I would only add in conclusion a word about the Qatar Arbitration over which Lord Radcliffe presided. I have reached a result in this case which happens closely to correspond with that reached by Lord Radcliffe in that case, on other facts and a different Agreement. There is, in fact, little connection between the two Arbitrations if only because in the Qatar Agreement there was no allusion in the contract to " sea waters " at all. If Lord Radcliffe instead of merely recording his conclusions had expounded the principles on which he had reached them, I should have derived invaluable and authoritative guidance from such an exposition; but as he took the course he did, I am to that extent *inops consilii*, and have only departed from his (perhaps more prudent) method and gone into general principles at the express invitation of the parties: to whose legal representatives I would wish to express my deep indebtedness.

(Signed) ASQUITH OF BISHOPSTONE.

The proceedings were held at 5 Rue le Tasse, Paris, France, from Tuesday, August 21, 1951, to Tuesday, August 28, 1951.

Sir Walter Monckton, K.C.M.G., K.C.V.O., M.C., K.C.; with him Professor H. Lauterpacht, K.C., Mr. G. R. F. Morris, and Mr. R. Dunn (instructed by Messrs. Bischoff & Co., Solicitors, London), appeared on behalf of Petroleum Development (Trucial Coast) Ltd.

Mr. N. R. Fox-Andrews K.C., with him Professor C. H. M. Waldock, K.C., Mr. Stephen Chapman, and Mr. J. F. E. Stephenson (instructed by Messrs. Holmes, Son & Pott, Solicitors, London), appeared on behalf of His Excellency, the Ruler of Abu Dhabi.

cannot forget that they, like the Sheikh, were testifying to events 12 years old. I think it more probable than not that the Sheikh did claim to rule coastal seas outside the three-mile limit. It is not the custom of Oriental potentates to minimise the extent of their dominions; but having regard particularly to subsequent correspondence it seems to me far more probable that this was, and was taken by the claimants to be, a rhetorical flourish than that it was either intended or treated at the time as a sober contractual stipulation. In a similar vein we say, "Britannia rules the waves." We do not expect to be taken literally. If we were, we should be challenging the doctrine of the freedom of the seas.

Certainly there is nothing in the correspondence for a whole 10 years or more after the contract to suggest that the company attached any binding contractual quality to this statement, assuming it was made. As late as March 9, 1949 (p. 84a of the correspondence) the company were claiming no more (apart from the mainland and islands) than the territorial three-mile belt. On March 24, 1949, however, a controversial discussion (recorded at p. 87 and the following pages of the correspondence) occurs between Mr. Lermitte and the Sheikh on which some such claim is raised for the first time. The Sheikh is contending that the company have no right under the Agreement to drill in any part of the sea bed even in the territorial zone. Mr. Lermitte replies, "It is recognised universally that the boundaries of any country situated on the sea extend automatically three miles into the sea. This is what is called 'territorial waters.'" In the latter part of this interview as recorded, Mr. Lermitte for the first time claims more submerged land than that covered by territorial waters, and this does not appear to be expressly challenged by the Sheikh (p. 88, sub-p. 8): but Brigadier Longrigg even as late as March 25, 1949, in a letter from London is only mooting in a very tentative fashion the view that where "exclusive rights are granted to a company in respect of the whole of a State including its territorial waters then the company is entitled to the same rights in respect of the subsoil of the Continental Shelf appertaining to that State" (p. 89). If Brigadier Longrigg had had a clear express promise of a contractual order from the Sheikh of rights in respect of the subsoil in the sea for 50 or a 100 miles out from the coast, no halting tentative and *ex post facto* recourse to the Shelf doctrine would have been needed. He would have had an express undertaking valid without reference to that doctrine, and would have said so.

For these reasons I am of opinion that the prima facie construction of the Agreement, which in my view excludes from the Concession the Shelf, is not modified so as to include it by the negotiations incident to the Agreement any more than by the (in my view incompletely established) doctrine of the Shelf itself.

6. *Conclusions and Award*: It follows, if I am right, that the claimants succeed as to the subsoil of the territorial waters (including the territorial waters of islands) and that the Sheikh succeeds as to the subsoil of the Shelf; by which I mean in this connection the submarine area contiguous with Abu Dhabi outside the territorial zone; *viz.*, the former is included in the Concession and the latter is not; and I award and declare to that effect.

10,000 square miles of extraterritorial marine subsoil. The argument falls to the ground if I am right in rejecting the premiss on which it rests, namely, that the doctrine of the Shelf has become and, indeed, was already in 1939, part of the *corpus* of international law.

