

SECRET

C.(53) 18

COPY NO. 72

14th JANUARY, 1953.

CABINET

PERSIA

Memorandum by the Secretary of State for Foreign Affairs.

The position reached as a result of the meeting between Ministers and the Americans on 13th January is as follows.

1. Terms of Reference

Since the Cabinet approved the terms attached to my memorandum C.(53) 3, the Americans have continually pressed us to be content with some more general formula. Mr. Henderson has urged that while Dr. Musaddiq is prepared to allow arbitration to be based on any United Kingdom nationalisation law the Anglo-Iranian Oil Company (A.I.O.C.) may care to select, and while he is fully aware that in the case of the coal-owners in this country the tribunal set up to assess compensation under the Act took future profits into account, he cannot in any circumstances accept terms of reference which would make this fact publicly clear. We cannot, of course, be certain that an arbitral tribunal will award the Company compensation for loss of profits under the Concession and the Persians will no doubt ask it not to do so. But while this is a risk which we must accept, it would be quite unacceptable that we should voluntarily agree to terms of reference under which there was a risk of the tribunal ruling that its terms of reference did not allow it even to entertain the Company's claim. After a great deal of argument involving consultation with the Company's leading counsel, agreement was reached on the formula at Annex A, which is accepted by all concerned.

2. Form of Arbitration

We have agreed that Mr. Henderson shall propose to Dr. Musaddiq that we ask the International Court to decide between three alternatives:

- (i) The court to constitute itself as an ad hoc arbitral tribunal, including the same judges (and not less) as sat in June 1952 to hear the preliminary issue of jurisdiction.
- (ii) The United Kingdom judge and the Persian ad hoc judge to select three other members of the Court and so constitute an arbitral tribunal.
- (iii) The Vice-President of the Court (since the President is the United Kingdom judge) to appoint a panel of five arbitrators from outside the Court. (See text of Arbitral Agreement at Annex B).

We are not completely satisfied that it is proper to urge the International Court to adopt alternatives (i) or (ii), since they amount almost to a means of circumventing Article 34, paragraph (i) of its statutes which lays down that the

Court can only entertain cases of which States are parties. But in deference to the urgent wish expressed by the Americans we are content to put all the alternatives to the Court and have been at pains to avoid any bias in our presentation. Apart from the difficulty connected with the Court's statutes we are not altogether happy about the reliability of the tribunal which would emerge if alternatives (i) or (ii) were adopted, but we cannot at this stage put ourselves in the position of seeming to question the fairness of the Court when we have repeatedly urged in public that the dispute should be referred to it.

The Americans demurred at our suggestion that the Arbitral Agreement should be signed by a representative of Her Majesty's Government. They quoted Mr. Henderson's record of his conversation on 31st December, 1952 when Dr. Musaddiq said that he "would prefer that the Arbitral Agreement be signed by the A.I.O.C. but would not seriously object if the British Government would sign the Agreement in the capacity of representative of A.I.O.C." We said that having made it quite clear in the text that the arbitration was to be between the Persian Government and the A.I.O.C., we could not go further and agree that the Arbitral Agreement itself should be signed by the A.I.O.C. We might with reluctance agree to its being signed by Her Majesty's Government on behalf of the A.I.O.C., but we saw no reason why Dr. Musaddiq should not be asked to sign it with Her Majesty's Government tout court. The Americans agreed, with reluctance, to try this on Dr. Musaddiq.

3. "Tie in" between United States advance payments and commercial negotiations.

The new form of the Defence Materials Procurement Agency Agreement (Annex C) enshrines, at paragraph 2, the proposed commitment from Dr. Musaddiq to enter into negotiations with an international organisation including the A.I.O.C. This commitment thus acquires the status of a contractual obligation between Persia and the United States and the Americans can justifiably withhold payment of the instalments if Dr. Musaddiq falls down on his undertaking. This is very satisfactory.

In return for this we have agreed that the first instalment, which will be paid over when the Arbitration Agreement enters into force shall be \$50 millions and not \$40 millions.

