the Court to indicate measures so that the respective rights of either Party be preserved and that the dispute be not aggravated or extended.

In 1932 the well-known case concerning the *Legal Status of the South-Eastern Territory of Greenland* (Series A/B, No. 48) came before the Court. I do not propose to deal with this case because the circumstances of this case were so very different from the circumstances of the present case. An interim order was refused in that case, but there were many reasons for such refusal which are not present in the case which the Court is now considering. Amongst other reasons I may refer to the view expressed by the Court that in the case of a claim to sovereignty over a large and sparsely inhabited area the acts complained of could not possibly prejudice the rights asserted by the parties.

The next case concerning interim measures of protection is the case concerning the *Administration of the Prince von Pless (Interim Measures of Protection)*, Series A/B, No. 54. This case, however, is not precisely in point on this aspect of my argument because in the event it was not necessary for the Court to make an interim order. I will therefore not deal further with the circumstances of this case.

I come now, Mr. President, to the case concerning the *Polish Agrarian Reform and the German Minority* (Series A/B, No. 58). In this case Germany filed an Application on the 1st July 1933, instituting proceedings against Poland concerning the application of the Polish agrarian reform to the German minority in the voivodeships of Posnania and Pomerania. In its Application the German Government requested the Court "to declare that violations of the Treaty of June 28th, 1919 (the Minorities Treaty), have been committed to the detriment of Polish nationals of German race and to order reparation to be made". On the same day Germany filed a request for interim measures of protection. The matter came before the Court on the 19th July 1933, and on the 29th July 1933, the Court issued an order denying relief. The reason given was that "the essential condition which must necessarily be fulfilled in order to justify a request for interim measures, should circumstances require them, is that such measures should have the effect of protecting the rights forming the subject-matter of the dispute submitted to the Court" (page 177). The German Application, however, as interpreted by the Court (Judge Anzilotti interpreted it differently and that is why he dissented) asked the Court to find that certain past acts of discrimination against the Polish nationals of German race in the voivodeships of Posnania and Pomerania amounted to a violation of the Minorities Treaty and to order reparation to be made, whereas, in her request to the Court for the indication of interim measures, Germany was seeking to prevent *all future cases* of the application of the Polish agrarian reform law to the Polish nationals of German race and to secure an immediate indication to the effect that henceforth, and until judgment was pronounced, the said Polish law should not be applied in respect of the said nationals. The Court, therefore, came to the conclusion that "the interim measures asked for would result in a general suspension of the agrarian reform in so far as concerns Polish nationals of German race and cannot therefore be regarded as solely designed to protect the subject of the dispute and the actual object of the principal claim, as submitted to the Court by the Application Instituting Proceedings" (page 178), that is to say, the Application covered past acts only and the request for interim measures covered all future cases as well. From this it followed that the request for interim measures did not confine itself to the protection of the rights asserted in the Application, but travelled wholly beyond it.

Judge Anzilotti, one of the four judges who gave dissenting opinions in that case, confessed that, although he agreed with the Court's conclusions, he was unable to subscribe to the reasons on which the Order was based. "If ever there was a case", he said, "in which the Application of Article 41 of the Statute would be in every way appropriate, it would certainly be so in the case before us. The German Government alleges that certain acts of expropriation, which have been or are being carried out, involve discriminatory treatment of Polish citizens of German race, as compared with Polish citizens of Polish race and, hence, that on this ground these acts are contrary to the Treaty of June 28th, 1919 : founding itself on this reason, it asks that the expropriations now in progress should be suspended, as an interim measure of protection, until the Court has finally decided whether the said expropriations are legal or illegal. If the *summa cognitio*, which is characteristic of a procedure of this kind, enabled us to take into account

the *possibility* of the right claimed by the German Government, and the *possibility* of the danger to which that right was exposed, I should find it difficult to imagine any request for the indication of interim measures more just, more opportune or more appropriate than the one which we are considering" (page 181).

