LEAGUE OF NATIONS

DISPUTE BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND THE IMPERIAL GOVERNMENT OF PERSIA

Note by the Secretary-General.

The Secretary-General has the honour to circulate to the Council the following communication, dated January 18th, which he has received from the Imperial Government of Persia.

Geneva, January 18th, 1933.

[Translation.]

I have the honour to enclose, for transmission to the Council of the League of Nations, a memorandum from the Imperial Persian Government in reply to the memorandum from His Majesty's Government in the United Kingdom (document C.841.1932.VII).

(Signed) DAVAR.

Enclosures: One memorandum and six appendices.

MEMORANDUM FROM THE IMPERIAL GOVERNMENT OF PERSIA.

[Translation.]

1. By a contract signed at Teheran on May 28th, 1901, the Government of His Imperial Majesty the Shah of Persia granted to William Knox D'Arcy, a British subject, a concession carrying the "special and exclusive privilege to search for, obtain, exploit, develop, render suitable for trade, carry away and sell natural gas, petroleum, asphalt and ozokerite throughout the whole extent of the Persian Empire for a term of sixty years".

2. The concession signed by His Imperial Majesty the Shah was signed and sealed by the Prime Minister and countersigned by the Ministers of Foreign Affairs and Mines, but, in order that the facts may be presented in their true light, it might be well to recall that, at that time, there was as yet no constitutional government in Persia, and the administration of the country offered no guarantees, and that different parts of Persia were under two influences—British and Russian—which were already marked by Article 6 of the concession before they were specifically determined in the Anglo-Russian Convention of 1907.

3. By the terms of the contract, the Persian Government granted the concessionaire—over a territory comprising the whole of the Empire, except five provinces—a great many advantages, including:

   (a) Power to acquire the necessary lands, some gratuitously and some at the current price (Article 3);

   (b) Freedom from all imposts and taxes for the lands acquired during the term of the concession (Article 7);

   (c) Freedom from taxes and Custom House duties for the necessary material and apparatus when imported, and for all products obtained in accordance with Article 1 when exported (Article 7).

   The concessionaire was authorised to found one or several companies for the working of the concession (Article 9). He was to give notice to the Government of such formation, through the medium of an Imperial Commissioner, who, in conjunction with the concessionaire, was to establish such supervision as he might think desirable to safeguard the Persian Government's interests. The first company for working the concession was to be founded before May 28th, 1903.

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1 Article 6 mentions the five provinces which are excluded from the concession. These five provinces—Azerbaijan, Ghilan, Mazenderan, Astarabad and Khorassan—are situated in the north of the country and border on Russia.
The concessionaire undertook to employ only subjects of His Imperial Majesty the Shah of Persia, except the technical staff such as the managers, engineers, borers, and foremen (Article 12).

He undertook to pay a fixed annual due of 2,000 tomans and a variable due equal to 16 per cent of the annual net profits (Articles 4 and 10).

On the expiration of the term of the concession, all materials, buildings and apparatus then used by the company for the exploitation of its industry were to become the property of the Government, free of charge (Article 15).

4. The first company for working the concession was formed in 1903. The Anglo-Persian Oil Company, established in 1909, took over all the rights and all the obligations arising out of the D’Arcy Concession.

5. From the beginning of the concession, the line of action pursued by the concessionaire gave rise to disputes:

(a) Under Article 4, the Government was to receive annually a fixed sum of 2,000 tomans. Years went by, and the due was not paid. In 1909, the arrears amounted to 16,000 tomans. The Government made representations to the Anglo-Persian Oil Company, which refused to make any payment. The Government asked for arbitration, but the company declined.

(b) Under Article 10, the Persian Government was to be paid annually a sum equal to 16 per cent of the annual net profits of any company or companies that might be formed to work the concession. Up to 1910, no sum had yet been paid under this head. During the great war, the Company complained that, in the course of hostilities (in February 1915), pipe-lines had been cut by armed bands, and that, owing to the disturbed state of the country, it would take a long time to repair them, which meant serious losses to the company. For these losses it sought to make the Persian Government responsible in virtue of Article 14. The Persian Government replied that the pipe-line, which supplied the British fleet, had been cut by armed bands at the instigation of one of the belligerents. It was not responsible, but proposed to settle the dispute by arbitration, as provided in Article 17. The company would not agree to this, and, acting as judge in its own cause, refused to pay the dues (Appendices I and II).

6. The Persian Government employed a sworn accountant, a British subject, Mr. William McLintock, to examine the company's books and accounts and those of its subsidiaries, to ascertain what losses the company might have sustained during the war, and to check the calculation of the net profits with a view to the levying of the 16 per cent. In his report, the expert stated that the delay in repairing the pipe-lines was chiefly due to the fact that the company's ships had been requisitioned by the British military authorities. He also called attention to the wide discrepancy between the sum claimed by the company (over £600,000) and the real amount of the loss sustained (about £20,000).

He further noted that the company deducted from the gross receipts an undue amount in respect of amortisation and considerable sums in respect of interest, and subtracted the income-tax on profits before calculating the dues.

7. In consequence of the expert's investigations, a financial adviser lent by the British Government to Persia—Mr. Armitage-Smith—was appointed to settle the questions outstanding between the Persian Government and the company, either by amicable agreement or by arbitration. He made an arrangement with the company whereby:

(a) He was to calculate the arrears;

(b) He was to fix the basis on which the dues were to be calculated;

(c) It was decided that, if a dispute should arise in regard to the state of the dues, the method of calculating them, or any contested point, such dispute should be referred, not to the arbitrators provided for in Article 17 of the concession (in Teheran), but to London, to an expert accountant to be appointed by the President for the time being of the English Chartered Accountants' Institute, "whose award shall be final ".

8. Confronted by this text, which was alleged to be purely an interpretation of the D'Arcy Concession, the Persian Government found that it was, in reality, an alteration in the concession, and that, consequently, parliamentary sanction was constitutionally necessary. Such, indeed, was the opinion given to the Persian Government, on consultation, by the firm of lawyers Lumley & Lumley (July 27th, 1921) (Appendix III).

The Government, whose instructions—even the most formal and specific—were not followed, did not submit the Armitage-Smith " Agreement " for parliamentary sanction.

9. Consequently, the so-called interpretative agreement could only have the provisional force of a modus vivendi.

10. The provisional situation under this modus vivendi had to be brought to an end by the conclusion of a definitive agreement satisfactory to Parliament.

