

## **Nationalization of the Iranian Oil Industry: A Legal Analysis**

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DOI: 10.22034/iruns.2024.213190

Received: 2024/02/03

Accepted: 2024/07/08

### **Abstract**

The Nationalisation of the Iranian Oil Industry has been a historic move by Iran around 70 years ago to free itself of the political influence of the United Kingdom. In the modern world in which States can exercise their political influences by companies acting under their control and direction, interventions in the inherently domestic affairs of States have taken new forms. The UK-Iran relation as a result of the 1901 D’Arcy’s concession is the main focus of this article. Even though the International Court of Justice could not go beyond the jurisdictional matters in the Anglo-Iranian Oil Company Case of 1951, international law and in particular, international jurisprudence have created a well-established series of law that can be applicable over Iran-UK Case. The authors have argued in detail that Iran’s nationalisation movement has satisfied all the required elements. Iran’s nationalisation movement was, indeed, an action to guarantee its sovereign rights and to ensure its political independence from foreign powers, which

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has its roots in the most fundamental principles of the establishment of the United Nations.

## Introduction

Iran's struggle to become independent in the oil industry dates back to more than 70 years ago. As a result of this nationalization, a case was brought by the United Kingdom against the Imperial Government of Iran before the International Court of Justice. The background of the dispute was the 1901 D'Arcy Concession. Starting from the mid-nineteenth century, lots of European companies had been established to exploit Persian oil deposits under the so-called legal brainchild of 'concession'.<sup>1</sup> One of these concessions which is of great relevance here is the one granted to William Knox D'Arcy by Amin al-Sultan under the aegis of the Qajar King, Muzaffar al-Din Shah. D'Arcy was granted the exclusive rights to, explore, exploit, transport and sell natural gas, petroleum, asphalt and mineral waxes in Persia.<sup>2</sup> In return, the Shah received £20,000 cash, £20,000 shares, and 16 percent of annual net profits, from the operating companies of the concession for a period of 60 years.<sup>3</sup>

The granting of the D'Arcy concession was in fact one of the contributing factors to the Iranian Constitutional Revolution of 1905, a movement which contested the authority of the Qajar kings to represent Persia in treaties, and to create and grant rights like those

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<sup>1</sup> Sundhya PAHUJA, Cait STORR, “*Rethinking Iran and International Law: The Anglo-Iranian Oil Company Case Revisited* (extracted from *The International Legal Order: Current Needs and Possible Responses*)” (Edited by James Crawford Abdul G. Koroma Said Mahmoudi Alain Pellet). (2017) *Brill Nijhoff*, 56.

<sup>2</sup> A.M.S, BAKHTIARI, “D'Arcy Concession Centennial and OPEC Today: An Historical Perspective”, (2001) *The Oil and Gas Journal*, 99 (28), 22.

<sup>3</sup> *Ibid.*

included in the D'Arcy Concession.<sup>4</sup> As a result of the Constitutional Revolution of 1905, *Majlis*, Iranian Parliament, was created.<sup>5</sup> In 1907, an Entente was concluded between Russia and Britain containing division of the Iranian territory into respective zones of influence. Following the discovery of commercial quantities of oil, this resulted in the establishment of the Anglo-Persian Oil Company in London in 1909, with close cooperation from the British Government.<sup>6</sup> Another fruit of the constitutionalisation was when it, through the legislative wing, prevented Iran from being British Protectorate in 1919.<sup>7</sup>

The Company's responsibilities went beyond what was specified in the concession and were expanded *ultra virus* to monopolise Iran's foreign policy and the oil sector in the south. Russia has similarly been mandated to do the same thing in the north.<sup>8</sup> Supporters of the Company were of the opinion that the Royalty payments from the Company is the main source of Iran's revenue.<sup>9</sup> On the contrary, critics mainly maintained that it intended to and, indeed, did exploit Persian Oil in an unfair manner.<sup>10</sup> Mohammad Mossadegh, as the key opponent to this movement, called for the abolition of capitulation

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<sup>4</sup> Nikkie KEDDIE, Mehrdad AMANAT, "Iran under the Later Qājārs, 1848–1922" (1991), Cambridge University Press, 202–203; Ervand ABRAHAMIAN, "Iran Between Two Revolutions" (1982), Princeton University Press, 74 et seq.