Again, if I am right in rejecting that premiss, the second way in which they put their case also fails; here they rely on the proviso to Article 2 which says that "If in future the lands which belong to Abu Dhabi are defined by agreement with other States, then the limits of the area" (of the Concession) "shall coincide with the limits specified in this definition." The argument is that the Concession is by these words expressly to extend to any after-acquired area of Abu Dhabi, and that the effect of the proclamations of 1949, if not retrospective, cannot be less than to add the Shelf to the area originally covered as from the date when the proclamations were promulgated. This argument also fails if I am right in thinking that the premiss on which it rests is invalid; but I think it would fail independently of that since there has been no definition of anything "by agreement with other States," and I should have thought in any case that the definition referred to was limited to one affecting dry land, whether epirot or insular.

LASTLY :—

(g) *The Negotiations*: Did the negotiations attending the conclusion of the contract operate to modify what I have held to be the construction which the contract would bear if there had been no such negotiations? I do not find it possible to base any firm conclusion under this head on the use of Arabic words such as "ard" or "aradi" or "mantiqua" in the negotiations leading up to the Agreement, nor on the fact that the price offered for options for oil concessions to the various Trucial Sheikhs from 1935 onwards till 1939 were proportioned not to any square mileage which included marine areas, but only to the length of the respective coast lines; although it is clear that marine areas were at this stage quite outside the contemplation of the parties.

Some evidence was given as to oral interchanges between the Sheikh on the one hand and Mr. Lermitte and Brigadier Longrigg on the other in the last fortnight or so before the contract was signed. The Sheikh in his evidence said, I doubt not in perfect good faith, that the meaning of the expression "the sea waters belonging to that area" was never discussed with him at all. The two witnesses for the company say that it was: they said that they explained that the territorial water belt of three miles would be included prima facie in the Concession, but added that the Sheikh then claimed that he ruled the waters leading out from the coast to islands, 50, or one of them even 100, miles out from the shore: and that it was in deference to this claim of the Sheikh's that the formula "and the sea waters belonging to that area" was inserted.

I am clearly of opinion and find as a fact that the Sheikh's recollection was at fault in so far as he said that the phrase in question was never mentioned in the negotiations. Mr. Lermitte and Brigadier Longrigg cannot have imagined the discussion to which they testified. They were excellent witnesses in point both of integrity and accuracy; although under the latter head one

the law should be; promoting as the phrase runs, " the progressive development of international law " by preparing draft conventions on " subjects which have not yet been regulated by international law, or in regard to which the law has not yet been sufficiently developed in the practice of States." It seems to me clear that these Articles were framed in the discharge, not of the first but of the second, of these functions. As the Commission in paragraph 6 of its commentary on Article 2 says: " The Commission has not attempted to base on customary law the right of a State to exercise control and jurisdiction for the limited purposes stated in Article 2, and though numerous proclamations have been issued over the past decade it can hardly be said that such unilateral action has already established a new customary law." [8]

I therefore cannot accept these Articles as recording, or even purporting to record, established rules: and if they do not, if they are mere recommendations as to what such rules might with advantage be, if adopted by International Convention, they clearly cannot affect the construction of the contract of 1939. (f) Pausing here before dealing with the last question, *viz.*, the effect, if any of the *negotiations* on the meaning of the contract; and considering only the possible effect on the construction of the contract of the doctrine of the Shelf; I would summarise as follows the claimant's argument and my conclusions about it: The claimant's primary contention is (1) that the doctrine of the Shelf is settled law, (2) that it always was so, and therefore that it was so in 1939; *ergo*, the meaning which some of the expressions in the contract would or might otherwise have borne is enlarged by the inclusion therein of the Shelf. For instance, in Article 2 either the expression " the whole of the lands which belong to the rule of the Ruler of Abu Dhabi " or the expression " and the sea waters which belong to that area," are so enlarged by the inclusion of an area in this case measuring over

[8] In respect of this interpretation of the suggested Articles—*viz.*, as recommendations rather than records—the following United Nations documents are relevant; besides A-CN. 4-48 of 1951 itself (the suggested Articles and commentary thereon), A-CN. 4-Sr. 66, 67, 68 and 69 (these last constituting the Summary Record of the meetings of the Second Session of the International Law Commission, 1950). Perhaps I may make this footnote the vehicle for an expression of gratitude to those who addressed me, for bringing to my notice some of the voluminous literature, articles, addresses and other publications—by experts on the Continental Shelf. Those from which I have derived the most instruction include:

(1) Prof. H. Lauterpacht's article entitled " Sovereignty over Submarine Areas," which is likely to be published in the *British Year Book of International Law*, Vol. 27, 1950, pp. 376–433, almost simultaneously with this Award.

(2) Professor Waldock's article " The Legal Basis of Claims to the Continental Shelf " (to appear in *Transactions of the Grotius Society*, Vol. 36, 1950), previously printed as a paper submitted to the Copenhagen Conference of the International Law Association, 1950.

(3) Mr. Richard Young's article, " The Legal Status of Submarine Areas beneath the High Seas," published in the *American Journal of International Law*, Vol. 45, 1951, April, pp. 225–249.