11. The company sought to make the Armitage-Smith Agreement binding. In view of its obstinacy, the Imperial Commissioner redoubled his protests. On May 9th, 1928, he wrote: "I have frequently said, and now repeat, that Mr. Armitage-Smith was not instructed or authorised to draw up an agreement affecting changes in the terms of the D'Arcy Concession " (Appendix IV).
12. In such circumstances, the negotiations, which had lasted several years, became increasingly difficult.
On August 12th, 1928, the Minister of the Court wrote to the Chairman of the Company, Sir John Cadman:

"I regret to learn that the negotiations have not as yet led to the desired results. Must I again refer to the community of Anglo-Persian interests in this enterprise? Must I again allude to the obsolescence of the D'Arcy Concession, which was obtained at a time when the Government of the Kadjars did not realise what was being taken from it and what it was giving? Consult any lawyer you like and you will be told that the concession needs to be remade, recast...
"

13. Confronted by this prospect, Sir John Cadman said he was prepared to negotiate with a view to the revision of the D'Arcy Concession. In March 1929, he went to Teheran to discuss the draft of a new concession.

14. Glimpses of an understanding began to appear. Only a few points remained to be settled. Sir John returned to London to confer with his colleagues upon them. The negotiations continued.

15. Conversation succeeded conversation until 1931. There was still some hope of success.

16. On August 7th, 1931, to the Government's great surprise and disappointment, Sir John Cadman categorically stated, in a letter to the Minister of the Court, that the revision of the concession could no longer be contemplated.

17. The Persian Government, still convinced of the necessity of revision, had to content itself with determining the basis for the calculation of the dues.

18. Towards the end of 1931, discussions took place, first in Switzerland and then in London, between the Minister of the Court and Sir John Cadman, and a preliminary draft concerning the calculation of the dues was drawn up.¹

19. On January 8th, 1932, the Minister of the Court and Sir John Cadman again met at Paris to settle the dues of which the Government was deprived by the Armitage-Smith Agreement. The representative of the company offered an inadequate sum, and the interview was fruitless.

20. The preliminary draft regarding the calculation of the dues had to be drawn up with all possible technical accuracy. It was submitted to lawyers and accountants, and, when completed, was sent to Teheran to receive parliamentary sanction in accordance with the Constitution, followed by the Persian Government's ratification.

21. When it received this document, the Cabinet studied it at great length. It found that on more than one point the document was complicated and obscure, and might thus lead to differences of interpretation.

It therefore asked the company to furnish explanations, and to send a representative to Teheran for that purpose.

22. The Company refused.

23. The Persian Government's last hope was thus extinguished.

24. With the utmost patience it had continually endeavoured for years past to secure the revision of the concession. The concessionaire had explicitly promised revision, as witness Sir John Cadman's correspondence. It was a complete rearrangement that was necessary. The Government had subsequently been forced to abandon this solution and content itself with limited results in an arrangement confined to the method of calculating the dues.

Even reduced to these terms, the negotiations came to nothing.

25. Proceeding, then, to make a general examination, the Government found how little the concession brought it in.

If, instead of stipulating for dues, it had put all its deposits gratuitously at the disposal of the concessionaire, while leaving him subject to the ordinary fiscal law, it would have drawn, between 1905 and 1932, from the taxes levied by the Customs Department alone, a sum of £19,998,509 16s., whereas actually, between 1901 and 1932, it received only about £11,000,000.

26. For more than four months the Persian Government continued to examine the various aspects of the problem. It saw no solution but to notify the Company of the cancellation of the D'Arcy contract. As a last proof of goodwill, however, it intimated that it was prepared to conclude a new contract with the Company in which the interests of both parties would receive equal consideration.

²²

27. There was nothing surprising in this decision.

In the case of a contract in which each party's obligation depends on the other's obligation, it is not allowable for one party to require that the other shall continue to fulfil his engagements while failing to fulfil his own. Every legislation in the world establishes the principle that every synallagmatic contract is subject to the tacit rescissory condition that the failure of one party to discharge his obligations authorises the other to regard himself as released from his own.

¹ It may be well to point out that the Minister of the Court had no power to conclude an agreement on behalf of the Persian Government. He did nothing binding on the Government, but merely endeavoured to find a formula that could be submitted to it.
The numerous grave and continued failures of the company to discharge its obligations incontestably gave the Persian Government the right to release itself in this way from obligations for which there was no longer any adequate equivalent consideration.

(a) When a source of wealth is placed by nature in a certain territory, it is only just that it should serve for the economic development of that territory.

Foreign assistance does, of course, deserve remuneration; but it cannot demand excessive profits to the detriment of the country, and still less can it be allowed to obtain the concession of a monopoly for the purpose of deliberately limiting the exercise of that monopoly.

It is inadmissible that, when Persia grants a concession over a territory larger than Germany and France combined, as Mr. Winston Churchill said in the House of Commons on June 17th, 1914, the extraction of oil should be confined for more than thirty years (out of the sixty for which the concession was made) to an area of little more than one square mile.

Yet such is the fact. The Anglo-Persian Oil Company, which derives its power from the Persian deposits, is continually extending its activities outside Persia, but in Persia it confines itself to a restricted exploitation—a line of action that is particularly unacceptable because the conceding party receives, not a fixed sum, but a sum varying according to the extent of the exploitation.

Such an understanding and such an application of the contract are certainly inconsistent with its spirit.

There are, however, other points on which the concessionaire disregards even the explicit terms of the concession.

(b) The concessionaire explicitly undertakes to carry out in Persian territory all the operations necessary for making the oil available for trade. This may be seen from the terms of Article 1, which uses not merely the words search for, obtain, exploit, but also ‘develop, render suitable for trade’ (referring to petroleum and other products mentioned in the article), throughout the whole extent of the Persian Empire. Notwithstanding this text, the Anglo-Persian Oil Company performs the greater part of the preparatory processes on Persian petroleum outside Persia.

(c) According to Article 12, the workmen employed in the service of the company must be subject to His Imperial Majesty the Shah, except the technical staff, which is definitively defined as ‘such as the Managers, Engineers, Borers and Foremen’. The concessionaire infringes this undertaking indirectly by constructing refineries and other works outside Persia, and directly by employing Indian workmen in Persia itself, despite the Government’s repeated protests.

(d) Article 10 plays a vital part in the structure of the concession contract. It is the only article that settles, from the pecuniary standpoint, the division of the profits between the two contracting parties associated in the undertaking: ‘A sum equal to 16 per cent of the annual net profits of any company or companies that may be formed’ is to be paid annually to the Government.

