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PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES
PROFESSOR LUCIUS CAFLISCH

Codification Division of the United Nations Office of Legal Affairs

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PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES
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RECOMMENDED READINGS (electronic format)

Legal instruments and documents
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2. World Summit Outcome (United Nations General Assembly resolution 60/1 of 16 September 2005)

Case law

8. Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978, p. 3

Legal writings

Handbook on the Peaceful Settlement of Disputes between States, 1992 (United Nations publication, Sales No. E.92.V.7)
PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES: COURSE OUTLINE
PROFESSOR LUCIUS CAFLISCH

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   ![Diagram of single arbitrator](image)

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Convention for the Pacific Settlement of International Disputes, 1907
CONVENTION
for the Pacific Settlement of International Disputes*

His Majesty the German Emperor, King of Prussia; the President of the United States of America; the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; the President of the Republic of Bolivia; the President of the Republic of the United States of Brazil; His Royal Highness the Prince of Bulgaria; the President of the Republic of Chile; His Majesty the Emperor of China; the President of the Republic of Colombia; the Provisional Governor of the Republic of Cuba; His Majesty the King of Denmark; the President of the Dominican Republic; the President of the Republic of Ecuador; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of the Hellenes; the President of the Republic of Guatemala; the President of the Republic of Haiti; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxembourg, Duke of Nassau; the President of the United States of Mexico; His Royal Highness the Prince of Montenegro; the President of the Republic of Nicaragua; His Majesty the King of Norway; the President of the Republic of Paraguay; Her Majesty the Queen of the Netherlands; the President of the Republic of Peru; His Imperial Majesty the Shah of Persia; His Majesty the King of Roumania; His Majesty the Emperor of All the Russians; the President of the Republic of Salvador; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden; the Swiss Federal Council; His Majesty the Emperor of the Ottomans; the President of the Oriental Republic of Uruguay; the President of the United States of Venezuela;

Animated by the sincere desire to work for the maintenance of general peace;
Resolved to promote by all the efforts in their power the friendly settlement of international disputes;
Recognizing the solidarity uniting the members of the society of civilized nations;
Desirous of extending the empire of law and of strengthening the appreciation of international justice;
Convinced that the permanent institution of a Tribunal of Arbitration accessible to all, in the midst of independent Powers, will contribute effectively to this result;
Having regard to the advantages attending the general and regular organization of the procedure of arbitration;
Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an International Agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

* The text of the Convention reproduced here is a translation of the French text adopted at the 1907 Peace Conference. The French-language version is authoritative.
Being desirous, with this object, of insuring the better working in practice of Commissions of Inquiry and Tribunals of Arbitration, and of facilitating recourse to arbitration in cases which allow of a summary procedure;

Have deemed it necessary to revise in certain particulars and to complete the work of the First Peace Conference for the pacific settlement of international disputes;

The High Contracting Parties have resolved to conclude a new Convention for this purpose, and have appointed the following as their Plenipotentiaries:

(Here follow the names of Plenipotentiaries.)

Who, after having deposited their full powers, found in good and due form, have agreed upon the following:

PART I. THE MAINTENANCE OF GENERAL PEACE

Article 1

With a view to obviating as far as possible recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences.

PART II. GOOD OFFICES AND MEDIATION

Article 2

In case of serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

Article 3

Independently of this recourse, the Contracting Powers deem it expedient and desirable that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

Article 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Article 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

Article 6

Good offices and mediation undertaken either at the request of the parties in dispute or on the initiative of Powers strangers to the dispute have exclusively the character of advice, and never have binding force.

Article 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted in the absence of an agreement to the contrary.

Article 8

The Contracting Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering peace, the States at variance choose respectively a Power, to which they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.
PART III. INTERNATIONAL COMMISSIONS OF INQUIRY

Article 9

In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of facts, the Contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

Article 10

International Commissions of Inquiry are constituted by special agreement between the parties in dispute.

The Inquiry Convention defines the facts to be examined; it determines the mode and time in which the Commission is to be formed and the extent of the powers of the Commissioners.

It also determines, if there is need, where the Commission is to sit, and whether it may remove to another place, the language the Commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint Assessors, the Convention of Inquiry shall determine the mode of their selection and the extent of their powers.

Article 11

If the Inquiry Convention has not determined where the Commission is to sit, it will sit at The Hague.

The place of meeting, once fixed, cannot be altered by the Commission except with the assent of the parties.

If the Inquiry Convention has not determined what languages are to be employed, the question shall be decided by the Commission.

Article 12

Unless an undertaking is made to the contrary, Commissions of Inquiry shall be formed in the manner determined by Articles 45 and 57 of the present Convention.

Article 13

Should one of the Commissioners or one of the Assessors, should there be any, either die, or resign, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

1907 CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

Article 14

The parties are entitled to appoint special agents to attend the Commission of Inquiry, whose duty it is to represent them and to act as intermediaries between them and the Commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the Commission.

Article 15

The International Bureau of the Permanent Court of Arbitration acts as registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal of the Contracting Powers for the use of the Commission of Inquiry.

Article 16

If the Commission meets elsewhere than at The Hague, it appoints a Secretary-General, whose office serves as registry.

It is the function of the registry, under the control of the President, to make the necessary arrangements for the sittings of the Commission, the preparation of the Minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

Article 17

In order to facilitate the constitution and working of Commissions of Inquiry, the Contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

Article 18

The Commission shall settle the details of the procedure not covered by the special Inquiry Convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

Article 19

On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the Commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.
Article 20
The Commission is entitled, with the assent of the Powers, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send one or more of its members. Permission must be obtained from the State on whose territory they are to be held.

Article 21
Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

Article 22
The Commission is entitled to ask from either party for such explanations and information as it considers necessary.

Article 23
The parties undertake to supply the Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with the facts, and to enable it to conclude its investigation in the manner and within the time fixed by the Commission.

Article 24
For all notices to be served by the Commission in the territory of a third Contracting Power, the Commission shall apply directly to the Government of the said Power. The same rule applies in the case of steps being taken on the spot to procure evidence.

Article 25
The witnesses and experts are summoned on the request of the parties or by the Commission at its own motion, and, in every case, through the Government of the State in whose territory they are to be held.

Article 26
The examination of witnesses is conducted by the President. The members of the Commission may however put to each witness questions on any point concerning the witness within the limits of what is necessary in order to get at the truth.

Article 27
The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the President to put such additional questions to the witness as they think expedient.

Article 28
The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the President to consult notes or documents if the nature of the facts referred to necessitates their employment.

Article 29
A Minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary. It will be recorded at the end of his statement.

Article 30
All questions are decided by a majority of the members of the Commission. If a member declines to vote, the fact must be recorded in the Minutes.
Article 31

The sittings of the Commission are not public, nor the Minutes and documents connected with the inquiry published except in virtue of a decision of the Commission taken with the consent of the parties.

Article 32

After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the President declares the inquiry terminated, and the Commission adjourns to deliberate and to draw up its Report.

Article 33

The Report is signed by all the members of the Commission.
If one of the members refuses to sign, the fact is mentioned; but the validity of the Report is not affected.

Article 34

The Report of the Commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.
A copy of the Report is given to each party.

Article 35

The Report of the Commission is limited to a statement of facts, and has in no way the character of an Award. It leaves to the parties entire freedom as to the effect to be given to the statement.

Article 36

Each party pays its own expenses and an equal share of the expenses incurred by the Commission.

PART IV. INTERNATIONAL ARBITRATION

Chapter I. The System of Arbitration

Article 37

International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law.
Recourse to arbitration implies an engagement to submit in good faith to the Award.

Article 38

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Contracting Powers as the most effective, and, at the same time, the most equitable means of settling disputes which diplomacy has failed to settle.
Consequently, it would be desirable that, in disputes about the above-mentioned questions, the Contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit.

Article 39

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.
It may embrace any dispute or only disputes of a certain category.

Article 40

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Contracting Powers, the said Powers reserve to themselves the right of concluding new Agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it.

Chapter II. The Permanent Court of Arbitration

Article 41

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

Article 42

The Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special Tribunal.
Article 43

The Permanent Court sits at The Hague.

An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has charge of the archives and conducts all the administrative business.

The Contracting Powers undertake to communicate to the Bureau, as soon as possible, a certified copy of any conditions of arbitration arrived at between them and of any Award concerning them delivered by a special Tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the Awards given by the Court.

Article 44

Each Contracting Power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrator.

The persons thus elected are inscribed, as Members of the Court, in a list which shall be notified to all the Contracting Powers by the Bureau.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Contracting Powers.

Two or more Powers may agree on the selection in common of one or more Members.

The same person can be selected by different Powers. The Members of the Court are appointed for a term of six years. These appointments are renewable.

Should a Member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years.

Article 45

When the Contracting Powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the Arbitrators called upon to form the Tribunal with jurisdiction to decide this difference must be chosen from the general list of Members of the Court.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:

Each party appoints two Arbitrators, of whom one only can be its national or chosen from among the persons selected by it as Members of the Permanent Court. These Arbitrators together choose an Umpire.

If the votes are equally divided, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

If, within two months’ time, these two Powers cannot come to an agreement, each of them presents two candidates taken from the list of Members of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them. Drawing lots determines which of the candidates thus presented shall be Umpire.

Article 46

The Tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court, the text of their ‘Compromis’, and the names of the Arbitrators.

The Bureau communicates without delay to each Arbitrator the ‘Compromis’, and the names of the other members of the Tribunal.

The Tribunal assembles at the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

The members of the Tribunal, in the exercise of their duties and out of their own country, enjoy diplomatic privileges and immunities.

Article 47

The Bureau is authorized to place its offices and staff at the disposal of the Contracting Powers for the use of any special Board of Arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal.

Article 48

The Contracting Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

In case of dispute between two Powers, one of them can always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other Power of the declaration.

Article 49

The Permanent Administrative Council, composed of the Diplomatic Representatives of the Contracting Powers accredited to The Hague and of the Netherlands Minister for Foreign Affairs, who will act as President, is charged with the direction and control of the International Bureau.

The Council settles its rules of procedure and all other necessary regulations.
It decides all questions of administration which may arise with regard to the operations of the Court.

It has entire control over the appointment, suspension, or dismissal of the officials and employees of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Contracting Powers without delay the regulations adopted by it. It furnishes them with an annual Report on the labours of the Court, the working of the administration, and the expenditure. The Report likewise contains a résumé of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43, paragraphs 3 and 4.

Article 50

The expenses of the Bureau shall be borne by the Contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

Chapter III. Arbitration Procedure

Article 51

With a view to encouraging the development of arbitration, the Contracting Powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

Article 52

The Powers which have recourse to arbitration sign a ‘Compromis’, in which the subject of the dispute is clearly defined, the time allowed for appointing Arbitrators, the form, order, and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The ‘Compromis’ likewise defines, if there is occasion, the manner of appointing Arbitrators, any special powers which may eventually belong to the Tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

Article 53

The Permanent Court is competent to settle the ‘Compromis’, if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:

1. A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a ‘Compromis’ in all disputes and not either explicitly or implicitly excluding the settlement of the ‘Compromis’ from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to compulsory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the ‘Compromis’ should be settled in some other way.

Article 54

In the cases contemplated in the preceding Article, the ‘Compromis’ shall be settled by a Commission consisting of five members selected in the manner arranged for in Article 45, paragraphs 3 to 6.

The fifth member is President of the Commission ex officio.

Article 55

The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the Members of the Permanent Court of Arbitration established by the present Convention.

Failing the constitution of the Tribunal by direct agreement between the parties, the course referred to in Article 45, paragraphs 3 to 6, is followed.

Article 56

When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitration procedure is settled by him.

Article 57

The Umpire is President of the Tribunal ex officio.

When the Tribunal does not include an Umpire, it appoints its own President.
Article 58

When the ‘Compromis’ is settled by a Commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the Commission itself shall form the Arbitration Tribunal.

Article 59

Should one of the Arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

Article 60

The Tribunal sits at The Hague, unless some other place is selected by the parties. The Tribunal can only sit in the territory of a third Power with the latter’s consent. The place of meeting once fixed cannot be altered by the Tribunal, except with the consent of the parties.

Article 61

If the question as to what languages are to be used has not been settled by the ‘Compromis’, it shall be decided by the Tribunal.

Article 62

The parties are entitled to appoint special agents to attend the Tribunal to act as intermediaries between themselves and the Tribunal. They are further authorized to retain for the defence of their rights and interests before the Tribunal counsel or advocates appointed by themselves for this purpose. The Members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them Members of the Court.

Article 63

As a general rule, arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the Tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents called for in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the ‘Compromis’.

The time fixed by the ‘Compromis’ may be extended by mutual agreement by the parties, or by the Tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussions consist in the oral development before the Tribunal of the arguments of the parties.

Article 64

A certified copy of every document produced by one party must be communicated to the other party.

Article 65

Unless special circumstances arise, the Tribunal does not meet until the pleadings are closed.

Article 66

The discussions are under the control of the President. They are only public if it be so decided by the Tribunal, with the assent of the parties. They are recorded in minutes drawn up by the Secretaries appointed by the President. These minutes are signed by the President and by one of the Secretaries and alone have an authentic character.

Article 67

After the close of the pleadings, the Tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

Article 68

The Tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties. In this case, the Tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

Article 69

The Tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the Tribunal takes note of it.

Article 70

The agents and the counsel of the parties are authorized to present orally to the Tribunal all the arguments they may consider expedient in defence of their case.
**Article 71**

They are entitled to raise objections and points. The decisions of the Tribunal on these points are final and cannot form the subject of any subsequent discussion.

**Article 72**

The members of the Tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the Tribunal in the course of the discussions, can be regarded as an expression of opinion by the Tribunal in general or by its members in particular.

**Article 73**

The Tribunal is authorized to declare its competence in interpreting the ‘Compromis’, as well as the other Treaties which may be invoked, and in applying the principles of law.

**Article 74**

The Tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

**Article 75**

The parties undertake to supply the Tribunal, as fully as they consider possible, with all the information required for deciding the case.

**Article 76**

For all notices which the Tribunal has to serve in the territory of a third Contracting Power, the Tribunal shall apply direct to the Government of that Power. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed as far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its own sovereign rights or its safety.

The Court will equally be always entitled to act through the Power on whose territory it sits.

**Article 77**

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the President shall declare the discussion closed.

**Article 78**

The Tribunal considers its decisions in private and the proceedings remain secret. All questions are decided by a majority of the members of the Tribunal.

**Article 79**

The Award must give the reasons on which it is based. It contains the names of the Arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.

**Article 80**

The Award is read out in public sitting, the agents and counsel of the parties being present or duly summoned to attend.

**Article 81**

The Award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal.

**Article 82**

Any dispute arising between the parties as to the interpretation and execution of the Award shall, in the absence of an Agreement to the contrary, be submitted to the Tribunal which pronounced it.

**Article 83**

The parties can reserve in the ‘Compromis’ the right to demand the revision of the Award.

In this case and unless there be an Agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the Award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence upon the Award and which was unknown to the Tribunal and to the party which demanded the revision at the time the discussion was closed.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.
Revised General Act for the Pacific Settlement of International Disputes, adopted by the General Assembly of the United Nations on 28 April 1949
Treaty Series

Treaties and international agreements registered or filed and recorded with the Secretariat of the United Nations

VOLUME 71

Recueil des Traités

Traités et accords internationaux enregistrés ou classés et inscrits au répertoire au Secrétariat de l'Organisation des Nations Unies

No: 912

REVISED GENERAL ACT FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

Adopted by the General Assembly of the United Nations on 28 April 1949

Official texts: English and French.
Registered ex officio on 20 September 1950.

ACTE GÉNÉRAL REVISE POUR LE REGLEMENT PACIFIQUE DES DIFFÉRENDXS INTERNATIONAUX

Adopté par l'Assemblée générale des Nations Unies le 28 avril 1949

Textes officiels anglais et français.
Enregistré d'office le 20 septembre 1950.
No. 912. REVISED GENERAL ACT FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 28 APRIL 1949

CHAPTER I

Conciliation

Article 1

Disputes of every kind between two or more Parties to the present General Act which it has not been possible to settle by diplomacy shall, subject to such reservations as may be made under article 59, be submitted, under the conditions laid down in the present chapter, to the procedure of conciliation.

Article 2

The disputes referred to in the preceding article shall be submitted to a permanent or special conciliation commission constituted by the parties to the dispute.

1 In accordance with article 44 the Revised General Act came into force on 20 September 1950, the fortieth day following the receipt by the Secretary-General of the second instrument of accession.

Accessions:

BELGIUM, 23 December 1949.—Accession extends to all the provisions of the Act (chapters I, II, III and IV).

SWEDEN, 22 June 1950.—Accession extends to the provisions relating to conciliation and judicial settlement (chapters I and II) together with the general provisions dealing with these procedures (chapter IV), with the reservation provided in article 59, paragraph 2 (a), to the effect of excluding, from the procedure described in the Act, disputes arising out of facts prior to the accession.

2 In the course of the study of methods for the promotion of international co-operation in the political field, the General Assembly, among other measures, decided to restore to the General Act of 26 September 1928 its original efficacy by introducing into its text a number of amendments taking into account that the organs of the League of Nations and the Permanent Court of International Justice ceased to function. However, in adopting the amendments and instructing the Secretary-General to prepare a revised text of the General Act and to hold it open for accession by States, under the title "Revised General Act for the Pacific Settlement of International Disputes", the General Assembly, in its resolution 208 A (III) of 28 April 1949, made it clear that "these amendments will only apply as between the States having acceded to the General Act as thus amended and, as a consequence, will not affect the rights of such States parties to the Act as established on 26 September 1928, as should claim to invoke it in so far as it might still be operative". For the text of the General Act of 26 September 1928 and subsequent accessions thereto see: League of Nations, Treaty Series, Volume XCVI, page 343; Volume C, page 260; Volume CVII, page 529; Volume CXI, page 414; Volume CXVII, page 304; Volume CL, page 297; Volume CLVI, page 211; Volume CLX, page 954; Volume CXCVI, page 415, and Volume CXCVII, page 304.

Article 3

On a request to that effect being made by one of the Contracting Parties to another party, a permanent conciliation commission shall be constituted within a period of six months.

Article 4

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

(1) The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties. The parties shall appoint the President of the Commission from among them.

(2) The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace a commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3) Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 5

If, when a dispute arises, no permanent conciliation commission appointed by the parties is in existence, a special commission shall be constituted for the examination of the dispute within a period of three months from the date at which a request to that effect is made by one of the parties to the other party. The necessary appointments shall be made in the manner laid down in the preceding article, unless the parties decide otherwise.

Article 6

1. If the appointment of the commissioners to be designated jointly is not made within the periods provided for in articles 3 and 5, the making of the necessary appointments shall be entrusted to a third Power, chosen by agreement between the parties, or on request of the parties, to the President of the General Assembly, or, if the latter is not in session, to the last President.
2. If no agreement is reached on either of these procedures, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 7

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement, or in default thereof by one or other of the parties.

2. The application, after giving a summary account of the subject of the dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable solution.

3. If the application emanates from only one of the parties, the other party shall, without delay, be notified by it.

Article 8

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent conciliation commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The party making use of this right shall immediately notify the other party; the latter shall, in such case, be entitled to take similar action within fifteen days from the date on which it received the notification.

Article 9

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the United Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the United Nations to afford it his assistance.

Article 10

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of part III of the Hague Convention of 18 October 1907 for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty shall be to act as intermediaries between them and the Commission; they may, moreover, be assisted by counsel and experts appointed by them for that purpose and may request that all persons whose evidence appears to them desirable shall be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of both parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 12

In the absence of agreement to the contrary between the parties, the decisions of the Conciliation Commission shall be taken by a majority vote, and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 13

The parties undertake to facilitate the work of the Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts and to visit the localities in question.

Article 14

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same manner.

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**Article 15**

1. The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

2. At the close of the proceedings the Commission shall draw up a procès-verbal stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the procès-verbal of whether the Commission’s decisions were taken unanimously or by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been given cognizance of the dispute.

**Article 16**

The Commission’s procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

**CHAPTER II**

**JUDICIAL SETTLEMENT**

**Article 17**

All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under article 39, be submitted for decision to the International Court of Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal. It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the International Court of Justice.

**Article 18**

If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected, and the procedure to be followed. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of 18 October 1907 for the Pacific Settlement of International Disputes shall apply so far as is necessary.

**Article 19**

If nothing is laid down in the special agreement as to the rules regarding the substance of the dispute to be followed by the arbitrators, the Tribunal shall apply the substantive rules enumerated in Article 38 of the Statute of the International Court of Justice.

**Article 20**

1. Notwithstanding the provisions of article 1, disputes of the kind referred to in article 17 arising between parties who have acceded to the obligations contained in the present chapter shall only be subject to the procedure of conciliation if the parties so agree.

2. The obligation to resort to the procedure of conciliation remains applicable to disputes which are excluded from judicial settlement only by the operation of reservations under the provisions of article 39.

3. In the event of recourse to and failure of conciliation, neither party may bring the dispute before the International Court of Justice or call for the constitution of the arbitral tribunal referred to in article 18 before the expiration of one month from the termination of the proceedings of the Conciliation Commission.

**CHAPTER III**

**ARBITRATION**

**Article 21**

Any dispute not of the kind referred to in article 17 which does not, within the month following the termination of the work of the Conciliation Commission provided for in chapter I, form the object of an agreement between the parties, shall, subject to such reservations as may be made under article 39, be brought before an arbitral tribunal which, unless the parties otherwise agree, shall be constituted in the manner set out below.

**Article 22**

The Arbitral Tribunal shall consist of five members. The parties shall each nominate one member, who may be chosen from among their respective nationals. The other two arbitrators and the Chairman shall be chosen...
by common agreement from among the nationals of third Powers. They
must be of different nationalities and must not be habitually resident in
the territory nor be in the service of the parties.

Article 23

1. If the appointment of the members of the Arbitral Tribunal is
not made within a period of three months from the date on which one
of the parties requested the other party to constitute an arbitral tribunal,
a third Power, chosen by agreement between the parties, shall be requested
to make the necessary appointments.

2. If no agreement is reached on this point, each party shall designate
a different Power, and the appointments shall be made in concert by the
Powers thus chosen.

3. If, within a period of three months, the two Powers so chosen have
been unable to reach an agreement, the necessary appointments shall be
made by the President of the International Court of Justice. If the latter
is prevented from acting or is a subject of one of the parties, the nominations
shall be made by the Vice-President. If the latter is prevented from acting
or is a subject of one of the parties, the appointments shall be made by
the oldest member of the Court who is not a subject of either party.