4. Embargo and immunity of vessels.

The Americans agreed reluctantly to ask Dr. Musaddiq to exchange letters with us under which

- (a) Her Majesty's Government would declare the embargo lifted;
- (b) The Persian Government would undertake not to seize any tugs, dredgers, tankers, etc. belonging to the A.I.O.C. which may have to enter Persian waters before or after the conclusion of the commercial contract.

It is, of course, superfluous formally to raise the embargo, but our note would provide a convenient way of eliciting the undertaking which we want from the Persians (see text at Annex D).

5. Overall Agreement

We had thought that the Arbitral Agreement, the Defence Materials Procurement Agency Agreement and the Exchange of Letters might appropriately

be "crowned" by a Protocol signed by the Governments of the United Kingdom, Persia and the United States. This would serve two purposes: first, it would demonstrate in the clearest possible manner that we had all buried the hatchet; second, it would make quite sure that the three documents formed an integral whole and came into effect simultaneously. The Americans, however, took strong exception to being involved in any tripartite agreement. They also pointed out, as is true, that the terms of the three documents make it clear that they hang together and that their effect is simultaneous. We therefore agreed not to press our point.

On the other hand the Americans asked us to agree that there should be a memorandum which Mr. Henderson would hand to Dr. Musaddiq with the drafts of the Arbitral Agreement, the Defence Materials Procurement Agency Agreement and the Exchange of Letters. Their idea, which they only developed fully after the meeting with Ministers, would be that this memorandum and the accompanying drafts should be initialled in Teheran by Dr. Musaddiq and Mr. Henderson, and also in London by representatives of Her Majesty's Government and the United States Government (presumably Mr. Byroade himself). We would authorise the United States Ambassador here forthwith to inform Dr. Musaddiq through Mr. Henderson that if and when the initialling in Teheran had taken place we would be happy to initial a similar document in London. Once we were satisfied that the initialling in Teheran had taken place, we would despatch our representatives to sign the final texts there. We agreed (see text at Annex E).

A.E.

Foreign Office, S.W.1.

14th January, 1953.

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ANNEX A

TERMS OF REFERENCE.

The function of the Tribunal shall be :-

- (1) to determine the sum required to provide fair compensation to the Anglo-Iranian Oil Company for the loss of its enterprise in Iran as the result of the Iranian Oil Nationalisation Laws of March and May, 1951 ; and for that purpose the Tribunal shall employ the principles applied for the purpose of determining the compensation awarded under any United Kingdom Law which the Company may specify, nationalising any industry in the United Kingdom ;
- (2) to determine the validity of all counter-claims which the Iranian Government may have against the Anglo-Iranian Oil Company, and the sum required to meet them.

ARBITRATION AGREEMENT.

The Government of Iran and the Government of the United Kingdom :

Desiring to bring about a settlement of all claims and counter-claims which have arisen between the Government of Iran and the Anglo-Iranian Oil Company and to submit the matter to international adjudication, to take place between the Government of Iran and the Company :

Conscious, however, of the fact that, under Article 34, paragraph 1, of its Statute, the International Court of Justice can only entertain cases of which States are parties :

Have agreed that the said claims and counter-claims shall be referred to international arbitration between the Iranian Government on the one hand, and the Anglo-Iranian Oil Company on the other, in the manner provided by, and before a Tribunal constituted as specified in, Parts I and II of the present Agreement, and that the arrangements for the payment of any balance due from either Party to the other in consequence of the award of the Tribunal shall be those set out in Part III :

PART I.

1. (a) The above-mentioned claims and counter-claims shall be referred to a Tribunal consisting of those members of the International Court of Justice who hold office as Judges of the International Court of Justice on the date of the conclusion of the present Agreement, together with the Iranian Judge ad hoc who was designated to sit on the International Court of Justice in 1952 ; provided that the number of members of the Tribunal so constituted shall not be fewer than the number of Judges (including the Iranian Judge ad hoc) which made up the bench of the International Court of Justice in July, 1952, for the hearing of the preliminary issue of jurisdiction in the Anglo-Iranian Oil dispute. In the event of the resignation or retirement of any Judge from the International Court of Justice, such Judge shall continue to sit on the Tribunal in his unofficial capacity. In the event of the death, incapacity, or withdrawal from the Tribunal of any member, the remaining members of the Tribunal shall proceed to adjudicate the case. The Tribunal shall select its President, and shall take its decisions, and give its award, by a majority vote.