The execution of this article has always been seriously incomplete. The concessionaire not only flatly refuses to pay the 16 per cent on the profits of certain of its subsidiaries, but even in respect of those that it agrees to subject to the dues it calculates them on bases which the British expert McLintock has shown to be incorrect; even the accounts produced are of such a nature that Mr. Armitage-Smith, notwithstanding all his friendliness towards the company, does not hesitate to write: ‘In my opinion these accounts are somewhat ambiguous’ (letter to the Persian Prime Minister).

These quotations are given merely to indicate the state of affairs. The full gravity of the breaches of obligations in connection with the dues can only be established by a thorough examination by an accountant.

(e) In addition to all these fundamental breaches of obligations, the undertaking regarding the procedure provided for in Article 17 of the concession has not been observed. It reads:

‘In the event of there arising between the parties to the present concession any dispute or difference in respect of its interpretation or the rights or responsibilities of one or the other of the parties resulting therefrom, such dispute or difference shall be submitted to two Arbitrators at Teheran, one of whom shall be named by each of the parties and to an Umpire who shall be appointed by the Arbitrators before they proceed to arbitrate. The decision of the Arbitrators or in the event of the latter disagreeing that of the Umpire shall be final.’

On several occasions the Persian Government has been in disagreement with the company and has asked it to refer the dispute to arbitration; but the company has always refused (see Appendices II and V).

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28. According to the most undisputed principles, the failure of one party to discharge his obligations entitles the other not to discharge his own; this rule of justice and equity is known to all legislations, though they may differ as to the manner of putting it into effect.

Roman law allows the party suffering by the non-fulfilment of the obligations assumed towards him to notify the other party that he reciprocally regards himself as released from his own obligations. French law requires the party to apply to the courts in order to vindicate his rights.

As between these two types of legislation, Persian law shares with Roman law the following rule: the party may himself, of his own motion, cancel the contract in case of complete
non-fulfilment or partial but serious non-fulfilment. It is beyond question that that is the Character of the non-fulfilment in numerous grave forms of which Persia had to complain.

There can be no grievance against the Persian Government for having followed the principle of Persian law.

It could not be asked to resort to the procedure laid down in Article 17; for, inasmuch as it was cancelling the contract, it would not, without contradicting itself, regard itself as bound by any article of that contract—the more so because the article in question was one that the other party had always refused to observe.

Moreover, the decision taken was not one against which the company had no remedy. If it regarded the cancellation as infringing its rights, it had only to apply to the courts.

Two lines of action were open to the company: either to negotiate with the Persian Government, which announced that it was prepared to conclude a new contract with the company on equitable bases, or to apply to the Persian courts.

* * *

29. Such being the situation, it can only have been through a misunderstanding that the British Government felt called upon to intervene.

30. To interpose between the parties amounted in effect to a claim to remove from the jurisdiction of the municipal courts a dispute which naturally belonged to them, and hence to infringe Persia's jurisdictional independence.

The Persian Government had therefore legitimate reason to be surprised at the terms in which the British Government informed it of its request to withdraw the cancellation notified to one of its nationals.

31. The Persian Government might have appealed to the League of Nations to enforce respect for its jurisdictional independence. Indeed, it intended to do so, as it informed the British Government in its letter of December 12th, 1932 (Appendix VI).

32. As a result of this letter, the British Government thought fit to take the initiative by summoning the Persian Government before the Council in virtue of Article 15 of the Covenant.

33. Such a summons is contrary to the terms of that article.

34. Article 15 requires a "dispute likely to lead to a rupture". But the dispute can only exist when a Government has, by means of diplomatic protection, taken up the cause of one of its nationals.

But diplomatic protection presupposes:

(1) A violation of general or conventional international law;

(2) The previous exhaustion of municipal remedies.

A procedure of cancellation based on the non-fulfilment of a contract is incontestably not a violation of international law.

Even if the cancellation was unfounded, diplomatic protection could only come into play after the municipal courts had been given an opportunity of dealing with the matter.

On this point international law is quite definite.

35. This is a principle of which the British Government quite recently reminded the Finnish Government before the Council (Official Journal of the League of Nations, November 1931, page 2217):

"There is a perfectly well-established rule of international law and practice to the effect that a State is not entitled to make any diplomatic claim on behalf of its nationals against another State in respect of any matter where, if the claim is valid, the municipal law affords a remedy, unless such municipal remedies have been exhausted. If the private persons concerned have failed to exhaust their municipal remedies, there is no foundation for any diplomatic claim."


"I was surprised to read in the Finnish memorandum that the Finnish Government throws doubt on what is a perfectly well-established principle of international law—namely, that, in a private claim of this kind, no diplomatic intervention can be used unless the parties have already exhausted all the remedies of the courts in the country against which they are making their claim."

And later:

"Both on principle and in virtue of the words of the Covenant and of previous decisions of the Council, it was undesirable for the Council to embark on a discussion of a question which was really a matter of private law and not of public international law. He submitted that, if the Council took a different view, very serious inconveniences would arise."
We read in the British memorandum of September 14th, 1931 (Official Journal of the League of Nations, November 1931, page 2231):

"It is clear that this is a claim which must come within the scope of the well-established rule of international law that the individuals concerned must have exhausted all their remedies under the municipal law of the country concerned as a condition precedent to the right of the Government whose nationals the claimants are to take up the claim and make it its own, and present it through the diplomatic channel. In such a case, unless and until this condition precedent has been fulfilled, the claimants' Government has no right to take up the case diplomatically at all, and, if the condition is fulfilled, must base its case on the failure of the country concerned to fulfil its international obligations to provide a system of law and of courts of justice through which private individuals may obtain redress in conformity with the requirements of international law. Until the municipal remedies have been exhausted, it is obviously impossible in such a case to contend that a State has failed to fulfil its international obligations in this respect. Until this condition has been fulfilled, such a claim cannot assume an international character at all."

A little later, in the British Government's memorandum to the Council, in reply to the Finnish Government's memorandum of December 1931 (Official Journal of the League of Nations, March 1932, page 813), we read:

"In paragraph 4 of the Finnish memorandum of December 1931, it appears to be argued that, as between Members of the League, the provisions of the Covenant in some way involve the abrogation or supersession of this well-known international rule. His Majesty's Government cannot help observing that this contention is somewhat startling, and that few Members of the League can have contemplated when they accepted the Covenant that the result was that the machinery of the League could be used to take the place of the municipal courts as a means by which the claims of foreigners in respect of matters within the jurisdiction of those courts should be adjudicated . . ."