Article 24

Vacancies which may occur as a result of death, resignation or any
other cause shall be filled within the shortest possible time in the manner
fixed for the nominations.

Article 25

The parties shall draw up a special agreement determining the subject
of the disputes and the details of procedure.

Article 26

In the absence of sufficient particulars in the special agreement regarding
the matters referred to in the preceding article, the provisions of the Hague
Convention of 18 October 1907 for the Pacific Settlement of International
Disputes shall apply so far as is necessary.

Article 27

Failing the conclusion of a special agreement within a period of three
months from the date on which the Tribunal was constituted, the dispute
may be brought before the Tribunal by an application by one or other
party.
2. In such a case, the party which desires to resort to the procedures laid down in the present General Act must notify the other party of its intention within a period of one year from the date of the aforementioned decision.

Article 32

If, in a judicial sentence or arbitral award, it is declared that a judgment, or a measure enjoined by a court of law or other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial sentence or arbitral award shall grant the injured party equitable satisfaction.

Article 33

1. In all cases where a dispute forms the object of arbitration or judicial proceedings, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the International Court of Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. The parties to the dispute shall be bound to accept such measures.

2. If the dispute is brought before a conciliation commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 34

Should a dispute arise between more than two Parties to the present General Act, the following rules shall be observed for the application of the forms of procedure described in the foregoing provisions:

(a) In the case of conciliation procedure, a special commission shall invariably be constituted. The composition of such commission shall differ according as the parties all have separate interests or as two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners nationals of third Powers not parties to the dispute, whose number shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event, the parties, unless they agree otherwise, shall apply article 5 and the following articles of the present Act, so far as they are compatible with the provisions of the present article.

(b) In the case of judicial procedure, the Statute of the International Court of Justice shall apply.

(c) In the case of arbitral procedure, if agreement is not secured as to the composition of the Tribunal, in the case of the disputes mentioned in article 17, each party shall have the right, by means of an application, to submit the dispute to the International Court of Justice; in the case of the disputes mentioned in article 21, the above article 22 and following articles shall apply, but each party having separate interests shall appoint one arbitrator and the number of arbitrators separately appointed by the parties to the dispute shall always be one less than that of the other arbitrators.

Article 35

1. The present General Act shall be applicable as between the Parties thereto, even though a third Power, whether a Party to the Act or not, has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

Article 36

1. In judicial or arbitral procedure, if a third Power should consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit to the International Court of Justice or to the Arbitral Tribunal a request to intervene as a third party.

2. It will be for the Court or the Tribunal to decide upon this request.

Article 37

1. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar of the International Court of Justice or the Arbitral Tribunal shall notify all such States forthwith.

2. Every State so notified has the right to intervene in the proceedings; but, if it uses this right, the construction given by the decision will be binding upon it.
Article 38

Accessions to the present General Act may extend:
A. Either to all the provisions of the Act (chapters I, II, III and IV);
B. Or to those provisions only which relate to conciliation an judicial settlement (chapters I and II), together with the general provisions dealing with these procedures (chapter IV);
C. Or to those provisions only which relate to conciliation (chapter I), together with the general provisions concerning that procedure (chapter IV).

The Contracting Parties may benefit by the accessions of other Parties only in so far as they have themselves assumed the same obligations.

Article 39

1. In addition to the power given in the preceding article, a Party, in acceding to the present General Act, may make his acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the procedure described in the present Act:
   (a) Disputes arising out of facts prior to the accession either of the Party making the reservation or of any other Party with whom the said Party may have a dispute;
   (b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;
   (c) Disputes concerning particular cases or clearly specified subject-matters, such as territorial status, or disputes falling within clearly defined categories.

3. If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

4. In the case of Parties who have acceded to the provisions of the present General Act relating to judicial settlement or to arbitration, such reservations as they may have made shall, unless otherwise expressly stated, be deemed not to apply to the procedure of conciliation.

Article 40

A Party whose accession has been only partial, or was made subject to reservations, may at any moment, by means of a simple declaration, either extend the scope of his accession or abandon all or part of his reservations.
Manila Declaration on the Peaceful Settlement of International Disputes (United Nations General Assembly resolution 37/10 of 15 November 1982, annex)
### IX. RESOLUTIONS ADOPTED ON THE REPORTS OF THE SIXTH COMMITTEE

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37/10. **Manila Declaration on the Peaceful Settlement of International Disputes**

The General Assembly,

Having examined the item entitled "Peaceful settlement of disputes between States",

Recalling its resolutions 34/102 of 14 December 1979, 35/160 of 15 December 1980 and 36/110 of 10 December 1981,

Reaffirming the need to exert utmost efforts in order to settle any conflicts and disputes between States exclusively by peaceful means and to avoid any military action and hostilities, which can only make more difficult the solution of those conflicts and disputes,

Considering that the question of the peaceful settlement of disputes should represent one of the central concerns for States and for the United Nations and that the efforts to strengthen the process of the peaceful settlement of disputes should be continued,

Convinced that the adoption of the Manila Declaration on the Peaceful Settlement of International Disputes should enhance the observance of the principle of peaceful settlement of disputes in relations between States and contribute to the elimination of the danger of recourse to force or to the threat of force, to the relaxation of international tensions, to the promotion of a policy of co-operation and peace and

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1 For the decisions adopted on the reports of the Sixth Committee, see sect. X.B.8.
2 See also sect. X.B.8, decision 37/407.
of respect for the independence and sovereignty of all States, to the enhancing of the role of the United Nations in preventing conflicts and settling them peacefully and, consequently, to the strengthening of international peace and security.

Considering the need to ensure a wide dissemination of the text of the Declaration,

1. Approves the Manila Declaration on the Peaceful Settlement of International Disputes, the text of which is annexed to the present resolution;

2. Expresses its appreciation to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for its important contribution to the elaboration of the text of the Declaration;

3. Requests the Secretary-General to inform the Governments of the States Members of the United Nations or members of specialized agencies, the Security Council and the International Court of Justice of the adoption of the Declaration;

4. Urges that all efforts be made so that the Declaration becomes generally known and fully observed and implemented.

ANNEX

Manila Declaration on the Peaceful Settlement of International Disputes

The General Assembly,

Reaffirming the principle of the Charter of the United Nations that all States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

Conscious that the Charter of the United Nations embodies the means and an essential framework for the peaceful settlement of international disputes, the continuance of which is likely to endanger the maintenance of international peace and security,

Recognizing the important role of the United Nations and the need to enhance its effectiveness in the peaceful settlement of international disputes and the maintenance of international peace and security, in accordance with the principles of justice and international law, in conformity with the Charter of the United Nations,

Reaffirming the principle of the Charter of the United Nations that all States shall refrain from their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Reiterating that no State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State,

Reaffirming the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,\(^1\)

Bearing in mind the importance of maintaining and strengthening international peace and security and the development of friendly relations among States, irrespective of their political, economic and social systems or levels of economic development,

Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and in other relevant resolutions of the General Assembly,

Stressing the need for all States to desist from any forcible action which deprives peoples, particularly peoples under colonial and racist regimes or other forms of alien domination, of their inalienable right to self-determination, freedom and independence, as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Mindful of existing international instruments as well as respective principles and rules concerning the peaceful settlement of international disputes, including the exhaustion of local remedies whenever applicable,

Determined to promote international co-operation in the political field and to encourage the progressive development of international law and its codification, particularly in relation to the peaceful settlement of international disputes,

Solemnly declares that:

1. All States shall act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nations with a view to avoiding disputes among themselves likely to affect friendly relations among States, thus contributing to the maintenance of international peace and security. They shall live together in peace with one another as good neighbours and strive for the adoption of meaningful measures for strengthening international peace and security.

2. Every State shall settle its international disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered.

3. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means in conformity with obligations under the Charter of the United Nations and with the principles of justice and international law. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with the sovereign equality of States.

4. States parties to a dispute shall continue to observe in their mutual relations their obligations under the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States, as well as other generally recognized principles and rules of contemporary international law.

5. States shall seek in good faith and in a spirit of co-operation an early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute.

6. States parties to regional arrangements or agencies shall make every effort to achieve pacific settlement of their local disputes through such regional arrangements or agencies before referring them to the Security Council. This does not preclude States from bringing any dispute to the attention of the Security Council or of the General Assembly in accordance with the Charter of the United Nations.

7. In the event of failure of the parties to a dispute to reach an early solution by any of the above means of settlement, they shall continue to seek a peaceful solution and shall consult forthwith on mutually agreed means to settle the dispute peacefully. Should the parties fail to settle by any of the above means a dispute the continuance of which is likely to endanger the maintenance of international peace and security, they shall refer it to the Security Council in accordance with the Charter of the United Nations and without prejudice to the functions and powers of the Council set forth in the relevant provisions of Chapter VII of the Charter.

8. States parties to an international dispute, as well as other States, shall refrain from any action whatsoever which may aggravate the situation so as to endanger the maintenance of international peace and security and make more difficult or impede the peaceful settlement of the dispute, and shall act in this respect in accordance with the purposes and principles of the United Nations.

9. States should consider concluding agreements for the peaceful settlement of disputes among them. They should also include in bilateral agreements and multilateral conventions to be concluded, as appropriate, effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.

10. States should, without prejudice to the right of free choice of means, bear in mind that direct negotiations are a flexible and effective method of peaceful settlement of their disputes. When they choose to resort to direct negotiations, States should negotiate meaningfully, in order to arrive at an early settlement acceptable to the parties. States should be equally prepared to seek the settlement of their disputes by the other means mentioned in the present Declaration.

11. States shall in accordance with international law implement in good faith all the provisions of agreements concluded by them for the settlement of their disputes.

\(^1\) Resolution 2625 (XXV), annex.
12. In order to facilitate the exercise by the peoples concerned of the right to self-determination as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the parties to a dispute may have the possibility, if they agree to do so and as appropriate, to have recourse to the relevant procedures mentioned in the present Declaration, for the peaceful settlement of the dispute.

13. Neither the existence of a dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or threat of force by any of the States parties to the dispute.

II

1. Member States should make full use of the provisions of the Charter of the United Nations, including the procedures and means provided for therein, particularly Chapter VI, concerning the peaceful settlement of disputes.

2. Member States shall fulfill in good faith the obligations assumed by them in accordance with the Charter of the United Nations. They should, in accordance with the Charter, as appropriate, duly take into account the recommendations of the Security Council relating to the peaceful settlement of disputes. They should also, in accordance with the Charter, as appropriate, duly take into account the recommendations adopted by the General Assembly, subject to Articles 11 and 12 of the Charter, in the field of peaceful settlement of disputes.

3. Member States reaffirm the important role conferred on the General Assembly by the Charter of the United Nations in the field of peaceful settlement of disputes and stress the need for it to discharge effectively its responsibilities. Accordingly, they should:
   (a) Bear in mind that the General Assembly may discuss any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations and, subject to Article 12 of the Charter, recommend measures for its peaceful adjustment;
   (b) Consider making use, when they deem it appropriate, of the possibility of bringing to the attention of the General Assembly any dispute or any situation which might lead to international friction or give rise to a dispute;
   (c) Consider utilizing, for the peaceful settlement of their disputes, the subsidiary organs established by the General Assembly in the performance of its functions under the Charter;
   (d) Consider, when they are parties to a dispute brought to the attention of the General Assembly, making use of consultations within the framework of the Assembly, with a view to facilitating an early settlement of their dispute.

4. Member States should strengthen the primary role of the Security Council so that it may fully and effectively discharge its responsibilities, in accordance with the Charter of the United Nations, in the area of the settlement of disputes or of any situation the continuance of which is likely to endanger the maintenance of international peace and security. To this end they should:
   (a) Be fully aware of their obligation to refer to the Security Council any situation which might lead to international friction or give rise to a dispute;
   (b) Make greater use of the possibility of bringing to the attention of the Security Council any dispute or any situation which might lead to international friction or give rise to a dispute;
   (c) Encourage the Security Council to make wider use of the opportunities provided for by the Charter in order to review disputes or situations the continuance of which is likely to endanger the maintenance of international peace and security;
   (d) Consider making greater use of the fact-finding capacity of the Security Council in accordance with the Charter;
   (e) Encourage the Security Council to make wider use, as a means to promote peaceful settlement of disputes, of the subsidiary organs established by it in the performance of its functions under the Charter;
   (f) Bear in mind that the Security Council may, at any stage of a dispute of the nature referred to in Article 33 of the Charter or of a situation of like nature, recommend appropriate procedures or methods of adjustment;
   (g) Encourage the Security Council to act without delay, in accordance with its functions and powers, particularly in cases where international disputes develop into armed conflicts.

5. States should be fully aware of the role of the International Court of Justice, which is the principal judicial organ of the United Nations. Their attention is drawn to the facilities offered by the International Court of Justice for the settlement of legal disputes, especially since the revision of the Rules of the Court.

States may entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

States should bear in mind:
   (a) That legal disputes should as a general rule be referred by the parties to the International Court of Justice, in accordance with the provisions of the Statute of the Court;
   (b) That it is desirable that they:
      (i) Consider the possibility of inserting in treaties, whenever appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties;
      (ii) Study the possibility of choosing, in the free exercise of their sovereignty, to recognize as compulsory the jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;
      (iii) Review the possibility of identifying cases in which use may be made of the International Court of Justice.

The organs of the United Nations and the specialized agencies should study the advisability of making use of the possibility of requesting advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities, provided that they are duly authorized to do so.

Recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States.

6. The Secretary-General should make full use of the provisions of the Charter of the United Nations concerning the responsibilities entrusted to him. The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. He shall perform such other functions as are entrusted to him by the Security Council or by the General Assembly. Reports in this connection shall be made whenever requested to the Security Council or the General Assembly.

Urges all States to observe and promote in good faith the provisions of the present Declaration in the peaceful settlement of their international disputes;

Declares that nothing in the present Declaration shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the peaceful settlement of disputes;

Declares that nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration;

Stresses the need, in accordance with the Charter, to continue efforts to strengthen the process of the peaceful settlement of disputes through progressive development and codification of international law, as appropriate, and through enhancing the effectiveness of the United Nations in this field.

37/11. United Nations Conference on Succession of States in respect of State Property, Archives and Debts

The General Assembly.

Recalling that, by its resolution 36/113 of 10 December 1981, it decided to convene a conference of plenipotentiaries in 1983 to consider the draft articles on succession of States in respect of State property, archives and debts, adopted by
The Indus Waters Treaty, 1960
(article IX and annexure G)
(8) The Commission shall submit to the Government of India and to the Government of Pakistan, before the first of June of every year, a report on its work for the year ended on the preceding 31st of March, and may submit to the two Governments other reports at such times as it may think desirable.

(9) Each Government shall bear the expenses of its Commissioner and his ordinary staff. The cost of any special staff required in connection with the work mentioned in Article VII (1) shall be borne as provided therein.

(10) The Commission shall determine its own procedures.

Article IX

SETTLEMENT OF DIFFERENCES AND DISPUTES

(1) Any question which arises between the Parties concerning the interpretation or application of this Treaty or the existence of any fact which, if established, might constitute a breach of this Treaty shall first be examined by the Commission, which will endeavour to resolve the question by agreement.

(2) If the Commission does not reach agreement on any of the questions mentioned in Paragraph (1), then a difference will be deemed to have arisen, which shall be dealt with as follows:

(a) Any difference which, in the opinion of either Commissioner, falls within the provisions of Part 1 of Annexure F\(^1\) shall, at the request of either Commissioner, be dealt with by a Neutral Expert in accordance with the provisions of Part 2 of Annexure F;

(b) If the difference does not come within the provisions of Paragraph (2) (a), or if a Neutral Expert, in accordance with the provisions of Paragraph 7 of Annexure F, has informed the Commission that, in his opinion, the difference, or a part thereof, should be treated as a dispute, then a dispute will be deemed to have arisen which shall be settled in accordance with the provisions of Paragraphs (3), (4) and (5):

Provided that, at the discretion of the Commission, any difference may either be dealt with by a Neutral Expert in accordance with the provisions of Part 2 of Annexure F or be deemed to be a dispute to be settled in accordance with the provisions of Paragraphs (3), (4) and (5), or may be settled in any other way agreed upon by the Commission.

(3) As soon as a dispute to be settled in accordance with this and the succeeding paragraphs of this Article has arisen, the Commission shall, at the request of either Commissioner, report the fact to the two Governments, as early as practicable, stating in its report the points on which the Commission is in agreement and the issues in dispute, the views of each Commissioner on these issues and his reasons therefor.

\(^1\) See p. 202 of this volume.
(4) Either Government may, following receipt of the report referred to in Paragraph (3), or if it comes to the conclusion that this report is being unduly delayed in the Commission, invite the other Government to resolve the dispute by agreement. In doing so it shall state the names of its negotiators and their readiness to meet with the negotiators to be appointed by the other Government at a time and place to be indicated by the other Government. To assist in these negotiations, the two Governments may agree to enlist the services of one or more mediators acceptable to them.

(5) A court of Arbitration shall be established to resolve the dispute in the manner provided by Annexure G.

(a) upon agreement between the Parties to do so; or

(b) at the request of either Party, if, after negotiations have begun pursuant to Paragraph (4), in its opinion the dispute is not likely to be resolved by negotiation or mediation; or

(c) at the request of either Party, if, after the expiry of one month following receipt by the other Government of the invitation referred to in Paragraph (4), that Party comes to the conclusion that the other Government is unduly delaying the negotiations.

(6) The provisions of Paragraphs (3), (4) and (5) shall not apply to any difference while it is being dealt with by a Neutral Expert.

Article X

Emergency Provision

If, at any time prior to 31st March 1965, Pakistan should represent to the Bank that, because of the outbreak of large-scale international hostilities arising out of causes beyond the control of Pakistan, it is unable to obtain from abroad the materials and equipment necessary for the completion, by 31st March 1973, of that part of the system of works referred to in Article IV (1) which related to the replacement referred to therein, (hereinafter referred to as the "replacement element") and if, after consideration of this representation in consultation with India, the Bank is of the opinion that

(a) these hostilities are on a scale of which the consequence is that Pakistan is unable to obtain in time such materials and equipment as must be procured from abroad for the completion, by 31st March 1973, of the replacement element, and

(b) since the Effective Date, Pakistan has taken all reasonable steps to obtain the said materials and equipment and, with such resources of materials and equipment as have been available to Pakistan both from within Pakistan and from abroad, has carried forward the construction of the replacement element with due diligence and all reasonable expedition,
of the dispute or claim to be submitted to arbitration, the nature of the relief sought and the names of the arbitrators appointed under Paragraph 6 by the Party instituting the proceeding.

3. The date of the special agreement referred to in Paragraph 2 (a), or the date on which the request referred to in Paragraph 2 (b) is received by the other Party, shall be deemed to be the date on which the proceeding is instituted.

4. Unless otherwise agreed between the Parties, a Court of Arbitration shall consist of seven arbitrators appointed as follows:
   (a) Two arbitrators to be appointed by each Party in accordance with Paragraph 6; and
   (b) Three arbitrators (hereinafter sometimes called the umpires) to be appointed in accordance with Paragraph 7, one from each of the following categories:
      (i) Persons qualified by status and reputation to be Chairman of the Court of Arbitration who may, but need not, be engineers or lawyers.
      (ii) Highly qualified engineers.
      (iii) Persons well versed in international law.

The Chairman of the Court shall be a person from category (b) (i) above.

5. The Parties shall endeavour to nominate and maintain a Standing Panel of umpires (hereinafter called the Panel) in the following manner:
   (a) The Panel shall consist of four persons in each of the three categories specified in Paragraph 4 (b).
   (b) The Panel will be selected, as soon as possible after the Effective Date, by agreement between the Parties and with the consent of the persons whose names are included in the Panel.
   (c) A person may at any time be retired from the Panel at the request of either Party: Provided however that he may not be so retired
      (i) during the period after arbitration proceedings have been instituted under Paragraph 2 (b) and before the process described in Paragraph 7 (a) has been completed; or
      (ii) during the period after he has been appointed to a Court and before the proceedings are completed.
   (d) If a member of the Panel should die, resign or be retired, his successor shall be selected by agreement between the Parties.

6. The arbitrators referred to in Paragraph 4 (a) shall be appointed as follows:

The Party instituting the proceeding shall appoint two arbitrators at the time it makes a request to the other Party under Paragraph 2 (b). Within 30 days of the receipt of this request, the other Party shall notify the names of the arbitrators appointed by it.

7. The umpires shall be appointed as follows:
   (a) If a Panel has been nominated in accordance with the provisions of Paragraph 5, each umpire shall be selected as follows from the Panel, from his appropriate category, provided that the category has, at that time, at least three names on the Panel:

(b) If a Panel has not been nominated in accordance with Paragraph 5, or if there should be less than three names on the Panel in any category or if no person in a category accepts the invitation referred to in Paragraph 7 (a), the umpires, or the remaining umpires or umpire, as the case may be, shall be appointed as follows:

   (i) By agreement between the Parties.
   (ii) Should the Parties be unable to agree on the selection of any or all of the three umpires, they shall agree on one or more persons to help them in making the necessary selection by agreement; but if one or more umpires remain to be appointed 60 days after the date on which the proceeding is instituted, or 30 days after the completion of the process described in sub-paragraph (a) above, as the case may be, then the Parties shall determine by lot for each umpire remaining to be appointed, a person from the appropriate list set out in the Appendix¹ to this Annexure, who shall then be requested to make the necessary selection.

   (iii) A national of India or Pakistan, or a person who is, or has been, employed or retained by either of the Parties shall be disqualified from selection under sub-paragraph (ii) above:

      Provided that
      (1) the person making the selection shall be entitled to rely on a declaration from the appointee, before his selection, that he is not disqualified on any of the above grounds; and
      (2) the Parties may by agreement waive any or all of the above disqualifications in the case of any individual appointee.

   (iv) The lists in the Appendix to this Annexure may, from time to time, be modified or enlarged by agreement between the Parties.

8. In selecting umpires pursuant to Paragraph 7, the Chairman shall be selected first, unless the Parties otherwise agree.

9. Should either Party fail to participate in the drawing of lots as provided in Paragraphs 7 and 10, the other Party may request the President of the Bank to nominate a person to draw the lots, and the person so nominated shall so after giving due notice to the Parties and inviting them to be represented at the drawing of the lots.

¹ See p. 222 of this volume.
10. In the case of death, retirement or disability from any cause of one of the arbitrators or umpires his place shall be filled as follows:

(a) In the case of one of the arbitrators appointed under Paragraph 6, his place shall be filled by the Party which appointed him. The Court shall, on request, suspend the proceedings but for not longer than 15 days pending such replacement.