(4) The Memorandum of the Secretary-General of the United Nations on the *Regime of the High Seas*—2nd Session (1950) of the International Law Commission (A-CN. 4-32).

(5) The works of Sir Arnold McNair *passim*; my debt to which is too diffused to be particularised by chapter and verse.

being the subject of exclusive rights in any one. The main reasons why this status is attributed to the high seas is (i) that they are the great highways between nations and navigation of these highways should be unobstructed. (ii) That fishing in the high seas should be unrestricted (a policy approved by this country ever since Magna Carta abolished "several" fisheries). The subsoil, however, of the submarine area is not a highway between nations and the installations necessary to exploit it (even though sunk from the surface into the subsoil rather than tunnelled laterally) need hardly constitute an appreciable obstacle to free navigation; nor does the subsoil contain fish. (4) To treat this subsoil as *res nullius*—"fair game" for the first occupier—entails obvious and grave dangers so far as occupation is possible at all. It invites a perilous scramble. The doctrine that occupation is vital in the case of a *res nullius* has in any case worn thin since the East Greenland Arbitration and more especially since that relating to Clipperton Island. But leaving that aside, it is difficult to imagine any arrangement more calculated to produce international friction than one which entitles nation A, it may be thousands of miles from nation B, to stake out claims in the Continental Shelf contiguous to nation B by "squatting" on B's doorstep—at some point just outside nation B's territorial water limit.

The question just considered, namely not what is but what ought to be the rule, is not so irrelevant as it might at first sight appear, for the following reason: the International Law Commission appointed by the United Nations with M. François as Rapporteur, has been investigating the doctrine and problems of the Continental Shelf. This body has made a number of reports of great interest and importance including a draft code contained in the Report of the Third Session of the International Law Commission (A–CN 4–48) consisting of some six or seven short articles of which I will quote the first three.

> ARTICLE 1: "As here used the term 'Continental Shelf' refers to the sea-bed and subsoil of the submarine areas contiguous to the coast but outside the areas of territorial waters where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil."
>
> ARTICLE 2: "The Continental Shelf is subject to the exercise by the coastal state of control and jurisdiction for the purpose of exploring it and exploiting its natural resources."
>
> ARTICLE 3: "The exercise by a coastal state of control and jurisdiction over the Continental Shelf does not affect the legal status of the superjacent waters as high seas."

These draft Articles have been prayed in aid by the claimants with the implication that they are, or are intended to be the expression of principles which are already part of international law, not merely of principles which ought to, or might with advantage, form part of that law in future. If this is indeed the contention of the claimants, I am of opinion that it is ill-founded. It is clear that the Codifying Commission of the International Law Commission is charged with two distinct functions, (1) that of recording existing rules of international law, and (2) that of indicating what

filum" applicable? How could it possibly be applied in the case of comparably shallow seas of completely irregular configuration, such as the North Sea? Again how are rights of whatever character to the subsoil of the Shelf acquired? Can they indeed be acquired at all? Or would their existence inevitably conflict with the "freedom" of the high seas? Before the doctrine of the Shelf was promulgated I think the general answer might well have been that they cannot be acquired at all—that the Shelf is as inappropriable as the high seas that roll or repose above it: subject to this reservation, that the sea-bed (not the subsoil) of the submarine area, is in certain rare cases, subject to a customary right vested in certain States to conduct "sedentary" fisheries in such sea-bed. For instance, the right to fish for sponges, coral, oysters, pearls and chank.[7] Indeed, the shallow seas of the Persian Gulf are subject to mutual pearling rights by subjects of the various littoral States. If, however, the submarine area is capable not merely of being the subject-matter of these limited occupational rights over the sea-bed, and *pro tanto* a "*res nullius*," is its subsoil as a whole *res nullius*? that is to say, something in which rights can be acquired, but only by effective occupation? Or is the position, as the claimants' main argument maintains, that the rights in the subsoil of the Shelf adhere (and must be taken always to have adhered) *ipso jure*—occupation or no occupation—to the contiguous coastal Power? Or failing that, if occupation be indeed necessary; in cases where it is almost impracticable, may proclamations, or similar acts be treated as a constructive or symbolic or inchoate occupation (the claimants' alternative contention under this head)?

Conclusion as to doctrine of the Continental Shelf

Neither the practice of nations nor the pronouncements of learned jurists give any certain or consistent answer to many—perhaps most—of these questions. I am of opinion that there are in this field so many ragged ends and unfilled blanks, so much that is merely tentative and exploratory, that in no form can the doctrine claim as yet to have assumed hitherto the hard lineaments or the definitive status of an established rule of international law.