<sup>5</sup> Ronald FERRIER, "The History of the British Petroleum Company" (2009), Cambridge University Press, 203.

<sup>6</sup> Peter J. BECK, "The Anglo-Persian Oil Dispute 1932–33" (1974), *Journal of Contemporary History*, 124; Meysam BEHRAVESH, "The Formative Years of Anglo-Iranian Relations (1907–1953): Colonial Scramble for Iran and Its Political Legacy" (2012), *Digest of Middle East Studies*, 388–89.

<sup>7</sup> Behraves, Supra note 6, 391.

<sup>8</sup> Ibid, 391-392; Abrahamian, Supra note 4, 110.

<sup>9</sup> Laurence LOCKHART, "The Causes of the Anglo-Persian Oil Dispute" (1953), *Journal of the Royal Central Asian Society*, 134–50.

<sup>10</sup> Keddie, Supra note 4, 435.

treaties in Iran with the main purpose of strengthening Iran's sovereignty and independence.<sup>11</sup> Due to unfair conditions of the D'Arcy Concession, the Shah of Iran, *Reza Khan*, suggested the renegotiation of the agreement.<sup>12</sup> Ultimately, the D'Arcy Concession was annulled by the Shah's order in 1932.<sup>13</sup>

At that time, both the Empire of Iran and the United Kingdom had accepted the compulsory jurisdiction of the Permanent Court of International Justice, the judicial organ of the League of Nations. After cancellation of the D'Arcy Concession, the British Cabinet authorised an appeal to the Council of the League of Nations upon the basis of diplomatic protection. In 1933, the two Governments agreed upon the discontinuation of all proceedings before the Council and reached another new Concession agreement in 1933 which was also ratified by *Majlis*. In around two decades, the National Front under Mossadegh campaigned for nationalisation of the oil industry.<sup>14</sup> Finally, in 1951, *Majlis* ratified the Oil Nationalisation Act. On 28 and 30 April, 1951, the Parliament passed another law “concerning the procedure for enforcement of the law concerning the nationalisation of the oil industry throughout the country.” These two laws received the Imperial assent on 1 May, 1951.<sup>15</sup> The United Kingdom severely criticised this decision. Finally, when the its objections did not convince the Mossadegh's Government to halt the nationalisation

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<sup>11</sup> Roy MOTTAHEDEH, *The Mantle of the Prophet: Religion and Politics in Iran*, (2002) Oxford: Oneworld Publications; Ali PIRZADEH, “*Iran Revisited: Exploring the Historical Roots of Culture, Economics, and Society*” (2016) Springer, 208.

<sup>12</sup> Keddie, *Supra* note 4, 435; Behraves, *Supra* note 6, 392.

<sup>13</sup> James BAMBERG, *The History of The British Petroleum Company, The Anglo-Iranian Years, 1928–1954*, (1994) *Cambridge University Press*, 30.

<sup>14</sup> Mark J. GASIOROWSKI, Malcolm BYRNE, Mohammad Mosaddeq and the 1953 Coup in Iran, (2004) *Syracuse University Press*, 19(3) 1–26.

<sup>15</sup> *Anglo-Iranian Oil Co. Case* (jurisdiction), (United Kingdom v. Iran), [1952] 13.

process, the UK instituted a proceeding against Iran before the International Court of Justice.

### **I. Bringing a Dispute before the International Court of Justice**

The Government of the United Kingdom believed that Iran, by passing the Oil Nationalisation Act, has unilaterally annulled or, altered the terms of, the 1933 Agreement (hereinafter will be referred to as the 'Concession Agreement'). The basis for the ICJ's jurisdiction was the declarations unilaterally made by both Parties under Article 36(2) of the ICJ Statute. These declarations indicate the unilateral will of States to accept the jurisdiction of the Court, with respect to the cases in which the other party has also made the same declarations. The translation of the declaration issued by Iran, the original version of which was in French,<sup>16</sup> is as follows:

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<sup>16</sup> The French declaration is as follows:

*"Le Gouvernement imperial de Perse declare reconnaitre comme obligatoire, de plein droit et sans convention speciale, vis-a-vis de tout autre Etat acceptant la meme obligation, c'est-a-dire sous condition de reciprocite, la juridiction de la Cour permanente de Justice internationale, conformement a l'arti-le 36, paragraphe 2 du Statut de la Cour, sur tous les differends qui s'eleveraient apn!s la ratification de la presente declaration, au sujet de situations ou de faits ayant directement ou indirectement trait a l'application des traites ou conventions acceptes par la Perse et posterieurs ala ratification de cette declaration, exception faite pour :*