(b) If the Tribunal cannot be constituted as set out in sub-paragraph (a) above, the matter shall be referred to a Tribunal composed of the following Judges of the Court acting in a private capacity, and assuming they are willing so to act : that is to say the United Kingdom Judge, the Iranian Judge ad hoc, above referred to, and any other three Judges agreed upon between the United Kingdom and Iranian Judges ; or, if they are unable so to agree within two months from the date on which the present Agreement has been communicated to the Court as provided

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in Article 11 hereof, any three Judges designated after consultation with the United Kingdom and Iranian Judges by the Vice-President of the Court, who shall in any case designate one of the three additional Judges to act as President of the Tribunal. In the event of the death, incapacity, or withdrawal from the Tribunal of the United Kingdom Judge, the Anglo-Iranian Oil Company shall have the option of designating a substitute member of the Tribunal; in the event of the death, incapacity, or withdrawal of the Iranian Judge ad hoc, the Government of Iran shall have the option of designating a substitute member. In the event of the death, incapacity, or withdrawal of any of the remaining members of the Tribunal, a substitute member shall be designated by means of the same processes by which his predecessor was designated. In the event of the death, incapacity, or withdrawal from the Tribunal of its President, his successor (who shall replace him as President) shall be designated by the Vice-President of the International Court of Justice. The Tribunal shall take its decisions, and give its award, by a majority vote.

(c) If the Tribunal is not constituted in one of the foregoing ways, the matter shall be referred to a Tribunal consisting of five eminent jurists from outside the Court, to be nominated after consultation with the Parties and with the Court by the Vice-President of the Court, who shall also designate one of them to act as President of the Tribunal. In the event of the death, withdrawal, or incapacity of any member of the Tribunal, a successor shall, by the same process, be nominated by the Vice-President of the Court. The Tribunal shall take its decisions, and give its award, by a majority vote.

2. The function of the Tribunal shall be:-

- (1) to determine the sum required to provide fair compensation to the Anglo-Iranian Oil Company for the loss of its enterprise in Iran as the result of the Iranian Oil Nationalisation Laws of March and May, 1951; and for that purpose the Tribunal shall employ the principles applied for the purpose of determining the compensation awarded under any United Kingdom Law which the Company may specify, nationalising any industry in the United Kingdom:
- (2) to determine the validity of all counter-claims which the Iranian Government may have against the Anglo-Iranian Oil Company, and the sum required to meet them.

3. In determining the matters specified in Article 2 above, and subject to the provisions of that Article, the Tribunal shall give its decision in accordance with international law, applying

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- (a) any relevant international conventions by which the Governments of Iran and the United Kingdom are both bound;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognised by civilised nations;
- (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

4. The decisions of the Tribunal shall be definitive and binding on both the Parties to the arbitration (hereinafter called the Parties), and the Tribunal's award, which shall be expressed in sterling, shall be regarded as a full and final settlement of all claims and counter-claims of the Parties.

PART II

5. If the Tribunal is constituted in the manner specified in Article 1(a) or 1(b) hereof, its procedure (and all matters incidental thereto) shall, mutatis mutandis, and so far as deemed appropriate by the Tribunal, be the same as that provided for the International Court of Justice by its Statute and Rules of Court

6. If the Tribunal is constituted in the manner specified in Article 1(c), it shall (subject to the terms of the present Agreement) settle its own procedure, but shall in any case apply the following provisions:

- (a) As soon as possible after the coming into force of the present Agreement, and after the nomination of the Members of the Tribunal as provided in Article 1(c) hereof, the President of the Tribunal (hereinafter called the President) shall, in consultation with representatives of the Parties, as designated by them, determine the procedure for the exchange of written pleadings between the Parties (number, order and time-limits, etc) and for their transmission to the Members of the Tribunal.
- (b) As soon as possible after receipt of the last of the written pleadings, the President shall, after consultation with the other Members of the Tribunal and with the representatives of the Parties, name the date and place for the oral hearing and determine the order in which the arguments of the Parties are to be presented.
- (c) The Tribunal shall give its award as soon as possible after the close of the oral hearing.

