DISSENTING OPINION OF JUDGE HACKWORTH

The controversy between the United Kingdom and Iran in its present stage relates exclusively to the question whether the Court has jurisdiction to entertain the complaint of the United Kingdom that its national, the Anglo-Iranian Oil Company, has been denied, through the nationalization of its properties in Iran in 1951, treatment in conformity with international law. Iran denies, and the United Kingdom affirms, that the Court is competent to entertain the complaint.

The Iranian Declaration accepting compulsory jurisdiction of the Permanent Court of International Justice, under Article 36 of its Statute (now applicable to this Court under Article 36 (5) of the present Statute) was signed on October 2nd, 1930. It was approved by a legislative act on June 14th, 1931, and ratification of the Declaration was notified to the League of Nations on September 19th, 1932.

The pertinent part of the Declaration states that compulsory jurisdiction of the Court is accepted, on condition of reciprocity, with respect to :

> ".... any disputes arising after the ratification of the present declaration with regard to situations or facts relating directly or indirectly to the application of treaties or conventions accepted by Persia and subsequent to the ratification of this declaration".

The present controversy revolves around the question whether this Declaration relates to treaties and conventions generally, to which Iran is a party, or only to those to which that country has become a party since the ratification of the Declaration.

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I agree with the conclusion of the Court that the Declaration applies only to treaties and conventions accepted by Iran subsequent to the ratification of its Declaration. I do not, however, consider that, in reaching this conclusion, it was necessary or even permissible for the Court to rely upon the Iranian Parliamentary Act of approval as evidence of the intention of the Iranian Government, since that was a unilateral act of a legislative body of which other nations had not been apprised. National courts may, as a matter of course, draw upon such acts for municipal purposes, but this Court must look to the public declarations by States made for international purposes, and cannot resort to municipal legislative enact-

ments to explain ambiguities in international acts. The fact that this was a public law which was available after 1933 to people who might have had the foresight and the facilities to examine it, is no answer. When a State deposits with an international organ a document, such as a declaration accepting compulsory jurisdiction of the Court, upon which other States are expected to rely, those States are entitled to accept that document at face value ; they are not required to go back to the municipal law of that State for explanations of the meaning or significance of the international instrument. Such a procedure would in many cases lead to utter confusion. This is not a case of drawing upon the *travaux préparatoires* of a bilateral or multilateral agreement to explain ambiguities. Had the Act of Parliament been attached to the instrument of ratification filed by Iran with the League of Nations, a different situation would have been presented. Other States would thus have been on notice of the discrepancy between the Declaration and the act of approval. But this was not done.

I also agree with the Court that the Concession Agreement between Iran and the Anglo-Iranian Oil Company, Limited, of 1933, cannot be regarded as a treaty or convention in the international law sense, and consequently cannot be regarded as coming within the purview of the Iranian Declaration.

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I regret that I cannot agree with the conclusion of the Court that the United Kingdom is not entitled for jurisdictional purposes, to invoke, by virtue of the most-favoured-nation clauses in earlier treaties between that country and Iran, provisions of treaties concluded by Iran with other countries subsequent to the ratification of its Declaration accepting jurisdiction of the Court.

The conclusion that the treaty containing the most-favoured-nation clause is the *basic* treaty upon which the United Kingdom must rely amounts, in my judgment, to placing the emphasis on the wrong treaty, and losing sight of the principal issue. The gravamen of the complaint of the United Kingdom Government is that Iran has not accorded to a British national, the Anglo-Iranian Oil Company, the benefits of international law and that, as a result, the Company has suffered a denial of justice. The provisions with respect to the application of the principles of international law are not to be found in the most-favoured-nation

clause of the earlier treaties of 1857 and 1903 between Iran and the United Kingdom, but are embodied in the later treaties between Iran and Denmark of 1934; between Iran and Switzerland of that same year, and between Iran and Turkey of 1937. It is to these treaties and not to the most-favoured-nation clause that we must look in determining the rights of British nationals in Iran. These then are the *basic* treaties. The most-favoured-nation clause in the earlier treaties is merely the operative part of the treaty structure involved in this case. It is the instrumentality through which benefits under the later treaties are derived. It is in these later treaties that we find the *ratio decidendi* of the present issue.

This conclusion will the more clearly appear if we further examine the treaty provisions in the light of what has just been said.

Article IX of the Treaty of Peace of March 4th, 1857, between Great Britain and Persia, provides:

> "The High Contracting Parties engage that, in the establishment and recognition of Consuls-General, Consuls, Vice-Consuls and Consular Agents, each shall be placed in the dominions of the other on the footing of the most-favoured nation; and that the treatment of their respective subjects, and their trade, shall also, in every respect, be placed on the footing of the treatment of the subjects and commerce of the most-favoured nation."

Similar provisions are contained in Article 2 of the Commercial Convention of May 27th, 1903, between the two countries.

This is not a unique most-favoured-nation clause, peculiar to a capitulatory régime, such as obtained in Persia during that era. It is wholly reciprocal in character. It is the sort of provision that is to be found in many treaties of commerce and navigation, ancient and modern. But that which is even more significant is the fact that in 1928, at a time when Persia was terminating the extra-territorial privileges of aliens, there was an exchange of notes, on May 10th, between the British Minister to Persia and the Persian Acting Foreign Minister, by which it was agreed that the most-favoured-nation provisions of Article IX of the Treaty of 1857 should remain in force. This has not been questioned by Iran.