"Finally, if a dispute were properly referred to the Council under Article 15, which arose out of a matter in respect of which a municipal remedy had not been exhausted, there is nothing whatever in Article 15 to suggest that the Council should ignore this fact in dealing with the matter. Indeed, the fact that municipal remedies have not been exhausted might itself form a valid ground on which the Council might find that the case was one which came within the provisions of paragraph 8 of Article 15, and decline to make any further recommendation on this ground."

36. Like His Britannic Majesty's Government, the Imperial Persian Government keenly desires that the present incident should not disturb the friendly relations which have hitherto existed between His Britannic Majesty's Government and itself.

37. It is the more assured that this will not be the case, inasmuch as, in this instance, it confines itself to endorsing the British Government's own declarations to the Council quoted above.

38. For the reasons stated in the foregoing paragraphs, the Imperial Persian Government considers it to be clear that, in the case in question, the British national concerned has not only not exhausted, but has not even begun to utilise the legal remedies open to him under Persian municipal law, and that, accordingly, the condition precedent to diplomatic intervention, in conformity with the recognised rules of international law, not having been fulfilled, the British Government has not, and has never had, the right to make a diplomatic claim in respect of the present case, a fact which, in virtue of paragraph 1—and, in any case, of paragraph 8—of Article 15, precludes, under the terms of Article 15 itself, any application of that article.
Appendix I.

[Translation.]

TRANSLATION OF NOTE ADDRESSED BY THE BRITISH MINISTER AT TEHERAN TO THE PERSIAN MINISTER FOR FOREIGN AFFAIRS.

22 Rejab, 1335 (May 14th, 1917).

I have had the honour to receive Your Highness’s note, dated 6 Jamadi-ul-a-l last, in which you proposed that the dispute between the Imperial Government and the Anglo-Persian Oil Company should be submitted to arbitration, in accordance with Article 17 of the deed of concession.

In reply, I beg to inform you that, if it is the Persian Government’s intention to confine the appeal to arbitration to the examination of the correctness of the amount of the sums claimed as reparation by the company, the latter is prepared to accept the Government’s proposal. If, however, the Government wishes to refer to arbitration (a) the question of the company’s right to withhold the Government’s dues pending the settlement of its claim, or (b) the Company’s right to take reparation for the losses it has sustained (through the negligence of the Government, which is bound by Article 14 of the D’Arcy Concession to secure the safety of the company), the company cannot accept this demand, since the arbitration clause does not operate in respect of these questions.

(Signed) Charles M. Marling.

Appendix II.

[Translation.]

TRANSLATION OF A NOTE ADDRESSED BY THE PERSIAN MINISTRY FOR FOREIGN AFFAIRS TO HIS BRITANNIC MAJESTY’S MINISTER AT TEHERAN.

No. 12187

1539

14 Zilhajeh, 1335 (September 1917).

I have had the honour to receive your answer of 22 Rejab, 1335, regarding the dispute that has arisen between the Persian Government and the Anglo-Persian Oil Company.

In reply, I beg to draw your attention to the fact that Article 17 of the D’Arcy Concession clearly provides for a reference to arbitration as proposed by the Persian Government. That article stipulates that disputes and differences of every kind in respect of the interpretation of the concession or the rights or responsibilities of one or the other of the parties shall be submitted to arbitration.

I therefore give my full support to the protests made by the Imperial Commissioner against the withholding by the company of the Persian Government’s dues (£19,600 for the year 1915 and £24,747 for the year 1916). I regard the action of the company, which, in violation of the principles of ordinary law has taken upon itself to be judge in a case in which it is itself interested (no man can be judge in his own case), as wholly illegal and arbitrary.

The specific object of the provision for arbitration in the deed of concession was to ensure that the principles of law to which I have just referred should be respected, and that this means should be employed to put an end to disputes.

Although it was essential that these principles should be respected, the company has violated them:

(1) By withholding the said sums of its own motion, without waiting for the arbitral award;

(2) By declining arbitration after acting illegally towards the Imperial Government, and thereby closing the door to the only means of settling the dispute.

The Government, having undertaken to ensure the safety and protection of the company in Persian territory, is prepared to pay any sum that may be found due by it in consequence of the arbitral award. The company’s proceedings, however, and its withholding of Persia’s
royalties, are intolerable. It is essential that the dispute as a whole be submitted to arbitration, and that, as a preliminary, the company pay over to the Government the dues it has improperly withheld.

I trust that, in consideration of right and justice, and of the cordial and friendly relations that exist between the two countries, Your Excellency will lend your good offices to the Persian Government with a view to reaching an equitable settlement of this dispute by arbitration.

I also hope that, in order to protect the economic interests of both parties, you will prevent the company from persisting in an attitude which is making an unfavourable impression upon public opinion.

The Imperial Government, I repeat, will respect the arbitral award, whatever it may be, and will put it into effect. Should the award assign damages to the company, however, since the Persian Government has done all in its power to protect the company's interests and is not responsible for the manoeuvres and operations arising out of the great war, it will be only just and fair that the sum adjudged and paid by the Government should be refunded to it, at the time of the general liquidation of war damages, by those who bear the real responsibility for the losses sustained.

Trusting in His Britannic Majesty's Government's spirit of justice and fairness, I cherish the firm hope that Your Excellency will agree entirely to the just claims of the Persian Government.

Appendix III.

37, Conduit Street, Bond Street,

To
His Excellency Farid-es-Saltaneh,
Commissaire Impérial
Champlain to His Imperial Majesty the Shah,
Attached to the Imperial Legation of Persia.

Your Excellency,

We have the honour to inform you that we have now perused and considered the various documents you have laid before us, and beg to submit the following observations for your consideration.

Apart from the Agreement of December 22nd, 1920, between the Imperial Persian Government and the Anglo-Persian Oil Company, Limited, requiring ratification to make it binding on the Government, we are rather inclined to the view (although it is not easy to advise with confidence) that, in entering into the Agreement, Mr. Armitage-Smith may have exceeded the powers conferred upon him by the letter of August 29th, 1920. These powers were limited to the final adjustment of all questions in dispute between the Anglo-Persian Oil Company and the Imperial Government of Persia, and if such powers are to be construed strictly, they certainly do not appear to authorise his entering into and signing an agreement, on behalf of the Imperial Government of Persia, effecting extensive variations in the terms of the original concession to the detriment of the Imperial Government.

