

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE L'INTERHANDEL

(SUISSE c. ÉTATS-UNIS D'AMÉRIQUE)

DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES

ORDONNANCE DU 24 OCTOBRE 1957

1957

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

INTERHANDEL CASE

(SWITZERLAND *v.* UNITED STATES OF AMERICA)

REQUEST FOR THE INDICATION
OF INTERIM MEASURES OF PROTECTION

ORDER OF OCTOBER 24th, 1957

La présente ordonnance doit être citée comme suit :

« *Affaire de l'Interhandel (mesures conservatoires),
Ordonnance du 24 octobre 1957: C. I. J. Recueil 1957, p. 105.* »

This Order should be cited as follows :

“*Interhandel Case (interim measures of protection),
Order of October 24th, 1957: I.C.J. Reports 1957, p. 105.*”

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INTERHANDEL CASE

(SWITZERLAND *v.* UNITED STATES OF AMERICA)
 REQUEST FOR THE INDICATION
 OF INTERIM MEASURES OF PROTECTION

 ORDER

Present: Vice-President BADAWI, *Acting President; President* HACKWORTH; *Judges* GUERRERO, BASDEVANT, WINIARSKI, ZORIČIĆ, KLAESTAD, READ, ARMAND-UGON, KOJEVNIKOV, Sir Muhammad ZAFRULLA KHAN, Sir Hersch LAUTERPACHT, MORENO QUINTANA, CÓRDOVA, WELLINGTON KOO; M. Paul CARRY, *Judge ad hoc; Registrar* LÓPEZ OLIVÁN.

THE COURT,

composed as above,

after deliberation,

having regard to Articles 41 and 48 of the Statute of the Court,

having regard to Article 61 of the Rules of Court,

having regard to the Application, dated October 1st, 1957, and handed to the Registrar on October 2nd, instituting proceedings by the Swiss Confederation and submitting to the Court a dispute between the Swiss Confederation and the United States of America, in which the Court is asked:

“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.”

Having regard to the letter dated October 3rd, 1957, and handed to the Registrar on that day, in which the Agent for the Swiss Government, whose appointment had been notified in the Application instituting proceedings, referred to Article 41 of the Statute and Article 61 of the Rules, relating to the indication of provisional measures, and asked the Court:

“pending a final decision in the proceedings instituted by the Application of October 1st, to indicate the following measures:

- (a) The Government of the United States of America is requested to take no legislative, judicial, administrative or executive step to part with the property which is claimed to be Swiss property in the submissions of the Swiss Application of October 1st instituting proceedings, so long as the case concerning this dispute is pending before the International Court of Justice.
- (b) In particular, the Government of the United States is requested not to sell the shares of the General Aniline and Film Corporation claimed by the Swiss Federal Government as the property of its nationals, so long as the proceedings in this dispute are pending.
- (c) In general, the Government of the United States should so act that no measure whatever is taken which would prejudice the right of Switzerland to execution of the judgment which the Court will deliver, either on the merits or on the alternative submission.”

Makes the following Order:

Whereas the Government of the United States of America was, on October 2nd, 1957, notified by telegram of the filing of the Application instituting proceedings, of which a copy was at the same time transmitted to it by letter; and whereas the submissions set forth in the request for the indication of interim measures of protection were, on October 3rd, 1957, communicated to that Government, the text of the request being at the same time transmitted to it by letter;

Whereas the request for the indication of interim measures of protection was notified to the Secretary-General of the United Nations with a reference to Article 41, paragraph 2, of the Statute;

Whereas on October 8th, 1957, the Swiss Government, through the Co-Agent appointed by it, and the Government of the United States of America, through the Secretary of State, were notified that the Court would sit on October 12th, 1957, to hear the observations of the Parties on the request for the indication of interim measures of protection;

Having regard to the letter of October 9th, 1957, by which the Ambassador to the Netherlands of the United States of America notified the appointment by his Government of an Agent and a Co-Agent for the case;

Having regard to the letter of October 10th, 1957, by which the Ambassador to the Netherlands of the United States of America informed the Registrar of the intention of his Government to raise a preliminary objection in connection with the proceedings instituted before the Court by the Government of Switzerland and adding that this objection would be filed in the Registry by the Agents for the United States of America on October 11th in the following terms:

“Preliminary objection of the United States of America:

The Government of the United States of America, through its Co-Agents Loftus Becker and Dallas S. Townsend, herewith files a preliminary objection under Article 62 of the Rules of the Court, to the proceedings instituted by the Government of Switzerland in the Interhandel case by its application of October 1, 1957, in so far as that application relates to the sale or other disposition of the shares of General Aniline and Film Corporation now held by the United States Government. The United States Government has determined that such sale or disposition of the shares in the American corporation, title to which is held by the United States Government in the exercise of its sovereign authority, is a matter essentially within its domestic jurisdiction. Accordingly, pursuant to paragraph (b) of the conditions attached to this country's acceptance of the Court's compulsory jurisdiction, dated August 14, 1946, this country respectfully declines, without prejudice to other and further preliminary objections which it may file, to submit the matter of the sale or disposition of such shares to the jurisdiction of the Court.”

Whereas on October 10th, 1957, a copy of the above text was communicated to the Co-Agent for the Swiss Government, and whereas that text was confirmed and signed by the Co-Agents for the Government of the United States of America;

Whereas, the Court not including upon the Bench a Judge of Swiss nationality, the Swiss Government availed itself of the provisions of Article 31, paragraph 2, of the Statute to choose M. Paul Carry, Professor of the Law Faculty of the University of Geneva, to sit as Judge *ad hoc*; and whereas the President of the Court, being a national of one of the Parties to the case, has transferred

the Presidency for the present case to the Vice-President in accordance with Article 13, paragraph 1, of the Rules;

Whereas in the course of hearings held on October 12th and 14th, 1957, the Court, in accordance with Article 61, paragraph 8, of the Rules, heard the observations of M. Paul Guggenheim, on behalf of the Swiss Government, and of the Honorable Loftus Becker and the Honorable Dallas S. Townsend, on behalf of the Government of the United States of America;

Whereas by letter of October 16th, 1957, the Ambassador to the Netherlands of the United States of America transmitted the text of the following telegram which had been addressed to him by the Department of Justice of the United States of America:

“Chemie Petition granted. Court invites counsel ‘to discuss among other things the power of the District Court to dismiss and the propriety of the dismissal of petitioner’s complaint under Rule 37 (B), for failure to obey its order for production of documents issued under Rule 34, in the absence of evidence and of finding that petitioner “refuses to obey” such order’. Attenhofer and Kaufman petitions denied.”

Whereas in the said letter, a copy of which was the same day transmitted to the Co-Agent for the Swiss Government, the Ambassador to the Netherlands of the United States of America expressed the hope that he would be able to amplify this information in due course;

Whereas by letter of October 18th, 1957, from the Swiss Ambassador to the Netherlands, the Co-Agent for the Swiss Government submitted the observation that the communication of the Government of the United States of America in no way affected the conclusions set out under (a), (b) and (c) of the request for the indication of interim measures of protection, which conclusions had been confirmed on behalf of the Swiss Government in the course of the hearings;

Whereas a copy of the letter from the Swiss Ambassador was the same day transmitted to the Agent for the Government of the United States of America;

Whereas by letter of October 19th, 1957, the Ambassador to the Netherlands of the United States of America informed the Registrar that his Government, through its Agent and its Co-Agent, had requested him to transmit the following statement:

1. At the public sitting of October 12, 1957, Co-Agent Dallas S. Townsend, for the United States of America, stated as follows:

“Chemie unsuccessfully exhausted its appellate remedies to the Supreme Court, and when the six months period of grace had expired, without Chemie making the production, the District Court entered the order and in 1956 held that Chemie’s complaint

stood dismissed. Again Chemie appealed unsuccessfully to the Court of Appeals and in this way attempted to get back into the case. The Court of Appeals affirmed and now Chemie, in its second trip to the Supreme Court, is making another effort to get back into the case by petitioning the Supreme Court to review the decision of the Court of Appeals. This petition is now pending before the Supreme Court of the United States." (Verbatim Record, p. 44.)