Whether there *ought* to exist a rule giving effect to the doctrine in one or other and, if so, which of its forms is another question and one which, if I had to answer it, I should answer in the affirmative. There seems to me much cogency on the arguments of those who advocate the *ipso jure* variant of the doctrine. In particular: (1) it is extremely desirable that someone, in what threatens to become an oil-starved world, should have the right to exploit the subsoil of the submarine area outside the territorial limit; (2) the contiguous coastal Power seems the most appropriate and convenient agency for this purpose. It is in the best position to exercise effective control, and the alternatives teem with disadvantages; (3) there is no reason in principle why the subsoil of the high seas should, like the high seas themselves, be incapable of

[7] An incompletely sedentary crustacean. I gathered from Professor Waldock that a chank moves very slowly: *epur si muove*: on this whole subject Sir Cecil Hurst's Paper read to the Grotius Society in 1948 is the *locus classicus*.

from the mainland; an area quite unrelated to the width of the physical Shelf.[6] In these exorbitant forms the claims met with protest and resistance; but in the more modest form in which they were advanced by the United States, the United Kingdom and Saudi Arabia, they were acquiesced in by the generality of Powers, or at least not actively gainsaid by them.

II. *The British Persian Gulf Proclamations*: The proclamation of Saudi Arabia was followed in 1949 by proclamations issued by the Sheikhs of the Trucial States (or on their behalf by the Government of the United Kingdom *qua* protecting Power) including the Sheikh of Abu Dhabi. All of these last proclamations conform broadly in their terms to the Truman proclamation. They mostly contain recitals on the following lines: "Whereas it is just that the sea-bed and subsoil extending to a reasonable distance from the coast should appertain to and be controlled by the littoral State to which it is adjacent." The Abu Dhabi proclamation of June 10, 1949, provides in its operative part "We, Shakhbut Bin Sultan Bin Za'id, Ruler of Abu Dhabi, hereby declare that the sea-bed and subsoil lying beneath the high seas in the Persian Gulf contiguous to the territorial waters of Abu Dhabi and extending seaward to boundaries to be determined more precisely as occasion arises on equitable principles by us after consultation with the neighbouring States appertain to the land of Abu Dhabi and are subject to its exclusive jurisdiction and control."

(e) *Is the doctrine in any of its forms part and parcel of international law?*: The preceding section calls attention not only to the recent origin of the doctrine but to the great variety of forms which in its short life it has assumed. Some States claim sovereignty over the Shelf. Others pointedly avoid doing so, claiming only "jurisdiction" or "control," "appurtenance" and the like. Whatever the scope of the rights claimed, some States assert those rights by declaratory proclamations implying their pre-existence; others issue proclamations which are on the face of them a new departure and designed to be constitutive of title. What is the seaward limit of the Shelf? Here again the answers given differ. Some States say, "its geological or geographical limit, its 'edge' or its 'drop.'" Others (whether because their particular Shelf has got no edge and has got no drop, or for other reasons), say, "the point at which the sea become 100 fathoms or 200 metres deep"; while yet others say, "a line drawn parallel to the coast of the contiguous power and 200 nautical miles from it." The 200-mile claim seems to be more or less universally discredited. The other two criteria seem on their face much more reasonable. But what is the position where as in the Persian Gulf itself, both of these more reasonable criteria fail us, because the Shelf not only has no edge, but extends continuously across a sea whose waters never attain a depth of as much as 100 fathoms? Is it to extend outwards to a "reasonable distance" from the coast—the expression used in the recital of the Abu Dhabi proclamation? If so, what is a "reasonable distance"? Where States are grouped, as in this case, round a more or less cylindrical gulf, is the principle "*usque ad medium*

[6] As in the case of Chile, El Salvador, Honduras and Costa Rica.

perhaps two miles below. As a rule the sea-bed shelves very gently outwards and downwards for a considerable distance, a distance generally (but not invariably) exceeding the three-mile territorial limit.[2] Again, not always but very often, where the sea reaches a depth of about 100 fathoms or (what is much the same thing) 200 metres, the edge of this shelf is reached and there is a more or less abrupt plunge of the land-mass down to the ocean floor. The doctrine of the "Shelf" as proclaimed in the Truman Declaration of 1945 arrogated to the United States "jurisdiction and control" over "the resources" of the American Continental Shelf which was described as "appertaining" to the United States.

The resources referred to were those of the subsoil of that zone of the sea-bed which lies between the limit of the territorial waters and the point at which its gently shelving character gives place to an abrupt descent.[3]

Several other States followed roughly the same course as the United States. For instance, Great Britain (not quite on the same lines) in respect of Jamaica and of the Bahamas, and Saudi Arabia in respect of parts of the Persian Gulf. Other States weighed in with similar claims. These other States fall into two groups; I. Mexico and the Latin and Central American Republics, and II. The States which are most directly relevant in this Arbitration—States bordering on the Persian Gulf other than Saudi Arabia.

