COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE L'INTERHANDEL

(SUISSE c. ÉTATS-UNIS D'AMÉRIQUE)

(EXCEPTIONS PRÉLIMINAIRES)

ARRÊT DU 21 MARS 1959

1959

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

INTERHANDEL CASE

(SWITZERLAND *v.* UNITED STATES OF AMERICA)

(PRELIMINARY OBJECTIONS)

JUDGMENT OF MARCH 21st, 1959

Le présent arrêt doit être cité comme suit:

« *Affaire de l'Interhandel,*
Arrêt du 21 mars 1959 : C. I. J. Recueil 1959, p. 6. »

This Judgment should be cited as follows:

"Interhandel Case,
Judgment of March 21st, 1959: I.C.J. Reports 1959, p. 6."

N° de vente : 205
Sales number

INTERNATIONAL COURT OF JUSTICE

1959
March 21st
General List:
No. 34

YEAR 1959

March 21st, 1959

INTERHANDEL CASE

(SWITZERLAND *v.* UNITED STATES OF AMERICA)

(PRELIMINARY OBJECTIONS)

Declarations of acceptance of compulsory jurisdiction of Court.—Reservation ratione temporis *with regard to date on which dispute arose.—Operation of principle of reciprocity.—Domestic jurisdiction of United States and scope of reservation* (b) *of its declaration of acceptance of compulsory jurisdiction of Court.—Application of rule of exhaustion of local remedies.*

JUDGMENT

Present: President KLAESTAD; *Vice-President* ZAFRULLA KHAN; *Judges* BASDEVANT, HACKWORTH, WINIARSKI, BADAWI, ARMAND-UGON, KOJEVNIKOV, Sir Hersch LAUTERPACHT, MORENO QUINTANA, CÓRDOVA, WELLINGTON KOO, SPIROPOULOS, Sir Percy SPENDER; *Judge ad hoc* CARRY; *Deputy-Registrar* GARNIER-COIGNET.

In the Interhandel case,

between

the Swiss Confederation,
represented by

M. Georges Sauser-Hall, Professor emeritus of the Universities of Geneva and Neuchâtel,

as Agent,

and by

M. Paul Guggenheim, Professor at the Law Faculty of the University of Geneva and at the Graduate Institute of International Studies,

as Co-Agent,

assisted by

M. Henri Thévenaz, Professor of International Law at the University of Neuchâtel,

as Counsel and Expert,

and

M. Michael Gelzer, Doctor of Laws,
M. Hans Miesch, Doctor of Laws, First Secretary of Embassy,

as Experts,

and

the United States of America,
represented by

the Honorable Loftus Becker, Legal Adviser of the Department of State,

as Agent,

assisted by

Mr. Stanley D. Metzger, Assistant Legal Adviser for Economic Affairs, Department of State,

Mr. Sidney B. Jacoby, Professor of Law, Georgetown University,

as Counsel,

THE COURT,

composed as above,

delivers the following Judgment:

On October 2nd, 1957, the Ambassador of the Swiss Confederation to the Netherlands filed with the Registrar an Application dated October 1st instituting proceedings in the Court relating to a dispute which had arisen between the Swiss Confederation and the United

States of America with regard to the claim by Switzerland to the restitution by the United States of the assets of the *Société internationale pour participations industrielles et commerciales S.A.* (Interhandel).

The Application, which invoked Article 36, paragraph 2, of the Statute and the acceptance of the compulsory jurisdiction of the Court by the United States of America on August 26th, 1946, and by Switzerland on July 28th, 1948, was, in accordance with Article 40, paragraph 2, of the Statute, communicated to the Government of the United States of America. In accordance with paragraph 3 of the same Article, the other Members of the United Nations and the non-Member States entitled to appear before the Court were notified.

Time-limits for the filing of the Memorial and the Counter-Memorial were fixed by an Order of the Court on October 24th, 1957, and subsequently extended at the request of the Parties by an Order of January 15th, 1958. The Memorial of the Swiss Government was filed within the time-limit fixed by that Order. Within the time-limit fixed for the filing of the Counter-Memorial, the Government of the United States of America filed preliminary objections to the jurisdiction of the Court. On June 26th, 1958, an Order recording that the proceedings on the merits were suspended under the provisions of Article 62 of the Rules of Court, granted the Swiss Government a time-limit expiring on September 22nd, 1958, for the submission of a written statement of its observations and submissions on the preliminary objections. The written statement was filed on that date and the case became ready for hearing in respect of the preliminary objections.

The Court not including upon the Bench a judge of Swiss nationality, the Swiss Government, pursuant to Article 31, paragraph 2, of the Statute, chose M. Paul Carry, Professor of Commercial Law at the University of Geneva, to sit as Judge *ad hoc* in the present case.

Hearings were held on November 5th, 6th, 8th, 10th, 11th, 12th, 14th and 17th, 1958, in the course of which the Court heard the oral arguments and replies of the Honorable Loftus Becker, on behalf of the Government of the United States of America, and of M. Sauser-Hall and M. Guggenheim, on behalf of the Swiss Government.

In the course of the written and oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of the Swiss Confederation, in the Application:

> "May it please the Court:
>
> To communicate the present Application instituting proceedings to the Government of the United States of America, in accordance with Article 40, paragraph 2, of the Statute of the Court;

To adjudge and declare, whether the Government of the United States of America appears or not, after considering the contentions of the Parties,

1. that the Government of the United States of America is under an obligation to restore the assets of the *Société internationale pour participations industrielles et commerciales S.A.* (Interhandel) to that company;
2. in the alternative, that the dispute is one which is fit for submission for judicial settlement, arbitration or conciliation under the conditions which it will be for the Court to determine.

The Swiss Federal Council further reserves the right to supplement and to modify its submissions."

On behalf of the same Government, in the Memorial:

"May it please the Court to adjudge and declare:

A. *Principal Submissions*

1. that the Government of the United States of America is under an obligation to restore the assets of the *Société internationale pour participations industrielles et commerciales S.A.* (Interhandel);
2. in the alternative, that in case the Court should not consider that proof of the non-enemy character of the property of the *Société internationale pour participations industrielles et commerciales S.A.* (Interhandel) has been furnished, an expert selected by the Court should be designated, in accordance with Article 50 of the Statute of the Court, with the task of
   (a) examining the documents put at the disposal of the American Courts by Interhandel,
   (b) examining the files and accounting records of the Sturzenegger Bank the seizure of which was ordered by the public authorities *(Ministère public)* of the Swiss Confederation on June 15th, 1950, subject to the reservation, however, that the expert in his expert opinion shall refer only to such documents as relate to the Interhandel case and shall be instructed to observe absolute secrecy concerning the documents of the Sturzenegger Bank, its clients and all other individuals and legal persons if such documents are not relevant to the case pending before the Court,

   for the purpose of enabling the Court to determine the enemy or non-enemy character of the Interhandel assets in the General Aniline and Film Corporation.