2. In the afternoon (Washington time) October 14, 1957, many hours after the adjournment on that day of the sitting of this Court at 11.39 a.m., the Supreme Court of the United States of America granted the above-mentioned petition of I.G. Chemie (Interhandel) to review the decision of the Court of Appeals, by issuing the following order:

"Number 348. Société internationale pour participations industrielles et commerciales, S. A. Brownell. United States Court of Appeals for the District of Columbia circuit. Certiorari granted. Counsel are invited to discuss, among other things, the power of the District Court to dismiss, and the propriety of its dismissal, of petitioner's complaint, under rule 37 (B) (2) of F.R.C.P. [Federal Rules of Civil Procedure], for failure to obey its order, for production of documents, issued under rule 34 of F.R.C.P. in the absence of evidence and of finding that petitioner 'refuses to obey' such order."

3. The Government of the United States of America wishes to state expressly that it adheres to its preliminary objection, filed October 11, 1957, and to the reasons given in the arguments of its agent and co-agent of October 12 and October 14, 1957, why no interim measures of protection should be issued with respect to the sale or disposition of the shares of General Aniline and Film Corporation. For the information of Court, the Government of the United States of America is not taking action at the present time to fix a time schedule for the sale of such shares."

Whereas a copy of the letter from the Ambassador to the Netherlands of the United States of America was the same day transmitted to the Co-Agent for the Swiss Government;

Whereas by a letter dated October 19th, 1957, and handed in to the Registry on October 20th the Ambassador of Switzerland to the Netherlands transmitted the following communication from the Co-Agent for the Swiss Government:

"The position of the Swiss Government in regard to this communication is as follows:

1. The Swiss Government takes note of the fact that the Government of the United States has informed the International Court of Justice that it 'is not taking action at the present time to fix a time schedule for the sale of such shares', that is, the shares of the

General Aniline and Film Corporation, which, in the opinion of the Swiss Government, belong to INTERHANDEL.

2. The effect of this declaration is that the sale of the shares is not imminent, contrary to what the Swiss Government was entitled to assume when, on October 3rd, 1957, it filed its request for interim measures of protection. The Swiss Government would, however, point out that the declaration of the Government of the United States does not indicate for how long the sale of the shares will be suspended. Nor does it indicate that this suspension will be maintained so long as the dispute is pending before the Court. The Swiss Government would be happy to receive fuller information from the Government of the United States on this point, to enable it to appreciate the exact purport of the above-mentioned declaration. Such information is the more necessary inasmuch as the Government of the United States confirms, in its declaration, the attitude adopted by its representatives before the Court, to the effect that it is for the United States to decide what matters fall within its domestic jurisdiction. As a consequence, the American Government has maintained its decision to include within this exclusive jurisdiction the right to proceed to a sale of the shares.

3. Lastly, the Swiss Government ventures to recall to the Court and to the Government of the United States that its request for interim measures of protection was presented not only for the purpose of preventing the danger of an imminent sale of the shares of the General Aniline and Film Corporation. As appears from the request itself, and from the statements of the Swiss Co-Agent at the sitting of the Court on October 12th, 1957, the request is designed in general to ensure the execution of the subsequent decision of the Court, should that decision be in favour of Switzerland.

4. The Swiss Government, having received direct communication from the Government of the United States of the declaration addressed to the Court, which is set out in the Registrar's letter of October 19th, 1957, the Federal Political Department has thought it proper similarly to communicate the foregoing to the Government of the United States."

Whereas a copy of the above communication was on October 20th, 1957, transmitted to the Agent for the Government of the United States;

Whereas Switzerland and the United States of America have, by Declarations made on their behalf, accepted the compulsory jurisdiction of the Court on the basis of Article 36, paragraph 2, of the Statute;

Whereas by its subject-matter the present dispute falls within the purview of that paragraph;

Whereas the Government of the United States of America has invoked, against the request for the indication of interim measures of protection, the reservation by which it excluded from its Declaration matters essentially within its domestic jurisdiction as deter-

mined by the United States and whereas the Government accordingly "respectfully declines ... to submit the matter of the sale or disposition of such shares to the jurisdiction of the Court";

Whereas at the hearing the Co-Agent of the Swiss Government challenged this reservation, on a number of grounds, and stated that, in its examination of a request for the indication of interim measures of protection, the Court would not wish to adjudicate "upon so complex and delicate a question as the validity of the American reservation";

Whereas the procedure applicable to requests for the indication of interim measures of protection is dealt with in the Rules of Court by provisions which are laid down in Article 61 and which appear, along with other procedures, in the section entitled: "Occasional Rules";

Whereas the examination of the contention of the Government of the United States requires the application of a different procedure, the procedure laid down in Article 62 of the Rules of Court, and whereas, if this contention is maintained, it will fall to be dealt with by the Court in due course in accordance with that procedure;