In almost every case the claim was embodied in a decree or proclamation. Most often, though not invariably, the proclamation was in a "declaratory" form, that is in a form asserting or implying that the proclamation was not constitutive of a new right but merely recorded the existence of a pre-existing one.[4]

I. The claims of the Latin and Central American Republics were often far more ambitious than those of this country, the United States and Saudi Arabia; inasmuch as on the one hand the former claims were often claims to actual sovereignty over the Shelf and its subsoil [5] and on the other hand, and this is more important, the claims were often not limited to the Shelf as a geological entity or even to the area ending where the depth of the sea began to exceed 100 fathoms, but sometimes extended to a zone 200 nautical miles

[2] If I speak of the three-mile limit and of the Territorial Maritime Belt interchangeably, this is only for brevity. I am aware that some States claim more than a three-mile belt, but about 80 per cent. of the merchant shipping in the world is registered in "three-mile" countries; and this is the width of territorial waters on the Persian Gulf.

[3] It does not seem to make any difference for the present purpose whether as a matter of geological fact the Shelf was built up by erosion of material from the unsubmerged portion and by its sedimentation, or whether the Shelf was originally there in a denuded state and was subsequently submerged by what is poetically called the "transgression of the seas."

[4] Declaratory: see, for instance, the proclamations of Saudi Arabia, May 28, 1949, of the Trucial States including Abu Dhabi of June 10, 1949; the Truman proclamation of 1945, though its language is not on this point wholly free from ambiguity: and contrast with these proclamations the language of the United Kingdom proclamations in the case of the Bahamas, November 27, 1949; Jamaica, November 26, 1948; and of the Falkland Islands, December 21, 1950, all of which employ somewhat annexatory language such as "the boundaries" of the Colony "are hereby extended": language "constitutive" of rather than merely declaratory of the rights involved.

[5] As in the case of Argentina 1944, Mexico 1945 and Chile 1947.

In particular I cannot accept the argument put forward for the respondent that sea waters are merely "included" as a means of access to dry land, whether mainland or insular. To read the word "included," in the Concession, as meaning in the case of the mainland and islands "included as petroliferous areas": and to read it in relation to the "sea waters" as something totally different, namely, "included as means of access to the petroliferous areas," seems to me unjustifiable, if not perverse.

I am not impressed by the argument that there was in 1939 no word for "territorial waters" in the language of Abu Dhabi, or that the Sheikh was quite unfamiliar with that conception. Mr. Jourdain had none the less been talking "prose" all his life because the fact was only brought to his notice somewhat late. Every State is owner and sovereign in respect of its territorial waters, their bed and subsoil, whether the Ruler has read the works of Bynkershoek or not. The extent of the Ruler's Dominion cannot depend on his accomplishments as an international jurist.

So far affirmatively. Negatively (still leaving aside what I have called the complicating factors) I should certainly in 1939 have read the expression "the sea waters which belong to that area" not only as including, but as *limited* to, the territorial belt and its subsoil. At that time neither contracting party had ever heard of the doctrine of the Continental Shelf, which as a legal doctrine did not then exist. No thought of it entered their heads. None such entered that of the most sophisticated jurisconsult, let alone the "understanding" perhaps strong, but "simple and unschooled" of Trucial Sheikhs.

Directed, as I apprehend I am, to apply a simple and broad jurisprudence to the construction of this contract, it seems to me that it would be a most artificial refinement to read back into the contract the implications of a doctrine not mooted till seven years later, and, if the view which I am about to express is sound, not even today admitted to the canon of international law. However, the time has now come to consider this doctrine more narrowly.

(d) *The doctrine of the Continental Shelf, its substance and history*: The expression "Continental Shelf" was first used by a geographer in 1898.[1] The legal doctrine which later gathered round this geographical term was possibly foreshadowed when in 1942 England and Venezuela concluded a treaty about the Gulf of Paria providing for spheres of influence in respect of areas covered by the high seas and followed by certain annexations coincident with these spheres. The doctrine was perhaps first explicitly asserted as a legal doctrine (in a very exaggerated form) in a proclamation by the Argentine Republic in 1944, but its classical enunciation in the form in which it has mainly to be considered in this case was the well-known proclamation by President Truman of September 28, 1945.

The substance of the doctrine then proclaimed, as I understand it, was this: A coastal power is not surrounded, even at low water, by a precipice leading vertically to the bottom of the ocean,

[1] It made a fleeting appearance on the legal stage in 1916: but passed over it with "printless feet."

place to brush aside these complicating factors and consider the bare language of the Agreement itself; reintroducing the complications at a later stage.

Articles 2 and 3 define the area within which the concession is to operate and therefore touch the heart of the dispute; which turns entirely on the extent of that area.