*a) les differends ayant trait au statut territorial de la Perse, y compris ceux relatifs a ses droits de souverainete sur ses iles et ports;*

*b) les differends au sujet desquels les Parties auraient convenu ou conviendraient d'avoir recours : un autre mode de reglement pacifique;*

*c) les differends relatifs a des questions qui, d'apres le droit international, releveraient exclusivement de la juridiction de la Perse;*

*Toutefois, le Gouvernement imperial de Perse se reserve le droit de demander la suspension de la procedure devant la Cour pour tout differend soumis au Conseil de la Societe des Nations.*

*La presente declaration est faite pour une duree de six ans ; a l'expiration de ce delai, elle continuera a avoir ses pleins effets jusqu'a ce que notification soit donnee de son abrogation."*

“The Imperial Government of Persia recognizes as compulsory *ipso facto* and without special agreement in relation to any other State accepting the same obligation. That is to say, on condition of reciprocity, the jurisdiction of the Permanent Court of International Justice, in accordance with Article 36, paragraph 2, of the Statute of the Court, in 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, with the exception of:

(a) disputes relating to the territorial status of Persia, including those concerning the rights of sovereignty of Persia over its islands and ports;

(b) disputes in regard to which the Parties have agreed or shall agree to have recourse to some other method of peaceful settlement;

(c) disputes with regard to questions which, by international law, fall exclusively within the jurisdiction of Persia.

However, the Imperial Government of Persia reserves the right to require that proceedings in the Court shall be suspended in respect of any dispute which has been submitted to the Council of the League of Nations. The present declaration is made for a period of six years. At the expiration of that period, it shall continue to bear its full effects until notification is given of its abrogation.”<sup>17</sup>

On the basis of the unilateral declarations made by both Parties, the UK submitted that the dispute between itself and Iran is a dispute

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<sup>17</sup> *Anglo-Iranian Oil Co. Case*, Supra note 15, 14.

covered by the terms of the declaration,<sup>18</sup> believing that any treaty or convention ratified at any time by Iran may fall within the scope of its declaration.<sup>19</sup>

Iran has, however, opined that the declaration merely concerns the treaties or conventions entered into force after the declaration was made. In accordance with the Court, the intention of the Government of Iran is confirmed by an Iranian law of 14 June, 1931, by which the *Majlis* approved the declaration. This law was passed some months after the declaration was signed. It was stated in that law that *Majlis* approved the declaration relating to the compulsory jurisdiction of the Court “as it was signed by the representative of Iran” on 2 October, 1930. The law comprised a single article, the text of Article 36 of the Court's Statute, together with the conditions of the Iranian Government's accession to the aforesaid Article.<sup>20</sup> One of these conditions was mentioned as follows:

“In respect of all disputes arising out of situations or facts relating, directly or indirectly, to the execution of treaties and conventions which the Government will have accepted after the ratification of the declaration.”<sup>21</sup>

Having regard to these considerations, the Court reached to the conclusion that the declaration is only limited to disputes concerning

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<sup>18</sup> *Anglo-Iranian Oil Co. Case*, Application Instituting Proceedings, Request for the Indication of Interim Measures of protection and pleadings, (Merits and Preliminary Objection) (United Kingdom v. Iran) [1952], 11.

<sup>19</sup> *Anglo-Iranian Oil Co. Case*, Memorial submitted by the Government of the United Kingdom of Great Britain and Northern Ireland, (United Kingdom v. Iran) [1952], 163, para 28.

<sup>20</sup> *Ibid*, 17.