(b) In the case of an umpire, a new appointment shall be made by agreement between the Parties or, failing such agreement, by a person determined by lot from the appropriate list set out in the Appendix to this Annexure, who shall then be requested to make the necessary selection subject to the provisions of Paragraph 7 (b) (iii). Unless the Parties otherwise agree, the Court shall suspend the proceedings pending such replacement.

11. As soon as the three umpires have accepted appointment, they together with such arbitrators as have been appointed by the two Parties under Paragraph 6 shall form the Court of Arbitration. Unless the Parties otherwise agree, the Court shall be competent to transact business only when all the three umpires and at least two arbitrators are present.

12. Each Party shall be represented before the Court by an Agent and may have the assistance of Counsel.

13. Within 15 days of the date of institution of a proceeding, each Party shall place sufficient funds at the disposal of its Commissioner to meet in equal shares the initial expenses of the umpires to enable them to attend the first meeting of the Court. If either Party should fail to do so, the other Party may initially meet the whole of such expenses.

14. The Court of Arbitration shall convene, for its first meeting, on such date and at such place as shall be fixed by the Chairman.

15. At its first meeting the Court shall

(a) establish its secretariat and appoint a Treasurer;

(b) make an estimate of the likely expenses of the Court and call upon each Party to pay to the Treasurer half of the expenses so estimated: Provided that, if either Party should fail to make such payment, the other Party may initially pay the whole of the estimated expenses;

(c) specify the issues in dispute;

(d) lay down a programme for submission by each side of legal pleadings and rejoinders; and

(e) determine the time and place of reconvening the Court.

Unless special circumstances arise, the Court shall not reconvene until the pleadings and rejoinders have been closed. During the intervening period, at the request of either Party the Chairman of the Court may, for sufficient reason, make changes in the arrangements made under (d) and (e) above.

16. Subject to the provisions of this Treaty and except as the Parties may otherwise agree, the Court shall decide all questions relating to its competence and shall determine its procedure, including the time within which each Party must present and conclude its arguments. All such decisions of the Court shall be by a majority of those present and voting. Each arbitrator, including the Chairman, shall have one vote. In the event of an equality of votes, the Chairman shall have a casting vote.

17. The proceedings of the Court shall be in English.

18. Two or more certified copies of every document produced before the Court by one Party shall be communicated by the Court to the other Party; the Court shall not take cognizance of any document or paper or fact presented by a Party unless so communicated.

19. The Chairman of the Court shall control the discussions. The discussions shall not be open to the public unless it is so decided by the Court with the consent of the Parties. The discussions shall be recorded in minutes drawn up by the Secretaries appointed by the Chairman. These minutes shall be signed by the Chairman and shall alone have an authentic character.

20. The Court shall have the right to require from the Agents of the Parties the production of all papers and other evidence it considers necessary and to demand all necessary explanations. In case of refusal, the Court shall take formal note of it.

21. The members of the Court shall be entitled to put questions to the Agents and Counsel of the Parties and to demand explanations from them on doubtful points. Neither the questions nor the remarks made by the members of the Court during the discussions shall be regarded as an expression of an opinion of the Court or any of its members.

22. When the Agents and Counsel of the Parties have, within the time allotted by the Court, submitted all explanations and evidence in support of their case, the Court shall pronounce the discussions closed. The Court may, however, at its discretion reopen the discussions at any time before making its Award. The deliberations of the Court shall be in private and shall remain secret.

23. The Court shall render its Award, in writing, on the issues in dispute and on such relief, including financial compensation, as may have been claimed. The Award shall be accompanied by a statement of reasons. An Award signed by four or more members of the Court shall constitute the Award of the Court. A signed counterpart of the Award shall be delivered by the Court to each Party. Any such Award rendered in accordance with the provisions of this Annexure in regard to a particular dispute shall be final and binding upon the Parties with respect to that dispute.

24. The salaries and allowances of the arbitrators appointed pursuant to Paragraph 6 shall be determined and, in the first instance, borne by their Governments; those of the umpires shall be agreed upon with them by the Parties or by the persons appointing them, and (subject to Paragraph 18) shall be paid, in the first instance, by the Treasurer. The salaries and allowances of the secretariat of the Court shall be determined by the Court and paid, in the first instance, by the Treasurer.

25. Each Government agrees to accord to the members and officials of the Court of Arbitration and to the Agents and Counsel appearing before the Court the same privileges and immunities as are accorded to representatives of member states to the principal and
subsidiary organs of the United Nations under Sections 11, 12 and 13 of Article IV of the Convention on the Privileges and Immunities of the United Nations (dated 13th February 1946) during the periods specified in those Sections. The Chairman of the Court, with the approval of the Court, has the right and the duty to waive the immunity of any official of the Court in any case where the immunity would impede the course of justice and can be waived without prejudice to the interests of the Court. The Government appointing any of the aforementioned Agents and Counsel has the right and the duty to waive the immunity of any said appointee in any case where in its opinion the immunity would impede the course of justice and can be waived without prejudice to the effective performance of the functions of the said appointee. The immunities and privileges provided for in this paragraph shall not be applicable as between an Agent or Counsel appearing before the Court and the Government which has appointed him.

26. In its Award, the Court shall also award the costs of the proceedings, including those initially borne by the Parties and those paid by the Treasurer.

27. At the request of either Party, made within three months of the date of the Award, the Court shall reassemble to clarify or interpret its Award. Pending such clarification or interpretation the Court may, at the request of either Party and if in the opinion of the Court circumstances so require, grant a stay of execution of its Award. After furnishing this clarification or interpretation, or if no request for such clarification or interpretation is made within three months of the date of the Award, the Court shall be deemed to have been dissolved.

28. Either Party may request the Court at its first meeting to lay down, pending its Award, such interim measures as, in the opinion of that Party, are necessary to safeguard its interests under the Treaty with respect to the matter in dispute, or to avoid prejudice to the final solution or aggravation or extension of the dispute. The Court shall, thereupon, after having afforded an adequate hearing to each Party, decide, by a majority consisting of at least four members of the Court, whether any interim measures are necessary for the reasons hereinbefore stated and, if so, shall specify such measures: Provided that

(a) the Court shall lay down such interim measures only for such specified period as, in its opinion, will be necessary to render the Award; this period may, if necessary, be extended unless the delay in rendering the Award is due to any delay on the part of the Party which requested the interim measures in supplying such information as may be required by the other Party or by the Court in connection with the dispute; and

(b) the specification of such interim measures shall not be construed as an indication of any view of the Court on the merits of the dispute.

29. Except as the Parties may otherwise agree, the law to be applied by the Court shall be this Treaty and, whenever necessary for its interpretation or application, but only to the extent necessary for that purpose, the following in the order in which they are listed:

(a) International conventions establishing rules which are expressly recognized by the Parties.

(b) Customary international law.

ANNEXURE H—TRANSITIONAL ARRANGEMENTS

(Article II (5))

Part I—Preliminary

1. The provisions of Article II (5) with respect to the distribution of the waters of the Eastern Rivers during the Transition Period shall be governed by the provisions of this Annexure. With the exception of the provisions of Paragraph 50, all the provisions of this Annexure shall lapse on the date on which the Transition Period ends. The provisions of Paragraphs 50 and 51 shall lapse as soon as the final refund or the additional payment referred to therein has been made for the last year of the Transition Period.

2. For the purposes of this Annexure, the Transition Period shall be divided into two parts: Phase I and Phase II.

3. Phase I shall begin on 1st April 1960 and shall end on 31st March 1965, or, if the proposed Trimmu-Islam Link is not ready to operate by 31st March 1965 but is ready to operate prior to 31st March 1966, then on the date on which the link is ready to operate. In any event, whether or not the Trimmu-Islam Link is ready to operate, Phase I shall end not later than 31st March 1965.

4. Phase II shall begin on 1st April 1965, or, if Phase I has been extended under the provisions of Paragraph 3, then on the day following the end of Phase I but in any case not later than 1st April 1965. Phase II shall end on the same date as the Transition Period.

5. As used in this Annexure:

(a) The term ‘Central Bari Doab Channels’ or ‘C.B.D.C.’ means the system of irrigation channels located in Pakistan which, prior to 15th August 1947, formed a part of the Upper Bari Doab Canal System.
International Court of Justice

Corfu Channel case
(United Kingdom of Great Britain and Northern Ireland v. Albania)
Preliminary Objection, Judgment

I.C.J. Reports 1948
COUR INTERNATIONALE DE JUSTICE

RECUEIL
DES ARÊTS, AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU DÉTROIT
DE CORFOU
(EXCEPTION PRÉLIMINAIRE)

ARRÊT DU 25 MARS 1948

1948

INTERNATIONAL COURT OF JUSTICE

REPORTS
OF
JUDGMENTS, ADVISORY OPINIONS AND ORDERS

THE CORFU
CHANNEL CASE
(PRELIMINARY OBJECTION)

JUDGMENT OF MARCH 25th, 1948

Le présent arrêt doit être cité comme suit :
"Affaire du détroit de Corfou, Arrêt sur l'exception préliminaire :
C. I. J. Recueil 1948, p. 15."

This Judgment should be cited as follows :
"Corfu Channel case, Judgment on Preliminary Objection :
I.C.J. Reports 1948, p. 15."
INTernational Court of Justice

Year 1948.

March 25th, 1948.

The corfu Channel Case
(Preliminary Objection)

Proceedings instituted by application alleging a case of compulsory jurisdiction specially provided for in Charter of United Nations (Article 36, paragraph 1, of Statute; Articles 25, 32, 36, paragraph 3, of Charter).—Preliminary Objection to admissibility founded on an alleged procedural irregularity, as well as on alleged want of jurisdiction (Articles 40, paragraph 1, and 36, paragraph 1, of Statute; Article 32, paragraph 2, of Rules).—Jurisdiction founded on voluntary acceptance by respondent.—Waiver of objection to admissibility.—Form of acceptance of jurisdiction.—Acceptance by Parties by means of separate and successive steps.—Recommendation of Security Council to submit a dispute to the Court (Article 36, paragraph 3, of Charter of United Nations).—Reservations upon acceptance of jurisdiction.

Judgment.

Present: President guerrero; Vice-President Basdevant; Judges Alvarez, Fabella, Hackworth, Winiarski, zorité, de Visscher, Mr Arnold Mcnaie, klaestad, Badawi Pasha, Krylov, Read, Hsu Mo, Azevedo; M. Daxner, judge ad hoc.

In the corfu Channel Case,

between

the government of the United Kingdom of Great Britain and Northern Ireland, represented by:

Mr. W. E. Beckett, C.M.G., K.C., Legal Adviser to the Foreign Office, as Agent, assisted by
The Right Honourable Sir Hartley Shawcross, K.C., M.P.,
Attorney-General;
Dr. H. Lauterpacht, Professor of international law in the University of Cambridge;
Mr. C. H. M. Waldock, Professor of international law in the University of Oxford;
Mr. R. O. Wilberforce,
Mr. J. Mervyn Jones,
Mr. M. E. Reed (of the Attorney-General’s Office), members of the English Bar, as Counsel,

and

the government of the People’s Republic of Albania, represented by:

M. Kahreman Ylli, Minister Plenipotentiary of Albania in Paris, as Agent, assisted by
Professor Vladimir Vidoč, Professor of international law in Charles University at Prague, and
Professor Ivo Lapenna, Professor of international law in the University at Zagreb, as Counsel,

the Court,

composed as above,

delivers the following judgment:

By an Application, transmitted to and filed in the Registry of the Court on May 22nd, 1947, under Article 40, paragraph 1, of the Statute, and Article 32, paragraph 2, of the Rules of Court, the Government of the United Kingdom of Great Britain and Northern Ireland instituted proceedings before the Court against the Government of the People’s Republic of Albania. These proceedings concerned the incident which occurred in the corfu Channel on October 22nd, 1946, when two British destroyers struck mines, the explosion of which caused damage to these vessels and heavy loss of life.
It is stated in the Application that the subject of the dispute and the succinct statement of the facts and grounds on which the claim of the United Kingdom is based are to be found in a note dated December 9th, 1946, transmitted by the Government of the United Kingdom to the Albanian Government, a copy of which is attached to the Application. It is alleged in the Application that the Court has jurisdiction "under Article 36 (1) of its Statute as being a matter, which is one specially provided for in the Charter of the United Nations, on the grounds: (a) that the Security Council of the United Nations, at the conclusion of proceedings in which it dealt with the dispute under Article 36 of the Charter, by a Resolution, decided to recommend both the Government of the United Kingdom and the Albanian Government to refer the present dispute to the International Court of Justice; (b) that the Albanian Government accepted the invitation of the Security Council under Article 32 of the Charter to participate in the discussion of the dispute and accepted the condition laid down by the Security Council, when convening the invitation, that Albania accepts in the present case all the obligations which a Member of the United Nations would have to assume in a similar case; (c) that Article 25 of the Charter provides that the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

Finally, it is stated in the Application that the purpose of the claim of the Government of the United Kingdom is to secure a decision of the Court that the Albanian Government is internationally responsible for the loss and injury resulting from the fact that two destroyers of the Royal Navy struck mines in Albanian territorial waters in the Corfu Channel, and to have the repairation or compensation due therefor from the Albanian Government determined by the Court.

By a telegram of January 24th, 1947, the Albanian Government accepted the decision of the Security Council inviting it, in accordance with Article 32 of the Charter, to participate, without a vote, in the proceedings with regard to the dispute, on condition that Albania should accept, in the present case, all the obligations which a Member of the United Nations would have to assume in a similar case.

The Resolution of the Security Council of April 9th, 1947, to which the Application refers, is as follows:

"The Security Council having considered statements of representatives of the United Kingdom and Albania concerning a dispute between the United Kingdom and Albania arising out of an incident on 22nd October, 1946, in the Strait of Corfu in which two British ships were damaged by mines with resulting loss of life and injury to their crews recommends that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court."

Notice of the Application of the Government of the United Kingdom was given on May 22nd, 1947, by the Registrar of the Court, to the Albanian Government by telegram and by letter. On the same day, the Application was transmitted by the Registrar to the Secretary-General of the United Nations for communication in accordance with Article 40, paragraph 3, of the Statute.

On June 23rd, 1947, the Registrar received from the Albanian Government, following upon a reminder addressed to the latter, a telegram acknowledging receipt of the letter and telegram of May 22nd, and announcing the despatch of a reply to these communications.

On July 23rd, 1947, the Deputy-Registrar received from the hands of M. Kahreman Ylli, Albanian Minister in Paris, a letter from the Deputy-Minister of Foreign Affairs of Albania, dated at Tirana, July 2nd, 1947, which confirmed the receipt of the Application, and, after referring to the contents of that document, requested the Registrar to be good enough to bring the following statement to the knowledge of the Court:

"The Government of the People's Republic of Albania finds itself obliged to observe:

1. That the Government of the United Kingdom, in instituting proceedings before the Court, has not complied with the recommendation adopted by the Security Council on 9th April, 1947, whereby that body recommended 'that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court'.

The Albanian Government considers that, according both to the Court's Statute and to general international law, in the absence of an acceptance by Albania of Article 36 of the Court's Statute or of any other instrument of international law whereby the Albanian Government might have accepted the compulsory jurisdiction of the Court, the Government of the United Kingdom was not entitled to refer the dispute to the Court by unilateral application."

2. It would appear that the Government of the United Kingdom endeavours to justify this proceeding by invoking Article 25 of the Charter of the United Nations.

There can, however, be no doubt that Article 25 of the Charter relates solely to decisions of the Security Council taken on the basis of the provisions of Chapter VII of the Charter and does not apply to recommendations made by the Council with reference to the pacific settlement of disputes, since such recommendations are not binding and consequently cannot afford an indirect basis for the compulsory jurisdiction of the Court, a jurisdiction which can only ensue from explicit declarations made by States Parties to the Statute of the Court, in accordance with Article 36, 3, of the Statute.

3. The Albanian Government considers that, according to the terms of the Security Council's recommendation of 9th April, 1947, the Government of the United Kingdom, before bringing the case
before the International Court of Justice, should have reached an understanding with the Albanian Government regarding the conditions under which the two Parties, proceeding in conformity with the Council's recommendation, should submit their dispute to the Court.

The Albanian Government is therefore justified in its conclusion that the Government of the United Kingdom has not proceeded in conformity with the Council's recommendation, with the Statute of the Court or with the recognized principles of international law.

In these circumstances, the Albanian Government would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the Court without first concluding a special agreement with the Albanian Government.


Profundely convinced of the justice of its case, resolved to neglect no opportunity of giving evidence of its devotion to the principles of friendly collaboration between nations and of the pacific settlement of disputes, it is prepared, notwithstanding this irregularity in the action taken by the Government of the United Kingdom, to appear before the Court.

Nevertheless, the Albanian Government makes the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court in application of the Council's recommendations and more especially respecting the interpretation which that Government has sought to place on Article 25 of the Charter with reference to the binding character of the Security Council's recommendations. The Albanian Government wishes to emphasize that its acceptance of the Court's jurisdiction for this case cannot constitute a precedent for the future.

Accordingly, the Government of the People's Republic of Albania has the honour to inform you that it appoints as its Agent, in accordance with Article 35, paragraph 3, of the Rules of Court, M. Kahreman Yll, Minister Plenipotentiary of Albania in Paris, whose address for service at the seat of the Court is the Legation of the Federal People's Republic of Yugoslavia at The Hague."

A copy of this letter, which had been handed to the Registry by the Agent for the Albanian Government, was transmitted, on July 24th, to the Agent for the Government of the United Kingdom.

On July 31st, 1947, the President of the Court, as the Court was not sitting, made an Order, in which, after ascertaining the views of the Parties with regard to questions of procedure, it was stated:

"Whereas on July 23rd, 1947, a note signed by the Deputy-Minister for Foreign Affairs was filed with the Registry on behalf of the Government of the People's Republic of Albania, in response to the Application of the Government of the United Kingdom;"

Whereas, in this note, the Albanian Government declares inter alia that the Government of the United Kingdom, in bringing the case before the Court by unilateral application, has not proceeded in conformity with the recommendation of the Security Council of April 9th, 1947, or with the Statute of the Court or the recognized principles of international law, and that, accordingly, the Albanian Government would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the Court without first concluding a special agreement with the Albanian Government, but whereas the Albanian Government, fully accepting for its part the recommendation of the Security Council, is prepared, notwithstanding this irregularity and in evidence of its devotion to the principles of friendly collaboration between nations and of the pacific settlement of disputes, to appear before the Court;

Whereas the note above mentioned gives notice of the appointment as Agent for the Albanian Government of M. Kahreman Yll, Minister Plenipotentiary of Albania in Paris, and of his address for service at The Hague;

Whereas, having regard to the Resolution of the Security Council of April 9th, 1947, the said note of the Albanian Government may be regarded as constituting the document mentioned in Article 36 of the Rules of Court;"

In the Order, the time-limits were fixed as follows: the 1st October, 1947, for the presentation of the Memorial of the United Kingdom, and the 10th December, 1947, for the presentation of the Counter-Memorial of Albania.

The Memorial of the United Kingdom, presented within the time-limit fixed by the Order, contains statements and submissions with regard to the incidents which occurred on October 22nd, 1946, in the Corfu Channel. These statements and submissions develop the points indicated in the Application as constituting the claim of the United Kingdom.

Within the time-limit fixed for the presentation of the Counter-Memorial, the Agent for the Albanian Government, by a document dated December 1st and filed in the Registry on December 9th, submitted a Preliminary Objection to the Application on the ground of inadmissibility, based upon the following statements:

"I. The facts:

(1) The Security Council, in a Resolution adopted on April 9th last, recommended that the United Kingdom and Albanian Governments should immediately refer the dispute between them arising out of an incident on October 22nd, 1946, in the Strait of Corfu, to the International Court of Justice, in accordance with the provisions of the Statute of the Court;

(2) contrary to this recommendation, the United Kingdom Government, alone and without any agreement with the Albanian Government, approached the Court on May 13th last. By proceeding thus unilaterally, the Government of the United Kingdom brought an Application before the Court;

(3) on July 2nd last, the Albanian Government made the Court most explicit reservations respecting the manner in which
the Government of the United Kingdom had brought the case before the Court, but, subject to these reservations, stated that it was prepared to appear before the Court;

(4) on the other hand, the Albanian Government, in its letter of July 2nd last addressed to the Court, fully accepted the Security Council's recommendation of April 9th last, as far as it was concerned, and observed that, to bring their case before the Court, the two Governments should have reached an understanding in conformity with the Security Council's recommendation and in accordance with the provisions of the Court's Statute.

II. The Law:

(1) According to Article 36, paragraph 1, of the Court's Statute, its jurisdiction 'comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force'. According to Article 40, paragraph 1, of the Statute, 'cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application...'.

(2) The Albanian Government not being bound by any treaty or convention in force to submit its dispute with the United Kingdom Government to the Court, it follows that, in accordance with the provisions of the Statute of the Court, only both parties to this dispute can validly do so.

If this is so, the case must be brought before the Court by the notification of the special agreement, and not by an application.

(3) In its Application of May 13th last, the United Kingdom Government invokes no treaty or convention on the part of the parties, that the parties are submitting their dispute to the Court in accordance with the provisions of the Statute. The United Kingdom Government maintains that this is a matter, which is one specially provided for in the Charter of the United Nations, on the grounds: (a) that the Security Council of the United Nations, at the conclusion of proceedings in which it dealt with the dispute under Article 36 of the Charter, by a Resolution, of which a copy forms Annex 2 to this Application, decided to recommend both the Government of the United Kingdom and the Albanian Government to refer the present dispute to the International Court of Justice; (b) that the Albanian Government accepted the invitation of the Security Council under Article 32 of the Charter to participate in the discussion of the dispute and accepted the condition laid down by the Security Council, when conveying the invitation, that Albania accepts in the present case all the obligations which a Member of the United Nations would have to assume in a similar case. (A copy of the invitation of the Security Council and of the Albanian Government's reply thereto form Annex 3 to the present Application); (c) that Article 25 of the Charter provides that the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.' (See letter from the Agent of the Government of the United Kingdom of Great Britain and Northern Ireland, dated May 13th, 1947.)

As regards these reasons given by the United Kingdom Government, the Albanian Government has the honour to make the following observations:

Ad (a) The Security Council, in its Resolution of April 9th last, only recommended 'the United Kingdom and Albanian Governments' to refer their dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Such a recommendation certainly cannot ipso facto constitute a matter specially provided for in the Charter of the United Nations to which the Court's jurisdiction extends. Nothing in the Charter of the United Nations provides for such a case;

Ad (b) In complying with the invitation given by the Secretary-General ad interim of the United Nations on January 20th last, the Albanian Government only acceded 'in the present case all the obligations which a Member of the United Nations would have to assume in a similar case', within the meaning of Article 32 of the Charter.