- (d) The Tribunal shall hold such sittings, whether for private deliberation or for hearing the Parties, as it may consider necessary for the carrying out of its functions under the present Agreement.
- (e) Subject to the provisions of Article 7 below, the President shall make all the necessary formal arrangements in connexion with the sittings of the Tribunal (premises, and interpreting, clerical and stenographic staff).
- (f) The languages of the Tribunal shall be English and French. The written and oral pleadings and statements of the Parties may be drawn up or presented in either language, and the arrangements for translation and for the interpretation of speeches shall be determined by the President in consultation with the other Members of the Tribunal and the representatives of the Parties.

7. Whatever the character of the Tribunal, each of the Parties shall bear its own costs of the arbitration. The expenses of the Tribunal shall be borne by the Parties in equal shares. Any question relating to the fees, expenses and allowances of the President, and of the other Members of the Tribunal, and all matters incidental thereto such as the time and method of payment, shall be determined by the Parties in consultation with the President.

PART III

8. Any balance due by either of the Parties to the other in consequence of the award of the Tribunal shall be paid as follows:-

- (1) Any balance due from the Iranian Government to the Anglo-Iranian Oil Company shall be discharged by payments in cash in sterling, to the credit of the Company, in a bank designated by the latter, of 25 per cent of the receipts from all sales of oil and oil products exported from Iran; or, if so agreed between the Iranian Government and the Anglo-Iranian Oil Company, by deliveries of oil to the Company in such quantities and over such a period of years as shall be mutually determined by them.
- (2) If a balance is due from the Anglo-Iranian Oil Company to the Iranian Government, it shall be discharged by payments in cash in sterling to the credit of the Iranian Government with a bank designated by the latter of such amounts over such periods of years as shall be agreed between the Iranian Government and the Company; or, in default of such agreement, in such amounts over such period of years, as shall be determined by an arbitrator appointed by the Vice-President of the International Court of Justice.

9. Pending the award of the Tribunal, 25 per cent of the receipts from all sales of oil and oil products exported from Iran shall, unless another currency is agreed between the Government of Iran and the Anglo-Iranian Oil Company, be deposited in sterling in a trust account with a financial institution or trustee bank to be agreed upon between the Government of Iran and the Company, or, in default of such agreement, to be specified by the Vice-President of the International Court of Justice, and shall await the award of the Tribunal. Any balance remaining in the trust account after the discharge of the award shall be paid to the Government of Iran.

10. Any amount still outstanding under Article 8 (1) and 8 (2) above, one year after the date of the award of the Tribunal, and thereafter from year to year, shall carry interest at a rate to be agreed between the Iranian Government and the Anglo-Iranian Oil Company, or, in default of such agreement, to be determined by an arbitrator appointed by the Vice-President of the International Court of Justice.

PART IV

11. The present Agreement shall be subject to ratification and shall come into force immediately upon the exchange between the Governments of Iran and the United Kingdom of their respective instruments of ratification. The Agreement shall thereupon be communicated to the International Court of Justice.

In faith whereof the undersigned Plenipotentiaries have signed the present Agreement.

Done in duplicate at this day of , 1953, in the English, Persian and French languages, all three texts being equally authentic.

After the entry into force of the Agreement of to-day's date for arbitration between the Government of Iran and the A.I.O.C., the United States Defense Materials Procurement Agency will contract to take from the National Iranian Oil Company over a period of time oil products or crude oil to a value of approximately \$133 million; 25% of the value of oil products or crude oil delivered to D.M.P.A. under the contract will be placed in escrow to be disbursed in accordance with the terms of the arbitration award; and D.M.P.A. will advance \$100 million to N.I.O.C. against future deliveries of oil products or crude oil upon the following basis:

1. Of the \$100,000,000, \$50,000,000 will be advanced immediately to N.I.O.C.; the balance will be advanced in instalments of \$10,000,000 a month as soon as D.M.P.A. and N.I.O.C. agree on a provisional schedule of shipment and D.M.P.A. has satisfied itself concerning the availability and quality of the oil products or crude oil to be shipped under the schedule and has assured itself of the suitability of port, loading, and other essential facilities.