<sup>21</sup> *Ibid*.

the “application of treaties or conventions accepted by Iran after the ratification of the declaration.”<sup>22</sup>

Apart from this argument, the UK brought another alternative argument *i.e.* Iran violated its obligations owed to the United Kingdom emanating from treaties or conventions accepted by Iran after the ratification of the Declaration.<sup>23</sup>

The UK submitted that Iran was in “breach of principles and practice of general international law which by those treaties Iran promised to observe towards Danish, Swiss and Turkish nationals and which consequently, by the operation of the most-favoured-nations clause in her treaties with the United Kingdom, she became, upon the coming into force of the said treaties, (*i.e.* On 21 March, 1935, 1 July 1935, and some date in June 1937 respectively) bound to observe towards British nationals.”<sup>24</sup>

However, the Court, relying on the *res inter alios acta, aliis nec nocet nec prodest* rule,<sup>25</sup> found that:

“The United Kingdom is not entitled, for the purpose of bringing its present dispute with Iran under the terms of the Iranian declaration, to invoke its treaties of 1857 and 1903 with Iran, since those treaties were concluded before the ratification of the declaration; that the most-favoured-nation clause contained in those treaties cannot thus be brought into operation; and that, consequently, no treaty concluded by

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<sup>22</sup> Ibid, 18.

<sup>23</sup> Ibid, 38.

<sup>24</sup> Ibid, 39.

<sup>25</sup> (Latin for "a thing done between others does not harm or benefit others") is a law doctrine which holds that a contract cannot adversely affect the rights of one who is not a party to the contract.

Iran with any third party can be relied upon by the United Kingdom in the present case.”<sup>26</sup>

The UK also contended that the 1933 concession agreement shall be considered as a treaty or interstate agreement. The Court rejected this argument by holding that:

“It is nothing more than a 'concessionary contract' between a government and a foreign corporation. [...] It does not regulate in any way the relations between the two Governments. This juridical situation is not altered by the fact that the concessionary contract was negotiated and entered into through the good offices of the Council of the League of Nations, acting through its Rapporteur.”<sup>27</sup>

This is an indication of the fact that, at least in the view of the world Court, corporations may not be regarded as the subjects of international law.<sup>28</sup> Another argument put forward by the UK was the belief that the Court has jurisdiction on the basis of *forum prorogatum*. This was also rejected by the Court maintaining that Iran has consistently denied the jurisdiction of the Court.<sup>29</sup> Based on these arguments, the Court finally found it has no jurisdiction over the Case.

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<sup>26</sup> *Anglo-Iranian Oil Co. Supra note 15, 21.*

<sup>27</sup> *Ibid, 23.*

<sup>28</sup> Alexander ORAKHELASHVILI, *Anglo-Iranian Oil Company Case, (2007), Max Planck Encyclopedias of International Law*, para 10.

<sup>29</sup> *Anglo-Iranian Oil Co. Case, Supra note 15, 25.*

*a) On the Edge of the Merit: What is Untouched from the Anglo-Iranian Oil Company Case*

*a-1) The Right to Nationalise Natural Resources: Substantive Analysis*

The ICJ was not allowed to address the merit of the Case between Iran and the United Kingdom since the Court was finally unable to exercise its jurisdiction over the Case. However, dealing with the merits of the case is extremely crucial through which the legality vel non of 'nationalisation' will be determined. In this case, it should be noted that Iran has always referred to the nationalisation act as its sovereign right. Iran was of the belief that:

“There is no controversy between the Governments of Iran and United Kingdom of Great Britain and Northern Island. The British Government is unjustly trying to inject itself into a matter which, according to the most fundamental and axiomatic principles of international law, results from Iranian right of sovereignty, and which exclusively lies within the jurisdiction of the Iranian Government.”<sup>30</sup>

Therefore, a question then arises as to whether the right of States to nationalise the oil industry is a real right under international law?

The right to nationalise the natural resources has been recognised in modern international law via various UN resolutions, such as the Resolution 3281, decisions of the courts and arbitration tribunals, legal doctrine as well as State practice.<sup>31</sup>

The relevant text of the United Nations General Assembly Resolution 3281 is as follows:

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<sup>30</sup> Communication from the Minister of Foreign Affairs of Iran to the President of the International Court of Justice, (dated 29th June 1951), 679.

<sup>31</sup> Ibid.

“Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.

1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.

