I.C.J. Communiqué No. 59/10
(Unofficial)

The following information from the Registry of the International Court of Justice has been communicated to the Press:

To-day, March 21st, 1959, the International Court of Justice delivered its Judgment in the Interhandel Case (Preliminary Objections) between Switzerland and the United States of America.

The case was submitted by an Application of the Swiss Government on October 2nd, 1957, relating to a dispute which had arisen with regard to the claim by Switzerland to the restitution by the United States of America of the assets of the Interhandel Company. The Application invoked Article 36, paragraph 2, of the Statute of the Court and the acceptance of the compulsory jurisdiction of the Court by the United States and by Switzerland. For its part, the Government of the United States submitted preliminary objections to the jurisdiction of the Court.

The Court, upholding one of these objections, found the Swiss Application inadmissible.

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In its Judgment, the Court sets out the facts and circumstances out of which the dispute arose.

In 1942, the Government of the United States, under the Trading with the Enemy Act, vested almost all of the shares of the General Aniline and Film Corporation (GAF), a company incorporated in the United States, on the ground that those shares in reality belonged to the I.G. Farben 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 I.G. Chemie Company of Basle. However, according to the contention of the Swiss Government, the links between the German company and the Swiss company were finally severed in 1940. The Swiss company adopted the name of Société internationale pour participations industrielles et commerciales S.A. (Interhandel) and the largest item in its assets was its participation in the GAF. In 1945, under a provisional agreement between Switzerland, the United States, France and the United Kingdom, property in Switzerland belonging to Germans in Germany was blocked. The Swiss Compensation Office was entrusted with the task of uncovering such property. In the course of those investigations, the question of the character of Interhandel was raised, but the Office, considering it to have been proved that this company had severed its ties with the German company, did not regard it as necessary to undertake the blocking of its assets in Switzerland. 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 Swiss Federal Authorities ordered the Swiss Compensation Office provisionally to block the assets of Interhandel.

On May 25th, 1946, an agreement was concluded in Washington between the Allies and Switzerland. Switzerland undertook to pursue its investigations and to liquidate German property in Switzerland.

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The Compensation Office was empowered to do this, in collaboration with a Joint Commission composed of representatives of each of the four Governments. In the event of disagreement between the Joint Commission and the Compensation Office, or if the party in interest so desired, the matter might be submitted to a Swiss Authority of Review. On the other hand, the Government of the United States was to unblock Swiss assets in the United States (Article IV). Finally, in case differences of opinion arose with regard to the application or interpretation of the Accord which could not be settled in any other way, recourse was to be had to arbitration.

After the conclusion of the Washington Accord, discussions with regard to Interhandel were continued without reaching any conclusion. By its decision of January 5th, 1948, the Swiss Authority of Review annulled the blocking of the Company's assets in Switzerland. In a Note of May 4th of the same year to the Department of State, the Swiss Legation in Washington invoked this decision and the Washington Accord to request the United States to restore to Interhandel the property which had been vested in the United States. On July 26th, 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. On October 21st, Interhandel, relying upon the provisions of the Trading with the Enemy Act, instituted proceedings in the United States courts. Up to 1957, these proceedings made little progress on the merits. A 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 1931, or by means of arbitration as provided for in the Washington Accord. These proposals were rejected by the Government of the United States in a Note of January 11th, 1957. Furthermore, in a Memorandum appended to the Note, it was said that Interhandel had finally failed in its suit in the United States courts. It was then that the Swiss Government addressed to the Court its Application instituting the proceedings.

The Court finds that the subject of the claim is expressed essentially in two propositions: the Court is asked to adjudge and declare, as a principal submission, that the Government of the United States is under an obligation to restore the assets of Interhandel and, as an alternative submission, that the United States is under an obligation to submit the dispute to arbitration or to a conciliation procedure.

The Court then proceeds to consider the Preliminary Objections of the United States.

The First Objection seeks a declaration that the Court is without jurisdiction on the ground that the 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 relates to legal disputes "hereafter arising" and the Government of the United States maintains that the dispute submitted to the Court goes back at least to the middle of the year 1945. An examination of the documents reveals that it was in the Note of the Swiss Legation in Washington dated May 4th, 1948 that a request for the return to Interhandel of the assets vested in the United States was formulated by Switzerland for the first time. As the negative reply was given on July 26th, 1948, the dispute can be placed at that date and the First Objection must be rejected so far as the principal Submission of Switzerland is concerned. In the alternative Submission, the point in dispute is

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the obligation of the Government of the United States to submit to arbitration or conciliation. 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 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. The First Preliminary Objection cannot therefore be upheld with regard to the alternative Submission of Switzerland.