It is to be observed that a perusal of the statement drawn up by Mr. Armitage-Smith for the opinion of counsel shows that nowhere does he ask counsel to direct their mind to the question whether he had authority to enter into the alleged Agreement under the powers conferred upon him, and no copy of the letter of authority or of the private instructions of August 29th, 1920, appears to have been laid before them.

The first-mentioned opinion certainly seems more favourable to the Imperial Government than the second, and it may be mentioned in passing, with regard to paragraph 2 of the latter opinion, which was obtained by Mr. Armitage-Smith, that the view expressed as to the possibility in practice of the Anglo-Persian Oil Company carrying out its threat to divest
itself of all interest in the subsidiary companies is based on the assumption that the shares of the company are not held by the public, whereas, as a matter of fact, a very large number of its shares were and are held by a large body of the public, the shares of which cannot be transferred.

Article 10 of the concession provides for the Imperial Government being paid annually a sum equal to 16 per cent of the annual net profits of any company or companies that may be formed in accordance with the terms of the concession, and no mention is made of any deduction from such net profits of any kind. Article 1 of the alleged Agreement of December 22nd, 1920, however, makes the 16 per cent royalty on profits subject to certain conditions, limitations and exceptions, which are set out in detail in the subsequent articles of the Agreement. Moreover, according to the alleged Agreement, the royalty is confined to profits arising from Persian oil only. If, therefore, the view taken by Messrs. Kerly and Goddard in their opinion be correct—namely, that such part of the profits of a subsidiary company as reach the parent company and are reflected in its own profits will form part of the profits of the Anglo-Persian Oil Company for royalty purposes—then this cutting down of the 16 per cent royalty is certainly disadvantageous to the Imperial Government. It is true that Messrs. Kerly and Goddard express this view in regard to only one type of subsidiary company, but the type contemplated by them is an extreme one, and the view would accordingly apply a fortiori to the other subsidiary companies of the Anglo-Persian Oil Company.

It seems reasonable to suppose that, in agreeing to the deductions mentioned in the alleged Agreement from the 16 per cent royalty, Mr. Armitage-Smith was actuated by the fear that the Anglo-Persian Oil Company would, and could, carry out its threat to divest itself of all interest in the subsidiary companies, but, as indicated above, the conclusion that this might be possible in practice appears to have been based upon false premises.

Again, by Article 17 of the Concession, any dispute or difference between the parties is to be submitted to two arbitrators at Teheran, one of whom is to be named by each party, and to an umpire who is to be appointed by the arbitrators (or, in the event of their disagreeing, that of the umpire) being final. By Article 2 of the alleged Agreement, failing agreement with regard to the matters referred to, the question is to be submitted to a single arbitrator, whose decision shall be final, such arbitrator in default of agreement being nominated by the President for the time being of the Chamber of Shipping in London. Furthermore, by Article 9 of the alleged Agreement, in the event of any dispute arising in connection with the calculation of royalty, etc., the question or questions in dispute are to be submitted to a chartered accountant to be nominated by the President for the time being of the Institute of Chartered Accountants in England, the decision of such arbitrator being final. This change in the constitution of the tribunal and the venue of the proceedings might conceivably militate very seriously against the interests of the Government, and, in this connection, reference may be made to the statement of Messrs. Kerly and Goddard, that one consideration of far-reaching importance must necessarily be: Who is to be the arbitrator whose opinion will ultimately decide between the parties?

With regard to Articles 3, 4 and 5 of the alleged Agreement, attention is called to the paragraph numbered 5 of the opinion of Messrs. Kerly and Goddard, in which they state that, if the subsidiary companies are formed for the purpose of working the concession or any part thereof (that is, substantially to search for and obtain or to prepare for sale or to sell oil within the Empire of Persia or to carry oil away from the Empire), the royalty payable ought to include an amount equal to 16 per cent of their profits and that no deduction should be made in respect of the 16 per cent of the profits of the Anglo-Persian Oil Company itself also included in the calculation of the royalty, on the ground that the first-mentioned amount has been brought into calculation.

Our reading of this is that the Imperial Government are entitled to a royalty of 16 per cent of the net profits of all subsidiary companies formed to work the concession, and also to a royalty of 16 per cent of the net profits of the Anglo-Persian Oil Company, notwithstanding that the latter may hold shares in such subsidiary companies. Assuming this view to be correct, then, in so far as Articles 3, 4 and 5 apply to such subsidiary companies, all deductions stipulated for in those articles would certainly seem to be a curtailment of the Imperial Government's rights; and there are other matters included in the alleged Agreement which appear to affect prejudicially the rights and interests of the Imperial Government under the Concession.

As we understand the matter, it is a question entirely for the Imperial Government whether they adopt the alleged Agreement or not, but we venture to think that the various matters we have indicated above point to the conclusion that the adoption of the Agreement would mean the Imperial Government giving up important rights and interests under the Concession.

If, however, it is intended to repudiate the Agreement, we are of opinion that steps should be taken to do so as promptly and with as little delay as possible.

If there are any further points upon which Your Excellency would like to have our views, it will give us much pleasure to place ourselves at Your Excellency's disposal.

We have the honour to be,

Your Excellency's obedient servants,

(Signed) LUMLEY & LUMLEY.
Appendix IV.


May 9th, 1928.

No. 538.

Mesers. The Anglo-Persian Oil Co., Ltd.,
Britannic House,
Finsbury Circus, E.C.2.

Dear Sirs,

Persian Government Royalty Arbitration.

With reference to outstanding questions, I beg to draw your attention to these facts.

On December 22nd, 1926, I sent a private letter to Sir John Cadman asking his kind intervention in bringing about an early settlement of all points under dispute pertaining to the years ended March 1924 and 1925, 1926 being now included and, in the near future, 1927. Our interests being identical, I remarked then on the distastefulness to me of having recourse to arbitration, and expressed the wish that things might be settled amicably. In Sir John’s reply of December 23rd, he promised to do all in his power to bring about such a settlement, since which date one year and five months have elapsed and we have made no material advance.