2. It is understood that following the approval of this agreement, the N.I.O.C. will enter into negotiations with a company of an international character (hereinafter called the international company) which would include A.I.O.C. and would be registered outside the United Kingdom or Iran, with a view to concluding a commercial agreement under which the N.I.O.C. will sell to the international company substantial quantities of crude oil and oil products annually over a period of years; such negotiations to be undertaken as soon as the international company is formed and ready to begin them.

3. D.M.P.A. intends to appoint the international company as its agent for receiving delivery f.o.b. Iranian ports of oil and oil products for the account of D.M.P.A.

4. Until such time as a commercial agreement is made between the international company and the N.I.O.C., the price for the quantities of refined products to be delivered against the D.M.P.A. advance shall be the United States Gulf posted price (which is the present Persian Gulf going price) less a discount of 35 percent. In the event sufficient refined products desired by D.M.P.A. are not available, D.M.P.A. shall have the option of receiving crude oil at the same discount from the going Persian Gulf posted price. If N.I.O.C. should sell refined products or crude oil to other customers than the international company at prices lower than the posted price or going prices referred to above, the price to D.M.P.A. will be calculated on the basis of such lower prices less such appropriate discounts as may be negotiated between N.I.O.C. and D.M.P.A.

5. For each delivery made under the purchase and advance contract, N.I.O.C. will be credited with 75% of its value as determined under paragraph 4 above, and D.M.P.A. will pay 25% of its value to the Federal Reserve Bank of New York to be held by it in escrow until disbursed in accordance with the terms of the arbitration award.

6. Deliveries under the purchase and advance contract will continue until the advance by D.M.P.A. of \$100,000,000 (carrying an interest charge of 4½ percent per annum on unpaid balances) is liquidated.

7. At such time as a commercial agreement is made between the N.I.O.C. and the international company, the price provisions contained in paragraph 4 shall be appropriately modified to conform with the price provisions of the commercial agreement.

8. The foregoing is an agreement binding upon the D.M.P.A. and the Government of Iran, and the parties agree to work out detailed arrangements to implement this agreement.

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ANNEX D

LIFTING OF EMBARGO. TANKER IMMUNITY.

United Kingdom - Iranian Exchange of Letters.

(Re-drafted 11.30 p.m. January 13th, 1953)

1. United Kingdom Letter

Your Excellency,

I have the honour to inform you that, following on the entry into force of the Agreement between our two Governments for the arbitration of the oil dispute, the Anglo-Iranian Oil Company will offer no further objection to the export and sale abroad of Iranian oil and oil products.

2. Iranian Note.

Your Excellency,

I acknowledge receipt of Your Excellency's letter of to-day's date informing me that following on the entry into force of the Agreement for the arbitration of the oil dispute, the Anglo-Iranian Oil Company will offer no further objection to the export and sale abroad of Iranian oil and oil products.

I have the honour to inform Your Excellency, in connexion with such exports and sales, that my Government and the National Iranian Oil Company for their part, will offer no impediment to the complete freedom of entry to, loading in, and departure from, Iranian ports and waters, on the part of all tankers or other vessels concerned with traffic in oil or oil products, irrespective of nationality or ownership; and that they will also use their best endeavours to facilitate all port, shipping and other arrangements necessary for the resumption of the flow of Iranian oil and products to world markets.

SECRETANNEX EDRAFT COVERING MEMORANDUM.

Attached to this memorandum are drafts of three agreements. The first two are agreements between the Government of Iran and the Government of the United Kingdom, providing respectively for the settlement of the dispute between the Government of Iran and the A.I.O.C. by international arbitration and for the regulation of certain questions connected therewith. The third is an agreement between the United States Defense Materials Procurement Agency and the Government of Iran providing for the purchase of crude oil and oil products.

It is understood that a representative of the Government of Iran and a representative of the Government of the United Kingdom will sign the first two of these agreements after the arrival of a United Kingdom representative in Tehran for that purpose ; and a representative of the Government of Iran and a representative of the Government of the United States will on the same day sign the third agreement.

(Initialed) Representative of the Government of Iran

(Initialed) Representative of the Government of the
United States

TEHRAN,

January, 1953.