



UNITED NATIONS
SECURITY
COUNCIL



GENERAL

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11 July 1951

ORIGINAL: ENGLISH-
FRENCH

ORDER OF THE INTERNATIONAL COURT OF JUSTICE DATED 5 JULY 1951
BY WHICH THE COURT INDICATED INTERIM MEASURES OF
PROTECTION IN THE ANGLO-IRANIAN
OIL COMPANY CASE

Note by the Secretary-General

Pursuant to Article 41, paragraph 2 of the Statute of the International Court of Justice, I have the honour to transmit herewith, for the information of the members of the Security Council, a copy of the Order of 5 July 1951 by which the Court indicated interim measures of protection in the Anglo-Iranian Oil Company case.

International Court of Justice

YEAR 1951

July 5th, 1951.

1951
July 5th
General List
No. 16.

ANGLO-IRANIAN OIL COMPANY CASE

REQUEST FOR THE INDICATION OF INTERIM MEASURES
OF PROTECTION

(UNITED KINGDOM / IRAN)

O R D E R.

Present: President BASDEVANT; Vice-President GUERRERO;
Judges ALVAREZ, HACKWORTH, WINIARSKI, ZORICIC,
DE VISSCHER, Sir Arnold McNAIR, KIAESTAD, BADAWI PASHA,
READ, HSU MO, Registrar HAMBRO.

THE COURT

composed as above,
after deliberation,

having regard to Articles 41 and 48 of the Statute of the
Court, having regard to Article 61 of the Rules of Court,

In the proceedings instituted before the Court by the Application
dated May 26th, 1951, by the Government of the United Kingdom of Great
Britain and Northern Ireland, against the Iranian Empire in the case
of the Anglo-Iranian Oil Company, Limited:

Makes the following Order:

Having regard to the Request dated June 22nd, 1951, submitted to
the Court and filed in the Registry on that day whereby the United
Kingdom Government, - invoking Article 41 of the Statute and Article
61 of the Rules, and referring to the Application of May 26th, in
which the United Kingdom Government had reserved the right to request
the Court to indicate such interim measures, - requested the Court to
indicate that pending the final Judgment of the Court in the Anglo-
Iranian Oil Company case:

/(a) The

- (a) The Imperial Government of Iran should permit the Anglo-Iranian Oil Company, Limited, its servants and agents, to search for and extract petroleum and to transport, refine or treat in any other manner and render suitable for commerce and to sell or export the petroleum obtained by it, and generally, to continue to carry on the operations which it was carrying on prior to the 1st May, 1951, free from interference calculated to impede or endanger the operations of the Company, by the Imperial Government of Iran, their servants or agents, or any Board, Commission, Committee, or other body nominated by them,
- (b) The Imperial Government of Iran should not by any executive or legislative act or judicial process hinder or prevent or attempt to hinder or prevent the Anglo-Iranian Oil Company, Limited, its servants or agents, in or from continuing to carry on its operations as aforesaid,
- (c) The Imperial Government of Iran should not by any executive or legislative act or judicial process sequester or seize or attempt to sequester or seize or otherwise interfere with any property of the Anglo-Iranian Oil Company, Limited, including (but without prejudice to a decision on the merits of the case) any property which the Imperial Government of Iran have already purported to nationalise or otherwise to expropriate.
- (d) The Imperial Government of Iran should not by any executive or legislative act or judicial process sequester or seize or attempt to sequester or seize any monies earned by the Anglo-Iranian Oil Company, Limited, or otherwise in the possession or power of the Anglo-Iranian Oil Company, Limited, including (but without prejudice to a decision on the merits of the case) any monies which the Imperial Government of Iran have purported to nationalise or otherwise to expropriate or any monies earned by means of property which they have purported so to nationalise or otherwise to expropriate.
- (e) The Imperial Government of Iran should not by any executive or legislative act or judicial process require or attempt to require the Anglo-Iranian Oil Company, Limited, to dispose of the monies referred to in sub-paragraph (d) above otherwise than in accordance with the terms of the Convention of 1933 or of any measure to be indicated by the Court,
- (f) The Imperial Government of Iran should ensure that no other steps of any kind are taken capable of prejudicing the right of the Government of the United Kingdom to have a decision of the Court in its favour on the merits of the case executed, should the Court render such a decision,
- (g) The Imperial Government of Iran and the Government of the United Kingdom should ensure that no step of any kind is taken capable of aggravating or extending the dispute submitted to the Court, and in particular, the Imperial Government of Iran should abstain from all propaganda calculated to inflame opinion in Iran against the Anglo-Iranian Oil Company, Limited, and the United Kingdom.