The company making no movement towards a settlement, in February 1927 I curtailed my holiday in the South of France, returning to London, and took the initial steps necessary towards having the matter submitted to arbitration. In your letter of September 29th of that year, you say : "The difference in opinion . . . should appear to be incapable of adjustment. Arbitration, therefore, would seem to be the only course". In your further letter of October 18th, you say, in the last paragraph : "We appreciate that it is because you believe it to be a rightful claim that you are adopting the procedure agreed on ; it is because we do not believe it to be a rightful claim that we have adopted the same procedure as the only means for the resolution of the difference between us". However, after all this loss of valuable time, you did not pursue this course, but, through Mr. Spens, your accountant, made some overtures to Sir William McLintock, hoping thereby to render the arbitration unnecessary. Though of all outstanding questions requiring adjustment the one most disputed contention concerns refining allowances, yet all are so essentially linked up that, finding your suggestions inadequate, I made counter-proposals through Sir William McLintock, who, through Mr. Spens, wrote to the Chairman on April 11th last, which proposals were briefly turned down by Sir John Cadman in his reply of April 25th, no further counter-proposals being offered.

In the course of conversation with me the day before his departure for France on April 25th, Sir John said that acceptance of my demands would be tantamount to tearing up the Agreement, to which I replied that, unfortunately, that was a course adopted by the company when their interests were served to the detriment of the interests of the Persian Government, who, it seems to me, have also a say in the matter. Article 10 of the alleged agreement decrees that the company agrees that "it will not enter into any fictitious or artificial transaction which would have the effect of reducing the amount of royalty payable". Also in paragraph 7 of the instructions given to Mr. Armitage-Smith which appear in the Blue Book of which you have a copy, in Appendix III, page 20, we read :

"Le point de vue du Gouvernement est donc le maintien du pourcentage actuel, tout en adoptant les moyens nécessaires pour empêcher la Compagnie de manier ses comptes de façon à diminuer la part de l’Etat persan, soit en soustrayant certains profits ou pourcentages, soit en inscrivant au compte de l’Etat certaines dépenses indues, soit en vendant le pétrole à prix réduit."

A case in point of the flagrant breach of these obligations is the method adopted by you regarding refining allowance. You will admit that, if the company sold all its oil at 14s. 3d. a ton which costs more than 15s. to produce, not only would there be not a penny of profit to the company, and therefore no royalty to the Persian Government, but it seems to me that, under such circumstances, the company would soon cease to exist.

I have frequently said, and now repeat, that Mr. Armitage-Smith was not instructed or authorised to draw up an agreement affecting changes in the terms of the D’Arcy concession, which act alone is binding on both the company and the Persian Government. The mission entrusted to him in accordance with letter No. 18059 of August 29th, 1920, in your
own publication of the D'Arcy concession, was merely to bring about a final adjustment of all outstanding questions between us up to date, and to evolve a practical scheme based on the view expressed in the above-quoted French extract. In drawing up an agreement, he most certainly exceeded his powers; his authority to do so was accepted by you unquestioned, being to your advantage. The alleged agreement has never been officially recognised or ratified by the Persian Government; but, as I have said on various occasions, pending a more satisfactory basis of operation for the future which I shall be pleased to discuss with you whenever you are disposed, my Government has unofficially acquiesced in this arrangement as a *modus vivendi* for the time being. Developments have proved that its theory is in practice unworkable. It has had the effect of completely destroying the Act of Concession in many directions to the disadvantage of my Government, which manifestly should not take place. According to Article 10 of the Act of Concession, any company or companies formed are to pay the Persian Government 16% of their annual net profits without any deduction or allowance; but the alleged agreement has, so to speak, done away with that vital and all-important article by excluding profits arising from the transport of oil by means of ships and by making deductions for refining, distributing and marketing, etc., all of which is contrary to the letter and spirit of the Act of Concession and to the purport of the instructions given to Mr. Armitage-Smith. It is obvious that the profits arising out of all subsidiary companies form part of the annual net profits of the parent company and are therefore chargeable for royalty purposes without exception.

Article 17 of the Act of Concession provides for arbitration in Teheran, which clause is modified in Article 2 of the alleged agreement to a course of procedure which might conceivably be to the disadvantage of the Persian Government. Therefore, I think I am fully justified in saying that an agreement which provides so many loopholes of advantage for the company and which even then is disregarded by them when their own interests are to be served, of which fact the immediate refining allowance question is an outstanding example, is no more binding on the company than on the Persian Government.

In conclusion, circumstances being similar, I quote again from paragraph 6 of the instructions given to Mr. Armitage-Smith appearing in Appendix III, page 20:

"En formulant sa réclamation le Gouvernement impérial n'a point demandé un acte de faveur; il n'a fait que revendiquer les droits légitimes qu'il pense avoir contre la Compagnie, du chef de certains arriérés et des dividendes indûment retenus par cette dernière."

I wish to avoid further controversy on these questions and fervently hope this may be my last communication of such nature. Though the rights are, to my belief, entirely on the side of the Imperial Persian Government, I am still open to any acceptable offer the company may be prepared to make covering all the points enumerated in Sir William McLintock's letter to Sir John Cadman. Failing such, I earnestly request you, without further loss of time, to instruct your legal advisers to get in touch with mine, so that we may reach a final and complete settlement, before summer holiday arrangements intervene and further retard us.

I remain,

Yours faithfully,

(Signed) Eissa.

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**Appendix V.**

Anglo-Persian Oil Company.

Winchester House, Old Broad Street,
London, E.C.

His Excellency

Sadigh es Saltanah
Royal Palace Hotel,
Kensington, W.

Your Excellency,

I have to thank you for your letter of October 2nd, 1909, following on the interview that I had the pleasure of having with you on the 29th ulto.

At our interview, you were good enough to advise me that you had received definite instructions to demand from this company either the equivalent of 16,000 tomans, or a
reference to arbitration, and I replied that this company, like the original concessionnaire, both for reasons given by the latter in his letter to you of January 18th, 1909, and also in consequence of information provided to me lately by His Britannic Majesty's Consuls in Persia, deny all liability on the part of the concessionnaire for any payment in respect of three springs (trois mines de pétrole situées à Schouster, à Kassre-Shirine — Province de Kerman-Chahan — et Balcki près de Bouchir).

By telephone yesterday, you requested me to let you have a reply to your letter before Monday next. I promised to do so, and I now accordingly write to repeat what I said to you verbally.

You informed me that your instructions were that, if we do not admit a liability—I think you said, if we do not pay the 16,000 tomans—we must forthwith proceed to arbitration, but I regret that I cannot in the present circumstances advise the Directors to do so. I submit that it is not a reasonable request to make to us, until your Government has replied to our legitimate requests for certain information on the subject.