B. *Alternative Submissions in case the Court should not sustain the Swiss request to examine the merits of the dispute*

1. *(a)* that the Court has jurisdiction to decide whether the dispute is one which is fit for submission either to the arbitral tribunal provided for in Article VI of the

Washington Accord of 1946, or to the arbitral tribunal provided for by the Treaty of Arbitration and Conciliation between Switzerland and the United States of February 16th, 1931;

(b) that in case of an affirmative reply to submission *(a)* either the arbitral tribunal provided for in the Washington Accord or the tribunal provided for in the Treaty of Arbitration and Conciliation of 1931, has jurisdiction to examine the dispute, and that the choice of one or the other tribunal belongs to the applicant State;

2. in the alternative:

(a) that the Court has jurisdiction to decide whether the dispute is fit to be submitted to the arbitral tribunal provided for by Article VI of the Washington Accord of 1946;

(b) that in case of an affirmative reply to submission *(a)* the said tribunal has jurisdiction to examine the dispute;

3. in the further alternative:

(a) that the Court has jurisdiction to decide whether the dispute is fit to be submitted to the arbitral tribunal provided for by the Treaty of Arbitration and Conciliation of 1931 between the Swiss Confederation and the United States of America;

(b) that in case of an affirmative reply to submission *(a)* the said tribunal has jurisdiction to examine the dispute;

4. in the final alternative:

that the dispute between the Swiss Confederation and the United States of America should be submitted to the examination of the Permanent Commission of Conciliation provided for in Articles II-IV of the Treaty of Arbitration and Conciliation of 1931.

The Swiss Federal Council furthermore reserves the right to supplement and to amend the preceding submissions."

On behalf of the Government of the United States of America, in the Preliminary Objections:

"May it please the Court to judge and decide:

(1) *First Preliminary Objection*

that there is no jurisdiction in the Court to hear or determine the matters raised by the Swiss Application and Memorial, for the reason that the dispute arose before August 26th, 1946, the date on which the acceptance of the Court's compulsory jurisdiction by this country became effective;

(2) *Second Preliminary Objection*

that there is no jurisdiction in the Court to hear or determine the matters raised by the Swiss Application and Memorial, for the reason that the dispute arose before July 28th, 1948,

the date on which the acceptance of the Court's compulsory jurisdiction by this country became binding on this country as regards Switzerland;

(3) *Third Preliminary Objection*

that there is no jurisdiction in this Court to hear or determine the matters raised by the Swiss Application and Memorial, for the reason that Interhandel, whose case Switzerland is espousing, has not exhausted the local remedies available to it in the United States courts;

(4) *Fourth Preliminary Objection*

(a) that there is no jurisdiction in this Court to hear or determine any issues raised by the Swiss Application or Memorial concerning the sale or disposition of the vested shares of General Aniline and Film Corporation (including the passing of good and clear title to any person or entity), for the reason that such sale or disposition has been determined by the United States of America, pursuant to paragraph *(b)* of the Conditions attached to this country's acceptance of this Court's jurisdiction, to be a matter essentially within the domestic jurisdiction of this country; and

(b) that there is no jurisdiction in this Court to hear or determine any issues raised by the Swiss Application or Memorial concerning the seizure and retention of the vested shares of General Aniline and Film Corporation, for the reason that such seizure and retention are, according to international law, matters within the domestic jurisdiction of the United States.

The United States of America reserves the right to supplement or to amend the preceding submissions, and, generally, to submit any further legal argument."

On behalf of the Swiss Government, in its Observations and Submissions:

"May it please the Court to adjudge and declare:

1. to dismiss the first preliminary objection of the United States of America;
2. to dismiss the second preliminary objection of the United States of America;
3. either to dismiss, or to join to the merits, the third preliminary objection of the United States of America;
4. either to dismiss, or to join to the merits, preliminary objection 4 *(a)* of the United States of America;
   either to dismiss, or to join to the merits, preliminary objection 4 *(b)* of the United States of America.

The Swiss Federal Council maintains and confirms its main and alternative submissions as set out on pages 67 and 68 of the Memorial of the Swiss Confederation of March 3rd, 1958.

The Swiss Federal Council supplements its main submissions by the following alternative submission:

The Swiss Federal Council requests the Court to declare that the property, rights and interests which the *Société internationale pour participations industrielles et commerciales S.A.* (Interhandel) possesses in the General Aniline and Film Corporation have the character of non-enemy (Swiss) property, and consequently to declare that by refusing to return the said property the Government of the United States of America is in breach of Article IV, paragraph 1, of the Washington Accord of May 25th, 1946, and of the obligations binding upon it under the general rules of international law.

The Swiss Federal Council further reserves the right to supplement and to modify the preceding submissions."

On behalf of the same Government, Submissions deposited in the Registry on November 3rd, 1958:

"A. *Principal Submissions*

1. that the Government of the United States of America is under an obligation to restore the assets of the *Société internationale pour participations industrielles et commerciales S.A.* (Interhandel);
2. in the alternative, that in case the Court should not consider that proof of the non-enemy character of the property of the *Société internationale pour participations industrielles et commerciales S.A.* (Interhandel) has been furnished, an expert selected by the Court should be designated, in accordance with Article 50 of its Statute, with the task of:
   (a) examining the documents put at the disposal of the American courts by Interhandel,
   (b) examining the files and accounting records of the Sturzenegger Bank, the seizure of which was ordered by the public authorities *(Ministère public)* of the Swiss Confederation on June 15th, 1950, subject to the reservation, however, that the expert in his expert opinion shall refer only to such documents as relate to the Interhandel case, and shall be instructed to observe absolute secrecy concerning the documents of the Sturzenegger Bank, its clients and all other individuals and legal persons, if such documents are not relevant to the case pending before the Court,

   for the purpose of enabling the Court to determine the enemy or non-enemy character of the Interhandel assets in the General Aniline and Film Corporation.

B. *Alternative Principal Submission*

The Swiss Federal Council requests the Court to declare that the property, rights and interests which the *Société internationale*

pour participations industrielles et commerciales S.A. (Interhandel) possesses in General Aniline and Film Corporation have the character of non-enemy (Swiss) property, and consequently to declare that by refusing to return the said property, the Government of the United States is acting contrary to the decision of January 5th, 1948, of the Swiss Authority of Review based on the Washington Accord, and is in breach of Article IV, paragraph 1, of the Washington Accord of May 25th, 1946, and of the obligations binding upon it under the general rules of the law of nations.