As it was a recommendation, the obligations cannot ipso facto constitute a matter specially provided for in the Charter of the United Nations with a view to the Court's compulsory jurisdiction.

As a result of rights and obligations assumed by them in the Charter, Members of the United Nations are never bound to appear before the Court without any other procedure, namely, without having duly and expressly accepted the Court's jurisdiction in conformity with the provisions of its Statute;

Ad (c) The Security Council's Resolution of April 9th last cannot be a recommendation which, in conformity with the Charter of the United Nations, has no binding force for the Governments of Albania and the United Kingdom without their consent and acceptance. Moreover, according to the very terms of the Resolution, the two Governments must proceed in conformity with the provisions of the Statute of the Court in order that they may submit their dispute to it.

The said Resolution of the Security Council cannot, in conformity with the Charter of the United Nations and with the provisions of the Statute of the Court, be considered to be a decision of the Security Council, such as would on the one hand oblige both parties, ipso facto and without any other step, to appear before the International Court of Justice, and such as would, on the other hand, authorize them to approach the International Court of Justice without regard to the provisions of the Statute of the Court.

To sum up the foregoing observations, the Albanian Government asserts that neither the said Resolution of April 9th last, nor the said declaration of the Albanian Government of 20th January last, nor yet Article 25 of the Charter, can, whether taken separately or conjointly, be relied on as imposing the Court's compulsory jurisdiction on the Albanian Government in the present case.

III. Conclusions:
May it please the Court to proceed in conformity with Article 62 of the Rules of Court, to place on record that, in accepting the Security Council’s recommendation, the Albanian Government is only obliged to submit the above-mentioned dispute to the Court in accordance with the provisions of the Statute of the Court, and to give judgment that the Application of May 13th last addressed to the Court by the Government of the United Kingdom against the Government of the People’s Republic of Albania, is inadmissible, the United Kingdom Government having submitted the said Application contrary to the provisions of Article 40, paragraph 1, and of Article 36, paragraph 1, of the Statute of the Court.”

The Albanian Preliminary Objection was transmitted, on December 9th, to the Agent for the United Kingdom and was communicated on December 11th to the Members of the United Nations, pursuant to the provisions of Article 63 of the Statute.

By an Order, made on December 10th, 1947, the President of the Court, as the Court was not sitting, fixed January 20th, 1948, as the time-limit for the presentation by the Government of the United Kingdom of a written statement of its observations and submissions in regard to the Preliminary Objection.

This statement, dated January 19th, 1948, and received in the Registry on the same date, contains, in addition to a number of arguments, the following statements and submissions:

“9. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(a) It [the Government of the United Kingdom] has fully complied with the recommendation of the Security Council immediately to refer the dispute to the Court. It did so in its Application of 13th May, 1947, which fully and clearly indicated the subject of the dispute, and the parties, in accordance with Article 40 (1) of the Statute of the Court and Article 32 (2) of the Rules of Court.

(b) The Government of Albania, after delivery of the United Kingdom Application, stated in its letter of 2nd July, 1947, that it fully accepted the recommendation of the Security Council, and that it was prepared to appear before the Court and to accept its jurisdiction in this case.

(c) This Albanian letter, coupled with the Resolution of the Security Council of 9th April, 1947, was accepted by the President of the Court as a document which satisfied the conditions laid down by the Security Council for the appearance before the Court of a State not party to the Statute. (See Resolution of the Security Council of 15th October, 1946, under which a State not party to the Statute may make a ‘particular declaration’ accepting the jurisdiction of the Court in respect of a particular dispute only.)

(d) In these circumstances the jurisdiction of the Court to make the Order of 31st July, 1947, and to proceed with the trial of this dispute is fully established. Under Article 36 (1) of the Statute, the jurisdiction of the Court comprises all cases which the parties refer to it, and there is no dispute which States entitled to appear before the Court cannot refer to it.... The parties have clearly referred the present dispute by the above-mentioned documents (namely, the United Kingdom Application of 13th May, 1947, and the Albanian letter of 2nd July, 1947), which, whether or not they constitute a ‘special agreement’, at least constitute a ‘reference’. A special agreement is not necessary....

(e) Article 40 of the Statute merely defines the formal basis for action by the Court in a case where jurisdiction is established by Article 36 (1). There is nothing in the Statute or the Rules of Court which prevents the proceedings being formally instituted by application, even though the jurisdiction of the Court is established by a ‘reference’ by the parties or by a ‘special agreement’. Accordingly the Government of the United Kingdom, in bringing this matter before the Court by application, has, it is submitted, proceeded correctly....

(f) Further, there has been, in fact, an agreement between the parties constituted by the acceptance of the jurisdiction on the part of the Government of the United Kingdom in compliance with the Resolution of the Security Council of 9th April, 1947 (as evidenced by its Application of 13th May, 1947), followed by an acceptance of the jurisdiction on the part of the Government of Albania in its letter of 2nd July, 1947, to refer (without prejudice to the Albanian Government’s view after the interpretation of Article 25 of the Charter) to the Court the issues defined in the Application. This agreement possesses all the essentials of a ‘special agreement’ and conforms fully with Article 40 of the Statute....

(g) Even if (which is not admitted) there was any formal irregularity in the mode of the commencement of the present proceedings, this irregularity has been cured, because the Albanian Government by its letter of 2nd July, 1947, has waived any possible objection and has consented to the jurisdiction of the Court. An irregularity in the manner in which a case is introduced may be cured by subsequent events....

(h) Having once consented to the jurisdiction, the Albanian Government cannot afterwards withdraw its consent....

(i) The President’s Order of 31st July, 1947, clearly proceeded upon the basis that the Albanian Government had definitely accepted the jurisdiction, as was, in fact, the case. It is not competent for the Albanian Government to reopen the question of jurisdiction....

12. In view of the circumstances above referred to, which constitute an acceptance of the Government of the United Kingdom, a clear acceptance by Albania of the jurisdiction of the Court, the Government of the United Kingdom has not, in these Observations, set forth arguments on the applicability of Article 25 of the Charter. However, the Government of the United Kingdom must reserve the right, if necessary, to invoke the jurisdiction of the Court on the grounds set forth in its original Application.”
In conclusion, the Government of the United Kingdom submits to the Court:

(a) that the preliminary objection submitted by the Government of Albania should be dismissed,

(b) that the Government of Albania should be directed to comply with the terms of the President's Order of 31st July, 1947, and to deliver a Counter-Memorial on the merits of the dispute without further delay."

As the Court did not have upon the Bench a judge of Albanian nationality, the Albanian Government availed itself of the right provided by Article 37, paragraph 2, of the Statute, and designated Dr. Igor Daxner, President of a Chamber of the Supreme Court of Czechoslovakia, as judge ad hoc.

In the course of public sittings, held on February 26th, 27th and 28th, and on March 1st, 2nd and 5th, 1948, the Court heard oral arguments on behalf of the respective parties: M. Kahreman Yilli, Agent, and Professor Vochko, Counsel, for Albania; and Mr. W. E. Beckett, Agent, and Sir Hartley Shawcross, Counsel, for the United Kingdom. On being questioned by the President before the close of the hearing, the Agent for the Albanian Government declared that the submissions presented in the Albanian Preliminary Objection of December 9th, 1947, were final submissions; a similar declaration was made on behalf of the Agent for the Government of the United Kingdom with regard to the submissions in the Observations of the United Kingdom of January 19th, 1948.

Documents in support were filed as annexes to the Application and Memorial of the United Kingdom Government, to the Preliminary Objection of the Albanian Government and to the Observations of the United Kingdom Government in regard to this Preliminary Objection, as well as in view of the oral proceedings.

The above being the state of the proceedings, the Court must now adjudicate upon the Preliminary Objection raised on behalf of the Government of the People's Republic of Albania.

* * *

In the written submissions, which it confirmed orally at the hearing on March 5th, 1948, the Albanian Government requests the Court

"to place on record that the Albanian Government, in accepting the Security Council's recommendation, is only obliged to submit the above-mentioned dispute to the Court in accordance with the provisions of the Statute of the Court", and

"to give judgment that the Application of May 13th last, addressed to the Court by the Government of the United Kingdom against the Government of the People's Republic of Albania, is inadmissible, the Government of the United Kingdom having submitted the said Application contrary to the provisions of Article 40, paragraph 1, and Article 36, paragraph 1, of the Statute of the Court".

The first submission relates to the Resolution of April 9th, 1947, in which the Security Council recommended "that the United Kingdom and Albanian Governments should immediately refer this dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court". The Albanian Government accepted this recommendation and on the basis of its acceptance recognizes its obligation to refer the dispute to the Court in accordance with the provisions of the Statute. It is true that this obligation could only be fulfilled in accordance with the provisions of the Statute. In recognizing this fact in accordance with the request of the Albanian Government, the Court points out that that Government subsequently contracted other engagements, the date and exact scope of which will be established later.

The second submission of the Albanian Government, which is disputed by the Government of the United Kingdom, appears to constitute an objection on the ground of the inadmissibility of the Application. The intention of the Albanian Government, however, seems to be somewhat lacking in precision in this respect. When it refers, in its submissions, to Article 40, paragraph 1, of the Statute of the Court, the Albanian Government appears merely to have in mind a procedural irregularity resulting from the fact that the main proceedings were instituted by means of an application instead of by a special agreement concluded beforehand. The Albanian Government, however, also refers to Article 36, paragraph 1, of the Statute, a provision which relates exclusively to the jurisdiction of the Court; and the criticisms which are directed against the Application of the United Kingdom in the text of the Preliminary Objection, relate to an alleged lack of compulsory jurisdiction as well as to the formal admissibility of the Application.

This argument may be explained by the connexion which the United Kingdom Government, for its part, had made between the institution of proceedings by application and the existence, alleged by it in this case, of compulsory jurisdiction.

In support of its Application, the Government of the United Kingdom invoked certain provisions of the Charter of the United Nations and of the Statute of the Court to establish the existence of a case of compulsory jurisdiction. The Court does not consider that it needs to express an opinion on this point, since, as will be pointed out, the letter of July 2nd, 1947, addressed by the Albanian Government to the Court, constitutes a voluntary acceptance of its jurisdiction.

The letter of July 2nd, 1947, in spite of the reservation stated therein, the exact scope of which will be considered later, removes...
all difficulties concerning the question of the admissibility of the Application and the question of the jurisdiction of the Court.

With respect to the first point, the Albanian Government, while declaring on the one hand that it "would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the International Court by unilateral application, without first concluding a special agreement with the Albanian Government", states, on the other hand, that "it is prepared, notwithstanding this irregularity in the action taken by the Government of the United Kingdom, to appear before the Court". This language used by the Albanian Government cannot be understood otherwise than as a waiver of the right subsequently to raise an objection directed against the admissibility of the Application founded on the alleged procedural irregularity of that instrument.

The letter of July 2nd, 1947, is no less decisive as regards the question of the Court’s jurisdiction. Not only does the Albanian Government, which had already assumed certain obligations towards the Security Council by its telegram of January 24th, 1947, declare in that letter that it "fully accepts the recommendation of the Security Council" to the effect that the dispute should be referred to the Court in accordance with the provisions of the Court’s Statute, but, after stating that it is "profoundly convinced of the justice of its case", it accepts in precise terms "the jurisdiction of the Court for this case". The letter of July 2nd, therefore, in the opinion of the Court, constitutes a voluntary and indisputable acceptance of the Court’s jurisdiction.

While the consent of the parties confers jurisdiction on the Court, neither the Statute nor the Rules require that this consent should be expressed in any particular form.

The Albanian contention that the Application cannot be entertained because it has been filed contrary to the provisions of Article 40, paragraph 1, and of Article 36, paragraph 1, of the Court’s Statute, is essentially founded on the assumption that the institution of proceedings by application is only possible where compulsory jurisdiction exists and that, where it does not, proceedings can only be instituted by special agreement.

This is a mere assertion which is not justified by either of the texts cited. Article 32, paragraph 2, of the Rules does not require the Applicant, as an absolute necessity, but only "as far as possible", to specify in the application the provision on which he founds the jurisdiction of the Court. It clearly implies, both by its actual terms and by the reasons underlying it, that the institution of proceedings by application is not exclusively reserved for the domain of compulsory jurisdiction.

In submitting the case by means of an Application, the Government of the United Kingdom gave the Albanian Government the opportunity of accepting the jurisdiction of the Court. This acceptance was given in the Albanian Government’s letter of July 2nd, 1947.

Besides, separate action of this kind was in keeping with the respective positions of the parties in proceedings where there is in fact a claimant, the United Kingdom, and a defendant, Albania.

Furthermore, there is nothing to prevent the acceptance of jurisdiction, as in the present case, from being effected by two separate and successive acts, instead of jointly and beforehand by a special agreement. As the Permanent Court of International Justice has said in its Judgment No. 12, of April 26th, 1928, page 23: "The acceptance by a State of the Court’s jurisdiction in a particular case is not, under the Statute, subordinated to the observance of certain forms, such as, for instance, the previous conclusion of a special agreement."

The Security Council’s recommendation has been relied upon to support opposite conclusions. But, in the first place, though this recommendation clearly indicates that the bringing of the case before the Court requires action on the part of the parties, it does not specify that this action must be taken jointly, and, in the second place, the method of submitting the case to the Court is regulated by the texts governing the working of the Court as was pointed out by the Security Council in its recommendation.

The Court cannot therefore hold to be irregular a proceeding which is not precluded by any provision in these texts.

The scope of the reservation formulated in the letter of July 2nd, 1947, has still to be considered. The reservation is as follows: "Nevertheless, the Albanian Government makes the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court in application of the Security Council’s recommendation and more especially respecting the interpretation which that Government has sought to place on Article 25 of the Charter with reference to the binding character of the Security Council’s recommendations. The Albanian Government wishes to emphasize that its acceptance of the Court’s jurisdiction for this case cannot constitute a precedent for the future."

This reservation is the only limit set by the Albanian Government either to its acceptance of the Court’s jurisdiction, or to its abandonment of any objection to the admissibility of the proceedings. It is for the Court to decide, with binding force as between the parties, what is the interpretation of the letter of July 2nd, 1947. It is clear that the reservation contained in the letter is intended only to maintain a principle and to prevent the establishment of a precedent as regards the future. The Albanian Government makes its reservations—both as to the manner in which the United Kingdom Government has instituted
the proceedings, and as to the interpretation which that Government claimed to give to Article 25 of the Charter with a view to establishing the Court's compulsory jurisdiction—not for the purposes of the present proceedings, but in order to retain complete freedom of decision in the future. It is clear that no question of a precedent could arise unless the letter signified in the present case the acceptance of the Court’s jurisdiction on the merits.

The reservation in the letter of July 2nd, 1947, therefore does not enable Albania to raise a preliminary objection based on an irregularity of procedure, or to dispute thereafter the Court’s jurisdiction on the merits.

For these reasons,

while placing on record the declaration contained in the first submission of the Albanian Government, but subject to the explicit reservation of the obligations assumed by that Government in its letter of July 2nd, 1947,

The Court,

by fifteen votes against one,

(1) rejects the Preliminary Objection submitted by the Albanian Government on December 9th, 1947;

(2) decides that proceedings on the merits shall continue and fixes the time-limits for the filing of subsequent pleadings as follows:

(a) for the Counter-Memorial of the Albanian Government, Tuesday, June 15th, 1948;

(b) for the Reply of the United Kingdom Government, Monday, August 2nd, 1948;

(c) for the Rejoinder of the Albanian Government, Monday, September 20th, 1948.

The present judgment has been drafted in French and English, the French text being authoritative.

Done at the Peace Palace, The Hague, this twenty-fifth day of March, one thousand nine hundred and forty-eight, in three copies, one of which shall be placed in the archives of the Court and the others delivered to the Governments of the People's Republic of Albania and of the United Kingdom of Great Britain and Northern Ireland respectively.

(Signed) J. G. GUERRERO,
President.

(Signed) EVDARD HAMBRO,
Registrar.

Judges Basdevant, Alvarez, Winiarski, Zoričić, De Visscher, Badawi Pasha, Krylov, whilst concurring in the judgment of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the judgment a statement of their separate opinion.

M. Daxner, Judge ad hoc, declaring that he is unable to concur in the judgment of the Court, has availed himself of the right conferred on him by Article 57 of the Statute and appended to the judgment a statement of his separate opinion.

(Initialized) J. G. G.

(Initialized) E. H.
International Court of Justice

Interhandel case
(Switzerland v. United States of America)
Preliminary Objections, Judgment

*I.C.J. Reports 1959*
COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRETS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE L'INTERHANDEL
(SUISSE c. ETATS-UNIS D'AMÉRIQUE)
(EXCEPTIONS PRÉLIMINAIRES)

ARRÊT DU 21 MARS 1959

1959

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

INTERHANDEL CASE
(SWITZERLAND v. UNITED STATES OF AMERICA)
(PRELIMINARY OBJECTIONS)

JUDGMENT OF MARCH 21st, 1959

Le présent arrêt doit être cité comme suit:
« Affaire de l'Interhandel,

This Judgment should be cited as follows:
“Interhandel Case,

N° de vente : 205
Sales number 205
INTERNATIONAL COURT OF JUSTICE

——

YEAR 1959

March 21st, 1959

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INTERHANDEL CASE
(SWITZERLAND v. UNITED STATES OF AMERICA)
(PRELIMINARY OBJECTIONS)

——

Declarations of acceptance of compulsory jurisdiction of Court.—Reservation ratione temporis with regard to date on which dispute arose.—Operation of principle of reciprocity.—Domestic jurisdiction of United States and scope of reservation (b) of its declaration of acceptance of compulsory jurisdiction of Court.—Application of rule of exhaustion of local remedies.

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JUDGMENT

Present: President KLAESTAD; Vice-President ZAFRULLA KHAN; Judges BASDEVANT, HACKWORTH, WINIARSKI, BADAWI, ARMAND-UGON, KOJEVNIKOV, Sir HERSH LAUTERPACHT, MORENO QUINTANA, CORDOVA, WELLINGTON KOO, SPIROPULOS, Sir PERCY SPENDER; Judge ad hoc CARRY; Deputy-Registrar GARNIER-COIGNET.

INTERHANDEL CASE (JUDGMENT OF 21 III 59)

In the Interhandel case,

between

the Swiss Confederation,
represented by

M. Georges Sauser-Hall, Professor emeritus of the Universities of Geneva and Neuchâtel,
as Agent,
and by

M. Paul Guggenheim, Professor at the Law Faculty of the University of Geneva and at the Graduate Institute of International Studies,
as Co-Agent,
assisted by

M. Henri Thévenaz, Professor of International Law at the University of Neuchâtel,
as Counsel and Expert,
and

M. Michael Gelzer, Doctor of Laws,
M. Hans Miesch, Doctor of Laws, First Secretary of Embassy,
as Experts,

and

the United States of America,
represented by

the Honorable Loftus Becker, Legal Adviser of the Department of State,
as Agent,
assisted by

Mr. Stanley D. Metzger, Assistant Legal Adviser for Economic Affairs, Department of State,
Mr. Sidney B. Jacoby, Professor of Law, Georgetown University,
as Counsel,

THE COURT,
composed as above,
delivers the following Judgment:

On October 2nd, 1957, the Ambassador of the Swiss Confederation to the Netherlands filed with the Registrar an Application dated October 1st instituting proceedings in the Court relating to a dispute which had arisen between the Swiss Confederation and the United
States of America with regard to the claim by Switzerland to the restitution by the United States of the assets of the Société internationale pour participations industrielles et commerciales S.A. (Interhandel).

The Application, which invoked Article 36, paragraph 2, of the Statute and the acceptance of the compulsory jurisdiction of the Court by the United States of America on August 26th, 1946, and by Switzerland on July 28th, 1948, was, in accordance with Article 40, paragraph 2, of the Statute, communicated to the Government of the United States of America. In accordance with paragraph 3 of the same Article, the other Members of the United Nations and the non-Member States entitled to appear before the Court were notified.

Time-limits for the filing of the Memorial and the Counter-Memorial were fixed by an Order of the Court on October 24th, 1957, and subsequently extended at the request of the Parties by an Order of January 15th, 1958. The Memorial of the Swiss Government was filed within the time-limit fixed by that Order. Within the time-limit fixed for the filing of the Counter-Memorial, the Government of the United States of America filed preliminary objections to the jurisdiction of the Court. On June 26th, 1958, an Order recording that the proceedings on the merits were suspended under the provisions of Article 62 of the Rules of Court, granted the Swiss Government a time-limit expiring on September 22nd, 1958, for the submission of a written statement of its observations and submissions on the preliminary objections. The written statement was filed on that date and the case became ready for hearing in respect of the preliminary objections.

The Court not including upon the Bench a judge of Swiss nationality, the Swiss Government, pursuant to Article 31, paragraph 2, of the Statute, chose M. Paul Carry, Professor of Commercial Law at the University of Geneva, to sit as Judge ad hoc in the present case.

Hearings were held on November 5th, 6th, 8th, 10th, 11th, 12th, 14th and 17th, 1958, in the course of which the Court heard the oral arguments and replies of the Honorable Loftus Becker, on behalf of the Government of the United States of America, and of M. Sauser-Hall and M. Guggenheim, on behalf of the Swiss Government.

In the course of the written and oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of the Swiss Confederation, in the Application:

"May it please the Court:

To communicate the present Application instituting proceedings to the Government of the United States of America, in accordance with Article 40, paragraph 2, of the Statute of the Court;

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.

The Swiss Federal Council further reserves the right to supplement and to modify its submissions."

On behalf of the same Government, in the Memorial:

"May it please the Court to adjudge and declare:

A. Principal Submissions

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);

2. in the alternative, that in case the Court should not consider that proof of the non-enemy character of the property of the Société internationale pour participations industrielles et commerciales S.A. (Interhandel) has been furnished, an expert selected by the Court should be designated, in accordance with Article 50 of the Statute of the Court, with the task of

(a) examining the documents put at the disposal of the American Courts by Interhandel,

(b) examining the files and accounting records of the Sturzengger Bank the seizure of which was ordered by the public authorities (Ministère public) of the Swiss Confederation on June 15th, 1950, subject to the reservation, however, that the expert in his expert opinion shall refer only to such documents as relate to the Interhandel case and shall be instructed to observe absolute secrecy concerning the documents of the Sturzengger Bank, its clients and all other individuals and legal persons if such documents are not relevant to the case pending before the Court,

for the purpose of enabling the Court to determine the enemy or non-enemy character of the Interhandel assets in the General Aniline and Film Corporation.

