

## SEPARATE OPINION OF JUDGE KLAESTAD

I share the view that the request for the indication of provisional measures must be declined, but for different reasons, which I shall briefly outline in a general way without mentioning details.

In the present preliminary phase of the proceedings I have to examine in a summary and provisional manner whether it appears *prima facie* that the Court lacks jurisdiction to take action under Article 41 of its Statute.

In its Declaration accepting the compulsory jurisdiction of the Court the Government of the United States of America made the reservation that the Declaration should not apply to "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". This reservation relates to the whole of the Court's jurisdiction under the Statute, including its jurisdiction to take action under Article 41.

The United States Government has filed a Preliminary Objection, under Article 62 of the Rules of the Court, to the proceedings instituted by the Application, "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 of America". The United States Government has determined that such sale or disposition of the shares is a matter essentially within its domestic jurisdiction. It has invoked the above-mentioned reservation and challenged the Court's jurisdiction to indicate provisional measures with regard to the sale or other disposition of the shares. This invocation of the reservation must be understood as relating to the first Submission of the Application concerning the alleged obligation to restore the assets of *Interhandel*, and not to the second and alternative Submission concerning reference to judicial settlement, arbitration or conciliation.

At the hearing the Co-Agent of the Swiss Government referred to the question of the validity of the American reservation, but he did not expressly contend that it is invalid. As to this question there does not at present appear to exist any dispute which calls for the consideration of the Court.

In the case of *Certain Norwegian Loans* the Court was confronted with a similar situation. Norway invoked, by virtue of the condition of reciprocity, a reservation in the French Declaration accepting the compulsory jurisdiction of the Court similar to the above-mentioned American reservation. Both Parties relied on the French

Declaration and argued on the basis that the reservation was legally valid. In such circumstances, the Court considered it was not called upon to enter into an examination of the validity of the French reservation and decided to give effect to that reservation.

I consider that I shall have to adopt the same attitude in the present case, giving effect to the reservation in so far as it is invoked without entering into an examination of its validity. But in this preliminary phase of the present proceedings, the finding that the Court lacks jurisdiction in respect of the matter to which the Preliminary Objection relates, must of necessity be only of a provisional character. Such a *prima facie* finding does not in any way prejudice the question of the jurisdiction of the Court to deal with the merits of the case.

(Signed) Helge KLAESTAD.