Pausing for a moment, Mr. President, at this point of Judge Anzilotti's dissenting opinion, I submit that the nexus in the case now before the Court between the *possible* danger to the *possible* right of the United Kingdom is far closer than it was in the case which the learned judge was considering, and that the request which the United Kingdom Government are now making is even "more just, more opportune and more appropriate", to use the learned judge's words, than was Germany's request in the case of the *Polish Agrarian Reform*.

If Germany's request was dismissed in that case, it is essential, as in all such cases, to understand the precise reason for the Court's decision. The majority of the Court took the view, as we have seen, that the German Application aimed at obtaining "a declaration confirming that, as alleged by it, infractions *have been* committed *in certain individual cases* where the measures in question *have already been* applied, and, if necessary, reparation in respect of such infractions", whereas the request for interim measures covered "*all future cases* of the application of the Polish agrarian reform law to the Polish nationals of German race...." (p. 178). Therefore, in the majority view, the request for interim measures was not sufficiently related to the case before the Court. Judge Anzilotti admitted that, if such an interpretation of the Application was correct, "it is manifest that the interim measures applied for would go far beyond the limits of the right that is in dispute" (pp. 181-182). He denied, however, that this interpretation of the Application was correct. He thought that Germany was really intending "to obtain from the Court a declaratory judgment, to the effect that the *Polish Government's conduct* in the application of the agrarian reform law was not consistent with its obligations under the Treaty of June 28th, 1919". (P. 182.) In other words, the issue was not "this or that violation of the Treaty", but "the whole body of acts by which the Polish authorities have applied the agrarian reform law" (p. 182). "If such was the object of the claim in the German Government's Application, it is quite comprehensible that it should have asked—as interim measure of protection—that the application of the agrarian reform to Polish citizens of German race, in general, should be suspended" (p. 182). Judge Anzilotti finished by saying that, although that was what he thought the Application meant to say, nevertheless that document was not sufficiently clear. The request for interim measures, therefore, should fail, but this "should not prejudice the German Government's right to submit a fresh application indicating the subject of the suit with the necessary clearness and precisions, and to follow it up by a fresh request for the indication of interim measures appropriate to the rights claimed" (p. 182). This no doubt because, in Judge Anzilotti's view, to use his words, "I should find it difficult to imagine any request for the indication of interim measures more just, more opportune or more appropriate than the one which we are considering", namely the expropriation by Poland of estates belonging to Polish nationals of German race.

In any event, what the case of the *Polish Agrarian Reform* illustrates is not that a request for interim measures of protection is inappropriate in the case of an expropriation law passed by a sovereign State—indeed the contrary is true—but that, when the request for interim measures comes from the party which filed the application instituting proceedings, the request for interim measures must not cover wider ground than the principal action does. It must only ask for protection of rights actually asserted in the case which has been put before the Court in the application. The request of the United Kingdom in this case does not ask for the protection of any rights which are not asserted in the Application. Thus, in its Application, the Government of the United Kingdom asks the Court *inter alia :*

> *(a)* To declare that the Imperial Government of Iran are under a duty to submit the dispute between themselves and the Anglo-Iranian Oil Company to arbitration under the provisions of Article 22 of the Convention concluded on 29th April 1933, between the Imperial Government of Persia and the Anglo-Persian Oil Company, and to accept and carry out any award issued as a result of such arbitration.
>
> *(b)* Alternatively,
>
> (i) To declare that Article 22 of the aforesaid Convention continues to be legally binding on the Imperial Government of Iran and that, by denying to the Anglo-Iranian Oil Company, Limited, the exclusive legal remedy provided in Article 22 of the aforesaid Convention, the Imperial Government have committed a denial of justice contrary to international law ;
>
> (ii) To declare 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, or under the conditions provided in Article 26 of the Convention.

