

INTERNATIONAL COURT OF JUSTICE

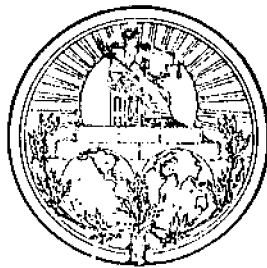
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PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

INTERHANDEL CASE

(SWITZERLAND *v.* UNITED STATES OF AMERICA)

JUDGMENT OF 21 MARCH 1959



## SECTION B.—REQUEST FOR THE INDICATION OF INTERIM MEASURES OF PROTECTION

[Translation by the Registry]

### 1. THE AGENT FOR THE GOVERNMENT OF THE SWISS CONFEDERATION IN THE INTERHANDEL CASE TO THE REGISTRAR OF THE COURT

The Hague, October 3rd, 1957.

Sir,

(1) I have the honour to refer to the Application addressed to the International Court of Justice on October 1st, 1957, instituting proceedings on behalf of the Government of the Swiss Confederation against the Government of the United States of America, and, in conformity with Article 41 of the Statute and Article 61 of the Rules of Court, to submit a request 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.

(2) The present request relates to the proceedings instituted by the Swiss Government against the Government of the United States on October 2nd.

(3) The rights to be protected are the rights of the Swiss Government to ensure that its national, the *Société internationale pour participations industrielles et commerciales* of Basle (INTERHANDEL), shall be treated in conformity with international law and, in particular, shall enjoy the full rights secured to it by the agreement concluded between Switzerland and the Allies on May 25th, 1946 (Washington Accord). A copy of this agreement was annexed to the Application (Annex 2).

(4) In the view of the Swiss Government, the principles by which the Court, acting under Article 41 of the Statute and Article 61 of the Rules, should be guided in deciding whether interim measures of protection should be indicated, are, among others, the principles which were summarized in the last decision given by the Permanent Court of International Justice; in dealing with such a request, the Court declared:

"... the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute" (Case of the Electricity Company of Sofia and Bulgaria, request for the indication of interim measures of protection; P.C.I.J., Reports 1939, Series A/B, No. 79, p. 109). Cf. also P.C.I.J., Series A, No. 8, No. 12, Series A/B, No. 48, No. 54, No. 58.

In the Order made by the International Court of Justice in the Anglo-Iranian Oil Company case, dated July 5th, 1951 (*I.C.J. Reports 1951*, p. 93), the Court expressly stated that the indication of interim measures of protection in no way prejudged the question of the jurisdiction of the Court to deal with the merits of the case and left unaffected the right of the Respondent to submit arguments against such jurisdiction; the Court considered that the object of interim measures of protection provided for in the Statute was to preserve the respective rights of the Parties pending the decision of the Court; and also that, from the general terms of Article 41 of the Statute and from the power recognized by Article 61, paragraph 6, of the Rules of Court, to indicate interim measures of protection *proprio motu*, it followed that the Court must be concerned to preserve by such measures the rights which might be subsequently adjudged by the Court to belong either to the Applicant or to the Respondent.

(5) The words "to the execution of the decision to be given", contained in the above-mentioned decision of the Permanent Court of International Justice in the case of the Electricity Company of Sofia and Bulgaria, must be construed in relation to the reparation which the party submitting the request for interim measures of protection seeks to obtain in the case referred to the Court. In other words, at the time when the request is made, there is still no decision on the issue whether the claim to the said reparation is or is not well-founded. Although it cannot be known at that stage of the case whether the Court will finally uphold such a claim or not, the parties may be requested to abstain from taking measures which would make a prompt execution of the judgment impossible, should the Court pronounce in favour of the claim.

The claims which the Swiss Government is putting forward in the present request are set forth in its Application instituting proceedings, and include the restitution of those of the assets of the Interhandel company which were vested as enemy property by the Alien Property Custodian of the United States of America or, in the alternative, a finding by the Court that the United States of America is under an obligation, under such conditions as it will be for the Court to specify, to submit the dispute concerning the Interhandel company to international judicial settlement, arbitration or conciliation.

Accordingly, the Court may finally decide that the Government of the United States of America is under an obligation to restore the above-mentioned property or at least to submit the dispute concerning the Interhandel company under certain conditions to international judicial settlement, arbitration or conciliation.

(6) If the Court does not indicate interim measures of protection of the kind which will be specified hereafter, the Swiss Government

has serious grounds for believing that, in the event of its claims as just stated being upheld by the Court, it may be impossible for the Court's decision to be carried out, should the Interhandel property vested in the Alien Property Custodian, the restitution of which is claimed, have been meanwhile transferred to third parties. This impossibility to execute a judgment in favour of Switzerland would involve irreparable damage, the mere possibility of which, according to the jurisprudence of the Permanent Court of International Justice, justifies interim measures of protection (P.C.I.J., Series A, No. 8, p. 7; Series A/B, No. 48, p. 288).