C. *Submissions regarding the Submissions of the Government of the United States following its Preliminary Objections*

1. To dismiss the first preliminary objection of the United States of America;
2. To dismiss the second preliminary objection of the United States;
3. Either to dismiss, or to join to the merits, the third preliminary objection of the United States of America;
4. Either to dismiss, or to join to the merits, the preliminary objection 4 *(a)* of the United States of America;

   either to dismiss, or to join to the merits, the preliminary objection 4 *(b)* of the United States of America;

In the alternative

should the Court uphold one or the other of the preliminary objections of the United States of America, to declare its competence in any case to decide whether the United States of America is under an obligation to submit the dispute regarding the validity of the Swiss Government's claim either to the arbitral procedure provided for in Article VI of the Washington Accord of 1946, or to the Arbitral Tribunal provided for in the 1931 Treaty of Arbitration and Conciliation, or to the Conciliation Commission provided for in the same Treaty, and to fix the subsequent procedure.

D. *Submissions on the merits in the event of the Court accepting one or other of the preliminary objections of the United States of America and accepting jurisdiction in conformity with the alternative submission as under C*

1. To declare that the United States of America is under an obligation to submit the dispute for examination either to the arbitral procedure of the Washington Accord or to the Tribunal provided for in the Arbitration and Conciliation Treaty of 1931, and that the choice of one or the other Tribunal belongs to the Applicant State.
2. *In the alternative:*

   that the United States of America is under an obligation to submit the dispute to the arbitral procedure provided for in Article VI of the Washington Accord of 1946.

3. *In the further alternative:*

that the United States of America is under an obligation to submit the dispute to the Arbitral Tribunal provided for in the Arbitration and Conciliation Treaty of 1931 between the Swiss Confederation and the United States of America.

4. *In the final alternative:*

that the United States of America is under an obligation to submit the dispute for examination by the Permanent Conciliation Commission provided for in Articles II-IV of the Arbitration and Conciliation Treaty of 1931."

At the hearing on November 6th, 1958, the Agent for the Government of the United States of America reaffirmed the submissions set forth in the Preliminary Objections.

For his part, the Agent for the Swiss Government repeated, at the hearing on November 12th, 1958, the submissions he had filed on November 3rd, whilst reserving his right to modify them after hearing any explanations that might be put forward on behalf of the Government of the United States of America.

At the hearing on November 14th, 1958, the Agent for the Government of the United States of America reaffirmed and maintained his earlier submissions whilst emphasizing that the preliminary objections were directed against all of the alternative as well as the principal submissions made on behalf of the Swiss Government.

Finally, at the hearing on November 17th, 1958, the Agent for the Swiss Government maintained the submissions he had filed in the Registry on November 3rd, 1958, which thus acquired the character of final submissions.

* * *

The declarations by which the Parties accepted the compulsory jurisdiction of the Court are as follows:

Declaration of the United States of America of August 14th, 1946 (in force since August 26th, 1946):

"I, Harry S. Truman, President of the United States of America, declare on behalf of the United States of America, under Article 36, paragraph 2, of the Statute of the International Court of Justice, and in accordance with the Resolution of August 2, 1946, of the Senate of the United States of America (two-thirds of the Senators present concurring therein), that the United States of America recognizes as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning

(a) The interpretation of a treaty;

(b) Any question of international law;

(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

(d) The nature or extent of the reparation to be made for the breach of an international obligation;

Provided, that this declaration shall not apply to

(a) Disputes the solution of which the Parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or

(b) Disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America; or

(c) Disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction; and

Provided further, that this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration."

Declaration of Switzerland of July 6th, 1948 (in force since July 28th, 1948):

"The Swiss Federal Council, duly authorized for that purpose by a Federal decree which was adopted on 12 March 1948 by the Federal Assembly of the Swiss Confederation and became operative on 17 June 1948,

Hereby declares that the Swiss Confederation recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:

(a) The interpretation of a treaty;

(b) Any question of international law;

(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

(d) The nature or extent of the reparation to be made for the breach of an international obligation.

This declaration, which is made under Article 36 of the Statute of the International Court of Justice, shall take effect from the date on which the Swiss Confederation becomes a party to that Statute and shall have effect as long as it has not been abrogated subject to one year's notice."

* * *

The present proceedings are concerned only with the preliminary objections raised by the Government of the United States of

America. It is nevertheless convenient to set out briefly the facts and circumstances as submitted by the Parties which constitute the origin of the present dispute.

By its decisions of February 16th and April 24th, 1942, based on the Trading with the Enemy Act of October 6th, 1917, as amended, the Government of the United States vested almost all of the shares of General Aniline and Film Corporation (briefly referred to as the GAF), a company incorporated in the United States, on the ground that these shares in reality belonged to the I.G. Farbenindustrie company of Frankfurt or that the GAF was in one way or another controlled by that enemy company.

It is not disputed that until 1940 I.G. Farben controlled the GAF through the *Société internationale pour entreprises chimiques S.A.* (I.G. Chemie), entered in the Commercial Register of the Canton of Bâle-Ville in 1928. However, according to the contention of the Swiss Government, the links between the German company I.G. Farben and the Swiss company I.G. Chemie were finally severed by the cancellation of the contract for an option and for the guarantee of dividends, a cancellation which was effected in June 1940, that is, well before the entry of the United States into the war. The Swiss company adopted the name of *Société internationale pour participations industrielles et commerciales S.A.* (briefly referred to as Interhandel); Article 2 of its Statute as modified in 1940 defines it as follows: "The enterprise is a holding company. Its object is participation in industrial and commercial undertakings of every kind, especially in the chemical field, in Switzerland and abroad, but excluding banking and the professional purchase and sale of securities." The largest item in the assets of Interhandel is its participation in the GAF. Approximately 75% of the GAF "A" shares and all its issued "B" shares are said to belong to Interhandel. A considerable part, approximately 90%, of these shares and a sum of approximately 1,800,000 dollars, have been vested by the Government of the United States.

Towards the end of the war, under a provisional agreement between Switzerland, the United States of America, France and the United Kingdom, property in Switzerland belonging to Germans in Germany was blocked (Decree of the Federal Council of February 16th, 1945). The Swiss Compensation Office was entrusted with the task of uncovering property in Switzerland belonging to Germans or controlled by them. In the course of these investigations, the question of the character of Interhandel was raised, but as a result of investigations carried out in June and July, 1945, the Office, considering it to have been proved that Interhandel had severed its ties with the German company, did not regard it as necessary to undertake the blocking of its assets.