The measures which, in paragraph 10, sub-paragraphs *(a)* to *(f)*, of its request the Government of the United Kingdom asks the Court to indicate are precisely measures for the protection of the rights thus asserted in the Application.

The last case, Mr. President and Members of the Court, concerned with interim measures of protection to come before the Permanent Court of International Justice, was the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 79). On 26th January 1938, Belgium filed an Application Instituting Proceedings against Bulgaria with regard to a controversy over rates between the *Electricity Company of Sofia and Bulgaria* (a Belgian national) on the one hand and the Municipality of Sofia on the other hand. On 4th July 1938, Belgium filed a request for interim measures praying that, as the Municipality of Sofia had indicated that, in default of early payment of a sum alleged to be due from the Company, it was about to take legal proceedings to collect that money, the compulsory collection by the Municipality of Sofia of the said sum must be postponed pending the delivery of judgment on the merits of the case by the Permanent Court of International Justice. This request was withdrawn on 26th August 1938, because on 27th July 1938, the Bulgarian Agent informed the

Court that the Bulgarian judicial decisions, of which the Municipality of Sofia was claiming the execution, were of a purely declaratory nature and could not lead to the application of any measure of compulsion against the Company.

On 1st August 1939, however, the Municipality of Sofia commenced a petitory action against the Company based on the previous decisions of the Bulgarian courts. This led the Belgian Agent, on 17th October 1939, to make a new request for interim measures on the ground that "the measures of execution with which the Belgian Company is threatened are such as would not only seriously prejudice the Company's position but also impede the restoration of its rights by the Municipality, if the Court were to uphold the Belgian Government's claim" (p. 196).

Meeting under conditions of considerable difficulty, owing to the outbreak of the Second World War, and despite the absence of the Bulgarian Agent, the Court, on the 5th December 1939, made an Order in the following terms:

> "The Court,
> indicates as an interim measure that, pending the final judgment of the Court in the suit submitted by the Belgian Application on January 26th, 1938, the State of Bulgaria should ensure that no step of any kind is taken capable of prejudicing the rights claimed by the Belgian Government or of aggravating or extending the dispute submitted to the Court." (P. 199.)

I submit that this is the most complete statement of the principles on which the Court should act in granting interim relief. I submit further that the principles so enunciated precisely cover the circumstances which the Court is now considering. If the Iranian Government persist in the course of conduct which I have above outlined, the result will be undoubtedly to prejudice gravely the rights which the United Kingdom is asserting and upon which the Court will in due course be asked to pronounce. Furthermore, the conduct of the Iranian Government is such as to be calculated both to aggravate and to extend the scope of the dispute. In this connection I would like in particular to refer the Court to those passages in the appendix to the Request in which an account is given of the continuous hostile propaganda which is directed against the Company and British personnel in Iran. But, Mr. President and Members of the Court, I would go a great deal further than that. I would submit that if the statement contained in the case of the *Denunciation of the Treaty of November 2nd, 1865*, between Belgium and China (Series A, No. 8) to which I have previously referred, namely that the Court should not decree interim relief when damages will suffice, is the correct view in the present case, the result of the conduct complained of will be to inflict irretrievable damage to the prejudice of the United Kingdom's rights which cannot possibly be compensated by any money payment, or by any money payment which it would be within the capacity of the Iranian Government to pay.

I will now address myself to this question. What I have now to say is in amplification of paragraph 8 of the Request for Interim Measures, and for the convenience of the Court I will deal with these matters in the sequence in which they appear in that paragraph.