According to the Second Preliminary Objection, the dispute, even if it is subsequent to the Declaration of the United States, arose before July 28th, 1948, the date of the entry into force of the Swiss Declaration. The United States Declaration contains a clause limiting the Court's jurisdiction to disputes "hereafter arising", while no such qualifying clause is contained in the Swiss Declaration. But the reciprocity principle would require that as between the United States and Switzerland the Court's jurisdiction should be limited to disputes arising after July 28th, 1948. The Court remarks that reciprocity in the case of Declarations accepting the compulsory jurisdiction of the Court enables a Party to invoke a reservation which it has not expressed in its own Declaration but which the other Party has expressed in its Declaration. For example, Switzerland might, if in the position of Respondent, invoke the American reservation against the United States by virtue of reciprocity, if the United States attempted to refer to the Court a dispute which had arisen before August 26th, 1946. 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 Objection must therefore be rejected so far as the principal Submission of Switzerland is concerned. Since it has been found that the dispute concerning the obligation of the United States to agree to arbitration or conciliation did not arise until 1957, this objection must also be rejected so far as the alternative Submission is concerned.

The Court then considers the Fourth Preliminary Objection and, in the first place, Part (b) of that Objection, in which the Government of the United States submits that there is no jurisdiction in the Court to hear or determine any issues concerning the seizure and retention of the vested shares, for the reason that such seizure and retention are, according to international law, matters within the jurisdiction of the United States. With regard to the principal Submission, the Swiss Government invokes Article IV of the Washington Accord, concerning which the Government of the United States contends that it is of no relevance whatsoever. The Parties are in disagreement with regard to the meaning of the terms of this article. It is sufficient for the Court to note that Article IV may be of relevance for the solution of the dispute and that its interpretation relates to international law. On the other hand, 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. But the whole question is whether the assets of Interhandel are enemy or neutral property and this is a matter which must be decided in the light of the principles and rules of international law. In its alternative Submission, the Swiss Government invokes the Washington Accord and the Treaty of Arbitration and Conciliation of 1931. The interpretation and application of these provisions involve questions of international law. Part (b) of the Fourth Objection must therefore be rejected.

Part (a)

Part (a) of this Objection seeks a finding from the Court that it is without jurisdiction for the reason that the sale or disposition of the shares vested have been determined by the United States, pursuant to paragraph (b) of the conditions attached to its acceptance of the compulsory jurisdiction of the Court, to be a matter essentially within its domestic jurisdiction. It appears to the Court that part (a) of the Fourth Objection only applies to the claim of the Swiss Government regarding the restitution of the vested assets and, having regard to the decision of the Court in respect of the Third Objection, it is without object at the present stage of the proceedings.

The Third Preliminary Objection seeks a finding that there is no jurisdiction in the Court for the reason that Interhandel 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. Indeed, it 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 considered itself entitled to institute proceedings by its Application of October 2nd, 1957. However, the Supreme Court of the United States has, since then, readmitted Interhandel into the suit and remanded the case to the District Court (decisions of October 14th, 1957, and June 16th, 1958). Interhandel can avail itself again of the remedies available under the Trading with the Enemy Act and its suit is still pending. The Swiss Government does not challenge the rule concerning the exhaustion of local remedies but contends that the present case is one in which an exception is authorized by the rule itself. In the first place, the measure taken against Interhandel 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 adequate remedies for the defence of their rights against the Executive. On the other hand, in proceedings based upon the Trading with the Enemy Act, the United States courts are, it is contended, not in a position to adjudicate in accordance with the rules of international law. 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. Finally, as 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, which decision the Swiss Government regards as an international judicial decision, there are, it is contended, no local remedies to exhaust, for the injury has been caused directly to the State. The Court confines itself to observing that this argument does 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 for the purpose of securing the restitution of the vested assets and that 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. The Court considers, moreover, 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.

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Consequently ....

Consequently, the Court rejects the First Preliminary Objection (by ten votes to five) and also the Second (unanimously) and part (b) of the Fourth (by 14 votes to one). The Court finds that it is not necessary to adjudicate on part (a) of the Fourth Preliminary Objection (by ten votes to five) and it upholds the Third (by nine votes to six) and holds that the Application is inadmissible.

Judges BASDEVANT and KOJEVNIKOV and Judge ad hoc CARRY have appended declarations to the Judgment. Judges HACKWORTH, CORDOVA, WELLINGTON KOO and Sir Percy SPENDER have appended statements of their separate opinions whilst Vice-President ZAFRULLA KHAN states that he agrees with Judge HACKWORTH.

President KLAESTAD and Judges WINIARSKI, ARMAND-UGON, Sir Hersch LAUTERPACHT and SPIROPOULOS have appended to the Judgment statements of their dissenting opinions while Judge ad hoc CARRY states in his declaration that he agrees with President KLAESTAD.

The Hague, March 21st, 1959.