(7) The reasons of the Swiss Government for believing that a decision given by the Court in its favour might be incapable of execution are as follows:

- (a) In the note sent by the Swiss Legation to the Department of State of August 9th, 1956, the Swiss Government asked for arbitration or conciliation proceedings in respect of its request for the assets of Interhandel, which in the Swiss view were wrongly held by the United States of America. In order to protect the rights which might eventually be held to belong to Switzerland or its nationals in one of these international procedures, the Swiss Government requested that the *status quo* should be maintained until completion of the proceedings in which the parties were engaged. In its note of January 11th, 1957, the Department of State flatly refused to take this request into consideration. This is what the Department of State said on the point:

"... The note of August 9, 1956, suggests that principles of good faith, which underlie the authority of the International Court of Justice to take appropriate precautionary measures, require that this Government maintain the *status quo*. We take this request to be one to refrain from making any sale of the General Aniline and Film shares to which claim is made.

The request for maintenance of the *status quo* falls with the request for arbitration, for the principles above discussed are equally applicable to the request for maintenance of the *status quo*. In the instant case, moreover, the request for maintenance of the *status quo* is in fact a request for a change of the *status quo*. To refrain from making a sale of the assets would prevent the effectuation of the laws of the United States which, once the litigation in the courts reaches a prescribed stage, permit and require a sale of the assets. A sale is desirable in the national interest of the United States, based in part upon considerations of national defense. Only the courts of the United States have jurisdiction to stay such

a sale of property located in the United States; such jurisdiction is sovereign and exclusive."

Without examining the merits of the reasons advanced by the Department of State against the Swiss request for the maintenance of the *status quo*—reasons the relevance of which the Swiss Government denies—it is clear that the Government of the United States is firmly resolved to sell the shares of the General Aniline and Film Corporation claimed by Interhandel as its property and the restitution of which is asked for in the present proceedings. But such a sale would prevent prompt execution of the Court's judgment, should the Court pronounce in favour of the main Swiss submission or even in favour of its alternative submission.

- (b) There is an obvious danger that the majority of the above-mentioned shares will be sold by the United States Government at a price below their real value. Indeed, the Department of Justice of the United States publicly announced on February 21st, 1957, its intention to sell 75 per cent of the vested shares. Potential buyers were invited to make offers by May 13th, 1957, furnishing any special reasons which might cause the competent authority to take a particular offer into consideration, having due regard for the national interest. It is to be feared that the shares may be allocated not to the highest bidder but to a national of the United States who would be regarded, from the American point of view, as the most suitable purchaser. It is therefore to be expected that the proceeds of the sale would not cover the direct losses sustained by Interhandel on the value of the shares, quite apart from the serious damage which the mere fact of selling would inflict upon that company.
- (c) Up to the present, Interhandel has tried in vain to obtain from the United States courts an injunction against the sale of the shares of the General Aniline and Film Corporation. Relying upon Section 9(a) of the Trading with the Enemy Act, the Swiss Company, on February 25th, 1957, asked that the sale should be forbidden by an Order of the United States courts. Its action is now pending before the United States Court of Appeals in Washington; in these proceedings the Department of Justice has contested Interhandel's capacity to act, on the ground that, its application for the release of the sequestered property having been finally rejected on April 11th, 1957, there was not pending before the United States courts any proceeding [to which Interhandel was properly a party] (*il ne peut pas y avoir de litispendance devant la justice des États-Unis dans cette affaire*) and that, consequently, the said Section 9(a) of the Trading with the Enemy Act could not be invoked to prevent

the sale of the shares. If the request by Interhandel for an injunction against sale were dismissed—which is to be expected—there would be no further obstacle, under American municipal law, to the immediate sale of the sequestrated shares.

Only the rules of international law can now be invoked in order to prevent 75 per cent. of the shares of the General Aniline and Film Corporation, which are a part of the assets of a Swiss company, from suffering the same fate as enemy property in the United States and from being sold as soon as the final judgments in the case have been delivered by the American courts.

(8) Consequently, in view of the circumstances of fact and of law, mentioned in the present request, I have the honour, on behalf of the Swiss Federal Council, to ask 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.

(9) In view of the fact that, by reason of measures which the Government of the United States of America threatens to take, there is danger in delay, the Swiss Government strongly urges that the present request be dealt with as a matter of urgency and with all the speed consistent with the Statute and the Rules of Court.

(10) The undersigned and the co-Agent, Professor Paul Guggenheim, are authorized by the Swiss Government to appear before the Court in any proceedings or discussions arising out of the present request which the Court may institute in conformity with Article 61, paragraph 8, of the Rules of Court.

I have, etc.

(Signed) G. SAUSER-HALL.