Loss of skilled personnel

Much progress has been made in the training of Persian engineers, engineering tradesmen and operators, but, in order to build up production and refining to its present level, the installation of a huge volume of complicated engineering and chemical plant has been necessary. Machinery includes turbines as large as 100,000 h.p. each. The operation and maintenance of this equipment calls for large numbers of highly-experienced men who have been recruited in Persia, the United Kingdom and other countries during the last 20 or 30 years and have gradually acquired the experience necessary for their individual posts. They form a most highly-specialized team of experts, each with knowledge of his own plant and, even more important, with knowledge of and a confidence in the capabilities of his various colleagues. Were this team to be broken up by the withdrawal of one section, the whole operation must either come to a standstill in a very short period of time or continue to operate, but in an undermanned condition, which would lead to serious accidents and irreparable damage to machinery and plant such as boilers, furnaces, acid plants and so on.

Even an organized team of foreign technicians supplied, for example, by a major United States company would have difficulty and take considerable time in restoring operations to their usual level; they would need to be at least as numerous as the existing foreign staff and it is unlikely that such a team could be provided. Independently recruited foreign operators (American, German, Romanian, Polish, etc.) would not be effective until a strong enough technical management had been formed, which might be difficult for an entirely non-technical administration to arrange.

Furthermore, foreign operators of standing would require a guaranty of continuity of employment which the Persians could not give convincingly while in breach of their main agreement.

Operating conditions peculiar to Iran

First, owing to the refinery and the fields in Iran being under the same ownership and control, special methods and machinery have been worked out and installed for the purpose of dealing with the vapours associated with the crude oil both in the fields and in the refineries. In oil-field operations elsewhere it is usual to extract these products and collect them for separate sale or blending, but in Iran it is found to be more economical to retain these valuable products in the crude oil by means of special stabilization plants so that they do not appear separately but are passed forward to the refinery to form an essential constituent of the aviation and motor spirit manufactured there. While this process does not cause any particular difficulty, it involves operating the main pipeline system with crude oil containing relatively large quantities of gas which vapourize easily, with the result that any leaks or breaks occurring in the system result in extensive escapes of highly inflammable and poisonous gas and special precautions must be taken to see that dangerous pipelines are not laid through populated areas. Any deficiencies in operation are specially dangerous on this aocount. The gas from most of the fields being operated is poisonous, sc that it is not only the danger of fire which exists.

The operation of this elaborate stabilization equipment is required for the retention of these gases in the crude oil. There are not nearly enough skilled and experienced Persians to safeguard against serious accidents in dangerous operations such as these. The sort of accident which might be expected to happen at the oil fields is that failure of an automatic controller, at the time when separation takes place, would lead to oil passing into the pipelines which are intended to carry gas only. This oil would find its way into the gas-driven turbines as a liquid, with the result that the turbine blades would be stripped and the pumps put permanently out of operation. The gas, before entering the turbine, enters a gasfired heater which, unless properly maintained, is liable to develop leaks which would rapidly lead to a major outbreak of fire.

Second, the majority of the world's oil is produced from sandstone reservoirs in which the oil is contained under conditions differing radically from those obtaining in the limestone reservoirs in the Persian oil fields. As a result, when the first limestone reservoir in Persia at Masjid-i-Sulaiman was being developed between 1910 and 1925, a new technique of oil production had to be worked out. The problem was studied on a scientific basis in the years immediately following the 1914-1918 war, and by means of special measurements and observations and by adopting a system of production then new to the oil industry, the significant characteristics of the limestone reservoirs, which have subsequently been found to persist throughout the oil belt in the Middle East (but for the recently discovered exceptions at Kuwait and Basrah) were established. These characteristics led to methods of production quite different from those existing elsewhere, and it is only by a correct understanding of them that the control of the reservoirs to give maximum recovery can be properly maintained. The petroleum engineers recruited from the science schools of European universities who originally solved these problems from first principles are still in the management of the Company (either in Iran or London), and it is due to their unique knowledge and experience that the fields are controlled in a manner ensuring the highest recovery of crude oil, free of water, from the various reservoirs.