Article 2 opens with the words "The area included in this Agreement." "Included" for what purpose? This question remits us to article 3, which provides that the Ruler of Abu Dhabi grants to the claimant company the "sole right" for a period of 75 years to "discover dig for and produce" mineral oils and their derivatives and allied substances "within the area." The "sole right" shortly, is a right to win petroleum from the "area" in question. What area? Turning back to Article 2 we find the area includes "the whole of the lands which belong to the rule of the Ruler of Abu Dhabi and their dependencies." The sentence does not end there. It goes on with the words "*and* all the islands and sea waters which belong to that area."

What does the word "and" mean in this connection? In its most natural sense it surely means "plus." It introduces an addendum to something which has gone before. (I discuss an alternative meaning suggested for it below.) But if it simply means "plus," then the expression "the whole of the lands which belong to the rule of the Ruler" cannot be read literally; for read literally that phrase would include in any case the islands, and probably the territorial waters, and it would not be necessary or sensible to make these items addenda. On this meaning of "and," the "land" must be limited to the mainland (no doubt excluding inland or landlocked waters in an indented coast). What, on this basis, does the second addendum mean? *viz.*, "the sea waters which belong to that area?" Placing oneself in the year 1939 and banishing from one's mind the subsequent emergence of the doctrine of the "Shelf" and everything to do with the negotiations, I should have thought this expression could only have been intended to mean the territorial maritime belt in the Persian Gulf, which is a three-mile belt; together with its bed and subsoil, since oil is not won from salt water. In what other sense at that time could sea waters be said to "belong" to a littoral power or to the "rule of the Ruler?" In point of fact, that is the meaning the claimant company were asserting for the expression as late as March, 1949, ten whole years after the contract (see letter page 86A of the Correspondence).

Even if "and" had a different signification, not cumulative but epexegetic, such as "and mark you, in case you are in doubt, I include in the 'lands' the islands and sea waters which belong to the area," I should still hold, in the absence of what I have termed the two complicating factors, that the Concession covered the sea-bed and subsoil of the territorial belt. Nothing less. The only question would be whether it covered more.

Conclusion as to territorial waters' subsoil: I therefore hold or find that the subsoil of the territorial belt is included in the Concession. Neither the ambiguity, if any, of the word "and" nor any of the considerations dealt with hereafter affect this conclusion.

would be fanciful to suggest that in this very primitive region there is any settled body of legal principles applicable to the construction of modern commercial instruments. Nor can I see any basis on which the municipal law of England could apply. On the contrary, Clause 17 of the agreement, cited above, repels the notion that the municipal law of any country, as such, could be appropriate. The terms of that clause invite, indeed prescribe, the application of principles rooted in the good sense and common practice of the generality of civilised nations—a sort of "modern law of nature." I do not think that on this point there is any conflict between the parties.

But, albeit English municipal law is inapplicable *as such*, some of its rules are in my view so firmly grounded in reason, as to form part of this broad body of jurisprudence—this "modern law of nature." For instance, while in this case evidence has been admitted as to the nature of the negotiations leading up to, and of the correspondence both preceding and following the conclusion of the agreement, which evidence as material for construing the contract might, according to domestic English law be largely inadmissible, and to this extent the rigid English rules have been disregarded; yet on the other hand the English rule which attributes paramount importance to the actual language of the written instrument in which the negotiations result seems to me no mere idiosyncrasy of our system, but a principle of ecumenical validity. Chaos may obviously result if that rule is widely departed from; and if, instead of asking what the words used mean, the inquiry extends at large to what each of the parties meant them to mean, and how and why each phrase came to be inserted.

The same considerations seem to me to apply to the principle *expressio unius est exclusio alterius*. I defer entirely to the warnings given by Wills J. and Lopes L.J. in the case of *Colquhoun* v. *Brooks* (19 Q.B.D. 400, at p. 406; 21 Q.B.D. 52, at p. 65), as to the possibilities (and indeed the frequency) of its misapplication. But confined within its proper borders it seems to me mere common sense. (If I have a house and a garden and 200 acres of agricultural land and if I recite this and let to X "my house and garden," it seems obvious that the 200 acres are excluded from the lease.)

Much more dubious to my mind is the application to this case of certain other English maxims relied on by one or the other party in this case. For instance, *verba chartarum fortius accipiuntur contra proferentem* : or the rule that grants by a sovereign are to be construed against the grantee. The latter is an English rule which owes its origin to incidents of our own feudal polity and royal prerogative which are now ancient history; and its survival, to considerations which, though quite different, seem to have equally little relevance to conditions in a protected State of a primitive order on the Persian Gulf.

(c) The next point for consideration is what construction the words of the contract (in particular those of articles 2 and 8, which are crucial) would bear, if (1) no regard were had to the doctrine of the so-called "Continental Shelf" or "submarine area," and (2) no regard were had to the negotiations preceding the Agreement or to the correspondence accompanying it. It may help in the first

intentions and integrity, and to interpret it in a reasonable manner. The Company undertakes to acknowledge the authority of the Ruler and his full rights as Ruler of Abu Dhabi and to respect it in all ways, and to fly the Ruler's flag over the Company's buildings."