For its part, the Government of the United States, considering that Interhandel was still controlled by I.G. Farben, continued to seek evidence of such control. In these circumstances the Federal

Department of Public Economy and the Federal Political Department ordered the Swiss Compensation Office provisionally to block the assets of Interhandel; this was done on October 30th, 1945. The Office then carried out a second investigation (November 1945-February 1946) which led it to the same conclusion as had the first.

On May 25th, 1946, an agreement was concluded between the three Allied Powers and Switzerland (the Washington Accord). Under one of the provisions of the Accord, Switzerland undertook to pursue its investigations and to liquidate German property in Switzerland. It was the Compensation Office which was "empowered to uncover, take into possession, and liquidate German property" (Accord, Annex, II, A), in collaboration with a Joint Commission "composed of representatives of each of the four Governments" (Annex, II, B). The Accord lays down the details of that collaboration (Annex, II, C, D, E, F) and provides that, in the event of disagreement between the Joint Commission and the Compensation Office or if the party in interest so desires, the matter may within a period of one month be submitted to a Swiss Authority of Review composed of three members and presided over by a Judge. "The decisions of the Compensation Office, or of the Authority of Review, should the matter be referred to it, shall be final" (Annex, III). In the event, however, of disagreement with the Swiss Authority of Review on certain given matters, "the three Allied Governments may, within one month, require the difference to be submitted to arbitration" (Annex, III).

The Washington Accord further provides:

"*Article IV, paragraph 1.*

> The Government of the United States will unblock Swiss assets in the United States. The necessary procedure will be determined without delay.

Article VI.

> In case differences of opinion arise with regard to the application or interpretation of this Accord which cannot be settled in any other way, recourse shall be had to arbitration."

After the conclusion of the Washington Accord, discussions with regard to Interhandel between the Swiss Compensation Office and the Joint Commission as well as between representatives of Switzerland and the United States were continued without reaching any conclusion accepted by the two parties. The Office, while declaring itself ready to examine any evidence as to the German character of Interhandel which might be submitted to it, continued to accept the results of its two investigations; the Joint Commission challenged

these results and continued its investigations. By its decision of January 5th, 1948, given on appeal by Interhandel, the Swiss Authority of Review annulled the blocking with retroactive effect. It had invited the Joint Commission to participate in the procedure, but the latter had declined the invitation. This question was not referred to the arbitration provided for in the Washington Accord.

In these circumstances, the Swiss Government considered itself entitled to regard the decision of the Swiss Authority of Review as a final one, having the force of *res judicata* vis-à-vis the Powers parties to the Washington Accord. Consequently, in a Note of May 4th, 1948, to the Department of State, the Swiss Legation at Washington invoked this decision and the Washington Accord to request the Government of the United States to restore to Interhandel the property which had been vested in the United States. On July 26th, 1948, the Department of State rejected this request, contending that the decision of the Swiss Authority of Review did not affect the assets vested in the United States and claimed by I.G. Chemie. On September 7th, 1948, in a Note to the Department of State, the Swiss Legation in Washington, still relying on its interpretation of the Washington Accord, maintained that the decision of the Swiss Authority of Review recognizing Interhandel as a Swiss company was legally binding upon the signatories of that Accord. It expressed the hope that the United States Government would accordingly release the assets of Interhandel in the United States, failing which the Swiss Government would have to submit the question to the arbitral procedure laid down in Article VI of the Washington Accord. On October 12th, 1948, the Department of State replied to that communication, maintaining its previous view that the decision of the Swiss Authority of Review was inapplicable to property vested in the United States. It added that United States law in regard to the seizure and disposal of enemy property authorized non-enemy foreigners to demand the restitution of vested property and to apply for it to the courts. On October 21st, 1948, Interhandel, relying upon the provisions of the Trading with the Enemy Act, instituted proceedings in the United States District Court for the District of Columbia. Direct discussion between the two Governments was then interrupted until April 9th, 1953, on which day the Swiss Government sent to the Government of the United States a Note questioning the procedure applied in the United States in the Interhandel case, stating that this procedure had led to a deadlock, and suggesting negotiations for a satisfactory settlement.

Up to 1957 the proceedings in the United States courts had made little progress on the merits. Interhandel, though it had produced a considerable number of the documents called for, did not produce all of them; it contended that the production of certain documents was prohibited by the Swiss authorities as constituting an offence under Article 273 of the Swiss Criminal Code and as violating banking

secrecy (Article 47 of the Federal Law of November 8th, 1934). The action brought by Interhandel was the subject of a number of appeals in the United States courts and in a Memorandum appended to the Note addressed by the Department of State to the Swiss Minister on January 11th, 1957, it was said that Interhandel had finally failed in its suit. It was then that the Swiss Government, on October 2nd, 1957, addressed to the Court the Application instituting the present proceedings. The assertion in the Note of January 11th, 1957, that Interhandel's claim was finally rejected proved, however, to be premature, as the Court will have occasion to point out in considering the Third Objection of the United States.

As stated, the exchange of notes with regard to Interhandel which had taken place in 1948, was resumed in 1953. In its Note of April 9th, 1953, the Swiss Legation at Washington suggested negotiations between the two Governments with a view to arriving amicably at a just and practical solution of the problem of Interhandel; these suggestions were repeated in the Notes of December 1st, 1954, and March 1st, 1955; they were not accepted by the Department of State. Finally, the Swiss Note of August 9th, 1956, formulated proposals for the settlement of the dispute either by means of arbitration or conciliation as provided for in the Treaty between Switzerland and the United States of February 16th, 1931, or by means of arbitration as provided for in the Washington Accord. This approach did not meet with the approval of the Government of the United States, which rejected it in its Note, already referred to, of January 11th, 1957.

* * *

The subject of the claim as set forth in the final submissions presented on behalf of the Swiss Government, and disregarding certain items of a subsidiary character which can be left aside for the moment, is expressed essentially in two propositions:

(1) as a principal submission, the Court is asked to adjudge and declare that the Government of the United States is under an obligation to restore the assets of the *Société internationale pour participations industrielles et commerciales S.A.* (Interhandel);

(2) as an alternative submission, the Court is asked to adjudge and declare that the United States is under an obligation to submit the dispute to arbitration or to a conciliation procedure in accordance with certain conditions set forth first in the principal submissions and then in the alternative submissions.