2. Each State has the right:

(a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;

(b) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph;

(c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on

the basis of the sovereign equality of States and in accordance with the principle of free choice of means.”<sup>32</sup>

As some commentators have stated, the right of a States to nationalise the natural resources is emanating from the State’s sovereignty. It is the supreme power possessed by States which can be exercised with regard to persons and things within their jurisdiction.<sup>33</sup> Arbitral awards in *Liamco*,<sup>34</sup> *Aminoil*,<sup>35</sup> as well as *Amoco* before the Iran-US Claims Tribunal<sup>36</sup> have endorsed this right of States to nationalise foreign property. This right to nationalise has also been regarded as crystallisation of customary international law.<sup>37</sup>

*a-2) Requirements for the Legality of Nationalisation under International Law*

Three requirements shall be satisfied for nationalisation to be considered as lawful under international law. The nationalisation shall

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<sup>32</sup> United Nations (1975). "General Assembly Resolution 3281 (XXIX): Charter of Economic Rights and Duties of States", Official Records of the General Assembly: Twenty-Ninth Session, Supplement No. 31 (A/9631) (New York: United Nations), pp.50-55

<sup>33</sup> Gillian WHITE, *Nationalisation of Foreign Property* (1961), *Revue internationale de droit comparé*, 35.

<sup>34</sup> *Libyan American Oil Company (Liamco) v. The Government of the Libyan Arab Republic*, Award of 12 April 1977, [1981], 120.

<sup>35</sup> *The Government of Kuwait v. American Independent Oil Company (Aminoil)*, (1982) 976 at 1012 and 1025.

<sup>36</sup> *Amoco International Finance Corp. v. The Islamic Republic of Iran. National Iranian Oil Company. National Petrochemical Company. and Kharg Chemical Company Limited*, (1987), reprinted in 15 Iran-U.S. C.T.R. 189 at 243, para. 179.

<sup>37</sup> *Texaco Overseas Petroleum Company/California Asiatic Oil Company v. The Government of the Libyan Arab Republic*, (1978) 1 at 21.

be for a public purpose; (ii) shall not be discriminatory; and (iii) there is also a duty by the State resorting to nationalisation to compensate.<sup>38</sup>

Rarely can it be claimed that taking the property of foreigners is not based on a public purpose since it is usually up to each State to recognise what is and is not regarded as public purpose.<sup>39</sup> In *Amoco International Finance Corporation*, the Iran-US Claims Tribunal stated that:

“a precise definition of the public purpose for which an expropriation may be lawfully decided has neither been agreed upon in international law nor even suggested. It is clear that, as a result of the modern acceptance of the right to nationalize, this term is broadly interpreted, and that States, in practice, are granted extensive discretion.”<sup>40</sup>

This approach was endorsed by the European Court of Human Rights, reflecting that this requirement is self-judge.<sup>41</sup>

Non-discrimination requirement signifies the differential treatment of aliens or their entities, compared to nationals or any particular group of other aliens.<sup>42</sup> The discrimination could also occur when the treatment of nationals and non-nationals is different.<sup>43</sup> “There is no rule of international law which stipulates that a State is guilty of illegal discrimination if it nationalises alien property in a field where

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<sup>38</sup> Hodayoun MAFI, “State Responsibility for Nationalization and Expropriation: A Preliminary Survey of the Awards of the Iran-United States Claims Tribunal” (2009) *International Journal of Humanities*, 16 (1), 94.

<sup>39</sup> *Ibid*, 88-9.

<sup>40</sup> *Amoco International Finance Corp. v. The Islamic Republic of Iran*, *Supra* note 37, para 145.

<sup>41</sup> *James et al. v. The United Kingdom*, Judgment of 21 February 1986, E.C.H.Rep. Series A, No. 98, 9 at 32, para. 46.

<sup>42</sup> Ardeshir ATAI, ‘*Government Guarantees to Foreign Investors*’ (1962), *Columbia University Press*, 249.

<sup>43</sup> Frank WOOLDRIDGE, Vishnu SHARMA, “*The Expropriation of the Property of the Ugandan Asians*”, (1974), *J.LL*, 61-63.

there are no national interests capable of being affected.”<sup>44</sup> “On this basis, the nationalisations of the Anglo-Iranian Oil Company of 1951, and the Suez Canal Company of 1956 which affected a single and unique alien undertaking respectively, are not discriminatory.”<sup>45</sup> The non-discriminatory nature of Iranian oil nationalisation has also been endorsed by the Civil Court of Rome, holding that “by the Oil Nationalization Law it is intended to protect the interests of Iran, not to attack the interests of foreign nationals as such.”<sup>46</sup>

Compensation requirement has been regarded as the most important element.<sup>47</sup> Nevertheless, it should be noted that failure to perform the duty to compensate does not negate the lawfulness of the measure in question.<sup>48</sup> It has been argued that: “since the State may never make a claim, or may waive its rights and abandon a claim to compensation, it is concluded that the original expropriation must be valid independently of the question of compensation.”<sup>49</sup> Furthermore, it is conceived from the principle of permanent sovereignty over natural resources that compensation is not a sine qua non for the

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<sup>44</sup> White, *Supra* note 33, 144.

