DISSENTING OPINION OF JUDGE READ

I regret that I am unable to concur in the judgment of the Court in this case, and that it has become necessary for me to state the reasons which have led me to the conclusion that the objections to the jurisdiction of this Court, raised by Iran, should be overruled.

Before examining the Persian Declaration, it is necessary to decide upon the method of approach to the problem of interpretation. There are no specific rules of international law which bear directly on the issues which the Court must decide. There are, however, important general principles, which need to be taken into account in the circumstances of this case.

The first principle was applied by this Court in its Opinion—Admission to the United Nations, I.C.J. Reports 1950, page 8—and stated in the following words :

> "The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words."

The second principle is, in reality, a special aspect of the first. It was applied by this Court in its Opinion—Peace Treaties II, I.C.J. Reports 1950, page 229—and stated in the following words :

> "It is the duty of the Court to interpret the Treaties, not to revise them."

I am unable to accept the contention that the principles of international law which govern the interpretation of treaties cannot be applied to the Persian Declaration, because it is unilateral. Admittedly it was drafted unilaterally. On the other hand, it was related, in express terms, to Article 36 of the Statute, and to the declarations of other States which had already deposited, or which might in the future deposit, reciprocal declarations. It was intended to establish legal relationships with such States, consensual in their character, within the regime established by the provisions of Article 36.

There is an additional consideration which, strictly speaking, is not a principle, but a rejection of a fallacious theory.

It has been contended that the Court should apply a restrictive construction to the provisions of the Declaration, because it is a treaty provision or clause conferring jurisdiction on the Court. Further, it has been suggested that a jurisdictional clause is a limitation upon the sovereignty of a State, and that, therefore, it should be strictly construed.

The making of a declaration is an exercise of State sovereignty, and not, in any sense, a limitation. It should therefore be construed in such a manner as to give effect to the intention of the State, as indicated by the words used ; and not by a restrictive interpretation, designed to frustrate the intention of the State in exercising this sovereign power.

In support of the contention that a restrictive interpretation should be applied, it is possible to cite certain *obiter dicta* of the Permanent Court ; and, particularly, statements made in two cases—the Free Zones Case, Series A/B, No. 46, page 138, and in the Phosphates of Morocco Case, Series A/B, No. 74, page 23. It should, however, be observed that in neither of these cases did the Court rely upon restrictive interpretation as the basis of its decision.

Article 38 of the Statute is mandatory, and not discretionary. It requires the Court to apply judicial decisions as a subsidiary means for the determination of rules of law. The expression "judicial decisions" certainly includes the jurisprudence of this Court and of the Permanent Court. I have no doubt that it includes the principles applied by the Court as the basis of its decisions. It is, however, equally clear that it cannot possibly be construed as requiring this Court to apply *obiter dicta.*

It would take too long to review the jurisprudence of the Permanent Court and of this Court. I have been unable to find any case in which either Court relied upon a restrictive interpretation to a jurisdictional clause as a basis for its judgment. I am satisfied that both Courts have decided jurisdictional questions in conformity with the principles, as stated above. Indeed, both Courts have, within the limitations established by those principles, given liberal interpretations to jurisdictional clauses, designed to give full effect to the intentions of the parties concerned. It is sufficient to refer to one decision of this Court. In the Ambatielos Case—I.C.J. Reports 1952, page 28—this Court upheld its jurisdiction, notwithstanding that a restrictive construction of the jurisdictional clause would have led, inevitably, to an opposite result.

These is a further and compelling reason for rejecting the theory of restrictive interpretation of jurisdictional clauses. This Court is in a different position from that which was occupied by the Permanent Court. This Court is directly bound by the provisions of the

Charter, and it is "the principal judicial organ of the United Nations". It cannot ignore the Preamble of the Charter, and its statement of Purposes and Principles. It cannot overlook the fact that the acceptance of the compulsory jurisdiction of the Court is one of the most effective means whereby Members of the United Nations have sought to give practical effect to the Preamble and to the Purposes and Principles. I should be failing in my duty, as a judge, if I applied a rule of interpretation, designed to frustrate the efforts of the Members to achieve this object.