Whereas, on the day on which the Request for the indication of interim measures was filed, it was transmitted to the Iranian Government and the

submissions made therein were communicated by telegraph to the said Government;

Whereas the Registry, referring to Article 41 paragraph 2 of the Statute, notified the Secretary-General of the United Nations of the said Request, and, in accordance with Article 40 paragraph 3 of the Statute communicated it to the Members of the United Nations through the Secretary-General, and to the other States entitled to appear before the Court;

Having regard to the message transmitted by telegraph by the President of the Court on June 23rd to the Prime Minister and to the Minister for Foreign Affairs in Iran, which was in the following terms:

"Court being due to meet to consider Request for indication interim measures of protection filed June 22nd by United Kingdom agent, it is my duty in accordance with Article 61 of the Rules to take such measures as appear necessary to me to enable the Court to give an effective decision. For this purpose I have honour suggest to Your Excellencies that Imperial Government issue appropriate instructions to avoid all measures which might render impossible or difficult the execution of any judgment which the Court might subsequently give and to ensure that no action is taken which might aggravate the dispute submitted to Court. Any measures taken by Imperial Iranian Government for this purpose would in no way prejudice such representations as that Government may deem it appropriate to make to Court either in proceedings on Request for interim measures in which both parties will have right to be heard at hearing on June 30th or subsequently in proceedings on Application filed May 26th by the United Kingdom."

Having regard to the reply to this message, transmitted by telegraph on 29th to the Iranian Legation at The Hague, and, on the same day, delivered to the President of the Court by the Iranian Minister at The Hague, filed and communicated to the Agent for the United Kingdom Government;

Having regard to the final text of the said reply, consisting of a message signed "B. Kazemi, Minister for Foreign Affairs of Iran", followed by a statement together with three annexes delivered to the President of the Court on June 30th by the Iranian Minister at The Hague, which was also communicated to the Agent for the United Kingdom Government;

Whereas the said reply stated:

"In view of the foregoing considerations the Iranian Government hopes that the Court will declare that the case is not within its jurisdiction
/because of the

because of the legal incompetence of the complainant and because of the fact that exercise of the right of sovereignty is not subject to complaint, Under these circumstances the request for interim measures of protection would naturally be rejected."

Whereas on June 23rd, the day following the filing of the Request for the indication of interim measures of protection, the United Kingdom Government, through its duly authorised Agent, and the Iranian Government through its Minister for Foreign Affairs, were informed that the Court would fix a hearing for the purpose of giving the Parties an opportunity of presenting their observations on the subject of the Request;

Whereas upon the opening of the hearing fixed for this purpose, the President of the Court took note of the presence in Court of Sir Eric Beckett, K.C.M.G., K.C., Legal Adviser to the Foreign Office, and of the Right Honourable Sir Frank Soskice, K.C., M.P., Attorney-General; Professor H. Lauterpacht, K.C., Professor of International Law at Cambridge University; Mr. A.K. Rothnie, Eastern Department, Foreign Office; and Messrs. H.A.P. Fisher and D.H.N. Johnson, Counsel;

Whereas the Iranian Government was not represented at this hearing;

Having heard Sir Frank Soskice on behalf of the United Kingdom Government, on the request for the indication of interim measures of protection;

Whereas the submissions in the request of the United Kingdom Government, quoted above, were maintained in the course of the hearing;

Whereas in its message of June 29th, 1951, the Iranian Government stated that it rejected the Request for the indication of interim measures of protection presented by the United Kingdom Government on the grounds principally of the want of competence on the part of the United Kingdom Government to refer to the Court a dispute which had arisen between the Iranian Government and the Anglo-Iranian Oil Company, Limited, and of the fact that this dispute pertaining to the exercise of the sovereign rights of Iran was exclusively within the national jurisdiction of that State and thus not subject to the methods of settlement specified in the Charter;

Whereas it appears from the Application by which the Government of the United Kingdom instituted proceedings, that that Government has adopted the cause of a British Company and is proceeding in virtue of the right of diplomatic protection;

Whereas the complaint made in the Application is one of an alleged violation

/of international

of international law by the breach of the agreement for a concession of April 29th, 1933, and by a denial of justice which, according to the Government of the United Kingdom, would follow from the refusal of the Iranian Government to accept arbitration in accordance with that agreement, and whereas it cannot be accepted a priori that a claim based on such a complaint falls completely outside the scope of international jurisdiction;