Your Government's claim is based on clause 4 of the concession of June 6th, 1901. That clause speaking of the said three springs as on June 6th, 1901, says: "qui sont actuellement affermés à des particuliers et produisent annuellement un revenu de deux mille tomans au profit du Gouvernement".

Obviously then, if at that date the three mines collectively were not "actuellement affermés à des particuliers et produisent annuellement un revenu de deux mille tomans au profit du Gouvernement", and never have done so, but only produced to the Persian Government some sum less than 2,000 tomans, your Government's claim would be automatically reduced pro tanto. I am informed by His Majesty's Consul-General at Bushire that, in regard to the supposed spring (or mines) at Balcki, neither the Persian Government nor any representative acting on their part ever did collect anything from "particuliers". Did they then even collect 2,000 tomans per annum at Kassre-Shirine and Schouster?

I am informed by His Britannic Majesty's Consul at Ahwaz that, with regard to the spring (or mine) at Schouster, the spring is farmed out now, as before, at 1,000 tomans per annum, out of which Samsam Khan, who claims a proprietary interest in the spring, receives 550 tomans, the Mustafí (or Treasurer) of the Persian Government 450 tomans, per annum. This has been regularly paid to the latter who has acknowledged its receipt to His Britannic Majesty's Consul.

As regards Kassre-Shirine, as I told you verbally, detailed authentic information has not yet reached me from His Britannic Majesty's Consul, but it has been promised, and I hope to get it by any mail, when I will advise you of its purport.

You have told me that, since May 1901, no money has been received by the Persian Government in respect of any of these "trois mines". If that be so, then your Government must apply to the Mustafí at Schouster for the 450 tomans per annum which he has collected and not paid in—i.e., 3,600 tomans.

But, in any case, it is incumbent, under the terms of the concession, on your Government to give me the names of the persons "particuliers" who were paying money in this connection to your Government and details of how much each one had paid annually, prior to the signature of the concession.

We asked specifically for this, among other information, in our letter to you dated September 8th last, and I have to ask you to procure and give me this simple information in substantiation of your Government's claim before we can go further into the matter.

I am your Excellency's obedient servant,
(Signed) C. W. WALLACE,
Vice-Chairman.

Appendix VI.

[Translation.]  

TRANSLATION OF THE NOTE SENT ON 21 AZAR (DECEMBER 12TH, 1932) BY HIS HIGHNESS ALI KHAN FOROUGHI, PERSIAN MINISTER FOR FOREIGN AFFAIRS, TO MR. HOARE, HIS BRITANNIC MAJESTY'S MINISTER AT TEHERAN.

In reply to Your Excellency's note of 17 Azar, 1311 (December 8th, 1932). No. 604, which was a reply to my note of 12 Azar, I have the honour to communicate to you the following:

The first paragraph of your note concludes by stating that the Persian Government has adduced no argument which can be regarded as in any way justifying its action in cancelling the D'Arcy Concession, and that His Britannic Majesty's Government must therefore reiterate its request for the withdrawal of this cancellation.
In reply, I wish to state that the Persian Government has several times indicated the causes of its dissatisfaction with the action of the company holding the Oil Concession, and thought it unnecessary to repeat them. I need hardly say that, should the Persian Government be unable to conclude a new and satisfactory agreement with the company, and should it think it necessary, in order to uphold its right to denounce the D'Arcy Concession, to refer the case to a court, it would not hesitate a moment to submit its arguments in detail.

The Persian Government has always displayed good faith in this question, and it was with the best intentions that, in its previous note concerning the denunciation of the D'Arcy Concession, it refrained from going into details. It is regrettable that this repugnance of the Imperial Government to embark upon discussions and arguments has been interpreted by the British Government as a proof that the Persian Government could not found its action on any legitimate basis.

In order that His Britannic Majesty's Government should not think that the Imperial Government refuses to give the reasons that have led it to cancel the contract, I shall briefly indicate a few of them below:

Not only was the D'Arcy Concession incompatible in itself with the interests of Persia, whose legitimate rights have been disregarded, but the concession was granted at a time when the interests and welfare of the country were unfortunately not taken into consideration in drawing up contracts of this kind, and when those who wished to obtain them took great advantage of the ignorance of the authorities in charge. Furthermore, in order to obtain these concessions, all sorts of threats and pressure were used at the time, and, as a result of these threats and this pressure, the authorities that granted concessions were unable to refuse them.

Your Excellency and His Britannic Majesty's Government will no doubt admit that the world to-day attaches no value to contracts obtained in this way and does not consider them as binding on their signatories.

In addition to the defects mentioned above, the company, in its relations with the Persian Government, did not even observe the stipulations of the concession, which was already so detrimental to Persia. The company has failed to respect the rights of the Government as laid down in this burdensome and obsolete concession. In doing so, it has infringed the rights of the Persian Government.

As an example I may quote the following fact:

Under the D'Arcy Concession, the company was to pay to the Persian Government 16 per cent of all its profits and of those of all its subsidiaries without exception. The logical result of this stipulation was to give the Persian Government the right to supervise the expenditure which was to be deducted from the company's gross profits in order to arrive at the amount of the net profits, and also the right to express its opinion on the justification of this expenditure. Otherwise, Persia ran the risk of suffering continual reductions in the royalty which was due to her.

Unfortunately, the company, which has been conspicuous by its prodigality and extravagance, has never consented to the Persian Government's having a right of supervision over the operating expenditure before the payment of its royalty.

I do not wish to expatiate on the fact that the expenditure, for the most part unjustified, in which the company indulged, has a very great effect on the royalty accruing to the Persian Government, and reduced it to a ridiculously small amount.

Moreover, the company has never hitherto submitted to the Persian Government or its representative any detailed accounts or other evidence of its expenditure, and of the expenditure of all its subsidiaries, which would enable the Persian Government to check the calculation of its royalties. It has also refused, contrary to the express conditions of the contract, to pay the Persian Government its share in the profits earned by its subsidiaries. It has further granted to some of its subsidiaries large subsidies taken from its profits, including these sums in its accounts as expenditure and thus appreciably diminishing the Persian Government's share. Consequently, the company has manifestly violated the clauses of the concession and has thereby caused the Government considerable loss.

I could mention many other circumstances in which the company has shown a lack of sincerity in its relations with the Persian Government. If Your Excellency will refer to the reports submitted by various British experts, you will find that on numerous occasions the company has acted in such a way as to injure Persia's interests.