B. Alternative Submissions in case the Court should not sustain the Swiss request to examine the merits of the dispute

1. (a) that the Court has jurisdiction to decide whether the dispute is one which is fit for submission either to the arbitral tribunal provided for in Article VI of the
Washington Accord of 1946, or to the arbitral tribunal provided for by the Treaty of Arbitration and Conciliation between Switzerland and the United States of February 16th, 1931;

(b) that in case of an affirmative reply to submission (a) either the arbitral tribunal provided for in the Washington Accord or the tribunal provided for in the Treaty of Arbitration and Conciliation of 1931, has jurisdiction to examine the dispute, and that the choice of one or the other tribunal belongs to the applicant State;

2. in the alternative:

(a) that the Court has jurisdiction to decide whether the dispute is fit to be submitted to the arbitral tribunal provided for by Article VI of the Washington Accord of 1946;

(b) that in case of an affirmative reply to submission (a) the said tribunal has jurisdiction to examine the dispute;

3. in the further alternative:

(a) that the Court has jurisdiction to decide whether the dispute is fit to be submitted to the arbitral tribunal provided for by the Treaty of Arbitration and Conciliation of 1931 between the Swiss Confederation and the United States of America;

(b) that in case of an affirmative reply to submission (a) the said tribunal has jurisdiction to examine the dispute;

4. in the final alternative:

that the dispute between the Swiss Confederation and the United States of America should be submitted to the examination of the Permanent Commission of Conciliation provided for in Articles II-IV of the Treaty of Arbitration and Conciliation of 1931.

The Swiss Federal Council furthermore reserves the right to supplement and to amend the preceding submissions."

On behalf of the Government of the United States of America, in the Preliminary Objections:

"May it please the Court to judge and decide:

(1) First Preliminary Objection

that there is no jurisdiction in the Court to hear or determine the matters raised by the Swiss Application and Memorial, for the reason that the dispute arose before August 26th, 1946, the date on which the acceptance of the Court's compulsory jurisdiction by this country became effective;

(2) Second Preliminary Objection

that there is no jurisdiction in the Court to hear or determine the matters raised by the Swiss Application and Memorial, for the reason that the dispute arose before July 28th, 1948.

The United States of America reserves the right to supplement or to amend the preceding submissions, and, generally, to submit any further legal argument."

On behalf of the Swiss Government, in its Observations and Submissions:

"May it please the Court to adjudge and declare:

1. to dismiss the first preliminary objection of the United States of America;

2. to dismiss the second preliminary objection of the United States of America;

3. either to dismiss or to join to the merits, the third preliminary objection of the United States of America;

4. either to dismiss, or to join to the merits, preliminary objection 4 (a) of the United States of America;

5. either to dismiss, or to join to the merits, preliminary objection 4 (b) of the United States of America."
The Swiss Federal Council maintains and confirms its main and alternative submissions as set out on pages 67 and 68 of the Memorial of the Swiss Confederation of March 3rd, 1958.

The Swiss Federal Council supplements its main submissions by the following alternative submission:

The Swiss Federal Council requests the Court to declare that the property, rights and interests which the Société internationale pour participations industrielles et commerciales S.A. (Interhandel) possesses in the General Aniline and Film Corporation have the character of non-enemy (Swiss) property, and consequently to declare that by refusing to return the said property the Government of the United States of America is in breach of Article IV, paragraph 1, of the Washington Accord of May 25th, 1946, and of the obligations binding upon it under the general rules of international law.

The Swiss Federal Council further reserves the right to supplement and to modify the preceding submissions.”

On behalf of the same Government, Submissions deposited in the Registry on November 3rd, 1958:

“A. Principal Submissions

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);

2. in the alternative, that in case the Court should not consider that proof of the non-enemy character of the property of the Société internationale pour participations industrielles et commerciales S.A. (Interhandel) has been furnished, an expert selected by the Court should be designated, in accordance with Article 50 of its Statute, with the task of:

(a) examining the documents put at the disposal of the American courts by Interhandel,

(b) examining the files and accounting records of the Sturzenegger Bank, the seizure of which was ordered by the public authorities (Ministère public) of the Swiss Confederation on June 15th, 1950, subject to the reservation, however, that the expert in his expert opinion shall refer only to such documents as relate to the Interhandel case, and shall be instructed to observe absolute secrecy concerning the documents of the Sturzenegger Bank, its clients and all other individuals and legal persons, if such documents are not relevant to the case pending before the Court,

for the purpose of enabling the Court to determine the enemy or non-enemy character of the Interhandel assets in the General Aniline and Film Corporation.

B. Alternative Principal Submission

The Swiss Federal Council requests the Court to declare that the property, rights and interests which the Société internationale pour participations industrielles et commerciales S.A. (Interhandel) possesses in General Aniline and Film Corporation have the character of non-enemy (Swiss) property, and consequently to declare that by refusing to return the said property, the Government of the United States of America is acting contrary to the decision of January 5th, 1948, of the Swiss Authority of Review based on the Washington Accord, and is in breach of Article IV, paragraph 1, of the Washington Accord of May 25th, 1946, and of the obligations binding upon it under the general rules of the law of nations.

C. Submissions regarding the Submissions of the Government of the United States following its Preliminary Objections

1. To dismiss the first preliminary objection of the United States of America;

2. To dismiss the second preliminary objection of the United States;

3. Either to dismiss, or to join to the merits, the third preliminary objection of the United States of America;

4. Either to dismiss, or to join to the merits, the preliminary objection 4 (a) of the United States of America;

   either to dismiss, or to join to the merits, the preliminary objection 4 (b) of the United States of America;

   In the alternative

   should the Court uphold one or the other of the preliminary objections of the United States of America, to declare in any case to decide whether the United States of America is under an obligation to submit the dispute regarding the validity of the Swiss Government’s claim either to the arbitral procedure provided for in Article VI of the Washington Accord of 1946, or to the Arbitral Tribunal provided for in the 1931 Treaty of Arbitration and Conciliation, or to the Conciliation Commission provided for in the same Treaty, and to fix the subsequent procedure.

D. Submissions on the merits in the event of the Court accepting one or other of the preliminary objections of the United States of America and accepting jurisdiction in conformity with the alternative submission as under C

1. To declare that the United States of America is under an obligation to submit the dispute for examination either to the arbitral procedure of the Washington Accord or to the Tribunal provided for in the Arbitration and Conciliation Treaty of 1931, and that the choice of one or the other Tribunal belongs to the Applicant State.

2. In the alternative:

   that the United States of America is under an obligation to submit the dispute to the arbitral procedure provided for in Article VI of the Washington Accord of 1946.

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3. In the further alternative:

that the United States of America is under an obligation to submit the dispute to the Arbitral Tribunal provided for in the Arbitration and Conciliation Treaty of 1937 between the Swiss Confederation and the United States of America.

4. In the final alternative:

that the United States of America is under an obligation to submit the dispute for examination by the Permanent Conciliation Commission provided for in Articles II-IV of the Arbitration and Conciliation Treaty of 1937.

At the hearing on November 6th, 1958, the Agent for the Government of the United States of America reaffirmed the submissions set forth in the Preliminary Objections.

For his part, the Agent for the Swiss Government repeated, at the hearing on November 5th, 1958, the submissions he had filed on November 3rd, whilst reserving his right to modify them after hearing any explanations that might be put forward on behalf of the Government of the United States of America.

At the hearing on November 14th, 1958, the Agent for the Government of the United States of America reaffirmed and maintained his earlier submissions whilst emphasizing that the preliminary objections were directed against all of the alternative as well as the principal submissions made on behalf of the Swiss Government.

Finally, at the hearing on November 17th, 1958, the Agent for the Swiss Government maintained the submissions he had filed in the Registry on November 3rd, 1958, which thus acquired the character of final submissions.

* * *

The declarations by which the Parties accepted the compulsory jurisdiction of the Court are as follows:

Declaration of the United States of America of August 14th, 1946 (in force since August 26th, 1946):

"I, Harry S. Truman, President of the United States of America, declare on behalf of the United States of America, under Article 36, paragraph 2, of the Statute of the International Court of Justice, and in accordance with the Resolution of August 2, 1949, of the Senate of the United States of America (two-thirds of the Senators present concurring therein), that the United States of America recognizes as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning

(a) The interpretation of a treaty;

(b) Any question of international law;

(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

(d) The nature or extent of the reparation to be made for the breach of an international obligation;

Provided, that this declaration shall not apply to

(a) Disputes the solution of which the Parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or

(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; or

(c) Disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction; and

Provided further, that this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration."

Declaration of Switzerland of July 6th, 1948 (in force since July 28th, 1948):

"The Swiss Federal Council, duly authorized for that purpose by a Federal decree which was adopted on 12 March 1948 by the Federal Assembly of the Swiss Confederation and became operative on 17 June 1948, hereby declares that the Swiss Confederation recognizes as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:

(a) The interpretation of a treaty;

(b) Any question of international law;

(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

(d) The nature or extent of the reparation to be made for the breach of an international obligation.

This declaration, which is made under Article 36 of the Statute of the International Court of Justice, shall take effect from the date on which the Swiss Confederation becomes a party to that Statute and shall have effect as long as it has not been abrogated subject to one year's notice."

* * *

The present proceedings are concerned only with the preliminary objections raised by the Government of the United States of
America. It is nevertheless convenient to set out briefly the facts and circumstances as submitted by the Parties which constitute the origin of the present dispute.

By its decisions of February 16th and April 24th, 1942, based on the Trading with the Enemy Act of October 6th, 1917, as amended, the Government of the United States vested almost all of the shares of General Aniline and Film Corporation (briefly referred to as the GAF), a company incorporated in the United States, on the ground that these shares in reality belonged to the I.G. Farbenindustrie 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 Société internationale pour entreprises chimiques S.A. (I.G. Chemie), entered in the Commercial Register of the Carton of Bâle-Ville in 1928. However, according to the contention of the Swiss Government, the links between the German company I.G. Farben and the Swiss company I.G. Chemie were finally severed by the cancellation of the contract for an option and for the guarantee of dividends, a cancellation which was effected in June 1940, that is, well before the entry of the United States into the war. The Swiss company adopted the name of Société internationale pour participations industrielles et commerciales S.A. (briefly referred to as Interhandel); Article 2 of its Statute as modified in 1940 defines it as follows: “The enterprise is a holding company. Its object is participation in industrial and commercial undertakings of every kind, especially in the chemical field, in Switzerland and abroad, but excluding banking and the professional purchase and sale of securities.” The largest item in the assets of Interhandel is its participation in the GAF. Approximately 75% of the GAF “A” shares and all its issued “B” shares are said to belong to Interhandel. A considerable part, approximately 90%, of these shares and a sum of approximately 1,800,000 dollars, have been vested by the Government of the United States.

Towards the end of the war, under a provisional agreement between Switzerland, the United States of America, France and the United Kingdom, property in Switzerland belonging to Germans in Germany was blocked (Decree of the Federal Council of February 16th, 1945). The Swiss Compensation Office was entrusted with the task of uncovering property in Switzerland belonging to Germans or controlled by them. In the course of these investigations, the question of the character of Interhandel was raised, but as a result of investigations carried out in June and July, 1945, the Office, considering it to have been proved that Interhandel had severed its ties with the German company, did not regard it as necessary to undertake the blocking of its assets.

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 Federal
these results and continued its investigations. By its decision of January 5th, 1948, given on appeal by Interhandel, the Swiss Authority of Review annulled the blocking with retroactive effect. It had invited the Joint Commission to participate in the procedure, but the latter had declined the invitation. This question was not referred to the arbitration provided for in the Washington Accord.

In these circumstances, the Swiss Government considered itself entitled to regard the decision of the Swiss Authority of Review as a final one, having the force of res judicata vis-à-vis the Powers parties to the Washington Accord. Consequently, in a Note of May 4th, 1948, to the Department of State, the Swiss Legation at Washington invoked this decision and the Washington Accord to request the Government of the United States to restore to Interhandel the property which had been vested in the United States. On July 26th, 1948, 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 and claimed by I.G. Chemie. On September 7th, 1948, in a Note to the Department of State, the Swiss Legation in Washington, still relying on the interpretation of the Washington Accord, maintained that the decision of the Swiss Authority of Review recognizing Interhandel as a Swiss company was legally binding upon the signatories of that Accord. It expressed the hope that the United States Government would accordingly release the assets of Interhandel in the United States, failing which the Swiss Government would have to submit the question to the arbitral procedure laid down in Article VI of the Washington Accord. On October 12th, 1948, the Department of State replied to that communication, maintaining its previous view that the decision of the Swiss Authority of Review was inapplicable to property vested in the United States. It added that United States law in regard to the seizure and disposal of enemy property authorized non-enemy foreigners to demand the restitution of vested property and to apply for it to the courts. On October 21st, 1948, Interhandel, relying upon the provisions of the Trading with the Enemy Act, instituted proceedings in the United States District Court for the District of Columbia. Direct discussion between the two Governments was then interrupted until April 9th, 1953, on which day the Swiss Government sent to the Government of the United States a Note questioning the procedure applied in the United States in the Interhandel case, stating that this procedure had led to a deadlock, and suggesting negotiations for a satisfactory settlement.

Up to 1957 the proceedings in the United States courts had made little progress on the merits. Interhandel, though it had produced a considerable number of the documents called for, did not produce all of them; it contended that the production of certain documents was prohibited by the Swiss authorities as constituting an offence under Article 273 of the Swiss Criminal Code and as violating banking secrecy (Article 47 of the Federal Law of November 8th, 1934). The action brought by Interhandel was the subject of a number of appeals in the United States courts and in a Memorandum appended to the Note addressed by the Department of State to the Swiss Minister on January 11th, 1957, it was said that Interhandel had finally failed in its suit. It was then that the Swiss Government, on October 2nd, 1957, addressed to the Court the Application instituting the present proceedings. The assertion in the Note of January 11th, 1957, that Interhandel's claim was finally rejected proved, however, to be premature, as the Court will have occasion to point out in considering the Third Objection of the United States.

As stated, the exchange of notes with regard to Interhandel which had taken place in 1948, was resumed in 1953. In its Note of April 9th, 1953, the Swiss Legation at Washington suggested negotiations between the two Governments with a view to arriving amicably at a just and practical solution of the problem of Interhandel; these suggestions were repeated in the Notes of December 1st, 1954, and March 1st, 1955; they were not accepted by the Department of State. Finally, the 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 February 16th, 1931, or by means of arbitration as provided for in the Washington Accord. This approach did not meet with the approval of the Government of the United States, which rejected it in its Note, already referred to, of January 11th, 1957.

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The subject of the claim as set forth in the final submissions presented on behalf of the Swiss Government, and disregarding certain items of a subsidiary character which can be left aside for the moment, is expressed essentially in two propositions:

(1) as a principal submission, the Court is asked to adjudge and declare that the Government of the United States is under an obligation to restore the assets of the Société internationale pour participations industrielles et commerciales S.A. (Interhandel);

(2) as an alternative submission, the Court is asked to adjudge and declare that the United States is under an obligation to submit the dispute to arbitration or to a conciliation procedure in accordance with certain conditions set forth first in the principal submissions and then in the alternative submissions.

The Government of the United States has put forward four preliminary objections to the Court's dealing with the claims of the Swiss Government. Before proceeding to examine these objections, the Court must direct its attention to the claim, formulated for the
first time in the Observations and Submissions of the Swiss Government, which is in the following terms:

“The Swiss Federal Council requests the Court to declare that the property, rights and interests which the Société internationale pour participations industrielles et commerciales S.A. (Interhandel) possesses in General Aniline and Film Corporation have the character of non-enemy (Swiss) property, and consequently declare that by refusing to return the said property the Government of the United States of America is in breach of Article IV, paragraph 1, of the Washington Accord of May 25th, 1945, and of the obligations binding upon it under the general rules of international law.”

In its final Submissions, deposited in the Registry on November 3rd, 1948, the Swiss Government gives the following explanation with regard to this claim:

“The Swiss Government, after examining the Preliminary Objections of the United States of America, has come to the conclusion that these involve the modification of the Swiss Government’s principal and alternative Submissions, which are as follows.”

The claim in question, however, which is described as “alternative principal Submission”, does not constitute a mere modification; it constitutes a new claim involving the merits of the dispute. Article 62, paragraph 3, of the Rules of Court, however, is categorical:

“Upon receipt by the Registrar of a preliminary objection filed by a party, the proceedings on the merits shall be suspended.”

Consequently, the new Swiss submission relating to a request for a declaratory judgment, presented after the suspension of the proceedings on the merits, cannot be considered by the Court at the present stage of the proceedings.

* * *

First Preliminary Objection

The First Objection of the Government of the United States seeks a declaration that the Court is without jurisdiction on the ground that the present 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 does indeed relate to legal disputes “hereafter arising”. The Government of the United States maintains that the dispute goes back at least to the middle of the year 1945, and that divergent opinions as to the character of Interhandel were exchanged between the American and Swiss authorities on a number of occasions before August 26th, 1946.

The Court would recall that the subject of the present dispute is indicated in the Application and in the Principal Final Submission of the Swiss Government which seeks the return to Interhandel of the assets vested in the United States. An examination of the documents reveals that a request to this effect was formulated by Switzerland for the first time in the Note of the Swiss Legation at Washington dated May 4th, 1948. The negative reply, which the Department of State describes as its final and considered view, is dated July 26th, 1948. Two other Notes exchanged shortly afterwards (on September 7th and October 12th of that same year) confirm that the divergent views of the two Governments were concerned with a clearly-defined legal question, namely, the restitution of Interhandel’s assets in the United States, and that the negotiations to this end rapidly reached a deadlock. Thus the dispute now submitted to the Court can clearly be placed at July 26th, 1948, the date of the first negative reply which the Government of the United States described as its final and considered view rejecting the demand for the restitution of the assets. Consequently the dispute arose subsequently to the date of the entry into force of the Declaration of the United States.

During the period indicated by the Government of the United States (the years 1945 and 1946), the exchanges of views between the Swiss authorities and the Allied and, in the first place, the American authorities, on the other, related to the search for, and the blocking and liquidation of, German property and interests in Switzerland; the question of the Swiss or German character of Interhandel was the subject of investigations and exchanges of views for the purpose of reaching a decision as to the fate of the assets in Switzerland of that company. It was only after the decision of the Swiss Authority of Review of January 5th, 1948, definitely recognizing the non-enemy character of the assets of Interhandel and, in consequence, putting an end to the provisional blocking of these assets in Switzerland, had, in the opinion of the Federal Government, acquired the authority of res judicata, that that Government: for the first time addressed to the United States its claim for the restitution of Interhandel’s assets in the United States.

The discussions regarding Interhandel between the Swiss and American authorities in 1945, 1946 and 1947 took place within the framework of the collaboration established between them prior to the Washington Accord and defined in that Accord. The representatives of the Joint Commission and those of the Swiss Compensation Office communicated to each other the results of their enquiries and investigations, and discussed their opinions with regard to Interhandel, without arriving at any final conclusions. Thus, for instance, the minute of the meeting of the Joint Commission on September 8th, 1947, records:

“The representatives of the Swiss Compensation Office stated that their investigations had yielded only negative results and
that they were still waiting for the Allies to furnish their documents which the Swiss Compensation Office was ready to discuss with the Allied experts."

The Court cannot see in these discussions between the Allied and Swiss officials a dispute between Governments which had already arisen with regard to the restitution of the assets claimed by Interhandel in the United States; the facts and situations which have led to a dispute must not be confused with the dispute itself; the documents relating to this collaboration between the Allied and Swiss authorities for the purpose of liquidating German property in Switzerland are not relevant to the solution of the question raised by the first objection of the United States.

The First Preliminary Objection must therefore be rejected so far as the principal submission of Switzerland is concerned.

In the Alternative Submission, Switzerland asks the Court to adjudge and declare that the United States is under an obligation to submit the dispute to arbitration or conciliation.

In raising its objection ratione temporis to the Application of the Swiss Government, the Government of the United States has not distinguished between the principal claim and the alternative claim in the Application. It is, however, clear that the alternative claim, in spite of its close connection with the principal claim, is nevertheless a separate and distinct claim relating not to the substance of the dispute, but to the procedure for its settlement.

The point here in dispute is the obligation of the Government of the United States to submit to arbitration or to conciliation an obligation the existence of which is asserted by Switzerland and denied by the United States. 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 and rejected by the United States 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 6th, 1956, and the Government of the United States rejected it by its Note of January 11th, 1957.

With regard to the Alternative Submission of Switzerland, the First Preliminary Objection cannot therefore be upheld.

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Second Preliminary Objection

According to this Objection, the present dispute, even if it is subsequent to the date of the Declaration of the United States, arose before July 28th, 1948, the date of the entry into force of the Swiss Declaration. The argument set out in the Preliminary Objections is as follows:

"The United States Declaration, which was effective August 20th, 1946, contained the clause limiting the Court's jurisdiction to disputes 'hereafter arising', while no such qualifying clause is contained in the Swiss Declaration which was effective July 28th, 1948. But the reciprocity principle ... requires that as between the United States and Switzerland the Court's jurisdiction be limited to disputes arising after July 28th, 1948... Otherwise, retroactive effect would be given to the compulsory jurisdiction of the Court."

In particular, it was contended with regard to disputes arising after August 20th, 1946, but before July 28th, 1948, that "Switzerland, as a Respondent, could have invoked the principle of reciprocity and claimed that, in the same way as the United States is not bound to accept the Court's jurisdiction with respect to disputes arising before its acceptance, Switzerland, too, could not be required to accept the Court's jurisdiction in relation to disputes arising before its acceptance."

Reciprocity in the case of Declarations accepting the compulsory jurisdiction of the Court enables a Party to invoke a reservation to that acceptance which it has not expressed in its own Declaration but which the other Party has expressed in its Declaration. For example, Switzerland, which has not expressed in its Declaration any reservation ratione temporis, while the United States has accepted the compulsory jurisdiction of the Court only in respect of disputes subsequent to August 20th, 1946, might, if in the position of Respondent, invoke by virtue of reciprocity against the United States the American reservation if the United States attempted to refer to the Court a dispute with Switzerland which had arisen before August 20th, 1946. This is the effect of reciprocity in this connection. Reciprocity enables the State which has made the wider acceptance of the jurisdiction of the Court to rely upon the reservations to the acceptance laid down by the other Party. 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 Preliminary Objection must therefore be rejected so far as the Principal Submission of Switzerland is concerned.

Since it has already been found that the dispute concerning the obligation of the United States to agree to arbitration or conciliation did not arise until 1957, the Second Preliminary Objection must also be rejected so far as the Alternative Submission of Switzerland is concerned.