Fire and other hazards

In the oil fields, a well out of control or a burst pipeline can flood residential areas with either burning crude oil or poisonous gas. If the well were a large high pressure one (and in this connection the Iranian oil wells are the largest in the world and will not "sand up" as do wells in many other fields after flowing wild for a few weeks), it is doubtful if control could be regained at all; it would certainly call for the employment of foreign specialists. The loss of oil would, in any case, be enormous and the field might be depleted completely of recoverable oil.

A major fire in the Abadan refinery would be most serious because it is the biggest single refinery in the world. The lack of skilled supervision must sooner or later lead to accidents of such magnitude as to result in the whole production and refining systems being put out of action. The material crude oil and its products are mostly highly inflammable and poisonous; in fact, the operations of many processes in Abadan are regarded to be of the same degree of danger—or even more—than processes in an explosives factory. Freedom from accidents

has tended to obscure this fact, but the danger nevertheless is ever present, and a very few mistakes can lead to calamities of a major nature.

A great volume of water continually flows through the Abadan refinery and out into the river where the tankers load. An uncontrolled outbreak of fire would release large quantities of highly volatile petroleum products into this water stream, with the probable result of setting fire to the river and the shipping in the port. In fact, shipowners, with this possibility in mind, would in all probability refuse to send their tankers into the port if the refinery and loading were in the control of Iranian operators. Loading alone calls for careful attention to detail and discipline not to be expected from Iranians until the lapse of a prolonged period. The Abadan bazaar stretches along a portion of the water front, with a creek fed from the river surrounding it, so that the danger of a large loss of life is not confined to those working in the refinery.

Finally, in considering the scope of fires and explosions which can occur along the lines indicated above, there is a very important point to be borne in mind. Generally speaking, a fire on a piece of equipment or a tank is limited to that piece of equipment by someone in authority giving instructions or acting himself to turn off the particular valves or stop the particular pumps which control the supply of oil to the scene of the fire. This calls for a detailed knowledge of the equipment right through the refinery and an immediate decision being taken. If such prompt steps are not taken, fire can spread right across the refinery.

Consequences of disrupting an integrated enterprise

Marketing organization

The Anglo-Iranian Oil Company has built up a vast marketing organization and through its owned and associated marketing companies distributes its products over a wide range of markets in Europe, Africa, Asia and Australasia. In addition, it operates an international service for bunkering throughout the Eastern Hemisphere merchant vessels of all nationalities which it supplies from over a hundred ports. It provides at major airports a refuelling service for international air lines.

Without this world-wide marketing organization the continued production and refining of oil in Iran would be valueless.

Danger in shutting down and resuming oil operations

The work of the British staff is largely associated with starting up and shutting down and, if this operation is conducted by inexperienced people, it is fraught with great danger. In this respect it is important to note that the Abadan equipment is much larger than similar equipment elsewhere, so that even the engagement of skilled staff but lacking in experience of Abadan would not remedy the absence of the experienced British staff.

Apart from the actual danger, considerable hardship will be caused to the Persian population. The oil fields have become, over the years, large centres of population in areas which would otherwise be completely uninhabited owing to their desert nature. These populations

are of course dependent for their livelihood on Company employment but they are also dependent for their living conditions on the operation of public utilities, some of which form part of the oil production system and all of which are in one way or another dependent on it. Therefore, an interruption in oil production would very soon result in failure of these utilities which would cause at the least very great distress and hardship to the fields' populations. The oil fields are very fully electrified and gas is used everywhere for domestic and industrial purposes. Failure in the supply of gas or oil would soon result not only in a shortage of domestic fuel for cooking, heating, incinerators, etc., but also in stoppage of the electric generating plant. This in turn would cut off the fresh water supplies which, in many cases, are brought by pipe from a great distance. There is no need to enlarge upon the disasters which would result from interruptions to the water supplies in the climatic conditions obtaining in the oil fields. All ice making, refrigeration for food preservation and air cooling would also stop. The populations concerned are very large; for instance, the Masjid-i-Sulaiman area contains at least 40,000 people.