<sup>45</sup> White, *Supra* note 33, 130-138; Chittharanjan Felix AMERASINGHE, “*Issues of Compensation for the Taking of Alien Property in the Light of Recent Cases and Practice*”, (2008), Cambridge University Press, 140; Zouhair A. KRONFOL, “*Protection of Foreign Investment - A Study in International Law*” (1972), Sijthoff, Leiden, 24-25; Will D. VERWEY, Kiko J. SCHRIJVER, “*The Taking of Foreign Property under International Law: A New Legal Perspective*” (1984), Cambridge University Press, 15 *N.Y.I.L.*, 12, n. 36.

<sup>46</sup> *Anglo-Iranian Oil Co. Ltd. v. S. U.P.o.R.* (1955). (*Unione Petrolifera per l'Orentie S.P.A.*), 22 *I.L.R.* 23 at 40.

<sup>47</sup> Ali GHASSEMI, *Expropriation of Foreign Property in International Law*. (Doctoral Dissertation, University of Hull), 108.

<sup>48</sup> *Ibid.*, 88.

<sup>49</sup> *Ibid.*, 108.

legality of a nationalisation.<sup>50</sup> This is confirmed by several law scholars as well.<sup>51</sup>

***b) Casting some Light on Related Factual Backgrounds and the Arguments of the Parties to Anglo-Iranian Oil Company Case***

In its oral submission before the Court, the Government of the United Kingdom, has stated that the 1933 Agreement

“cannot be annulled or altered except with the agreement of the Company or under the terms of the Convention [agreement], and that the annulment or alteration which the Iranian Government has purported to enact by the oil nationalisation law is a breach of the Convention [agreement] and contrary to international law. And in the second place, even if the Company was prepared to agree in principle to some form of nationalisation, 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.”<sup>52</sup>

The UK, moreover, opined that:

“Article 22 of the aforesaid Convention [agreement] continues to be legally binding on the Imperial Government of Iran and that, by denying to

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<sup>50</sup> Ove BRING, “*Impact of Developing States on International Customary Law concerning Protection of Foreign Property*” (1980), *Scandinavian Studies in Law*, 31.

<sup>51</sup> Isi FOIGHHEL, “*Nationalization: A study in the Protection of Alien Property in International Law*”, (1957), *Stevens & Sons Ltd.*, 40-41; ATAI, *supra* note 42, 314-315.

<sup>52</sup> *Anglo-Iranian Oil Co. Case*, (1952). Oral Proceedings Concerning Interim Measures of Protection (Public Settings) *held at the Peace Palace, The Hague*, STATEMENT BY SIR FRANK SOSKICE [Public sitting of June 30th. 1951, morning], 401-2.

the Anglo-Iranian Oil Company, Limited, the exclusive legal remedy provided in Article 22 of the aforesaid Convention [agreement], the Imperial Government have committed a denial of justice contrary to international law.”

Moreover, in the UK’s view:

“The Imperial Government of Iran should give full satisfaction and indemnity for all acts committed in relation to the Anglo-Iranian Oil Company, Limited, which are contrary to international law or the aforesaid Convention [agreement], and to determine the manner of such satisfaction and indemnity.”<sup>53</sup>

Iran's view was totally different. Iran mainly focused on the issue that the Government of the United Kingdom, under the cover of the former Anglo-Iranian Oil Company, was insistently intervening in the internal affairs and political independence of Iran,<sup>54</sup> to the extent that this intervention has been also confirmed by *figaro*, a neutral observer.<sup>55</sup> In a letter from Iran communicated to the President of the International Court of Justice on 29 June, 1951, Iran started criticising the issue while emphasising the main purpose of the establishment of the United Nations Organisation, the Security Council and the ICJ. It went further to say:

“If we view this question impartially, it will become clear to us that greed and selfishness on the part of the strong to procure illicit advantages from the weak nations are to be regarded as the main causes of this instability and the insecurity which prevails at the present; and for so long as fair play and justice are not governing the

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<sup>53</sup> *Anglo-Iranian Oil Co. Case, Supra note 15, 6-7.*

<sup>54</sup> *Ibid*, 402.