*  *  *

Fourth Preliminary Objection

Since the Fourth Preliminary Objection of the United States relates to the jurisdiction of the Court in the present case, the Court will proceed to consider it before the Third Objection which
is an objection to admissibility. This Fourth Objection really consists of two objections which are of different character and of unequal scope. The Court will deal in the first place with part (b) of this Objection.

The Government of the United States submits "that there is no jurisdiction in this Court to hear or determine any issues raised by the Swiss Application or Memorial concerning the seizure and retention of the vested shares of General Aniline and Film Corporation, for the reason that such seizure and retention are, according to international law, matters within the domestic jurisdiction of the United States".

In challenging before the Court the seizure and retention of these shares by the authorities of the United States, the Swiss Government invokes the Washington Accord and general international law.

In order to determine whether the examination of the grounds thus invoked is excluded from the jurisdiction of the Court for the reason alleged by the United States, the Court will base itself on the course followed by the Permanent Court of International Justice in its Advisory Opinion concerning Nationality Decrees issued in Tunis and Morocco (Series B, No. 4), when dealing with a similar divergence of view. Accordingly, the Court does not, at the present stage of the proceedings, intend to assess the validity of the grounds invoked by the Swiss Government or to give an opinion on their interpretation, since that would be to go over the merits of the dispute. The Court will confine itself to considering whether the grounds invoked by the Swiss Government are such as to justify the provisional conclusion that they may be of relevance in this case and, if so, whether questions relating to the validity and interpretation of those grounds are questions of international law.

With regard to its principal Submission that the Government of the United States is under an obligation to restore the assets of Interhandel in the United States, the Swiss Government invokes Article IV of the Washington Accord. The Government of the United States contends that this Accord relates only to German property in Switzerland, and that Article IV "is of no relevance whatever in the present dispute".

By Article IV of this international agreement, the United States has assumed the obligation to unblock Swiss assets in the United States. The Parties are in disagreement with regard to the meaning of the term "unblock" and the term "Swiss assets". The interpretation of these terms is a question of international law which affects the merits of the dispute. At the present stage of the proceedings it is sufficient for the Court to note that Article IV of the Washington Accord may be of relevance for the solution of the present dispute and that its interpretation relates to international law.

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 and are not subject to any international supervision. All the authorities and judicial decisions cited by the United States refer to enemy property; but the whole question is whether the assets of Interhandel are enemy or neutral property. There having been a formal challenge based on principles of international law by a neutral State which has adopted the cause of its national, it is not open to the United States to say that their decision is final and not open to challenge; despite the American character of the Company, the shares of which are held by Interhandel, this is a matter which must be decided in the light of the principles and rules of international law governing the relations between belligerents and neutrals in time of war.

In its alternative Submission, the Swiss Government requests the Court to adjudge and declare that the United States is under an obligation to submit the dispute to arbitration or conciliation. The Swiss Government invokes Article VI of the Washington Accord, which provides: "In case differences of opinion arise with regard to the application or interpretation of this Accord which cannot be settled in any other way, recourse shall be had to arbitration." It also invokes the Treaty of Arbitration and Conciliation between Switzerland and the United States, dated February 16th, 1931. Article I of this Treaty provides: "Every dispute arising between the Contracting Parties, of whatever nature it may be, shall, when ordinary diplomatic proceedings have failed, be submitted to arbitration or to conciliation, as the Contracting Parties may at the time decide." The interpretation and application of these provisions relating to arbitration and conciliation involve questions of international law.

Part (b) of the Fourth Preliminary Objection must therefore be rejected.

Part (a) of the Fourth Objection seeks a finding from the Court that it is without jurisdiction to entertain the Application of the Swiss Government, for the reason that the sale or disposition by the Government of the United States of the shares of the GAF which have been vested as enemy property "has been determined by the United States of America, pursuant to paragraph (b) of the Conditions attached to this country's acceptance of this Court's jurisdiction, to be a matter essentially within the domestic jurisdiction of this country". The Preliminary Objections state that: "Such declination encompasses all issues raised in the Swiss Application and Memorial (including issues raised by the Swiss-United States Treaty of 1931 and the Washington Accord of 1946)"; but they add: "in so far as the determination of the issues would affect the sale or disposition of the shares". And they immediately go on to say: "However, the determination pursuant to paragraph (b) of the Conditions attached to this country's acceptance of the Court's
compulsory jurisdiction is made only as regards the sale or disposition of the assets."

During the oral arguments, the Agent for the United States continued to maintain that the scope of part (a) of the Fourth Objection was limited to the sale and disposition of the shares. At the same time, while insisting that local remedies were once more available to Interhandel and that, pending the final decision of the Courts of the United States, the disputed shares could not be sold, he declared on several occasions that part (a) of the Fourth Objection has lost practical significance, that "it has become somewhat academic", and that it is "somewhat moot".

Although the Agent for the United States maintained the Objection throughout the oral arguments, it appears to the Court that, thus presented, part (a) of the Fourth Objection only applies to the claim of the Swiss Government regarding the restitution of the assets of Interhandel which have been vested in the United States. Having regard to the decision of the Court set out below in respect of the Third Preliminary Objection of the United States, it appears to the Court that part (a) of the Fourth Preliminary Objection is without object at the present stage of the proceedings.

* * *

Third Preliminary Objection

The Third Preliminary Objection seeks a finding that "there is no jurisdiction in this Court to hear or determine the matters raised by the Swiss Application and Memorial, for the reason that Interhandel, whose case Switzerland is espousing, 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 of the Swiss Government. Indeed, by its nature it is to be regarded as a plea which 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, basing itself on the idea that Interhandel's suit had been finally rejected in the United States courts, considered itself entitled to institute proceedings by its Application of October 2nd, 1957. However, the decision given by the Supreme Court of the United States on October 14th, 1957, on the application of Interhandel made on August 6th, 1957, granted a writ of certiorari and re-admitted Interhandel into the suit. The judgment of that Court on June 16th, 1958, reversed the judgment of the Court of Appeals dismissing Interhandel's suit and remanded the case to the District Court. It was thenceforth open to Interhandel to avail itself again of the remedies available to it under the Trading with the Enemy Act, and to seek the restitution of its shares by proceedings in the United States courts. Its suit is still pending in the United States courts. The Court must have regard to the situation thus created.

The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law; the rule has been generally observed in cases in which a State has adopted the cause of its national whose rights are claimed to have been disregarded in another State in violation of international law. Before resort may be had to an international court in such a situation, it has been considered necessary that the State where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic legal system. A fortiori the rule must be observed when domestic proceedings are pending, as in the case of Interhandel, and when the two actions, that of the Swiss company in the United States courts and that of the Swiss Government in this Court, in its principal Submission, are designed to obtain the same result: the restitution of the assets of Interhandel vested in the United States.

The Swiss Government does not challenge the rule which requires that international judicial proceedings may only be instituted following the exhaustion of local remedies, but contends that the present case is one in which an exception to this rule is authorized by the rule itself.

The Court does not consider it necessary to dwell upon the assertion of the Swiss Government that "the United States itself has admitted that Interhandel had exhausted the remedies available in the United States courts". It is true that the representatives of the Government of the United States expressed this opinion on several occasions, in particular in the memorandum annexed to the Note of the Secretary of State of January 11th, 1957. This opinion was based upon a view which has proved unfounded. In fact, the proceedings which Interhandel had instituted before the courts of the United States were then in progress.

However, the Swiss Government has raised against the Third Objection other considerations which require examination.

In the first place, it is contended that the rule is not applicable for the reason that the measure taken against Interhandel and regarded as contrary to international law is a measure which 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 who consider that they have been deprived of their rights by measures taken in pursuance of the Trading with the Enemy Act, adequate remedies for the defence of their rights against the Executive.
It has also been contended on behalf of the Swiss Government that in the proceedings based upon the Trading with the Enemy Act, the United States courts are not in a position to adjudicate in accordance with the rules of international law and that the Supreme Court, in its decision of June 16th, 1938, made no reference to the many questions of international law which, in the opinion of the Swiss Government, constitute the subject of the present dispute. 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. In the present case, when the dispute was brought to this Court, the proceedings in the United States courts had not reached the merits, in which considerations of international law could have been profitably relied upon.

The Parties have argued the question of the binding force before the courts of the United States of international instruments which, according to the practice of the United States, fall within the category of Executive Agreements; the Washington Accord is said to belong to that category. At the present stage of the proceedings it is not necessary for the Court to express an opinion on the matter. Neither is it practicable, before the final decision of the domestic courts, to anticipate what basis they may adopt for their judgment.

Finally, the Swiss Government laid special stress on the argument that 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 and based on the Washington Accord, a decision which the Swiss Government regards as an international judicial decision. “When an international decision has not been executed, there are no local remedies to exhaust, for the injury has been caused directly to the injured State.” It has therefore contended that the failure by the United States to implement the decision constitutes a direct breach of international law, causing immediate injury to the rights of Switzerland as the Applicant State. The Court notes in the first place that to implement a decision is to apply its operative part. In the operative part of its decision, however, the Swiss Authority of Review “Decrees: (1) that the Appeal is sustained and the decision subjecting the appellant to the blocking of German property in Switzerland is annulled...” The decision of the Swiss Authority of Review relates to the unblocking of the assets of Interhandel in Switzerland; the Swiss claim is designed to secure the restitution of the assets of Interhandel in the United States. Without prejudging the validity of any arguments which the Swiss Government seeks or may seek to base upon that decision, the Court would confine itself to observing that such arguments do 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, Interhandel, for the purpose of securing the restitution to that company of assets vested by the Government of the United States. 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.

In its alternative claim, the Swiss Government asks the Court to declare its competence to decide whether the United States is under an obligation to submit the dispute to arbitration or conciliation. The Government of the United States contends that this claim, while not identical with the principal claim, is designed to secure the same object, namely, the restitution of the assets of Interhandel in the United States, and that for this reason the Third Objection applies equally to it. It maintains that the rule of the exhaustion of local remedies applies to each of the principal and alternative Submissions which seek a “ruling by this Court to the effect that some other international tribunal now has jurisdiction to determine that very same issue, even though that issue is at the same time being actively litigated in the United States courts.”

The Court considers that one interest, and one alone, that of Interhandel, which has led the latter to institute and to resume proceedings before the United States courts, has induced the Swiss Government to institute international proceedings. This interest is the basis for the present claim and should determine the scope of the action brought before the Court by the Swiss Government in its alternative form as well as in its principal form. On the other hand, the grounds on which the rule of the exhaustion of local remedies is based are the same, whether in the case of an international court, arbitral tribunal, or conciliation commission. In these circumstances, the Court considers 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 of Switzerland.

For these reasons,

THE COURT,

by ten votes to five,

rejects the First Preliminary Objection of the Government of the United States of America;

unanimously,

rejects the Second Preliminary Objection;

by ten votes to five,

finds that it is not necessary to adjudicate on part (a) of the Fourth Preliminary Objection:
by fourteen votes to one,
rejects part (b) of the Fourth Preliminary Objection; and
by nine votes to six,
upholds the Third Preliminary Objection and holds that the
Application of the Government of the Swiss Confederation is
inadmissible.

Done in French and English, the French text being authoritative,
at the Peace Palace, The Hague, this twenty-first day of March,
one thousand nine hundred and fifty-nine, 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) Helge Klaestad,
President.

(Signed) Garnier-Coignet,
Deputy-Registrar.

Judge Basdevant states that he concurs in the decision that
the Application is inadmissible as that decision is set forth in the
operative part of the Judgment, but he adds that his opinion on
this point was reached in a way which, in certain respects, differs
from that followed by the Court. Basing himself on the provisions
of the Statute and of the Rules of Court, he considered that, in
order to assess the validity of the objections advanced, he should
direct his attention to the subject of the dispute and not to any
particular claim put forward in connection with the dispute. The
subject of the dispute and the subject of the claim are explicitly
differentiated in Article 32, paragraph 2, of the Rules of Court.
Accordingly, he has directed his attention to the statement in the
Application to the effect that the latter submits to the Court the
dispute relating to "the restitution by the United States of the
assets" of Interhandel. This indication of the subject of the dispute,
which is confirmed by an examination of the correspondence,
reveals the scope of the dispute, shows that it is not limited to
whatever may have been discussed at any particular moment
between the two Governments and consequently throws a light
upon the date at which the dispute between them arose. He was
thus led to the conclusion that the dispute to which the Appli-
cation relates did not arise until after July 28th, 1948, and this
factual finding is sufficient to justify the rejection of the first
two preliminary objections.

Judge Kojevnikov states that he concurs in the Judgment of
the Court so far as the First, Second, Third and part (a) of the
Fourth Preliminary Objections of the Government of the United
States are concerned. He is, however, unable to concur in the
reasoning of the Judgment relating to the Second Preliminary
Objection since, in his opinion, the Judgment should have been
based not on the question of reciprocity, which is of very great
importance, but upon the factual circumstances which show that
the legal character of the dispute between the Swiss Government
and the Government of the United States was clearly defined only
after July 28th, 1948, the date of the entry into force of the Swiss
Declaration.

Judge Kojevnikov is further of the opinion that the Third
Objection should have been upheld by the Court, not only as a
contention relating to the admissibility of the Application, but also
with regard to the jurisdiction of the Court.

Finally, he considers that part (b) of the Fourth Preliminary
Objection, having regard to its subject-matter, ought not to have
been rejected but, in the present case, should have been joined to the merits if the Court had not upheld the Third Objection.

M. Carry, Judge ad hoc, states that he regrettably cannot subscribe to the decisions taken by the Court on the Third and part (a) of the Fourth Objections of the Government of the United States. He agrees generally with the dissenting opinion of President Klaestad.

He considers that in any event the Third Objection should not have been upheld in so far as it was directed against the alternative claim of the Swiss Government relating to arbitration or conciliation. He regards that claim as separate and distinct from the principal claim, since it did not relate to the merits of the dispute but only to the procedure for its settlement. By this claim the Court was invited to pass only upon the arbitrability of the dispute, not on the obligation of the United States to return the assets of Interhandel. That latter question was within the exclusive jurisdiction of the tribunal to be seised. It follows, in his opinion, that the rule relating to the exhaustion of local remedies was not applicable to the alternative claim of the Swiss Government, inasmuch as, by that claim, the applicant State sought to secure from the international tribunal a result different from that which Interhandel is seeking to obtain in the American courts. The question of exhaustion of local remedies is one which could arise only before the arbitral tribunal seised of the case: the Court should not, in his opinion, encroach upon the jurisdiction of that tribunal.

Judges Hackworth, Córdova, Wellington Koo and Sir Percy Spender, availing themselves of the right conferred upon them by Article 57 of the Statute, append to the Judgment of the Court statements of their separate opinions.

Vice-President Zafrulla Khan states that he agrees with Judge Hackworth.

President Klaestad and Judges Winiarski, Armand-Ugon, Sir Hersch Lauterpacht and Spiropoulos, availing themselves of the right conferred upon them by Article 57 of the Statute, append to the Judgment of the Court statements of their dissenting opinions.

(Initialled) H. K.

(Initialled) G.-C.
International Court of Justice

LaGrand
(Germany v. United States of America)
Judgment

I.C.J. Reports 2001
LA GRAND CASE
(GERMANY v. UNITED STATES OF AMERICA)

JUDGMENT OF 27 JUNE 2001

Official citation:
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Judgment. I.C.J. Reports 2001, p. 466

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INTERNATIONAL COURT OF JUSTICE

YEAR 2001

27 June 2001

LAGRAND CASE

(GERMANY v. UNITED STATES OF AMERICA)

Facts of the case.

* * *


Jurisdiction of Court in respect of Germany’s first submission — Recognition by United States of existence of dispute arising out of breach of subparagraph (b) of Article 36, paragraph 1, of Vienna Convention on Consular Relations — Recognition by United States of Court’s jurisdiction to hear this dispute in so far as concerns Germany’s own rights — Objection by United States to Court’s jurisdiction over Germany’s claim founded on diplomatic protection — Objection by United States to Court’s jurisdiction over alleged breach of subparagraphs (a) and (c) of Article 36, paragraph 1, of Convention.

Jurisdiction of Court in respect of Germany’s third submission concerning implementation of Order of 3 March 1999 indicating provisional measures.

Jurisdiction of Court in respect of Germany’s fourth submission — Objection by United States — United States argument that submission seeking guarantees of non-repetition falls outside terms of Optional Protocol.

* * *

Admissibility of Germany’s submissions.

United States objection to admissibility of Germany’s second, third and fourth submissions — United States argument that Court cannot be turned into ultimate court of appeal in criminal proceedings before its own domestic courts.

United States objection to admissibility of Germany’s third submission —

United States challenging manner of Germany’s institution of present proceedings before the Court.

United States objection to admissibility of Germany’s first submission — Allegation of failure to exhaust local remedies.

United States objection to Germany’s submissions — Allegation that Germany seeking to apply standard to United States different from own practice.

* * *

Germany’s first submission — Question of disregard by United States of its legal obligations to Germany under Articles 5 and 36, paragraph 1, of Convention.

Submission advanced by Germany in own right — Recognition by United States of breach of Article 36, paragraph 1 (b), of Convention — Article 36, paragraph 1, establishing interrelated regime designed to facilitate implementation of system of consular protection.

Submission by Germany based on diplomatic protection — Article 36, paragraph 1 (b), of Convention and obligations of receiving State to detained person and to sending State.

* * *

Germany’s second submission — Question of disregard by United States of its legal obligation under Article 36, paragraph 2, of Convention.

Argument of United States that Article 36, paragraph 2, applicable only to rights of sending State.

“Procedural default” rule — Distinction to be drawn between rule as such and application in present case.

* * *

Germany’s third submission — Question of disregard by United States of its legal obligation to comply with Order indicating provisional measures of 3 March 1999.

Court called upon to rule expressly on question of legal effects of orders under Article 41 of Statute — Interpretation of that provision — Comparison of French and English texts — French and English versions of Statute "equally authentic" by virtue of Article 111 of United Nations Charter — Article 33, paragraph 4, of Vienna Convention on Law of Treaties — Object and purpose of Statute — Context — Principle that party to legal proceedings must abstain from any measure which might aggravate or extend the dispute — Preparatory work of Article 41 — Article 94 of United Nations Charter.

Question of binding nature of Order of 3 March 1999 — Measures taken by United States to give effect to Order — No request for reparation in Germany’s third submission — Time pressure due to circumstances in which proceedings were instituted.

* * *

Germany’s fourth submission — Question of obligation to provide certain assurances of non-repetition.
General request for assurance of non-repetition — Measures taken by United States to prevent recurrence of violation of Article 36, paragraph 1 (b) — Commitment undertaken by United States to ensure implementation of specific measures adopted in performance of obligations under that provision.

Consideration of other assurances requested by Germany — Germany’s characterization of individual right provided for in Article 36, paragraph 1, as human right — Court’s power to determine existence of violation of international obligation and, if necessary, to hold that domestic law has caused violation — United States having apologized to Germany for breach of Article 36, paragraph 1, of Convention — Germany not having requested material reparation for injury to itself and to LaGrand brothers — Question of review and reconsideration of certain sentences.

JUDGMENT

Present: President GUILLAUME; Vice-President SHI; Judges ODA, BEDIAOUI, RANJEVA, HERCEGHI, FLEISCHAUFER, KOROMA, VEVERICHETIN, HIGGINS, PARRA-ARANGUREN, KOOMANS, REZK, AL-KHASAWNEH, BUEGENTHAL; Registrar COUVRREUR.

In the LaGrand case,

between

the Federal Republic of Germany,

represented by

Mr. Gerhard Westdickenberg, Director General for Legal Affairs and Legal Adviser, Federal Foreign Office of the Federal Republic of Germany,

H.E. Mr. Eberhard U. H. von Puttkamer, Ambassador of the Federal Republic of Germany to the Kingdom of the Netherlands,

as Agents;

Mr. Bruno Simma, Professor of Public International Law at the University of Munich,

as Co-Agent and Counsel;

Mr. Pierre-Marie Dupuy, Professor of Public International Law at the University of Paris (Panthéon-Assas) and at the European University Institute in Florence,

Mr. Donald Francis Donovan, Debevoise & Plimpton, New York,

Mr. Hans-Peter Kaul, Head of the Public International Law Division, Federal Foreign Office of the Federal Republic of Germany,

Mr. Daniel Khan, University of Munich,

Mr. Andreas Paulus, University of Munich,

as Counsel;

the United States of America,

represented by

Mr. James H. Thessin, Acting Legal Adviser, United States Department of State,

as Agent;

Ms Catherine W. Brown, Assistant Legal Adviser for Consular Affairs, United States Department of State,

Mr. D. Stephen Mathias, Assistant Legal Adviser for United Nations Affairs, United States Department of State,

as Deputy Agents;

The Honourable Janet Napolitano, Attorney General, State of Arizona,

Mr. Michael J. Matheson, Professor of International Law, School of Advanced International Studies, Johns Hopkins University; former Acting Legal Adviser, United States Department of State,

Mr. Theodor Meron, Counsellor on International Law, United States Department of State; Charles L. Denison Professor of International Law, New York University; Associate Member of the Institute of International Law,

Mr. Stefan Trechsel, Professor of Criminal Law and Procedure, University of Zurich Faculty of Law,

as Counsel and Advocates;

Mr. Shabtai Rosenne, Member of the Israel Bar; Honorary Member of the American Society of International Law; Member of the Institute of International Law,

Ms Norma B. Martens, Assistant Attorney General, State of Arizona,

Mr. Paul J. McMurdie, Assistant Attorney General, State of Arizona,

Mr. Robert J. Erickson, Principal Deputy Chief, Appellate Section, Criminal Division, United States Department of Justice,

Mr. Allen S. Weiner, Counsellor for Legal Affairs, Embassy of the United States of America in the Netherlands,

Ms Jessica R. Holmes, Attaché, Office of the Counsellor for Legal Affairs, Embassy of the United States of America in the Netherlands,

as Counsel,
The Court,
composed as above,
after deliberation,
delivers the following Judgment:

1. On 2 March 1999 the Federal Republic of Germany (hereinafter referred to as “Germany”) filed in the Registry of the Court an Application instituting proceedings against the United States of America (hereinafter referred to as the “United States”) for “violations of the Vienna Convention on Consular Relations [of 24 April 1963]” (hereinafter referred to as the “Vienna Convention”).

In its Application, Germany based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes, which accompanies the Vienna Convention (hereinafter referred to as the “Optional Protocol”).

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was forthwith communicated to the Government of the United States: and, in accordance with paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. On 2 March 1999, the day on which the Application was filed, the German Government also filed in the Registry of the Court a request for the indication of provisional measures based on Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court.