Loss of markets and goodwill: absence of necessary sales organization

Oil products can reach the consumer only through the medium of the local distribution service which supplies him. The exporter of oil products is thus dependent for his outlet on there being in the markets a distribution service which will handle his oil. The Anglo-Iranian Oil Company has accordingly built up a distribution service through its own and associated marketing companies operating over the Eastern Hemisphere so as to provide a secure outlet for its production. There is not available to the National Iranian Oil Company any comparable distribution network such as has been created over a long period by the Anglo-Iranian Oil Company to provide outlets for Iran's oil.

The Anglo-Iranian Oil Company is operating in the markets in competition with other distributors, themselves backed by resources of other producers. Continuity of supply is a vital factor in the retention of business and the threat to the continuity of their supplies from the Anglo-Iranian Oil Company will influence consumers to place their business with other distributors. This factor is of importance, not only in relation to inland consumers but also in relation to the very large international bunkering business done by the Anglo-Iranian Oil Company; shipowners are particularly concerned to have the assurance of availability of supplies at the various ports at which they call. The threat to the continuity of supplies is thus severely detrimental to the maintenance of the Anglo-Iranian Oil Company's business and seriously damaging to its goodwill in the markets.

If the Court should desire it, we can file affidavit evidence in support of the facts contained in the appendix to the Request and the further facts which I have described to the Court to-day. We could, for instance, obtain the evidence of Mr. Drake, the Company's general manager. Further, we can file affidavits by the Company's experts in support of all that is said in paragraph 8 of the Request and in the portion of my address this afternoon dealing with the same matters. Perhaps we may assume, however, that the Court does not require this sworn evidence unless I am informed to the contrary.

Extent of the Company's undertakings

Much of the greatest part of the Company's business lies in the production of crude oil in Iran, the refining of this oil in Iran into marketable products (out of 32 million tons, 24 million is refined in the Abadan refinery) and the shipping of the products, and the portion of the crude oil which is not refined, to its marketing organizations in various parts of the world.

The size of the undertaking is immense. An enormous expenditure of wealth and labour has gone to create the ports, refineries, wells, roads, accommodation and plant. Since the start of production in 1912, 310 million tons of oil have been produced and 32 million tons were produced in 1950. Exploratory work has during 40 years resulted in the development of six producing fields and twice this number of areas has been tested with negative results. As a result of the Company's long experience of Persian producing conditions, it has been possible to develop and produce from the fields at a very high rate; one field is now being developed to be capable of producing at the rate of 28 million tons per annum or 5½ % of the 1950 world total oil production.

To give this production, 453 wells have been drilled requiring 285 miles of drilling.

The oil is piped to the refinery at Abadan 150 miles away, 2,177 miles of large diameter steel pipe having been laid across the desert wastes. Four pumping stations have been constructed and in all 1,600 miles of motor road have been built.

The refinery at Abadan, the largest in the world, covers an area of 500 acres for the refining plant alone, but several square miles are covered by the accompanying tank farms, housing areas, townships and tanker loading wharfs.

Three major ports have been constructed with a total of 20 berths to take tankers up to a 30,000 ton dead weight. The combined ports of Abadan and Khosrowabad handle 25 million tons per annum alone. One of the biggest ports in Europe, Rotterdam, handles 16 million tons per annum. Abadan lies 40 miles from the river mouth and extensive dredging and river conservancy work has been needed.

All the activities described above have been carried out in districts practically devoid of inhabitants and possessing none of the resources needed to support an industrial population. Therefore, in addition to the facilities upon which the production, refining and transport of oil depend, all living facilities have also had to be provided.

The numbers employed at the beginning of 1951 amounted to 75,000 and it had been necessary to provide, in addition to houses in the settled areas, water supplies, power supplies, shops, restaurants, food supplies to a great extent, passenger transport (2,500 road vehicles are operated), laundries, dairy farms and medical and public services and innumerable amenities.