Whereas the considerations stated in the preceding paragraph suffice to empower the Court to entertain the request for interim measures of protection;

Whereas the indication of such measures in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction;

Whereas the object of interim measures of protection provided for in the Statute is to preserve the respective rights of the Parties pending the decision of the Court, and whereas from the general terms of Article 41 of the Statute and from the power recognised by Article 61, paragraph 6, of the Rules of Court, to indicate interim measures of protection proprio motu, it follows that the Court must be concerned to preserve by such measures the rights which may be subsequently adjudged by the Court to belong either to the Applicant or to the Respondent;

Whereas the existing state of affairs justifies the indication of interim measures of protection;

For these reasons,

THE COURT

Indicates, pending its final decision in the proceedings instituted on May 26th, 1951, by the Government of the United Kingdom of Great Britain and Northern Ireland against the Imperial Government of Iran, the following provisional measures which will apply on the basis of reciprocal observance:

1. That the Iranian Government and the United Kingdom Government should each ensure that no action is taken which might prejudice the rights of the other Party in respect of the carrying out of any decision on the merits which the Court may subsequently render;
2. That the Iranian Government and the United Kingdom Government should each ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court;

/3. That the

3. That the Iranian Government and the United Kingdom Government should each ensure that no measure of any kind should be taken designed to hinder the carrying on of the industrial and commercial operations of the Anglo-Iranian Oil Company, Limited, as they were carried on prior to May 1st, 1951;

4. That the Company's operations in Iran should continue under the direction of its management as it was constituted prior to May 1st, 1951, subject to such modifications as may be brought about by agreement with the Board of Supervision referred to in paragraph 5;

5. That, in order to ensure the full effect of the preceding provisions, which in any case retain their own authority, there should be established by agreement between the Iranian Government and the United Kingdom Government a Board to be known as the Board of Supervision composed of two Members appointed by each of the said Governments and a fifth Member, who should be a national of a third State and should be chosen by agreement between these Governments, or, in default of such agreement, and upon the joint request of the Parties, by the President of the Court,

The Board will have the duty of ensuring that the Company's operations are carried on in accordance with the provisions above set forth. It will, inter alia, have the duty of auditing the revenue and expenses and of ensuring that all revenue in excess of the sums required to be paid in the course of the normal carrying on of the operations and the other normal expenses incurred by the Anglo-Iranian Oil Company, Limited, are paid into accounts at banks to be selected by the Board on the undertaking of such banks not to dispose of such funds except in accordance with the decisions of the Court or the agreement of the Parties.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this fifth day of July, one thousand nine hundred and fifty one, in four copies, one of which will be placed in the Archives of the Court, and the others transmitted to the Imperial Government of Iran, to the Government of the United Kingdom of Great Britain and Northern Ireland, and to the Secretary-General of the United Nations for transmission to the Security Council.

(Signed) Basdevant
President.

(Signed) E. Hambro
Registrar,

/Judges Winarski

Judges Winiarski and Badawi Pasha, declaring that they are unable to concur in the Order of the Court, have appended to the Order the joint statement of their dissenting opinion.

(initialled) J.B.

(initialled) E.H.

Dissenting Opinion of Judges Winarski and Bedawi Pasha

However justified the interim measures of protection formulated in this Order may appear, we are of opinion that the Court should not have indicated them, on grounds of principle which it is our duty to indicate briefly.

The question of interim measures of protection is linked, for the Court, with the question of jurisdiction; the Court has power to indicate such measures only if it holds, should it be only provisionally, that it is competent to hear the case on its merits. Article 41 of the Statute empowers the Court to indicate interim measures of protection "if it considers that circumstances so require". The provisions of this Article presuppose the competence of the Court: this Article is to be found in the Chapter of the Statute headed "Procedure"; it refers to "the parties": there must therefore be proceedings within the meaning of the Statute and there must be parties.

Clearly, it could not be claimed that, in the event of a challenge of its jurisdiction, the Court should finally pronounce on this question before indicating interim measures of protection; in such a case as this the request might well become pointless; but the Court must consider its competence reasonably probable.