In the translation relied upon by the respondents :—

"ARTICLE 17. The Ruler and the Company both declare that they *base their work* in this Agreement on goodwill and sincerity of belief and on the interpretation of this Agreement in a fashion consistent with reason. The Company undertakes to acknowledge the authority of the Ruler and his full rights as Ruler of Abu Dhabi and to respect it in all ways, and to fly the Ruler's flag over the Company's buildings."

The variation between the two translations of Article 17 would seem immaterial.

5. Order in which questions considered :

The order in which I propose to consider the questions raised by the arbitration is the following :—

(a) What is the true translation of the Agreement?

(b) What is the "Proper Law" of the Agreement, that is, the law applicable in interpreting it?

(c) If that law were applied to the bare language of the Agreement, and no regard were paid either (1) to the so-called doctrine of the "Continental Shelf" or, (2) to the negotiations leading up to its signature, what construction ought to be placed on those of its provisions which are the subject-matter of the present dispute?

(d) What is the substance and history of the doctrine of the Continental Shelf?

(e) Is it an established rule of International Law?

(f) If it were, would it operate in any, and if so, what way to modify the construction of the contract which would prevail in its absence?

(g) If not, did the negotiations leading up to the execution of the contract have any such modifying operation?

I will then record my conclusions in paragraph 6.

I now revert to paragraph 5, taking its sub-paragraphs in turn.

(a) *Translations* : I have indicated the two rival translations of the contract of 1939. There is in this matter little conflict; and there would probably have been even less but for the circumstance that the Arabic of the Gulf, in which the contract is framed, is an archaic variety of the language, bearing, I was told, some such relation to modern current Arabic as Chaucer's English does to modern English. Such discrepancies, however, as exist between the two translations are fortunately trivial, and the claimants were willing for purposes of argument to accept the translation put forward on behalf of the respondent. I therefore adopt that translation in what follows.

(b) What is the "Proper Law" applicable in construing this contract? This is a contract made in Abu Dhabi and wholly to be performed in that country. If any municipal system of law were applicable, it would prima facie be that of Abu Dhabi. But no such law can reasonably be said to exist. The Sheikh administers a purely discretionary justice with the assistance of the Koran; and it

In the translation of this article relied upon by the respondent, the Sheikh, the wording is as follows :—

" ARTICLE 2 (a). The area included in this Agreement is the whole of the lands which belong to the rule of the Ruler of Abu Dhabi and its dependencies and all the islands and the sea waters which belong to that area. And if in the future the lands which belong to Abu Dhabi are defined by agreement with other States, then the limits of the area shall coincide with the limits specified in this definition.

" (b) If in the future a Neutral Area should be established adjacent to the lands of Abu Dhabi and the rights of rule over such Neutral Area be shared between the Ruler of Abu Dhabi and another Ruler, then the Ruler of Abu Dhabi undertakes that this Agreement shall include what mineral oil rights he has in that area.

" (c) The Company shall not undertake any works in areas used and set apart for places of worship or sacred buildings or burial grounds."

Article 8 of the Agreement runs as follows in the translation relied upon by the claimants :

" ARTICLE 8. The Ruler by this Agreement grants to the Company the sole right, for a period of 75 solar years from the date of signature, to search for discover drill for and produce mineral oils and their derivatives and allied substances within the area, and the sole right to the ownership of all substances produced, and free disposal thereof both inside and outside the territory : provided that the export of oil shall be from the territory of the Concession direct without passing across any adjacent territory.

" And it is understood that this Agreement is a grant of rights over Oil and cannot be considered an Occupation in any manner whatsoever."

In the translation relied upon by the respondent the only difference is the wholly immaterial one that " dig for " appears in lieu of " drill for."

Article 12 (a) runs as follows :

In the translation relied upon by both parties :—

" ARTICLE 12 (a). The Ruler shall have right at any time to grant to a third party a Concession for any substances other than those specified in Article 8, on condition that this shall have no adverse effect on the operations and rights of the Company."

Article 1 defines the expression " The Ruler " in the translation relied upon by both parties as follows :—

" ARTICLE 1. The expression " The Ruler " includes the present Ruler of Abu Dhabi and its dependencies and his heirs and successors to whom may in future be entrusted the rule of Abu Dhabi."

Article 17 is in these terms :

In the translation relied upon by the claimants :—

" ARTICLE 17. The Ruler and the Company both declare that they intend to execute this Agreement in a spirit of good

deal with territorial waters and the second two with the submarine area outside territorial waters—

(i) At the time of the agreement of January 11, 1939, did the respondent—the Sheikh—own the right to win mineral oil from the subsoil of the sea-bed subjacent to the territorial waters of Abu Dhabi? (There seems to be no doubt about this.)