The Government of the United States has put forward four preliminary objections to the Court's dealing with the claims of the Swiss Government. Before proceeding to examine these objections, the Court must direct its attention to the claim, formulated for the

first time in the Observations and Submissions of the Swiss Government, which is in the following terms:

> "The Swiss Federal Council requests the Court to declare that the property, rights and interests which the *Société internationale pour participations industrielles et commerciales S.A.* (Interhandel) possesses in General Aniline and Film Corporation have the character of non-enemy (Swiss) property, and consequently to declare that by refusing to return the said property the Government of the United States of America is in breach of Article IV, paragraph 1, of the Washington Accord of May 25th, 1946, and of the obligations binding upon it under the general rules of international law."

In its final Submissions, deposited in the Registry on November 3rd, 1958, the Swiss Government gives the following explanation with regard to this claim:

> "The Swiss Government, after examining the Preliminary Objections of the United States of America, has come to the conclusion that these involve the modification of the Swiss Government's principal and alternative Submissions, which are as follows."

The claim in question, however, which is described as "alternative principal Submission", does not constitute a mere modification; it constitutes a new claim involving the merits of the dispute. Article 62, paragraph 3, of the Rules of Court, however, is categorical:

> "Upon receipt by the Registrar of a preliminary objection filed by a party, the proceedings on the merits shall be suspended."

Consequently, the new Swiss submission relating to a request for a declaratory judgment, presented after the suspension of the proceedings on the merits, cannot be considered by the Court at the present stage of the proceedings.

* * *

First Preliminary Objection

The First Objection of the Government of the United States seeks a declaration that the Court is without jurisdiction on the ground that the present dispute arose before August 26th, 1946, the date on which the acceptance of the compulsory jurisdiction of the Court by the United States came into force. The declaration of the United States does indeed relate to legal disputes "hereafter arising". The Government of the United States maintains that the dispute goes back at least to the middle of the year 1945, and that divergent opinions as to the character of Interhandel were exchanged between the American and Swiss authorities on a number of occasions before August 26th, 1946.

The Court would recall that the subject of the present dispute is indicated in the Application and in the Principal Final Submission of the Swiss Government which seeks the return to Interhandel of the assets vested in the United States. An examination of the documents reveals that a request to this effect was formulated by Switzerland for the first time in the Note of the Swiss Legation at Washington dated May 4th, 1948. The negative reply, which the Department of State describes as its final and considered view, is dated July 26th, 1948. Two other Notes exchanged shortly afterwards (on September 7th and October 12th of that same year) confirm that the divergent views of the two Governments were concerned with a clearly-defined legal question, namely, the restitution of Interhandel's assets in the United States, and that the negotiations to this end rapidly reached a deadlock. Thus the dispute now submitted to the Court can clearly be placed at July 26th, 1948, the date of the first negative reply which the Government of the United States described as its final and considered view rejecting the demand for the restitution of the assets. Consequently the dispute arose subsequently to the date of the entry into force of the Declaration of the United States.

During the period indicated by the Government of the United States (the years 1945 and 1946), the exchanges of views between the Swiss authorities on the one hand and the Allied and, in the first place, the American authorities, on the other, related to the search for, and the blocking and liquidation of, German property and interests in Switzerland; the question of the Swiss or German character of Interhandel was the subject of investigations and exchanges of views for the purpose of reaching a decision as to the fate of the assets in Switzerland of that company. It was only after the decision of the Swiss Authority of Review of January 5th, 1948, definitely recognizing the non-enemy character of the assets of Interhandel and, in consequence, putting an end to the provisional blocking of these assets in Switzerland, had, in the opinion of the Federal Government, acquired the authority of *res judicata*, that that Government for the first time addressed to the United States its claim for the restitution of Interhandel's assets in the United States.

The discussions regarding Interhandel between the Swiss and American authorities in 1945, 1946 and 1947 took place within the framework of the collaboration established between them prior to the Washington Accord and defined in that Accord. The representatives of the Joint Commission and those of the Swiss Compensation Office communicated to each other the results of their enquiries and investigations, and discussed their opinions with regard to Interhandel, without arriving at any final conclusions. Thus, for instance, the minute of the meeting of the Joint Commission on September 8th, 1947, records:

> "The representatives of the Swiss Compensation Office stated that their investigations had yielded only negative results and

that they were still waiting for the Allies to furnish their documents which the Swiss Compensation Office was ready to discuss with the Allied experts."

The Court cannot see in these discussions between the Allied and Swiss officials a dispute between Governments which had already arisen with regard to the restitution of the assets claimed by Interhandel in the United States; the facts and situations which have led to a dispute must not be confused with the dispute itself; the documents relating to this collaboration between the Allied and Swiss authorities for the purpose of liquidating German property in Switzerland are not relevant to the solution of the question raised by the first objection of the United States.

The First Preliminary Objection must therefore be rejected so far as the principal submission of Switzerland is concerned.

In the Alternative Submission, Switzerland asks the Court to adjudge and declare that the United States is under an obligation to submit the dispute to arbitration or conciliation.

In raising its objection *ratione temporis* to the Application of the Swiss Government, the Government of the United States has not distinguished between the principal claim and the alternative claim in the Application. It is, however, clear that the alternative claim, in spite of its close connection with the principal claim, is nevertheless a separate and distinct claim relating not to the substance of the dispute, but to the procedure for its settlement.

The point here in dispute is the obligation of the Government of the United States to submit to arbitration or to conciliation an obligation the existence of which is asserted by Switzerland and denied by the United States. This part of the dispute can only have arisen subsequently to that relating to the restitution of Interhandel's assets in the United States, since the procedure proposed by Switzerland and rejected by the United States was conceived as a means of settling the first dispute. In fact, the Swiss Government put forward this proposal for the first time in its Note of August 9th, 1956, and the Government of the United States rejected it by its Note of January 11th, 1957.

With regard to the Alternative Submission of Switzerland, the First Preliminary Objection cannot therefore be upheld.

* * *

Second Preliminary Objection

According to this Objection, the present dispute, even if it is subsequent to the date of the Declaration of the United States, arose before July 28th, 1948, the date of the entry into force of the Swiss Declaration. The argument set out in the Preliminary Objections is as follows:

"The United States Declaration, which was effective August 26th, 1946, contained the clause limiting the Court's jurisdiction to disputes 'hereafter arising', while no such qualifying clause is contained in the Swiss Declaration which was effective July 28th, 1948. But the reciprocity principle ... requires that as between the United States and Switzerland the Court's jurisdiction be limited to disputes arising after July 28th, 1948... Otherwise, retroactive effect would be given to the compulsory jurisdiction of the Court."