Whereas the request for the indication of interim measures of protection must accordingly be examined in conformity with the procedure laid down in Article 61;

Whereas, finally, the decision given under this procedure in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction;

Whereas the Swiss Government, by its request of October 3rd for the indication by the Court "of the interim measures of protection which should be taken in order to safeguard the rights of the Swiss Federal Government" purported to submit its request "in conformity with Article 41 of the Statute and Article 61 of the Rules of Court";

Whereas the Court, in order to decide what action should be taken in pursuance of the request, must, in accordance with Article 41 of the Statute, ascertain what is required by the circumstances to preserve the respective rights of the Parties pending the decision of the Court;

Whereas, of the three points set forth in the submissions of Switzerland with regard to its request for the indication of interim measures of protection, the second is the only one which is formulated in terms fulfilling the requirement laid down in Article 61, paragraph 1, of the Rules and which relates to the concern of the Court to preserve the rights which may be subsequently adjudged by the Court to belong either to the Applicant or to the Respondent;

Whereas, accordingly, the Court must direct its attention to this point, namely, the request to the Government of the United States not to sell the shares of the General Aniline and Film Corporation claimed by the Swiss Government as the property of its nationals, so long as the proceedings in this dispute are pending;

Whereas in the light of the information furnished to the Court, it appears that, according to the law of the United States, the sale of those shares can only be effected after termination of a judicial proceeding which is at present pending in that country in respect of which there is no indication as to its speedy conclusion, and whereas such a sale is therefore conditional upon a judicial decision rejecting the claims of Interhandel;

Whereas, on the other hand, in the statement of the views of the Government of the United States transmitted to the Court on October 19th, 1957, it is said that that Government "is not taking action at the present time to fix a time schedule for the sale of such shares";

Whereas in the premises it does not appear to the Court that the circumstances require the indication of the provisional measures envisaged in the request of the Swiss Federal Government;

For these reasons,

THE COURT

finds that there is no need to indicate interim measures of protection.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-fourth day of October, one thousand nine hundred and fifty-seven, 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) A. BADAWI,
Vice-President.

(Signed) J. LÓPEZ OLIVÁN,
Registrar.

Judge KLAESTAD appends to the Order a statement of his separate opinion, in which President HACKWORTH and Judge READ concur.

Judge Sir Hersch LAUTERPACHT appends to the Order a statement of his separate opinion.

Judge WELLINGTON KOO makes the following declaration:

I agree with the decision of the Court not to indicate provisional measures in the case, but regret that I do not share the reasons upon which it is based. In my view, the Court has no jurisdiction to deal with the request for such measures. The Government of the United States raised an objection based upon Proviso (b) of its Declaration of August 14th, 1946, accepting the compulsory jurisdiction of the Court under paragraph (2) of Article 36 of the Statute. Proviso (b) states that the Declaration shall not apply to "... (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".

Although the objection was raised by the United States in the form of a Preliminary Objection, under Article 62 of the Rules of Court, to the proceedings instituted by the Swiss Government's Application of October 1st, 1957, "in so far as that Application relates to the sale or other disposition of the shares of General Aniline and Film Corporation now held by the United States Government", it was, in fact, an objection directed against the Court's jurisdiction to indicate provisional measures, requested by the Swiss Government on October 3rd, 1957. This was made clear by the Agent of the United States in his observations at the proceedings held on October 12th and 14th, 1957, under paragraph 8 of Article 61 of the Rules of Court, when he urged that Proviso (b) to the United States' Declaration of Acceptance excluded the Court's jurisdiction in the matter of the sale or other disposition of the shares of the General Aniline and Film Corporation—a matter which the United States had determined to be essentially within its domestic jurisdiction in exercise of its reserved right under Proviso (b).

I consider that this objection is well founded, that the Court is not competent to deal with the Swiss request for indication of provisional measures and that its decision should be based upon this ground. The reason of lack of urgency is a true circumstance, but the placing of its decision on this ground carries an implication that the Court considers the said Pro-

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viso (*b*) to the United States' Declaration is not applicable to the matter of provisional measures, whereas, in my view, it is applicable.

Judge KOJEVNIKOV declares that he is unable to agree with the Order.

(Initialed) A. B.

(Initialed) J. L. O.