The Treaty of Friendship, Establishment and Commerce, concluded between Iran and Denmark on February 20th, 1934, provides in Article IV that:

> "The nationals of each of the High Contracting Parties shall, in the territory of the other, be received and treated, as regards their persons and property, in accordance with the principles and

practice of ordinary international law. They shall enjoy therein the most constant protection of the laws and authorities of the territory, for their persons, property, rights and interests."

Similar provisions are contained in Article I of the Establishment Convention of April 25th, 1934, between Iran and Switzerland, and in Article I of the Establishment Convention of March 14th, 1937, between Iran and Turkey.

It will thus be apparent, using the Danish Treaty as the criterion, that Danish nationals in the territory of Iran and their property are entitled by Article IV of the Treaty of 1934 to be treated "in accordance with the principles and practice of ordinary international law".

The United Kingdom is entitled, by virtue of the most-favoured-nation provisions quoted above, to claim for British nationals in Iran no less favourable treatment than that promised by Iran to Danish nationals.

The Government of the United Kingdom has contended that the treatment accorded by Iran to the Anglo-Iranian Oil Company is not in keeping with the requirements of international law, and has invoked the Danish Treaty.

The Court is not called upon to say whether this contention is or is not warranted. It need only say, for present purposes, whether these treaty provisions to which Iran has subscribed bring the case within the purview of the Iranian Declaration accepting compulsory jurisdiction of the Court.

I readily agree with the majority that the most-favoured-nation provisions of the earlier treaties and the provisions of the later treaties are interrelated and must be considered together in order that benefits under the latter may be claimed. But I cannot accept, for reasons which follow, the conclusion that the necessity for invoking the earlier treaties as a means of claiming benefits under the later ones, constitutes a bar to the exercise of jurisdiction by the Court under the Iranian Declaration. This it seems to me is giving far more weight to the restrictive features of the Iranian Declaration than is warranted.

One cannot dispute the fact that the jurisdiction of the Court is a limited one. Acceptance of jurisdiction by States is purely a voluntary act on their part; and it necessarily follows that, unless a State has by special agreement, by treaty or convention, or by a declaration made under the Optional Clause of Article 36, paragraph 2, of the Statute, accepted jurisdiction, the Court is without jurisdiction.

On the other hand, when a State has filed a declaration under the Optional Clause of Article 36 of the Statute accepting jurisdiction, it has performed a voluntary act. It has voluntarily and unilaterally

notified the world that it is prepared to submit certain classes of disputes to judicial examination by this Court.

Iran took full advantage of its liberty of action under the Statute by submitting a declaration, adroitly drafted, limited in scope to a comparatively narrow category of cases, and further safeguarded by three specific exceptions and a reservation, not pertinent to the present discussion. We are concerned with the meaning and scope of this Declaration. Precisely we are concerned with the meaning of the undertaking by Iran to accept the jurisdiction of the Court with respect to disputes arising after ratification of the Declaration with regard to situations or facts

> ".... relating directly or indirectly to the application of treaties or conventions accepted by Persia and subsequent to the ratification of this declaration".

It is common knowledge that this dispute arose after ratification of the Declaration. It is also common knowledge that it relates "directly or indirectly" to the application of treaties or conventions accepted by Iran. The pivotal question is whether the treaties or conventions relied upon by the United Kingdom were accepted by Iran "subsequent to ratification" of the Declaration.

It is no part of the functions of the Court to give to such a declaration a broader meaning or a more restrictive meaning than the State itself has seen fit to prescribe. Our duty is to find that plain and reasonable meaning which more nearly comports with the purpose of the State as disclosed by the language which it itself has employed.

I find nothing in the Iranian Declaration to suggest that it is necessary that action under it shall be premised exclusively on a single treaty. I find nothing to suggest that it is necessary that such an action shall be based on a treaty between the plaintiff State and the defendant State. The Declaration, though drafted with meticulous safeguards, does not specify any such condition, nor does it specify that in considering a dispute as to the application of a treaty or convention accepted by Iran subsequent to the ratification of the Declaration, an earlier treaty may not be drawn upon. This would indeed have been a strange limitation. All that the Declaration requires in order that the dispute shall fall within the competence of the Court, is that it shall relate to the application of treaties or conventions accepted by Iran subsequent to the ratification of the Declaration, and nothing more.

The Danish Treaty answers this description. It is in that Treaty and not in the most-favoured-nation clause that the substantive

rights of British nationals are to be found. Until that Treaty was concluded, the most-favoured-nation clauses in the British-Persian treaties were but promises, in effect, of non-discrimination, albeit binding promises. They related to rights *in futuro*. There was a right to claim something but it was an inchoate right. There was nothing to which it could attach itself unless and until favours should be granted to nationals of another country. But when Iran conferred upon Danish nationals by the Treaty of 1934 the right to claim treatment "in accordance with the principles and practice of ordinary international law", the right thereupon *ipso facto* became available to British nationals. This new right—based on international law concepts—came into existence not by virtue of the earlier treaties alone or even primarily, but by them plus the new treaties which gave them vitality. The new treaty is, in law and in fact, the fountain-head of the newly-acquired rights.

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To summarize, the United Kingdom has a right to claim the benefits of the Danish Treaty of 1934. It matters not that that right was acquired through the operation of a most-favoured-nation clause of a treaty anterior to the ratification of the Iranian Declaration. The important thing is that it is a right acquired subsequent to ratification of that Declaration. It is the later treaty, and not the most-favoured-nation clause, that embraces the assurance upon which reliance is sought to be placed. A conclusion that jurisdiction does not lie, amounts, in my judgment, to giving to the restrictive features of the Iranian Declaration a more far-reaching scope than is warranted by the language there used.

(Signed) HACKWORTH.