(ii) If yes, did he by that agreement transfer such right to the claimant company?

(iii) At the time of the agreement did he own (or as the result of a proclamation of 1949 did he acquire) the right to win mineral oil from the subsoil of any, and, if so, what submarine area lying outside territorial waters?

(iv) If yes, was the effect of the agreement to transfer such original or acquired rights to the claimant company? (The Sheikh in 1949—10 years after this agreement—purported to transfer these last rights to an American company—the "Superior Corporation": which the Petroleum Development Company claim he could not do, since he had already 10 years earlier parted with these same rights to themselves.)

I would add that the parties requested me to express a view both on question (iii) and on question (iv), even if owing to the answer given to one of these questions, the other should become academic; and the view expressed upon it at best an *obiter dictum*.

8. *The terms of the agreement*: The terms of the agreement which are mainly relevant to the determination of these questions are articles 2, 8, 12a, 1 and 17; from which I proceed to quote certain passages.

4. The agreement having originally been in the Arabic tongue, considerable differences have arisen as to what is and what is not an accurate translation. This applies particularly to what is the most crucial article of all, namely article 2. Although, as will later appear, the divergences between those translations are not important, I think I ought for completeness to set out the rival translations. In the translation originally relied upon by the claimant company, the wording of article 2 is as follows:—

"ARTICLE 2 (a) The area included in this Agreement is the whole territory subject to the rule of the Ruler of Abu Dhabi and its dependencies, and all its islands and territorial waters. And if in the future there should be carried out a delimitation of the territory belonging to Abu Dhabi, by arrangement with other governments, then the area (of this Agreement) shall coincide with the boundaries provided in such delimitation.

"(b) If in the future a Neutral Zone should be formed adjacent to the territories of Abu Dhabi and the rights of rule over such Neutral Zone be shared between the Ruler of Abu Dhabi and another Ruler, then the Ruler of Abu Dhabi undertakes that this Agreement shall include all the mineral oil rights which belong to him in such Zone.

"(c) The Company shall not undertake any works in areas used and set apart for places of worship or sacred buildings or burial grounds."

IN THE MATTER OF AN ARBITRATION BETWEEN PETROLEUM DEVELOPMENT (TRUCIAL COAST) LTD. AND THE SHEIKH OF ABU DHABI.

AWARD OF LORD ASQUITH OF BISHOPSTONE

1. On January 11, 1939, Sheikh Shakhbut of Abu Dhabi, one of the Trucial States abutting on the Gulf of Persia from the south and west, entered into a written contract in the Arabic language with Petroleum Development (Trucial Coast) Ltd., whereby the Sheikh purported to transfer to that company the exclusive right to drill for and win mineral oil within a certain area in Abu Dhabi. That written agreement contained an arbitration clause, providing for the reference of disputes arising under it to arbitration, for the appointment of two arbitrators, and for the appointment of an umpire in the event of the two arbitrators being unable to agree. Certain disputes (the nature of which is indicated more precisely below, but which relate in substance entirely to the area of the concession) have arisen under this agreement and were in fact referred to arbitration; the said arbitrators did differ; and appointed me as umpire. According to the terms of the arbitration clause, this, my Award, in respect of the dispute is final.

1A. Abu Dhabi has a coast line of about 275 miles on the Gulf. It is bounded on the west by the State of Qatar, and on the east by the State of Dubai, both much smaller States. These frontiers, however, were and are to some extent vague. So is its mainland area, which has been estimated at anything from 10,000 to 26,000 square miles. The main reason for these wide divergences is that the depth of hinterland to be included is indeterminate. Abu Dhabi is a large, primitive, poor, thinly populated country, whose revenue, until oil was discovered, depended mainly on pearling. It is, like the other Trucial Principalities, a British-protected State; that is, its external relations are controlled by His Majesty. Internally, the Sheikh is an absolute, feudal monarch.

2. The nature of the disputes referred to arbitration and the subject-matter of this Award are formulated in a letter from the claimants to the respondent dated July 18, 1949. The letter runs as follows :—

> " The arbitration is to determine what are the rights of the Company with respect to all underwater areas over which the Ruler has or may have sovereignty jurisdiction control or mineral oil rights.
>
> " The Company claims that the area covered by the Agreement of January 11, 1939 (notably Articles 2 and 8 thereof), includes in addition to the mainland and islands :
>
> " (1) All the sea-bed and subsoil under the Ruler's territorial waters (including the territorial waters of his islands), and
>
> " (2) All the sea-bed and subsoil contiguous thereto over which either the Ruler's sovereignty jurisdiction or control extends or may hereafter extend, or which now or hereafter may form part of the area over which he has or may have mineral oil rights."

The issues : The questions referred to arbitration can usefully be paraphrased by expanding them into four, of which the first two