DISSENTING OPINION OF JUDGE SPIROPOULOS

[Translation]

I regret that, for the reasons given below, I am unable to concur in the view of the Court in regard to the Third Preliminary Objection of the United States of America.

1. The effect of the objection concerning the non-exhaustion of local remedies on the Swiss principal submission (strictly speaking this should be described as an "objection to admissibility") can be determined only by reference to the bases of the Swiss action before the Court. Now that action is based on an alleged breach of the Washington Accord and of the general rules of international law.

The Swiss Government contends that, under the Washington Accord, the United States of America is obliged to "unblock" all Swiss assets in the United States, regardless of the category to which they belong. This construction is contested by the Government of the United States of America which asserts that the Washington Accord does not relate, and could not relate, to any vested assets, even if found to be Swiss, and that such assets consequently remain outside the scope of the Washington Accord and are governed by the Trading with the Enemy Act.

What is the legal position in this case? According to Article IV of the Washington Accord, the Government of the United States of America has undertaken the obligation to unblock "Swiss assets" in the United States of America. It has also undertaken to "determine the necessary procedure without delay".

The question arises whether the obligation incumbent upon the United States of America refers also to any assets that may be found to be Swiss that are vested under the Trading with the Enemy Act. If so, has the necessary procedure for the unblocking of vested Swiss assets been determined by the United States of America? Is it possible, in accordance with Article IV of the Washington Accord, if need be, to consider the Trading with the Enemy Act as the appropriate unblocking procedure for the freeing of the shares of GAF? (It is known that Interhandel is in the process of following the procedure prescribed by the Trading with the Enemy Act before the American courts with a view to the freeing of the shares of GAF.)

How is it possible to decide whether the principle of the exhaustion of local remedies is applicable in this case, without knowing *(a)* whether the United States of America is, on the basis of the Washington Accord, under an obligation to free the shares of GAF

(as being Swiss assets); and *(b)* whether the freeing procedure of the Trading with the Enemy Act is the appropriate "unblocking" procedure from the standpoint of the Washington Accord?

2. According to another basic argument of the Swiss Government, the obligation incumbent on the United States of America to unblock the vested assets of Interhandel follows also from the decision given on January 5th, 1948, by the Swiss Authority of Review, which is based on the Washington Accord and which is considered by the Swiss Government to be an international judicial decision. Since the Interhandel company was recognized by that decision as being "Swiss", all the assets of that company, including therefore the assets in America, should, according to the Swiss Government, be considered as being "Swiss" by all the States parties to the Washington Accord.

According to the Swiss Government, the non-execution of an international decision by the United States of America causes an injury directly to the Swiss State and, according to that Government, there is here a direct breach of international law which immediately infringes the rights of Switzerland as plaintiff.

3. To answer these questions, it is essential to consider the significance of various articles of the Washington Accord. But this cannot be done without considering the merits of the dispute. It is only by considering the merits of the dispute, however, that the Court will be in a position to adjudicate on the question whether the exhaustion of the remedies at present available to Interhandel is or is not, under the Washington Accord, a necessary condition for the examination by the Court of the merits of the dispute between the United States of America and Switzerland.

4. What has been said above relates to the Swiss principal submission. As, in my opinion, the Third Preliminary Objection of the United States of America should not be upheld, I have not to express an opinion concerning the effect of this objection on the Swiss alternative submission. It is only if I had expressed an opinion in favour of upholding the American Third Objection that the problem of the effect of that objection on the Swiss alternative submission would have arisen for me—as, indeed, it has arisen for the Court. Nevertheless, in order to be consistent with my vote as regards the effect of the Third Objection on the Swiss principal submission, I voted in favour of joining the American Third Preliminary Objection to the merits.

5. As I come to the conclusion that the Third Preliminary Objection should be joined to the merits, I should logically give

my opinion also as to whether Preliminary Objection No. 4 *(a)* is well founded in order to consider the effect of that objection in relation to the Swiss submissions. However, as the Court has not adjudicated on that question, any opinion I might express would be only of a purely theoretical character and would be extraneous to the questions on which the votes of the Court were given. I therefore refrain from expressing any opinion on the question whether Objection 4 *(a)* should be upheld, joined to the merits or rejected.

(Signed) J. SPIROPOULOS.