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In the light of these considerations, it becomes necessary to consider whether Iran, by virtue of the Declaration of 1932, has consented to the exercise of jurisdiction by this Court in the sort of case which has been brought by the United Kingdom.

It will be convenient to begin with the question whether the United Kingdom is entitled to rely upon the application of the provisions of treaties concluded, after the ratification of the Declaration, between Iran and third States, and invoked by virtue of most-favoured-nation clauses contained in older British treaties.

The United Kingdom has invoked the provisions of the most-favoured-nation clause of the Treaty of 1857, Article IX, which provides "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". It will be observed that this clause was fully reciprocal, conferring rights and privileges on both parties. On the abandonment of the regime of capitulations in 1928, these provisions were maintained, by exchange of notes.

The United Kingdom Government thus bases its case on the provisions of three treaties concluded by Persia with Denmark and Switzerland in 1934 and by Iran with Turkey in 1937. For the purpose of this opinion it will be sufficient to consider the provisions of the treaty with Denmark, which was accepted by Persia after the ratification of the Declaration.

The Danish treaty, in Article IV, contained the following provision:

> "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...."

There can be no doubt that legally, by virtue of the invocation of the provisions of the Denmark treaty, Iran is under a treaty obligation to treat British nationals "in accordance with the principles and practice of ordinary international law".

The mere existence of a case based upon the Danish treaty invoked by virtue of a most-favoured-nation clause would not justify the Court in finding that it had jurisdiction. It is necessary that it should be a case coming within the scope of the Persian Declaration. For this purpose it is necessary to proceed upon the assumption that the Court has decided that the Declaration must be interpreted as applying only to treaties or conventions accepted by Persia after the ratification of the Declaration.

In dealing with this aspect of the case it is possible to concentrate upon a few words in the Declaration. I do not mean that we should ignore the context ; but, for the moment, we should examine closely the following words :

> ".... with regard to situations or facts relating directly or indirectly to the application of treaties or conventions accepted by Persia".

Our problem is to determine whether the Anglo-Iranian Oil Company dispute relates directly or indirectly to the application of the Danish treaty, one which admittedly was accepted by Persia after the ratification of the Declaration.

There is no doubt that the dispute and the facts relate *directly* to the application of the Treaty of 1857. It is, however, equally clear that they relate *indirectly* to the application of the provisions of the Danish treaty which have been invoked by virtue of the most-favoured-nation clauses.

Here it is necessary to go back to the principles to which I referred in the earlier part of this opinion.

The fact that jurisdiction depends on the will of the parties makes it necessary to consider what the will of the Persian Government was at the time when it made the Declaration. That will was expressed in the words used, and in order to determine it, the first principle must be applied. It is necessary to give effect to the words used in their natural and ordinary meaning in the context in which they occur. The second principle is equally important. It is my duty to interpret the Declaration and not to revise it. In other words, I cannot, in seeking to find the meaning of these words, disregard the words as actually used, give to them a meaning different from their ordinary and natural meaning, or add words or ideas which were not used in the making of the Declaration.

If the words "directly or indirectly" had been omitted from the Declaration, it would have been possible to assume that the jurisdiction was restricted to situations or facts which related directly to treaties or conventions accepted by Persia. But the words "directly or indirectly" were not omitted from the Declaration ; and any attempt to construe it by ignoring this expression would amount to revision which a judge cannot do. Further, to give the words "directly or indirectly" some different and artificial meaning would again amount to a revision and would be beyond

my powers as a judge. Similarly, any attempt to suggest that there is to be found in the Declaration, considered as a whole, a positive intention to exclude disputes on the ground that they may be to some extent based upon the provisions of earlier treaties would again be an attempt to revise the Declaration by the incorporation of words that are not there.

There are two considerations that strongly support the interpretation which is based on the natural and ordinary meaning of the words used. The first is that the Persian Government was certainly aware, at the time of the Declaration, of the existence of the most-favoured-nation clause referred to above. There were doubtless others. It must have had under consideration the possibility, or even the probability, of disputes arising which would relate directly to the application of such clauses and indirectly to the application of subsequent treaties or conventions. In drafting the Declaration, deliberate use was made of the disjunctive "or", which has an unequivocal meaning. There can be no doubt that the Persian Government envisaged a system of compulsory jurisdiction which would be broad enough to include disputes arising in this way. Assuming such an intention, I do not know of any way in which it could have been more clearly indicated than by using this expression "directly or indirectly".