Another proof that the company has not respected the stipulations of the D'Arcy Concession is provided by the following facts:

Although, during the great war, the price of oil and of oil products constantly rose and the demand grew greater and greater (Persian oil being considered as an important factor in the Allied fleets); and although the sale of Persian oil at world rates brought the company enormous profits, the company, despite the explicit terms of the concession, failed to pay the Persian Government the sums which were its due, thus, in practice, completely invalidating the contract.

The Persian Government, has on various occasions, endeavoured to recover these royalties and to secure a settlement of the accounts of arrears, but without obtaining any satisfactory result.
Your Excellency is also aware that, under the D'Arcy Contract, the company was not entitled to any exemption from taxation in Persia (with the exception of certain Customs taxes) and that it was subject to all the laws of the country.

Although an income tax has been in force in Persia since 1309 (1930) and although the company was bound to submit to the laws of the country, it has hitherto refused to pay the tax in question and has thus shown its contempt for the laws of my country.

I have no need to inform your Excellency of the development of the company, of its present expansion and of its wealth. This wealth is obviously derived from Persian soil. Nevertheless, if the profits obtained by the Persian Government are compared with those of the company, it will be seen to what extent the interests of the Persian State have been sacrificed, in what an unjust manner the country has been deprived of its revenue, and how the company has employed the wealth extracted from Persia in foreign oil undertakings, thus endangering the future of Persian oil.

Although the company derives all its profits from the Persian oil-wells, and although the Persian people might legitimately expect to obtain the oil which they require for their industry or transport at a reasonable price, the oil and its derivatives are sold by the company in this country and in the very area in which they are extracted at a price above that ruling in other countries. Hence, the needs of Persian industry are not satisfied.

I can quote yet another example of the company's indifference to Persian interests.

Although, under the D'Arcy Contract, the company is entitled to extract oil in all parts of Persia with the exception of five northern provinces, and although the existence of oil deposits all over the country cannot be questioned, the company, far from centralising its activities in Persia and increasing its exploitation (thus augmenting the share of the profits accruing to the Persian Government), has, on the contrary, limited its exploitation in Persia and continually extended its activities outside Persia.

Despite the above-mentioned violations, the Persian Government has, on various occasions, endeavoured to place its relations with the company on a stable and fair basis and to put an end to all controversies. Unfortunately, the Persian Government's efforts have not led to any practical result. Last summer the Persian Government even expressed the desire that the company should send its representative to Teheran in order to arrive at a final agreement, but the company, taking the general crisis as an excuse, refused to send him.

In view of the company's conduct towards the Persian Government, and the fact that it has refused to pay Persia her due, and has displayed no willingness to proceed to a revision of the contract, how can His Britannic Majesty's Government consider the Imperial Government's action as unjustifiable and feel entitled to exert pressure on the Persian Government?

In view of all these circumstances, the Persian Government found itself justified, as I stated in my previous note, in denouncing the D'Arcy Concession. It therefore sees no reason for withdrawing its notice of cancellation.

I would specially draw your attention to the fact that the Persian Government has always respected its international obligations and has always made a point of basing its actions on the principles of law and justice. But it cannot tolerate its most indisputable rights being disregarded or permit the interests of the country to be sacrificed.

Because the Persian Government hopes that, in the world to-day there are ears to hear reasonable and just claims, it has never refused—indeed, it has always shown its willingness—to state its claims and to submit to the competent international courts the infringements which the rights of the country have suffered. In the present instance, as Your Excellency in the name of your Government and basing yourself on Article 36 of the Statute of the Permanent Court of International Justice alludes to a reference to that Court, I deem it my duty to draw Your Excellency's attention to the fact that, if the stipulations of the article referred to had placed the examination of such question within the competence of that Court, the Persian Government, of course, would not have hesitated at all to accept a reference to that Court; but it appears that the Permanent Court of International Justice is not competent for the examination of differences which have arisen between the Persian Government and the company, because Article 36 of the said Statute designates the competence of that Court in such a way, in all cases where reference to the Permanent Court is made on the basis of the Optional Clause, that the circumstances of the present case do not correspond with them.

Your Excellency repeats in paragraph 3 of your note that you consider the Persian Government as responsible for losses which the company may suffer.

The Persian Government cannot understand how, while, on the one hand, they have no participation whatever in the activities of the company and, on the other hand, they have not interfered and do not interfere with the affairs of the company nor cause them any inconvenience, any responsibility can devolve on them; and it is on the above grounds that I have the honour to reiterate that the company itself is responsible for any losses which it may suffer.

Coming now to the allusion constantly made by Your Excellency in your letters to the necessity of establishing friendly relations with the company, I beg to draw your attention to the fact that the Persian Government has never refused, and still does not refuse, to conclude a new agreement equitably safeguarding the interests of the two parties. It has already given
practical proof of its good faith in this connection and the reason why the Persian Government did not take measures after the cancellation of the D'Arcy Concession to interfere with the company's operations, and still hold for the time being to the same decision in the hope of attaining the desired result, is that my Government has hoped that the company, instead of entering into the sphere of disputes over principles and of legal controversies, would not lose the opportunity of sending their duly authorised representative to Teheran in order that he might enter into negotiations forthwith with the Persian Government with a view to concluding an agreement which would safeguard the legitimate interests of Persia. But, in practice, it appears, unfortunately, that His Majesty's Government are perhaps not in favour of such an agreement between the Persian Government and the company, because the threats and intimidation which His Majesty's Government are bringing to bear on my Government and the unacceptable demands that are put forward prevent, in practice, both the Persian Government and the company from taking a single step towards reaching a mutual agreement.

Although the British Legation has so far not interfered in the discussions between the Persian Government and the company, it has now become an obstacle between the two parties, and has adopted an attitude which does away at once with any hope for success in the conclusion of a new agreement with the company; and the authorities of the Persian Government cannot but regret that, although His Majesty's Government are certainly aware of the disappointment felt by the Persian Government and of their losses, far from advising and encouraging the company to take advantage of the good faith of the Persian Government and to hasten the amelioration of their situation, are, on the contrary, encouraging the company to resist by pressure that they bring to bear on the Persian Government.

The Persian Government consider this attitude of His Majesty's Government as incompatible with the spirit of uprightness and the desire for peace which should prevail amongst friendly Powers and Members of the League of Nations, and consider themselves within their rights in bringing to the notice of the Council of the League of Nations the threats and pressure which have been directed against them.

(Signed) M. A. FOROUGHI.