Article 41 naturally raises a different question for the consideration of the Court, the question whether the circumstances require provisional measures to be taken, and, from this point of view, the power of the International Court of Justice is not in substance different from that of a national tribunal. President Azziotti, in a dissenting opinion (in the Polish Agrarian Reform case, in 1932) went so far as to say that if the Hungarian case, which was characterized as a procedure of that kind, entailed the Court to take into account the possibility of the right claimed and the possibility of the danger to which that right was exposed, a request for interim measures of protection should be granted. But as interim measures of protection are exceptional in character and in violation of general rights, the tribunal ought to examine the situation as a whole; thus, for instance, in the countries where there is power to grant a temporary injunction, in cases where the measures asked for would involve particular hardship on the respondent, a judge will only grant it if the right of the applicant appears to him to be clear; thus, too, if it seems to him to be

/very probable

very probable that the applicant will fail in the proceedings, he will refuse to grant the relief asked for. The question of the jurisdiction of the national tribunal does not in practice arise; the application is made to the competent tribunal; if the tribunal has no jurisdiction it will not order interim measures. But, in municipal law, there is always some tribunal which has jurisdiction.

In international law it is the consent of the parties which confers jurisdiction on the Court; the Court has jurisdiction only insofar as that jurisdiction has been accepted by the parties. The power given to the Court by Article 41 is not unconditional; it is given for the purposes of the proceedings and is limited to those proceedings. If there is no jurisdiction as to the merits, there can be no jurisdiction to indicate interim measures of protection. Measures of this kind in international law are exceptional in character to an even greater extent than they are in municipal law; they may easily be considered a scarcely tolerable interference in the affairs of a sovereign State. For this reason, too, the Court ought not to indicate interim measures of protection unless its competence, in the event of this being challenged, appears to the Court to be nevertheless reasonably probable. Its opinion on this point should be reached after a summary consideration; it can only be provisional and cannot prejudice its final decision, after the detailed consideration to which the Court will proceed in the course of adjudicating on the question in conformity with all the Rules laid down for its procedure.

We find it difficult to accept the view that if prima facie the total lack of jurisdiction of the Court is not patent, that is, if there is a possibility, however remote, that the Court may be competent, then it may indicate interim measures of protection. This approach, which also involves an element of judgment, and which does not reserve to any greater extent the right of the Court to give a final decision as to its jurisdiction, appears however to be based on a presumption in favour of the competence of the Court which is not in consonance with the principles of international law. In order to accord with these principles, the position should be reversed: if there exist weighty arguments in favour of the challenged jurisdiction, the Court may indicate interim measures of protection; if there exist serious doubts or weighty arguments against this jurisdiction such measures cannot be indicated.

In order to minimise the seriousness of this question, there have been invoked

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before the Court examples taken from the practice of the Mixed Arbitral Tribunals. But these tribunals, as joint organs of two States, differ both as to their character and as to their procedure from an international tribunal, and, therefore, from the International Court of Justice, and there is, consequently, nothing to be learned from their precedents.

There were also invoked precedents of the Permanent Court of International Justice; these precedents, however, in no way support the argument put forward. Interim measures of protection were requested in six cases; the requests were granted in only two. In the Belgian/Chinese case (in 1927), the President first refused, then granted, and, finally revoked the interim measures of protection. In his Order, the President was careful to say: "Provisionally, pending the final decision of the Court ... either on the question of its jurisdiction or on the merits". In revoking these measures the President pointed out what were the circumstances: "the time limit 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 the case". In the case concerning the Electricity Company of Sofia and Bulgaria (in 1939), Bulgaria objected to the jurisdiction of the Court. The objection was considered by the Court and allowed in part; as to the remainder the Court held itself competent. It was only after this finding that the Court indicated interim measures of protection, and then in very general terms.

There are certainly cases in which the objection to the jurisdiction is regarded as a mere ground of defence, and in which the party overruled in its objection continues to take part in the proceedings. But in this case the facts are quite different. Iran affirms that it has not accepted the jurisdiction of the Court in the present matter and that it is in no way bound in law; it has refused to appear before the Court and has put forward reasons for its attitude. The Court ought therefore to decide, in a summary way and provisionally, for the purpose of arriving at the decision which it must take on the question of interim measures of protection, which is the more probable of the two conclusions which it may finally come to on the question of its jurisdiction.

In this connection, a consideration, entirely summary in character, of the various grounds upon which the Government of the United Kingdom alleges that the

Court has jurisdiction, leads us to the provisional conclusion that if Iran does not accept the jurisdiction of the Court in pursuance of the suggestion made by the United Kingdom in paragraph 20 of the Application ("Alternatively, whether or not the Court has the right to exercise jurisdiction in this case ... the Government of the United Kingdom expects that Iran ... will agree to appear before the Court voluntarily"), the Court will be compelled to hold itself without jurisdiction in this case and that, in these circumstances, interim measures of protection should not have been indicated.

B. WINIARSKI
BADAWI PASHA.