In particular, it was contended with regard to disputes arising after August 26th, 1946, but before July 28th, 1948, that "Switzerland, as a Respondent, could have invoked the principle of reciprocity and claimed that, in the same way as the United States is not bound to accept the Court's jurisdiction with respect to disputes arising before its acceptance, Switzerland, too, could not be required to accept the Court's jurisdiction in relation to disputes arising before its acceptance."

Reciprocity in the case of Declarations accepting the compulsory jurisdiction of the Court enables a Party to invoke a reservation to that acceptance which it has not expressed in its own Declaration but which the other Party has expressed in its Declaration. For example, Switzerland, which has not expressed in its Declaration any reservation *ratione temporis*, while the United States has accepted the compulsory jurisdiction of the Court only in respect of disputes subsequent to August 26th, 1946, might, if in the position of Respondent, invoke by virtue of reciprocity against the United States the American reservation if the United States attempted to refer to the Court a dispute with Switzerland which had arisen before August 26th, 1946. This is the effect of reciprocity in this connection. Reciprocity enables the State which has made the wider acceptance of the jurisdiction of the Court to rely upon the reservations to the acceptance laid down by the other Party. There the effect of reciprocity ends. It cannot justify a State, in this instance, the United States, in relying upon a restriction which the other Party, Switzerland, has not included in its own Declaration.

The Second Preliminary Objection must therefore be rejected so far as the Principal Submission of Switzerland is concerned.

Since it has already been found that the dispute concerning the obligation of the United States to agree to arbitration or conciliation did not arise until 1957, the Second Preliminary Objection must also be rejected so far as the Alternative Submission of Switzerland is concerned.

* * *

Fourth Preliminary Objection

Since the Fourth Preliminary Objection of the United States relates to the jurisdiction of the Court in the present case, the Court will proceed to consider it before the Third Objection which

is an objection to admissibility. This Fourth Objection really consists of two objections which are of different character and of unequal scope. The Court will deal in the first place with part *(b)* of this Objection.

The Government of the United States submits "that there is no jurisdiction in this Court to hear or determine any issues raised by the Swiss Application or Memorial concerning the seizure and retention of the vested shares of General Aniline and Film Corporation, for the reason that such seizure and retention are, according to international law, matters within the domestic jurisdiction of the United States".

In challenging before the Court the seizure and retention of these shares by the authorities of the United States, the Swiss Government invokes the Washington Accord and general international law.

In order to determine whether the examination of the grounds thus invoked is excluded from the jurisdiction of the Court for the reason alleged by the United States, the Court will base itself on the course followed by the Permanent Court of International Justice in its Advisory Opinion concerning *Nationality Decrees issued in Tunis and Morocco* (Series B, No. 4), when dealing with a similar divergence of view. Accordingly, the Court does not, at the present stage of the proceedings, intend to assess the validity of the grounds invoked by the Swiss Government or to give an opinion on their interpretation, since that would be to enter upon the merits of the dispute. The Court will confine itself to considering whether the grounds invoked by the Swiss Government are such as to justify the provisional conclusion that they may be of relevance in this case and, if so, whether questions relating to the validity and interpretation of those grounds are questions of international law.

With regard to its principal Submission that the Government of the United States is under an obligation to restore the assets of Interhandel in the United States, the Swiss Government invokes Article IV of the Washington Accord. The Government of the United States contends that this Accord relates only to German property in Switzerland, and that Article IV "is of no relevance whatever in the present dispute".

By Article IV of this international agreement, the United States has assumed the obligation to unblock Swiss assets in the United States. The Parties are in disagreement with regard to the meaning of the term "unblock" and the term "Swiss assets". The interpretation of these terms is a question of international law which affects the merits of the dispute. At the present stage of the proceedings it is sufficient for the Court to note that Article IV of the Washington Accord may be of relevance for the solution of the present dispute and that its interpretation relates to international law.

The Government of the United States submits that according to international law the seizure and retention of enemy property

in time of war are matters within the domestic jurisdiction of the United States and are not subject to any international supervision. All the authorities and judicial decisions cited by the United States refer to enemy property; but the whole question is whether the assets of Interhandel are enemy or neutral property. There having been a formal challenge based on principles of international law by a neutral State which has adopted the cause of its national, it is not open to the United States to say that their decision is final and not open to challenge; despite the American character of the Company, the shares of which are held by Interhandel, this is a matter which must be decided in the light of the principles and rules of international law governing the relations between belligerents and neutrals in time of war.

In its alternative Submission, the Swiss Government requests the Court to adjudge and declare that the United States is under an obligation to submit the dispute to arbitration or conciliation. The Swiss Government invokes Article VI of the Washington Accord, which provides: "In case differences of opinion arise with regard to the application or interpretation of this Accord which cannot be settled in any other way, recourse shall be had to arbitration." It also invokes the Treaty of Arbitration and Conciliation between Switzerland and the United States, dated February 16th, 1931. Article I of this Treaty provides: "Every dispute arising between the Contracting Parties, of whatever nature it may be, shall, when ordinary diplomatic proceedings have failed, be submitted to arbitration or to conciliation, as the Contracting Parties may at the time decide." The interpretation and application of these provisions relating to arbitration and conciliation involve questions of international law.

Part *(b)* of the Fourth Preliminary Objection must therefore be rejected.

Part *(a)* of the Fourth Objection seeks a finding from the Court that it is without jurisdiction to entertain the Application of the Swiss Government, for the reason that the sale or disposition by the Government of the United States of the shares of the GAF which have been vested as enemy property "has been determined by the United States of America, pursuant to paragraph *(b)* of the Conditions attached to this country's acceptance of this Court's jurisdiction, to be a matter essentially within the domestic jurisdiction of this country". The Preliminary Objections state that: "Such declination encompasses all issues raised in the Swiss Application and Memorial (including issues raised by the Swiss-United States Treaty of 1931 and the Washington Accord of 1946)", but they add: "in so far as the determination of the issues would affect the sale or disposition of the shares". And they immediately go on to say: "However, the determination pursuant to paragraph *(b)* of the Conditions attached to this country's acceptance of the Court's

compulsory jurisdiction is made only as regards the sale or disposition of the assets."

During the oral arguments, the Agent for the United States continued to maintain that the scope of part *(a)* of the Fourth Objection was limited to the sale and disposition of the shares. At the same time, while insisting that local remedies were once more available to Interhandel and that, pending the final decision of the Courts of the United States, the disputed shares could not be sold, he declared on several occasions that part *(a)* of the Fourth Objection has lost practical significance, that "it has become somewhat academic", and that it is "somewhat moot".