It is, of course, true that the drafting of the Declaration was imperfect ; and that it is possible, by purely grammatical argument, to attribute a different and unrealistic meaning to this expression. But I cannot rely on purely grammatical interpretation. While the grammatical construction may be open to criticism, there can be no real doubt as to what the draftsman had in mind when he deliberately interpolated the expression "directly or indirectly" in the middle of the text. He certainly meant to ensure that the scope of the Declaration should be broadened so as to cover disputes and facts having an indirect relationship with the treaties or conventions in question.

The second consideration is that the arguments which have been advanced as leading the Persian Government to exclude the older treaties from the compulsory jurisdiction of the Court could have no conceivable application to compulsory jurisdiction relating to those modern treaty provisions which had nothing to do with the regime of capitulations which were applicable indirectly through the medium of most-favoured-nation clauses. Here it must be borne in mind that, at the date of the Declaration, Article IX of the Treaty of 1857 no longer had the character of a provision of an old treaty of the regime of capitulations. Originally, it possessed that character ; but in 1928 the United Kingdom concurred in a denunciation of the objectionable provisions of the Treaty. The two States agreed, by exchange of notes, to maintain the most-favoured-nation clause, Article IX, pending the negotiation and conclusion

of a new treaty of commerce and navigation. In reality, the most-favoured-nation clause relied upon by the Applicant is founded upon a new agreement, accepted by Persia before the ratification, but after the disappearance of the regime of capitulations.

Further, the most-favoured-nation clauses were reciprocal in character, and entirely consistent with the new and independent status which was resulting from the denunciation of capitulations. They furnished the keys which unlocked the doors for Persian merchants in the four corners of the earth, and protected them while engaged in their far-flung trading enterprises. They were essential to the national economy. The fact that their provisions were kept alive, by special stipulations, after the ending of capitulations in 1928, is proof that the Persian Government, far from grouping them with the treaties of the old regime, regarded them in an entirely different light.

There is nothing in the context which could justify the rejection of the natural and ordinary meaning to the words under consideration. Certain arguments have, however, been presented in the course of the oral proceedings. It has been contended that this claim is based upon the most-favoured-nation clause. Of course it is. This claim has a *direct* basis in the most-favoured-nation clauses and an *indirect* basis in the Danish treaty invoked by virtue of their provisions. The argument is completely irrelevant because the task of the Court is the very simple one of deciding whether Persia by this Declaration consented to the exercise of jurisdiction in disputes relating directly *or* indirectly to the application of treaties accepted by Persia.

In view of these considerations, I have reached the conclusion that the United Kingdom is entitled to invoke the provisions of the Danish treaty as a basis for the jurisdiction of the Court. It must however be understood that, in reaching this conclusion, I do not want to prejudge the merits. I cannot consider, in a preliminary proceeding, whether the subject-matter of the dispute comes within the scope of these provisions, because this question has not been discussed by counsel and because it is essentially a part of the merits. Accordingly, and subject to this reservation, I have concluded that the present claim is one which is based *indirectly* on the application of the Danish treaty, which was accepted by Persia after the date of the Declaration. Accordingly, the Iranian Objection to the Jurisdiction, as regards this part of the case, should be overruled, or at most joined to the merits.

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In view of the foregoing conclusion, it is unnecessary for me to discuss that part of the judgment of the Court which upholds the Iranian objection on the ground that the Declaration limits the jurisdiction of the Court to disputes relating to treaties or conventions accepted by Persia after the date of the Declaration.

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It is, however, necessary for me to discuss the part of the judgment which relates to the 1933 Agreement.

This agreement was referred to in clause *(c)* of the United Kingdom Submission No. 4 as follows:

> "The treaty stipulation arising out of the settlement in 1933, through the mediation of the Council of the League of Nations, of the international dispute between the United Kingdom and Persia, the conditions of which settlement are contained in the Concession Convention concluded by the Imperial Government of Persia with the Anglo-Persian Oil Company in that year."