By a letter dated 2 March 1999, the Vice-President of the Court, acting President in the case, addressed the Government of the United States in the following terms:

“Exercising the functions of the presidency in terms of Articles 13 and 32 of the Rules of Court, and acting in conformity with Article 74, paragraph 4, of the said Rules, I hereby draw the attention of [the Government of the United States] to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects.”

By an Order of 3 March 1999, the Court indicated certain provisional measures (see paragraph 32 below).

4. In accordance with Article 43 of the Rules of Court, the Registrar sent the notification referred to in Article 63, paragraph 1, of the Statute to all States parties to the Vienna Convention or to that Convention and the Optional Protocol.

5. By an Order of 5 March 1999, the Court, taking account of the views of the Parties, fixed 16 September 1999 and 27 March 2000, respectively, as the time-limits for the filing of a Memorial by Germany and of a Counter-Memorial by the United States.

The Memorial and Counter-Memorial were duly filed within the time-limits so prescribed.

6. By letter of 26 October 2000, the Agent of Germany expressed his Government’s desire to produce five new documents in accordance with Article 56 of the Rules.

By letter of 6 November 2000, the Agent of the United States informed the Court that his Government consented to the production of the first and second documents, but not to that of the third, fourth and fifth documents.

7. Pursuant to Article 53, paragraph 2, of the Rules, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed would be made available to the public at the opening of the oral proceedings.

8. Public hearings were held from 13 to 17 November 2000, at which the Court heard the oral arguments and replies of:

For Germany:
Mr. Gerhard Westdickenberg,
Mr. Bruno Simma,
Mr. Daniel Khan,
Mr. Hans-Peter Kaul,
Mr. Andreas Paulus,
Mr. Donald Francis Donovan,
Mr. Pierre-Marie Dupuy.

For the United States:
Mr. James H. Thessin,
The Honourable Janet Napolitano,
Mr. Theodor Merson,
Ms Catherine W. Brown,
Mr. D. Stephen Mathias,
Mr. Stefan Trechsel,
Mr. Michael J. Matheson.

9. At the hearings, Members of the Court put questions to Germany, to which replies were given in writing, in accordance with Article 61, paragraph 4, of the Rules of Court.

In addition, the United States, acting within the time-limit accorded it for this purpose, commented on the new documents filed by Germany on 26 October 2000 (see paragraph 6 above) and produced documents in support of those comments.

10. In its Application, Germany formulated the decision requested in the following terms:

“Accordingly the Federal Republic of Germany asks the Court to adjudge and declare

(1) that the United States, in arresting, detaining, trying, convicting and sentencing Karl and Walter LaGrand, as described in the preceding statement of facts, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, as provided by Articles 5 and 36 of the Vienna Convention,

(2) that Germany is therefore entitled to reparation,

(3) that the United States is under an international legal obligation not to
apply the doctrine of 'procedural default' or any other doctrine of national law, so as to preclude the exercise of the rights accorded under Article 36 of the Vienna Convention; and

(4) that the United States is under an international obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against any other German national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character;

and that, pursuant to the foregoing international legal obligations,

(1) the criminal liability imposed on Karl and Walter LaGrand in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;
(2) the United States should provide reparation, in the form of compensation and satisfaction, for the execution of Karl LaGrand on 24 February 1999;
(3) the United States should restore the status quo ante in the case of Walter LaGrand, that is re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of that German national in violation of the United States' international legal obligation took place; and

(4) the United States should provide Germany a guarantee of the non-repetition of the illegal acts.”

11. In the course of the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Germany,
in the Memorial:

“Having regard to the facts and points of law set forth in the present Memorial, and without prejudice to such elements of fact and law and to such evidence as may be submitted at a later time, and likewise without prejudice to the right to supplement and amend the present Submissions, the Federal Republic of Germany respectfully requests the Court to adjudge and declare

(1) that the United States, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36 subparagraph 1 (b) of the Vienna Convention on Consular Relations, and by depriving Germany of the possibility of rendering consular assistance, which ultimately resulted in the execution of Karl and Walter LaGrand, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, under Articles 5 and 36 paragraph 1 of the said Convention;

(2) that the United States, by applying rules of its domestic law, in par-

ticular the doctrine of procedural default, which barred Karl and Walter LaGrand from raising their claims under the Vienna Convention on Consular Relations, and by ultimately executing them, violated its international legal obligation to Germany under Article 36 paragraph 2 of the Vienna Convention to give full effect to the purposes for which the rights accorded under Article 36 of the said Convention are intended;

(3) that the United States, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice on the matter, violated its international legal obligation to comply with the Order on provisional measures issued by the Court on 3 March 1999, and to refrain from any action which might interfere with the subject matter of a dispute while judicial proceedings are pending;

and, pursuant to the foregoing international legal obligations,

(4) that the United States shall provide Germany a guarantee that it will not repeat its illegal acts and ensure that, in any future cases of detention of or criminal proceedings against German nationals, United States domestic law and practice will not constitute a bar to the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations.”

On behalf of the Government of the United States, in the Counter-Memorial:

“Accordingly, on the basis of the facts and arguments set forth in this Counter-Memorial, and without prejudice to the right further to amend and supplement these submissions in the future, the United States asks the Court to adjudge and declare that:

(1) There was a breach of the United States obligation to Germany under Article 36 (1) (b) of the Vienna Convention on Consular Relations, in that the competent authorities of the United States did not promptly give to Karl and Walter LaGrand the notification required by that Article, and that the United States has apologized to Germany for this breach, and is taking substantial measures aimed at preventing any recurrence; and

(2) That all other claims and submissions of the Federal Republic of Germany are dismissed.”

12. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Germany,

“The Federal Republic of Germany respectfully requests the Court to adjudge and declare

(1) that the United States, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36, subparagraph 1 (b), of the Vienna Convention on Consular Relations, and by depriving Germany of the possibility of rendering con-
ular assistance, which ultimately resulted in the execution of Karl
and Walter LaGrand, violated its international legal obligations to
Germany, in its own right and in its right of diplomatic protection of
its nationals, under Articles 5 and 36, paragraph 1, of the said
Convention;

(2) that the United States, by applying rules of its domestic law, in particular
the doctrine of procedural default, which barred Karl and Wal-
ter LaGrand from raising their claims under the Vienna Convention
on Consular Relations, and by ultimately executing them, violated its
international legal obligation to Germany under Article 36, para-
graph 2, of the Vienna Convention to give full effect to the purposes
for which the rights accorded under Article 36 of the said Convention
are intended;

(3) that the United States, by failing to take all measures at its disposal to
ensure that Walter LaGrand was not executed pending the final deci-
sion of the International Court of Justice on the matter, violated its
international legal obligation to comply with the Order on provisional
measures issued by the Court on 3 March 1999, and to refrain from
any action which might interfere with the subject-matter of a dispute
while judicial proceedings are pending;

and, pursuant to the foregoing international legal obligations,

(4) that the United States shall provide Germany an assurance that it will
not repeat its unlawful acts and that, in any future cases of detention
of or criminal proceedings against German nationals, the United
States will ensure in law and practice the effective exercise of the rights
under Article 36 of the Vienna Convention on Consular Relations. In
particular in cases involving the death penalty, this requires the United
States to provide effective review of and remedies for criminal convic-
tions impaired by a violation of the rights under Article 36."

On behalf of the Government of the United States,

"The United States of America respectfully requests the Court to adjudge
and declare that:

(1) There was a breach of the United States obligation to Germany under
Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations, in that the competent authorities of the United States did
not promptly give to Karl and Walter LaGrand the notification
required by that Article, and that the United States has apologized to
Germany for this breach, and is taking substantial measures aimed at
preventing any recurrence; and

(2) All other claims and submissions of the Federal Republic of Germany
are dismissed."

* * *

13. Walter LaGrand and Karl LaGrand were born in Germany in
1962 and 1963 respectively, and were German nationals. In 1967, when
they were still young children, they moved with their mother to take up
permanent residence in the United States. They returned to Germany
only once, for a period of about six months in 1974. Although they lived
in the United States for most of their lives, and became the adoptive
children of a United States national, they remained at all times German
nationals, and never acquired the nationality of the United States. How-
ever, the United States has emphasized that both had the demeanour
and speech of Americans rather than Germans, that neither was known to
have spoken German, and that they appeared in all respects to be native
citizens of the United States.

14. On 7 January 1982, Karl LaGrand and Walter LaGrand were
arrested in the United States by law enforcement officers on suspicion
of having been involved earlier the same day in an attempted armed bank
robbery in Marana, Arizona, in the course of which the bank manager
was murdered and another bank employee seriously injured. They were
subsequently tried before the Superior Court of Pima County, Arizona,
which, on 17 February 1984, convicted them both of murder in the first
degree, attempted murder in the first degree, attempted armed robbery
and two counts of kidnapping. On 14 December 1984, each was sen-
tenced to death for first degree murder and to concurrent sentences of
imprisonment for the other charges.

15. At all material times, Germany as well as the United States were
parties to both the Vienna Convention on Consular Relations and the
Optional Protocol to that Convention. Article 36, paragraph 1 (b), of
the Vienna Convention provides that:

"if he so requests, the competent authorities of the receiving State
shall, without delay, inform the consular post of the sending State if,
within its consular district, a national of that State is arrested or
committed to prison or to custody pending trial or is detained in any
other manner. Any communication addressed to the consular post
by the person arrested, in prison, custody or detention shall be for-
warded by the said authorities without delay. The said authorities
shall inform the person concerned without delay of his rights under
this subparagraph."

It is not disputed that at the time the LaGrands were convicted and sen-
tenced, the competent United States authorities had failed to provide the
LaGrands with the information required by this provision of the Vienna
Convention, and had not informed the relevant German consular post of
the LaGrands' arrest. The United States concedes that the competent
authorities failed to do so, even after becoming aware that the LaGrands
were German nationals and not United States nationals, and admits that
the United States has therefore violated its obligations under this provision of the Vienna Convention.

16. However, there is some dispute between the Parties as to the time at which the competent authorities in the United States became aware of the fact that the LaGrands were German nationals. Germany argues that the authorities of Arizona were aware of this from the very beginning, and in particular that probation officers knew by April 1982. The United States argues that at the time of their arrest, neither of the LaGrands identified himself to the arresting authorities as a German national, and that Walter LaGrand affirmatively stated that he was a United States citizen. The United States position is that its “competent authorities” for the purposes of Article 36, paragraph 1 (b), of the Vienna Convention were the arresting and detaining authorities, and that these became aware of the German nationality of the LaGrands by late 1984, and possibly by mid-1983 or earlier, but in any event not at the time of their arrest in 1982. Although other authorities, such as immigration authorities or probation officers, may have known this even earlier, the United States argues that these were not “competent authorities” for the purposes of this provision of the Vienna Convention. The United States has also suggested that at the time of their arrest, the LaGrands may themselves have been unaware that they were not nationals of the United States.

17. At their trial, the LaGrands were represented by counsel assigned by the court, as they were unable to afford legal counsel of their own choice. Their counsel at trial did not raise the issue of non-compliance with the Vienna Convention, and did not themselves contact the German consular authorities.

18. The convictions and sentences pronounced by the Superior Court of Pima County, Arizona, were subsequently challenged by the LaGrands in three principal sets of legal proceedings.

19. The first set of proceedings consisted of appeals against the convictions and sentences to the Supreme Court of Arizona, which were rejected by that court on 30 January 1987. The United States Supreme Court, in the exercise of its discretion, denied applications by the LaGrands for further review of these judgments on 5 October 1987.

20. The second set of proceedings involved petitions by the LaGrands for post-conviction relief, which were denied by an Arizona state court in 1989. Review of this decision was denied by the Supreme Court of Arizona in 1990, and by the United States Supreme Court in 1991.

21. At the time of these two sets of proceedings, the LaGrands had not been informed by the competent United States authorities of their rights under Article 36, paragraph 1 (b), of the Vienna Convention, and the German consular post had still not been informed of their arrest. The issue of the lack of consular notification, which had not been raised at trial, was also not raised in these two sets of proceedings.

22. The relevant German consular post was only made aware of the case in June 1992 by the LaGrands themselves, who had learnt of their rights from other sources, and not from the Arizona authorities. In December 1992, and on a number of subsequent occasions between then and February 1999, an official of the Consulate-General of Germany in Los Angeles visited the LaGrands in prison. Germany claims that it subsequentially helped the LaGrands’ attorneys to investigate the LaGrands’ childhood in Germany, and to raise the issue of the omission of consular advice in further proceedings before the federal courts.

23. The LaGrands commenced a third set of legal proceedings by filing applications for writs of habeas corpus in the United States District Court for the District of Arizona, seeking to have their convictions — or at least their death sentences — set aside. In these proceedings they raised a number of different claims, which were rejected by that court in orders dated 24 January 1995 and 16 February 1995. One of these claims was that the United States authorities had failed to notify the German consulate of their arrest, as required by the Vienna Convention. This claim was rejected on the basis of the “procedural default” rule. According to the United States, this rule:

“is a federal rule that, before a state criminal defendant can obtain relief in federal court, the claim must be presented to a state court. If a state defendant attempts to raise a new issue in a federal habeas corpus proceeding, the defendant can only do so by showing cause and prejudice. Cause is an external impediment that prevents a defendant from raising a claim and prejudice must be obvious on its face. One important purpose of this rule is to ensure that the state courts have an opportunity to address issues going to the validity of state convictions before the federal courts intervene.”

The United States District Court held that the LaGrands had not shown an objective external factor that prevented them from raising the issue of the lack of consular notification earlier. On 16 January 1998, this judgment was affirmed on appeal by the United States Court of Appeals,
Ninth Circuit, which also held that the LaGrands' claim relating to the Vienna Convention was "procedurally defaulted", as it had not been raised in any of the earlier proceedings in state courts. On 2 November 1998, the United States Supreme Court denied further review of this judgment.

24. On 21 December 1998, the LaGrands were formally notified by the United States authorities of their right to consular access.

25. On 15 January 1999, the Supreme Court of Arizona decided that Karl LaGrand was to be executed on 24 February 1999, and that Walter LaGrand was to be executed on 3 March 1999. Germany claims that the German Consulate learned of these dates on 19 January 1999.

26. In January and early February 1999, various interventions were made by Germany seeking to prevent the execution of the LaGrands. In particular, the German Foreign Minister and German Minister of Justice wrote to their respective United States counterparts on 27 January 1999; the German Foreign Minister wrote to the Governor of Arizona on the same day; the German Chancellor wrote to the President of the United States and to the Governor of Arizona on 2 February 1999; and the President of the Federal Republic of Germany wrote to the President of the United States on 5 February 1999. These letters referred to German opposition to capital punishment generally, but did not raise the issue of the absence of consular notification in the case of the LaGrands. The latter issue was, however, raised in a further letter, dated 22 February 1999, two days before the scheduled date of execution of Karl LaGrand, from the German Foreign Minister to the United States Secretary of State.

27. On 23 February 1999, the Arizona Board of Executive Clemency rejected an appeal for clemency by Karl LaGrand. Under the law of Arizona, this meant that the Governor of Arizona was prevented from granting clemency.

28. On the same day, the Arizona Superior Court in Pima County rejected a further petition by Walter LaGrand, based inter alia on the absence of consular notification, on the ground that these claims were "procedurally precluded".

29. On 24 February 1999, certain last-minute federal court proceedings brought by Karl LaGrand ultimately proved to be unsuccessful. In the course of these proceedings the United States Court of Appeals, Ninth Circuit, again held the issue of failure of consular notification to be procedurally defaulted. Karl LaGrand was executed later that same day.

30. On 2 March 1999, the day before the scheduled date of execution of Walter LaGrand, at 7.30 p.m. (The Hague time), Germany filed in the Registry of this Court the Application instituting the present proceedings against the United States (see paragraph 1 above), accompanied by a request for the following provisional measures:

31. On the same day, the Arizona Board of Executive Clemency met to consider the case of Walter LaGrand. It recommended against a commutation of his death sentence, but recommended that the Governor of Arizona grant a 60-day reprieve having regard to the Application filed by Germany in the International Court of Justice. Nevertheless, the Governor of Arizona decided, "in the interest of justice and with the victims in mind", to allow the execution of Walter LaGrand to go forward as scheduled.

32. In an Order of 3 March 1999, this Court found that the circumstances required it to indicate, as a matter of the greatest urgency and without any other proceedings, provisional measures in accordance with Article 41 of its Statute and with Article 75, paragraph 1, of its Rules (I.C.J. Reports 1999 (1), p. 15, para. 26); it indicated provisional measures in the following terms:

(a) The United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of that Order.

By a letter of the same date, the German Foreign Minister requested the Secretary of State of the United States "to urge [the] Governor [of Arizona] for a suspension of Walter LaGrand's execution pending a ruling by the International Court of Justice".

33. On the same day, proceedings were brought by Germany in the United States Supreme Court against the United States and the Governor of Arizona, seeking inter alia to enforce compliance with this Court's Order indicating provisional measures. In the course of these proceedings, the United States Solicitor General as counsel of record took the position, inter alia, that "an order of the International Court of Justice indicating provisional measures is not binding and does not furnish a basis for judicial relief". On the same date, the United States Supreme Court dismissed the motion by Germany, on the ground of the tardiness of Germany's application and of jurisdictional barriers under United States domestic law.

34. On that same day, proceedings were also instituted in the United
States Supreme Court by Walter LaGrand. These proceedings were decided against him. Later that day, Walter LaGrand was executed.

* * *

35. The Court must as a preliminary matter deal with certain issues, which were raised by the Parties in these proceedings, concerning the jurisdiction of the Court in relation to Germany’s Application, and the admissibility of its submissions.

* * *

36. In relation to the jurisdiction of the Court, the United States, without having raised preliminary objections under Article 79 of the Rules of Court, nevertheless presented certain objections thereto.

Germany bases the jurisdiction of the Court on Article I of the Optional Protocol, which reads as follows:

“Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.”

Germany contends that the

“proceedings instituted by [it] in the present case raise questions of the interpretation and application of the Vienna Convention on Consular Relations and of the legal consequences arising from the non-observance on the part of the United States of certain of its provisions vis-à-vis Germany and two of its nationals”.

Accordingly, Germany states that all four of its submissions

“are covered by one and the same jurisdictional basis, namely Art. 1 of the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes of 24 April 1963”.

* *

37. The Court will first examine the question of its jurisdiction with respect to the first submission of Germany. Germany relies on paragraph 1 of Article 36 of the Vienna Convention, which provides:

“With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from acting on behalf of a national who is in prison, custody or detention if he expressly opposes such action.”

38. Germany alleges that the failure of the United States to inform the LaGrand brothers of their right to contact the German authorities “prevented Germany from exercising its rights under Art. 36 (1) (a) and (c) of the Convention” and violated “the various rights conferred upon the sending State vis-à-vis its nationals in prison, custody or detention as provided for in Art. 36 (1) (b) of the Convention”. Germany further alleges that by breaching its obligations to inform, the United States also violated individual rights conferred on the detainees by Article 36, paragraph 1 (a), second sentence, and by Article 36, paragraph 1 (b). Germany accordingly claims that it “was injured in the person of its two nationals”, a claim which Germany raises “as a matter of diplomatic protection on behalf of Walter and Karl LaGrand”.

39. The United States acknowledges that “there was a breach of the U.S. obligation . . . to inform the LaGrand brothers that they could ask that a German consular post be notified of their arrest and detention”. It does not deny that this violation of Article 36, paragraph 1 (b), has given rise to a dispute between the two States and recognizes that the Court has
jurisdiction under the Optional Protocol to hear this dispute in so far as it concerns Germany's own rights.

40. Concerning Germany's claims of violation of Article 36, paragraph 1 (a) and (c), the United States however calls these claims "particularly misplaced" on the grounds that the "underlying conduct complained of is the same" as the claim of the violation of Article 36, paragraph 1 (b). It contends, moreover, that "to the extent that this claim by Germany is based on the general law of diplomatic protection, it is not within the Court's jurisdiction" under the Optional Protocol because it "does not concern the interpretation or application of the Vienna Convention". The United States points to the distinction between jurisdiction over treaties and jurisdiction over customary law and observes that "[e]ven if a treaty norm and a customary norm were to have exactly the same content", each would have its "separate applicability". It contests the German assertion that diplomatic protection "enters through the intermediary of the Vienna Convention" and submits:

"the Vienna Convention deals with consular assistance...it does not deal with diplomatic protection. Legally, a world of difference exists between the right of the consul to assist an incarcerated national of his country, and the wholly different question whether the State can espouse the claims of its national through diplomatic protection. The former is within the jurisdiction of the Court under the Optional Protocol; the latter is not...Germany based its right of diplomatic protection on customary law...[T]his case comes before this Court not under Article 36, paragraph 2, of its Statute, but under Article 36, paragraph 1. Is it not obvious...that whatever rights Germany has under customary law, they do not fall within the jurisdiction of this Court under the Optional Protocol?"

41. Germany responds that the breach of paragraph 1 (a) and (c) of Article 36 must be distinguished from that of paragraph 1 (b), and that as a result, the Court should not only rule on the latter breach, but also on the violation of paragraph 1 (a) and (c). Germany further asserts "that 'application of the Convention' in the sense of the Optional Protocol very well encompasses the consequences of a violation of individual rights under the Convention, including the espousal of respective claims by the State of nationality".

42. The Court cannot accept the United States objections. The dispute between the Parties as to whether Article 36, paragraph 1 (a) and (c), of the Vienna Convention have been violated in this case in consequence of the breach of paragraph 1 (b) does relate to the interpretation and application of the Convention. This is also true of the dispute as to whether paragraph 1 (b) creates individual rights and whether Germany has standing to assert those rights on behalf of its nationals. These are consequently disputes within the meaning of Article I of the Optional Protocol. Moreover, the Court cannot accept the contention of the United States that Germany's claim based on the individual rights of the LaGrand brothers is beyond the Court's jurisdiction because diplomatic protection is a concept of customary international law. This fact does not prevent a State party to a treaty, which creates individual rights, from taking up the case of one of its nationals and instituting international judicial proceedings on behalf of that national, on the basis of a general jurisdictional clause in such a treaty. Therefore the Court concludes that it has jurisdiction with respect to the whole of Germany's first submission.

43. The United States does not challenge the Court's jurisdiction in regard to Germany's second submission. Nor does it as such address the issue of the jurisdiction of the Court over the third submission concerning the binding nature of the Order of the Court of 3 March 1999 indicating provisional measures. It argues, however, that this submission is inadmissible (see paragraphs 50 and 53-55 below), and that the Court can fully and adequately dispose of the merits of this case without having to rule on the submission.