Although the Agent for the United States maintained the Objection throughout the oral arguments, it appears to the Court that, thus presented, part *(a)* of the Fourth Objection only applies to the claim of the Swiss Government regarding the restitution of the assets of Interhandel which have been vested in the United States. Having regard to the decision of the Court set out below in respect of the Third Preliminary Objection of the United States, it appears to the Court that part *(a)* of the Fourth Preliminary Objection is without object at the present stage of the proceedings.

* * *

Third Preliminary Objection

The Third Preliminary Objection seeks a finding that "there is no jurisdiction in this Court to hear or determine the matters raised by the Swiss Application and Memorial, for the reason that Interhandel, whose case Switzerland is espousing, has not exhausted the local remedies available to it in the United States courts".

Although framed as an objection to the jurisdiction of the Court, this Objection must be regarded as directed against the admissibility of the Application of the Swiss Government. Indeed, by its nature it is to be regarded as a plea which would become devoid of object if the requirement of the prior exhaustion of local remedies were fulfilled.

The Court has indicated in what conditions the Swiss Government, basing itself on the idea that Interhandel's suit had been finally rejected in the United States courts, considered itself entitled to institute proceedings by its Application of October 2nd, 1957. However, the decision given by the Supreme Court of the United States on October 14th, 1957, on the application of Interhandel made on August 6th, 1957, granted a writ of *certiorari* and readmitted Interhandel into the suit. The judgment of that Court on June 16th, 1958, reversed the judgment of the Court of Appeals dismissing Interhandel's suit and remanded the case to the District

Court. It was thenceforth open to Interhandel to avail itself again of the remedies available to it under the Trading with the Enemy Act, and to seek the restitution of its shares by proceedings in the United States courts. Its suit is still pending in the United States courts. The Court must have regard to the situation thus created.

The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law; the rule has been generally observed in cases in which a State has adopted the cause of its national whose rights are claimed to have been disregarded in another State in violation of international law. Before resort may be had to an international court in such a situation, it has been considered necessary that the State where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic legal system. *A fortiori* the rule must be observed when domestic proceedings are pending, as in the case of Interhandel, and when the two actions, that of the Swiss company in the United States courts and that of the Swiss Government in this Court, in its principal Submission, are designed to obtain the same result: the restitution of the assets of Interhandel vested in the United States.

The Swiss Government does not challenge the rule which requires that international judicial proceedings may only be instituted following the exhaustion of local remedies, but contends that the present case is one in which an exception to this rule is authorized by the rule itself.

The Court does not consider it necessary to dwell upon the assertion of the Swiss Government that "the United States itself has admitted that Interhandel had exhausted the remedies available in the United States courts". It is true that the representatives of the Government of the United States expressed this opinion on several occasions, in particular in the memorandum annexed to the Note of the Secretary of State of January 11th, 1957. This opinion was based upon a view which has proved unfounded. In fact, the proceedings which Interhandel had instituted before the courts of the United States were then in progress.

However, the Swiss Government has raised against the Third Objection other considerations which require examination.

In the first place, it is contended that the rule is not applicable for the reason that the measure taken against Interhandel and regarded as contrary to international law is a measure which was taken, not by a subordinate authority but by the Government of the United States. However, the Court must attach decisive importance to the fact that the laws of the United States make available to interested persons who consider that they have been deprived of their rights by measures taken in pursuance of the Trading with the Enemy Act, adequate remedies for the defence of their rights against the Executive.

It has also been contended on behalf of the Swiss Government that in the proceedings based upon the Trading with the Enemy Act, the United States courts are not in a position to adjudicate in accordance with the rules of international law and that the Supreme Court, in its decision of June 16th, 1958, made no reference to the many questions of international law which, in the opinion of the Swiss Government, constitute the subject of the present dispute. But the decisions of the United States courts bear witness to the fact that United States courts are competent to apply international law in their decisions when necessary. In the present case, when the dispute was brought to this Court, the proceedings in the United States courts had not reached the merits, in which considerations of international law could have been profitably relied upon.

The Parties have argued the question of the binding force before the courts of the United States of international instruments which, according to the practice of the United States, fall within the category of Executive Agreements; the Washington Accord is said to belong to that category. At the present stage of the proceedings it is not necessary for the Court to express an opinion on the matter. Neither is it practicable, before the final decision of the domestic courts, to anticipate what basis they may adopt for their judgment.

Finally, the Swiss Government laid special stress on the argument that the character of the principal Submission of Switzerland is that of a claim for the implementation of the decision given on January 5th, 1948, by the Swiss Authority of Review and based on the Washington Accord, a decision which the Swiss Government regards as an international judicial decision. "When an international decision has not been executed, there are no local remedies to exhaust, for the injury has been caused directly to the injured State." It has therefore contended that the failure by the United States to implement the decision constitutes a direct breach of international law, causing immediate injury to the rights of Switzerland as the Applicant State. The Court notes in the first place that to implement a decision is to apply its operative part. In the operative part of its decision, however, the Swiss Authority of Review "Decrees: (1) that the Appeal is sustained and the decision subjecting the appellant to the blocking of German property in Switzerland is annulled..." The decision of the Swiss Authority of Review relates to the unblocking of the assets of Interhandel in Switzerland; the Swiss claim is designed to secure the restitution of the assets of Interhandel in the United States. Without prejudging the validity of any arguments which the Swiss Government seeks or may seek to base upon that decision, the Court would confine itself to observing that such arguments do not deprive the dispute which has been referred to it of the character of a dispute in which the Swiss Government appears as having adopted the cause of its national, Interhandel, for the purpose of securing the

restitution to that company of assets vested by the Government of the United States. This is one of the very cases which give rise to the application of the rule of the exhaustion of local remedies.

For all these reasons, the Court upholds the Third Preliminary Objection so far as the principal Submission of Switzerland is concerned.

In its alternative claim, the Swiss Government asks the Court to declare its competence to decide whether the United States is under an obligation to submit the dispute to arbitration or conciliation. The Government of the United States contends that this claim, while not identical with the principal claim, is designed to secure the same object, namely, the restitution of the assets of Interhandel in the United States, and that for this reason the Third Objection applies equally to it. It maintains that the rule of the exhaustion of local remedies applies to each of the principal and alternative Submissions which seek "a ruling by this Court to the effect that some other international tribunal now has jurisdiction to determine that very same issue, even though that issue is at the same time being actively litigated in the United States courts".