The United Kingdom claim on the merits, as set forth in the Application and in the Memorial, relates, in an important part, to breaches of this "treaty stipulation". In this part of the case on the merits, the United Kingdom contended, in the Memorial, that the 1933 Concession embodied "the substance of an implied agreement between the Government of the United Kingdom and the Iranian Government because there was an implied agreement between these two Governments (fully operative as creating an obligation in international law) to the effect that the Iranian Government undertook to observe the provisions of its concessionary convention with the Company".

To my mind, the merits of a dispute consist of the issues of fact and law which give rise to a cause of action, and which an applicant State must establish in order to be entitled to the relief claimed. In every dispute which is founded upon the breach of a treaty obligation, the applicant must establish the existence and scope of the treaty, as well as the facts which constitute the breach, in order to justify a tribunal in according the relief which it has requested.

It is, therefore, clear that the question as to whether such an implied agreement arose between the two Governments in 1933, one fully operative as creating an obligation in international law, is an essential element of the United Kingdom claim on the merits. It is a question partly of fact and partly of mixed fact and law.

It is equally clear that this question goes to the jurisdiction as well as to the merits.

It does not follow, however, that, because it goes to the jurisdiction, it can be decided on Preliminary Objection.

The Statute provides, in Article 36 (6):

> "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

There is nothing in the Statute providing for summary procedure by way of preliminary objection. There can be no doubt that the normal course, contemplated by this article, is that "the decision of the Court", in disputes as to jurisdiction, should be in accordance with the course of procedure prescribed by Chapter III of the Statute. The exceptional provisions of Rule 62 can only be construed as enabling the Court to deal summarily with those questions of jurisdiction which can be settled without prejudging matters which are a part of the merits. They cannot possibly be construed as authorizing the Court to decide, in preliminary proceedings, issues of law or fact which are essential elements of both jurisdiction and merits, or which are inextricably linked with the merits of the case. This is undoubtedly the basis of the rule in the Losinger Case—Series A/B, No. 67, at pages 23, 24—and it is confirmed by the instances in which the Permanent Court refused to deal, in preliminary proceedings, with questions of jurisdiction which concerned or were closely related to issues of law or fact that formed part of the merits. Without attempting an exhaustive reference to the jurisprudence of the Permanent Court, reference can be made to three cases in which this course was adopted as a basis for decision : Prince von Pless, Series A/B, No. 52, at page 16; Pajzs, Csáky, Esterházy Case, Series A/B, No. 66, at page 9; The Railway Line Panevezys-Saldutiskis, Series A/B, No. 75, at pages 55, 56.

It is impossible to overlook the grave injustice which would be done to an applicant State, by a judgment upholding an objection to the jurisdiction and refusing to permit adjudication on the merits, and which, at the same time, decided an important issue of fact or law, forming part of the merits, against the applicant State. The effect of refusal to permit adjudication of the dispute would be to remit the applicant and respondent States to other measures, legal or political, for the settlement of the dispute. Neither the applicant nor the respondent should be prejudiced, in seeking an alternative solution of the dispute, by the decision of any issue of fact or law that pertains to the merits.

It is for these reasons that I have reached the conclusion that the Court is not competent, in preliminary proceedings and under the relevant provisions of the Statute and Rules, to decide whether or not an international agreement arose between the two Governments in 1933, one fully operative as creating an obligation in international law. I have reached the conclusion that the competence of the Court, at this stage, is limited to deciding whether the alleged international agreement, assuming that the United Kingdom's contentions as regards its nature and scope are well founded, is a treaty or convention within the meaning of the Declaration.

Accordingly, I am compelled to conclude that the aspect of this Objection which relates to the existence and scope of the alleged international agreement should be joined to the merits.

In view of the decision of the Court as regards the Iranian Objection No. 3, it is unnecessary for me to give my reasons for rejecting the other Iranian Objections, Nos. 1, 2, 4, 5 and 6.

(Signed) J. E. READ.