<sup>55</sup> "FIGARO" of June 16th, 1951, Paris.

relations of the strong and the weak, there can be no hope of bringing about world stability and achieving a lasting peace.”<sup>56</sup>

Iran also believed that even the provisions of the concession agreement were not observed by the UK, blaming the UK for the alleged violations of the said agreement resulted in economic losses. On this matter, Iran referred to some cases of falsifications and distortions committed by the company in its accounts with the purpose of decreasing the royalties belonging to the Iranian Government. However, regardless of all this the oil company paid to the Iranian Government only one million pounds in arrears until 1920.<sup>57</sup>

From 1920 to 1932, the Oil Company has merely paid less than ten million pounds as its royalty payments to the Iranian Government, which, in accordance with its balance sheets, amounts to only 13 per cent of its total profits; [...] The Company, having earned huge profits and having acquired undue political influence and power in Iran, made its decision to prolong its period of exploitation. Since the way was not paved for the easy attainment of such an aim, the Company began to prepare the grounds through illicit means. In the beginning of 1919, when the British Government had the plan of making Iran a protectorate, it started to exercise its influence in the Iranian Parliamentary elections. However, their illegal interference proved ineffective for achieving their goals, thus they sought to make some radical changes in Iran, implementing measures starting in 1921. After that, the government openly meddled in the general elections, and no member was allowed to enter Parliament without the government's

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<sup>56</sup> Communication from the Minister of Foreign Affairs of Iran to the President of the International Court of Justice, dated 29th June 1951. with three annexes. `

<sup>57</sup> Ibid.

approval. As a result, the Iranian people completely lost control over their government and were denied their unalienable right to self-government. Following these initial actions, the Company staged a false front to demonstrate that the Iranian Government had offered to annul the original contract. The Company then successfully extended the aforementioned document through its agents.<sup>58</sup>

Concerning the customs duties, it has to be mentioned that the former oil company was not liable to pay any customs duties or dues. The financial loss to the Iranian Government from this exemption is substantial. Indeed, the Iranian Government would have gained more by receiving the relevant customs duties and dues on the imports and the exports of the Company. Iran had left its oil resources at the disposal of the Company gratuitously. The most important argument which can be advanced against this defective and one-sided agreement of 1933 lies in the fact that under the D'Arcy Concession, the Iranian people had to wait until 1961 when the whole installation and the entire revenue from oil would unconditionally belong to the Iranian Government. But as a result of this conspiracy and imposition, this boundless wealth would have remained for another 32 years in the hands of the Company.<sup>59</sup> These all resulted in Iran's firm opposition as to the UK's policy behind the Company-Iran relations.

## **Conclusion**

Constitutionalisation of Iran was a huge step towards a more developed Iran, through which it could exert parliamentary power, where required, to protect its sovereign rights. The dispute between

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<sup>58</sup> *Anglo-Iranian Oil Co. Case, Supra note 52, 674.*

<sup>59</sup> *Ibid, 676.*

Iran and UK was of such seriousness that it was brought before the International Court of Justice by the Applicant, the UK. The arguments submitted by the UK in jurisdictional phase of the proceedings before the ICJ led nowhere but to a dead-end alley. The Court has ultimately found that it has no jurisdiction over the Case. Not addressing the merit as a result of non-exercise of jurisdiction by the Court shall not underestimate the national security interests the Iranian Government was entitled to under international law.

Indeed, Iran initiated the nationalisation process when it observed that the interests of the public as a whole would be adversely affected unless it begins to employ the very initial bricks required for building a nationalised oil industry. Thus, the nationalisation became a starting point for Iran to move on a route far from other States' unlawful interventions. By doing so, Iran, to a very substantial extent, guaranteed its political independence. This historic step taken by the then Iranian Government was a decisive move towards the recognition as well as development of sovereign rights of the global south, which also took the lead in respect to similar nationalisation movements in other States. Nevertheless, it shall not be overlooked that Iran paid an extremely heavy price to achieve this goal. The incurred cost was the 1953 *coup d'état* (28 Mordad Coup) as a result of which the democratically elected Prime Minister of Iran, Mossadegh, was overthrown.