The Court considers that one interest, and one alone, that of Interhandel, which has led the latter to institute and to resume proceedings before the United States courts, has induced the Swiss Government to institute international proceedings. This interest is the basis for the present claim and should determine the scope of the action brought before the Court by the Swiss Government in its alternative form as well as in its principal form. On the other hand, the grounds on which the rule of the exhaustion of local remedies is based are the same, whether in the case of an international court, arbitral tribunal, or conciliation commission. In these circumstances, the Court considers that any distinction so far as the rule of the exhaustion of local remedies is concerned between the various claims or between the various tribunals is unfounded.

It accordingly upholds the Third Preliminary Objection also as regards the alternative Submission of Switzerland.

For these reasons,

THE COURT,

by ten votes to five,
rejects the First Preliminary Objection of the Government of the United States of America;

unanimously,
rejects the Second Preliminary Objection;

by ten votes to five,
finds that it is not necessary to adjudicate on part *(a)* of the Fourth Preliminary Objection;

by fourteen votes to one,
rejects part *(b)* of the Fourth Preliminary Objection; and

by nine votes to six,
upholds the Third Preliminary Objection and holds that the Application of the Government of the Swiss Confederation is inadmissible.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-first day of March, one thousand nine hundred and fifty-nine, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Swiss Confederation and the Government of the United States of America, respectively.

(Signed) Helge KLAESTAD,
President.

(Signed) GARNIER-COIGNET,
Deputy-Registrar.

Judge BASDEVANT states that he concurs in the decision that the Application is inadmissible as that decision is set forth in the operative part of the Judgment, but he adds that his opinion on this point was reached in a way which, in certain respects, differs from that followed by the Court. Basing himself on the provisions of the Statute and of the Rules of Court, he considered that, in order to assess the validity of the objections advanced, he should direct his attention to the subject of the dispute and not to any particular claim put forward in connection with the dispute. The subject of the dispute and the subject of the claim are explicitly differentiated in Article 32, paragraph 2, of the Rules of Court. Accordingly, he has directed his attention to the statement in the Application to the effect that the latter submits to the Court the dispute relating to "the restitution by the United States of the assets" of Interhandel. This indication of the subject of the dispute, which is confirmed by an examination of the correspondence, reveals the scope of the dispute, shows that it is not limited to whatever may have been discussed at any particular moment between the two Governments and consequently throws a light upon the date at which the dispute between them arose. He was thus led to the conclusion that the dispute to which the Application relates did not arise until after July 28th, 1948, and this factual finding is sufficient to justify the rejection of the first two preliminary objections.

In his view, the subject of the dispute justifies, in this case, the requirement of the preliminary exhaustion of local remedies on the ground that if, through them, Interhandel obtains satisfaction, the subject of the dispute will disappear. He refrained from complicating the problem by considering any particular claim that might be put forward in connection with the dispute indicated in the Application. In considering the question whether in fact the local remedies have been exhausted, he based himself largely on the factual data mentioned in the Judgment. He took account also of certain other facts—the fact that, at the date of the memorandum of January 11th, 1957, an appeal by Interhandel was pending in the American courts, the mention by the Swiss Co-Agent (at the hearing on October 12th, 1957) of the application made to the Supreme Court, with the comment that that application also would end in a negative decision and, finally, the mention in the preamble of the Order of the Court of October 24th, 1957, of a judicial proceeding then pending in the United States.

As the anticipated effect of a judgment on a preliminary objection is to determine whether the proceedings on the merits will or will not be resumed, he might have agreed that the Court should confine itself to adjudicating on the Third Objection which it has upheld. As the Application is declared to be inadmissible, this puts an end to the proceedings and all the other questions that were connected with them no longer arise. He considered, nevertheless, that it was his duty to follow the Court in the examination of the other points with which it dealt and, on those points, he concurs in the operative part of the Judgment.

Judge KOJEVNIKOV states that he concurs in the Judgment of the Court so far as the First, Second, Third and part *(a)* of the Fourth Preliminary Objections of the Government of the United States are concerned. He is, however, unable to concur in the reasoning of the Judgment relating to the Second Preliminary Objection since, in his opinion, the Judgment should have been based not on the question of reciprocity, which is of very great importance, but upon the factual circumstances which show that the legal character of the dispute between the Swiss Government and the Government of the United States was clearly defined only after July 28th, 1948, the date of the entry into force of the Swiss Declaration.

Judge Kojevnikov is further of the opinion that the Third Objection should have been upheld by the Court, not only as a contention relating to the admissibility of the Application, but also with regard to the jurisdiction of the Court.

Finally, he considers that part *(b)* of the Fourth Preliminary Objection, having regard to its subject-matter, ought not to have

been rejected but, in the present case, should have been joined to the merits if the Court had not upheld the Third Objection.

M. CARRY, Judge *ad hoc*, states that he regrets that he cannot subscribe to the decisions taken by the Court on the Third and part *(a)* of the Fourth Objections of the Government of the United States. He agrees generally with the dissenting opinion of President Klaestad.

He considers that in any event the Third Objection should not have been upheld in so far as it was directed against the alternative claim of the Swiss Government relating to arbitration or conciliation. He regards that claim as separate and distinct from the principal claim, since it did not relate to the merits of the dispute but only to the procedure for its settlement. By this claim the Court was invited to pass only upon the arbitrability of the dispute, not on the obligation of the United States to return the assets of Interhandel. That latter question was within the exclusive jurisdiction of the tribunal to be seised. It follows, in his opinion, that the rule relating to the exhaustion of local remedies was not applicable to the alternative claim of the Swiss Government, inasmuch as, by that claim, the applicant State sought to secure from the international tribunal a result different from that which Interhandel is seeking to obtain in the American courts. The question of exhaustion of local remedies is one which could arise only before the arbitral tribunal seised of the case: the Court should not, in his opinion, encroach upon the jurisdiction of that tribunal.

Judges HACKWORTH, CÓRDOVA, WELLINGTON KOO and Sir Percy SPENDER, availing themselves of the right conferred upon them by Article 57 of the Statute, append to the Judgment of the Court statements of their separate opinions.

Vice-President ZAFRULLA KHAN states that he agrees with Judge Hackworth.

President KLAESTAD and Judges WINIARSKI, ARMAND-UGON, Sir Hersch LAUTERPACHT and SPIROPOULOS, availing themselves of the right conferred upon them by Article 57 of the Statute, append to the Judgment of the Court statements of their dissenting opinions.

(Initialled) H. K.

(Initialled) G.-C.