Mr. President and Members of the Court, I wish now to make a few remarks on the actual interim measures of protection which the Government of the United Kingdom has requested that the Court should indicate. They are to be found in paragraph 10 of our Request filed on 22nd June. They are there set out and drafted, I hope, in precise legal language. I do not propose to read them out in making this address. In a word, all the submissions which we have made to the Court in

subparagraphs *(a)* to *(f)* of paragraph 10—that is to say, all except the last one—proceed on the footing that the great enterprise of the Anglo-Iranian Oil Company can only be saved from irreparable damage before the Court gives its decision on the merits if, while the proceedings are still in course, the Company is allowed to carry on the enterprise in broadly the same manner as it is entitled to do under the Concession Convention of 1933 and without greater interference from the authorities of the Imperial Iranian Government than the control which those authorities are entitled to exercise under the terms of the Convention of 1933. It is for that reason that we ask that the Court should indicate that the Iranian Government should permit the Company to extract petroleum, transport it, refine it, treat it, sell it and export it ; that it should be left in possession of all the property which it undoubtedly owned before the Oil Nationalization Law was passed ; and that the Iranian authorities should not seize or attempt to seize any of the monies which the Company receives as the result of its operations. For the reasons which have been given both in paragraph 8 of the Request and developed earlier in my address, I hope that the Court will agree that it is necessary that the Company should in this interim period be allowed to continue its operations in virtually the same freedom as before, if a judgment on the merits upholding the claims which the United Kingdom has made in its Application of the 26th May is to be capable of execution and the great enterprise of the Company is not to be irretrievably damaged before the Court can deliver judgment on the merits at all. Of course, I fully realize that the Court may, as Article 61 of the Rules of Court clearly suggests, indicate interim measures of protection other than those proposed in the Request. I can only request the Court to weigh carefully the reasons which we have advanced in support of our Request and see if they do not lead to the conclusion that *only* measures the same or very similar to those which we have requested are capable of fully safeguarding the rights which under the Statute it is proper for the Court to safeguard when an application for interim measures is made. Mr. President and Members of the Court, this brings me very near to the end of my address, but before I conclude there are two matters to which I would like to refer.

Yesterday evening we saw for the first time a copy of a telegram which the Persian Government has submitted to the Court. I am told indeed that the copy with which we have been supplied has not been transmitted accurately. We have read it but we have not had time to reply to it or to controvert the many statements in it which, it is apparent, do not accord with the facts as we understand them. Perhaps the Court will allow me to say no more about this telegram at this stage.

The other matter to which I would like to refer before I conclude my remarks is this. It has been the constant endeavour of the Anglo-Iranian Oil Company, ever since these unhappy incidents began, to do all it could to preserve the undertaking and in every way to prevent harm accruing to it. No responsible employee of the Company has done anything to hinder its proper working or to obstruct its operations. I think I may perhaps refer to the message that was sent out by Mr. Drake, the general manager of the Company, which you may have noticed, to the employees of the Company, both Persian and British. He called on them to stay at their posts and to do all that they could

to exercise patience and forebearance and to do nothing that would exacerbate an already difficult situation. It is in this spirit that those connected with the Company have sought to meet the trying and dangerous conditions with which they have been confronted. It is in that same spirit that both the Company and my Government will endeavour loyally to co-operate in the implementation of any measure which this Court may indicate as appropriate to prevent further damage. Thank you, Mr. President.

The PRESIDENT: I take it that the statement of the United Kingdom Government has been concluded.

Sir FRANK SOSKICE: That is the case Mr. President.

The PRESIDENT: In those circumstances I should like to reserve the right of the Court to ask the Parties, in a form which the Court will consider to be appropriate, for additional information which the Court might consider to be desirable. With this reservation I declare that the oral proceedings are closed in the matter of the Request for the Indication of the Interim Measures of Protection. The Parties will be duly informed of the date on which the Court's decision will be read in open Court. The sitting is closed.