44. Germany asserts that the Court's Order of 3 March 1999 was intended to "enforce" the rights enjoyed by Germany under the Vienna Convention and "preserve those rights pending its decision on the merits". Germany claims that a dispute as to "whether the United States were obliged to comply and did comply with the Order" necessarily arises out of the interpretation or application of the Convention and thus falls within the jurisdiction of the Court. Germany argues further that questions "relating to the non-compliance with a decision of the Court under Article 41, para. 1, of the Statute, e.g. Provisional Measures, are an integral component of the entire original dispute between the parties". Moreover, Germany contends that its third submission also implicates "in an auxiliary and subsidiary manner...the inherent jurisdiction of the Court for claims as closely interrelated with each other as the ones before the Court in the present case".

45. The third submission of Germany concerns issues that arise directly out of the dispute between the Parties before the Court over which the Court has already held that it has jurisdiction (see paragraph 42 above), and which are thus covered by Article I of the Optional Protocol. The Court reaffirms, in this connection, what it said in its Judgment in the
46. The United States objects to the jurisdiction of the Court over the fourth submission in so far as it concerns a request for assurances and guarantees of non-repetition. The United States submits that its "jurisdictional argument [does] not apply to jurisdiction to order cessation of a breach or to order reparation, but is limited to the question of assurances and guarantees . . . [which] are conceptually distinct from reparation". It contends that Germany's fourth submission "goes beyond any remedy that the Court can or should grant, and should be rejected. The Court's power to decide cases . . . does not extend to the power to order a State to provide any 'guarantee' intended to confer additional legal rights on the Applicant State . . . The United States does not believe that it can be the role of the Court . . . to impose any obligations that are additional to or that differ in character from those to which the United States consented when it ratified the Vienna Convention."

47. Germany counters this argument by asserting that "a dispute whether or not the violation of a provision of the Vienna Convention gives rise to a certain remedy is a dispute concerning 'the application and interpretation' of the aforesaid Convention, and thus falls within the scope of Art. I of the Optional Protocol".

Germany notes in this regard that the Court, in its Order of 9 April 1998 in the case concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America), held that "there exists a dispute as to whether the relief sought by Paraguay is a remedy available under the Vienna Convention, in particular in relation to Articles 5 and 36 thereof; and . . . this is a dispute arising out of the application of the Convention within the meaning of Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes of 24 April 1963" (I.C.J. Reports 1998, p. 256, para. 31).

48. The Court considers that a dispute regarding the appropriate remedies for the violation of the Convention alleged by Germany is a dispute that arises out of the interpretation or application of the Convention and thus is within the Court's jurisdiction. Where jurisdiction exists over a dispute on a particular matter, no separate basis for jurisdiction is required by the Court to consider the remedies a party has requested for the breach of the obligation (Factory at Chorzów, P.C.I.J., Series A, No. 9, p. 22). Consequently, the Court has jurisdiction in the present case with respect to the fourth submission of Germany.

49. The United States has argued that the submissions of Germany are inadmissible on various grounds. The Court will consider these objections in the order presented by the United States.

50. The United States objects first to Germany's second, third and fourth submissions. According to the United States, these submissions are inadmissible because Germany seeks to have this Court "play the role of ultimate court of appeal in national criminal proceedings", a role which it is not empowered to perform. The United States maintains that many of Germany's arguments, in particular those regarding the rule of "procedural default", ask the Court "to address and correct . . . asserted violations of US law and errors of judgment by US judges" in criminal proceedings in national courts.

51. Germany denies that it requests the Court to act as an appellate criminal court, or that Germany's requests are in any way aimed at interfering with the administration of justice within the United States judicial system. It maintains that it is merely asking the Court to adjudge and declare that the conduct of the United States was inconsistent with its international legal obligations towards Germany under the Vienna Convention, and to draw from this failure certain legal consequences provided for in the international law of State responsibility.

52. The Court does not agree with these arguments of the United
States concerning the admissibility of the second, third and fourth German submissions. In the second submission, Germany asks the Court to interpret the scope of Article 36, paragraph 2, of the Vienna Convention; the third submission seeks a finding that the United States violated an Order issued by this Court pursuant to Article 41 of its Statute; and in Germany’s fourth submission, the Court is asked to determine the applicable remedies for the alleged violations of the Convention. Although Germany deals extensively with the practice of American courts as it bears on the application of the Convention, all three submissions seek to require the Court to do no more than apply the relevant rules of international law to the issues in dispute between the Parties to this case. The exercise of this function, expressly mandated by Article 38 of its Statute, does not convert this Court into a court of appeal of national criminal proceedings.

* *

53. The United States also argues that Germany’s third submission is inadmissible because of the manner in which these proceedings were brought before the Court by Germany. It notes that German consular officials became aware of the LaGrands’ cases in 1992, but that the German Government did not express concern or protest to the United States authorities for some six and a half years. It maintains that the issue of the absence of consular notification was not raised by Germany until 22 February 1999, two days before the date scheduled for Karl LaGrand’s execution, in a letter from the German Foreign Minister to the Secretary of State of the United States (see paragraph 26 above). Germany then filed the Application instituting these proceedings, together with a request for provisional measures, after normal business hours in the Registry in the evening of 2 March 1999, some 27 hours before the execution of Walter LaGrand (see paragraph 30 above).

54. The United States rejects the contention that Germany found out only seven days before the filing of its Application that the authorities of Arizona knew as early as 1982 that the LaGrands were German nationals; according to the United States, their German nationality was referred to in pre-sentence reports prepared in 1984, which should have been familiar to German consular officers much earlier than 1999, given Germany’s claims regarding the vigour and effectiveness of its consular assistance.

55. According to the United States, Germany’s late filing compelled the Court to respond to its request for provisional measures by acting ex parte, without full information. The United States claims that the procedure followed was inconsistent with the principles of “equality of the

56. Germany acknowledges that delay on the part of a claimant State may render an application inadmissible, but maintains that international law does not lay down any specific time-limit in that regard. It contends that it was only seven days before it filed its Application that it became aware of all the relevant facts underlying its claim, in particular, the fact that the authorities of Arizona knew of the German nationality of the LaGrands since 1982. According to Germany, it cannot be accused of negligence in failing to obtain the 1984 pre-sentence reports earlier. It also maintains that in the period between 1992, when it learned of the LaGrands’ cases, and the filing of its Application, it engaged in a variety of activities at the diplomatic and consular level. It adds that it had been confident for much of this period that the United States would ultimately rectify the violations of international law involved.

57. The Court recognizes that Germany may be criticized for the manner in which these proceedings were filed and for their timing. The Court recalls, however, that notwithstanding its awareness of the consequences of Germany’s filing at such a late date it nevertheless considered it appropriate to enter the Order of 3 March 1999, given that an irreparable prejudice appeared to be imminent. In view of these considerations, the Court considers that Germany is now entitled to challenge the alleged failure of the United States to comply with the Order. Accordingly, the Court finds that Germany’s third submission is admissible.

* *

58. The United States argues further that Germany’s first submission, as far as it concerns its right to exercise diplomatic protection with respect to its nationals, is inadmissible on the ground that the LaGrands did not exhaust local remedies. The United States maintains that the alleged breach concerned the duty to inform the LaGrands of their right to consular access, and that such a breach could have been remedied at the trial stage, provided it was raised in a timely fashion. The United States contends that when a person fails, for example, to sue in a national court before a statute of limitations has expired, the claim is both procedurally barred in national courts and inadmissible in international tribunals for failure to exhaust local remedies. It adds that the failure of counsel for the LaGrands to raise the breach of the Vienna Convention at the appropriate stage and time of the proceedings does not excuse the non-exhaustion of local remedies. According to the United States, this
failure of counsel is imputable to their clients because the law treats defendants and their lawyers as a single entity in terms of their legal positions. Moreover, the State is not accountable for the errors or mistaken strategy by lawyers.

59. Germany responds that international law requires the exhaustion of only those remedies which are legally and practically available. Germany claims that in this case there was no remedy which the LaGrands failed to invoke that would have been available in the specific context of their case. This is so because, prior to 1992, the LaGrands could not resort to the available remedies, since they were unaware of their rights due to failure of the United States authorities to comply with the requirements of the Vienna Convention; thereafter, the "procedural default" rule prevented them from seeking any remedy.

60. The Court notes that it is not disputed that the LaGrands sought to plead the Vienna Convention in United States courts after they learned in 1992 of their rights under the Convention; it is also not disputed that by that date the procedural default rule barred the LaGrands from obtaining any remedy in respect of the violation of those rights. Counsel assigned to the LaGrands failed to raise this point earlier in a timely fashion. However, the United States may not now rely before this Court on this fact in order to preclude the admissibility of Germany's first submission, as it was the United States itself which had failed to carry out its obligations under the Convention to inform the LaGrand brothers.

61. The United States also contends that Germany's submissions are inadmissible on the ground that Germany seeks to have a standard applied to the United States that is different from its own practice. According to the United States, Germany has not shown that its system of criminal justice requires the annulment of criminal convictions where there has been a breach of the duty of consular notification; and that the practice of Germany in similar cases has been to do no more than offer an apology. The United States maintains that it would be contrary to basic principles of administration of justice and equality of the Parties to apply against the United States alleged rules that Germany appears not to accept for itself.

62. Germany denies that it is asking the United States to adhere to standards which Germany itself does not abide by; it maintains that its law and practice is fully in compliance with the standards which it invokes. In this regard, it explains that the German Code of Criminal

Procedure provides a ground of appeal where a legal norm, including a norm of international law, is not applied or incorrectly applied and where there is a possibility that the decision was impaired by this fact.

63. The Court need not decide whether this argument of the United States, if true, would result in the inadmissibility of Germany's submissions. Here the evidence adduced by the United States does not justify the conclusion that Germany's own practice fails to conform to the standards it demands from the United States in this litigation. The United States relies on certain German cases to demonstrate that Germany has itself proffered only an apology for violating Article 36 of the Vienna Convention, and that State practice shows that this is the appropriate remedy for such a violation. But the cases concerned entailed relatively light criminal penalties and are not evidence as to German practice where an arrested person, who has not been informed without delay of his or her rights, is facing a severe penalty as in the present case. It is no doubt the case, as the United States points out, that Article 36 of the Vienna Convention imposes identical obligations on States, irrespective of the gravity of the offence a person may be charged with and of the penalties that may be imposed. However, it does not follow therefrom that the remedies for a violation of this Article must be identical in all situations. While an apology may be an appropriate remedy in some cases, it may in others be insufficient. The Court accordingly finds that this claim of inadmissibility must be rejected.

* * *

64. Having determined that the Court has jurisdiction, and that the submissions of Germany are admissible, the Court now turns to the merits of each of these four submissions.

* * *

65. Germany's first submission requests the Court to adjudge and declare:

"that the United States, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36 subparagragh 1 (b) of the Vienna Convention on Consular Relations, and by depriving Germany of the possibility of rendering consular assistance, which ultimately resulted in the execution of Karl and Walter LaGrand, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, under Articles 5 and 36 paragraph 1 of the said Convention".

26
66. Germany claims that the United States violated its obligation under Article 36, paragraph 1 (b), to “inform a national of the sending State without delay of his or her right to inform the consular post of his home State of his arrest or detention”. Specifically, Germany maintains that the United States violated its international legal obligation to Germany under Article 36, paragraph 1 (b), by failing to inform the German nationals Karl and Walter LaGrand “without delay” of their rights under that subparagraph.

67. The United States acknowledges, and does not contest Germany’s basic claim, that there was a breach of its obligation under Article 36, paragraph 1 (b), of the Convention “promptly to inform the LaGrand brothers that they could ask that a German consular post be notified of their arrest and detention”.

68. Germany also claims that the violation by the United States of Article 36, paragraph 1 (b), led to consequential violations of Article 36, paragraph 1 (a) and (c). It points out that, when the obligation to inform the arrested person without delay of his or her right to contact the consulate is disregarded, “the other rights contained in Article 36, paragraph 1, become in practice irrelevant, indeed meaningless”. Germany maintains that, “[b]y informing the LaGrand brothers of their right to inform the consulate more than 16 years after their arrest, the United States . . . clearly failed to meet the standard of Article 36 [(1) (c)]”. It concludes that, by not preventing the execution of Karl and Walter LaGrand, and by “making irreversibly its earlier breaches of Art. 5 and 36 (1) and (2) and causing irreparable harm, the United States violated its obligations under international law”.

69. The United States argues that the underlying conduct complained of by Germany is one and the same, namely, the failure to inform the LaGrand brothers as required by Article 36, paragraph 1 (b). Therefore, it disputes any other basis for Germany’s claims that other provisions, such as subparagraphs (a) and (c) of Article 36, paragraph 1, of the Convention, were also violated. The United States asserts that Germany’s claims regarding Article 36, paragraph 1 (a) and (c), are “particularly misplaced” in that the LaGrands were able to and did communicate freely with consular officials after 1992. There was, in the view of the United States, “no deprivation of Germany’s right to provide consular assistance, under Article 5 or Article 36, to Karl or Walter LaGrand” and “Germany’s attempt to transform a breach of one obligation into an additional breach of a wholly separate and distinct obligation should be rejected by the Court.”

70. In response, Germany asserts that it is “commonplace that one and the same conduct may result in several violations of distinct obligations”. Hence, when a detainee’s right to notification without delay is violated, he or she cannot establish contact with the consulate, receive visits from consular officers, nor be supported by adequate counsel. “Therefore, violation of this right is bound to imply violation of the other rights . . . [and] later observance of the rights of Article 36, paragraph 1 (a) and (c), could not remedy the previous violation of those provisions.”

71. Germany further contends that there is a causal relationship between the breach of Article 36 and the ultimate execution of the LaGrand brothers. Germany’s inability to render prompt assistance was, in its view, a “direct result of the United States’ breach of its Vienna Convention obligations”. It is claimed that, had Germany been properly afforded its rights under the Vienna Convention, it would have been able to intervene in time and present a “persuasive mitigation case” which “likely would have saved” the lives of the brothers. Germany believes that, “[h]ad proper notification been given under the Vienna Convention, competent trial counsel certainly would have looked to Germany for assistance in developing this line of mitigating evidence”. Moreover, Germany argues that, due to the doctrine of procedural default and the high post-conviction threshold for proving ineffective counsel under United States law, Germany’s intervention at a stage later than the trial phase could not “remedy the extreme prejudice created by the counsel appointed to represent the LaGrands”.

72. The United States terms these arguments as “suppositions about what might have occurred had the LaGrand brothers been properly informed of the possibility of consular notification”. It calls into question Germany’s assumption that German consular officials from Los Angeles would rapidly have given extensive assistance to the LaGrands’ defence counsel before the 1984 sentencing, and contests that such consular assistance would have affected the outcome of the sentencing proceedings. According to the United States, these arguments “rest on speculation” and do not withstand analysis. Finally, the United States finds it extremely doubtful that the early childhood “mitigating evidence” mentioned by Germany, if introduced at the trial, would have persuaded the sentencing judge to be lenient, as the brothers’ subsequent 17 years of experiences in the United States would have been given at least equal weight. The United States points out, moreover, that such evidence was in fact presented at trial.

73. The Court will first examine the submission Germany advances in its own right. The Court observes, in this connection, that the United States does not deny that it violated paragraph 1 (b) in relation to Ger-
many. The Court also notes that as a result of this breach, Germany did not learn until 1992 of the detention, trial and sentencing of the LaGrand brothers. The Court concludes therefrom that on the facts of this case, the breach of the United States had the consequence of depriving Germany of the exercise of the rights accorded it under Article 36, paragraph 1 (a) and paragraph 1 (c), and thus violated these provisions of the Convention. Although the violation of paragraph 1 (b) of Article 36 will not necessarily always result in the breach of the other provisions of this Article, the Court finds that the circumstances of this case compel the opposite conclusion, for the reasons indicated below. In view of this finding, it is not necessary for the Court to deal with Germany’s further claim under Article 5 of the Convention.

74. Article 36, paragraph 1, establishes an interrelated régime designed to facilitate the implementation of the system of consular protection. It begins with the basic principle governing consular protection: the right of communication and access (Art. 36, para. 1 (a)). This clause is followed by the provision which spells out the modalities of consular notification (Art. 36, para. 1 (b)). Finally Article 36, paragraph 1 (c), sets out the measures consular officers may take in rendering consular assistance to their nationals in the custody of the receiving State. It follows that when the sending State is unaware of the detention of its nationals due to the failure of the receiving State to provide the requisite consular notification without delay, which was true in the present case during the period between 1982 and 1992, the sending State has been prevented for all practical purposes from exercising its rights under Article 36, paragraph 1. It is immaterial for the purposes of the present case whether the LaGrands would have sought consular assistance from Germany, whether Germany would have rendered such assistance, or whether a different verdict would have been rendered. It is sufficient that the Convention conferred these rights, and that Germany and the LaGrands were in effect prevented by the breach of the United States from exercising them, had they so chosen.

75. Germany further contends that “the breach of Article 36 by the United States did not only infringe upon the rights of Germany as a State party to the [Vienna] Convention but also entailed a violation of the individual rights of the LaGrand brothers”. Invoking its right of diplomatic protection, Germany also seeks relief against the United States on this ground.

Germany maintains that the right to be informed of the rights under Article 36, paragraph 1 (b), of the Vienna Convention, is an individual right of every national of a State party to the Convention who enters the territory of another State party. It submits that this view is supported by the ordinary meaning of the terms of Article 36, paragraph 1 (b), of the Vienna Convention, since the last sentence of that provision speaks of the “rights” under this subparagraph of “the person concerned”, i.e., of the foreign national arrested or detained. Germany adds that the provision in Article 36, paragraph 1 (b), according to which it is for the arrested person to decide whether consular notification is to be provided, has the effect of conferring an individual right upon the foreign national concerned. In its view, the context of Article 36 supports this conclusion since it relates to both the concerns of the sending and receiving States and to those of individuals. According to Germany, the travaux préparatoires of the Vienna Convention lend further support to this interpretation. In addition, Germany submits that the “United Nations Declaration on the human rights of individuals who are not nationals of the country in which they live”, adopted by General Assembly resolution 40/144 on 13 December 1985, confirms the view that the right of access to the consulate of the home State, as well as the information on this right, constitute individual rights of foreign nationals and are to be regarded as human rights of aliens.

76. The United States questions what this additional claim of diplomatic protection contributes to the case and argues that there are no parallels between the present case and cases of diplomatic protection involving the espousal by a State of economic claims of its nationals. The United States maintains that the right of a State to provide consular assistance to nationals detained in another country, and the right of a State to espouse the claims of its nationals through diplomatic protection, are legally different concepts.

The United States contends, furthermore, that rights of consular notification and access under the Vienna Convention are rights of States, and not of individuals, even though these rights may benefit individuals by permitting States to offer them consular assistance. It maintains that the treatment due to individuals under the Convention is inextricably linked to and derived from the right of the State, acting through its consular officer, to communicate with its nationals, and does not constitute a fundamental right or a human right. The United States argues that the fact that Article 36 by its terms recognizes the rights of individuals does not determine the nature of those rights or the remedies required under the Vienna Convention for breaches of that Article. It points out that Article 36 begins with the words “[w]ith a view to facilitating the exercise of consular functions relating to nationals of the sending State”, and that this wording gives no support to the notion that the rights and obligations enumerated in paragraph 1 of that Article are intended to ensure that nationals of the sending State have any particular rights or
treatment in the context of a criminal prosecution. The *travaux préparatoires* of the Vienna Convention according to the United States do not reflect a consensus that Article 36 was addressing immutable individual rights, as opposed to individual rights derivative of the rights of States.

77. The Court notes that Article 36, paragraph 1 (b), spells out the obligations the receiving State has towards the detained person and the sending State. It provides that, at the request of the detained person, the receiving State must inform the consular post of the sending State of the individual’s detention “without delay”. It provides further that any communication by the detained person addressed to the consular post of the sending State must be forwarded to it by authorities of the receiving State “without delay”. Significantly, this subparagraph ends with the following language: “The said authorities shall inform the person concerned without delay of his rights under this subparagraph” (emphasis added). Moreover, under Article 36, paragraph 1 (c), the sending State’s right to provide consular assistance to the detained person may not be exercised “if he expressly opposes such action”. The clarity of these provisions, viewed in their context, admits of no doubt. It follows, as has been held on a number of occasions, that the Court must apply these as they stand (see Acquisition of Polish Nationality, Advisory Opinion, 1923, P.C.I.J., Series B, No. 7, p. 20; Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950, p. 8; Arbitral Award of 31 July 1989, Judgment, I.C.J. Reports 1991, pp. 69-70, para. 48; Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994, p. 25, para. 51).

Based on the text of these provisions, the Court concludes that Article 36, paragraph 1, creates individual rights, which, by virtue of Article I of the Optional Protocol, may be invoked in this Court by the national State of the detained person. These rights were violated in the present case.

78. At the hearings, Germany further contended that the right of the individual to be informed without delay under Article 36, paragraph 1, of the Vienna Convention was not only an individual right but has today assumed the character of a human right. In consequence, Germany added, “the character of the right under Article 36 as a human right renders the effectiveness of this provision even more imperative”. The Court having found that the United States violated the rights accorded by Article 36, paragraph 1, to the LaGrand brothers, it does not appear necessary to it to consider the additional argument developed by Germany in this regard.

* * *

79. The Court will now consider Germany’s second submission, in which it asks the Court to adjudge and declare:

“that the United States, by applying rules of its domestic law, in particular the doctrine of procedural default, which barred Karl and Walter LaGrand from raising their claims under the Vienna Convention on Consular Relations, and by ultimately executing them, violated its international legal obligation to Germany under Article 36 paragraph 2 of the Vienna Convention to give full effect to the purposes for which the rights accorded under Article 36 of the said Convention are intended”.

80. Germany argues that, under Article 36, paragraph 2, of the Vienna Convention

“the United States is under an obligation to ensure that its municipal ‘laws and regulations . . . enable full effect to be given to the purposes for which the rights accorded under this article are intended’ [and that it] is in breach of this obligation by upholding rules of domestic law which make it impossible to successfully raise a violation of the right to consular notification in proceedings subsequent to a conviction of a defendant by a jury”.

81. Germany points out that the “procedural default” rule is among the rules of United States domestic law whose application makes it impossible to invoke a breach of the notification requirement. According to Germany, this rule “is closely connected with the division of labour between federal and state jurisdiction in the United States . . . where [c]riminal jurisdiction belongs to the states except in cases provided for in the Constitution”. This rule, Germany explains, requires “exhaustion of remedies at the state level before a habeas corpus motion can be filed with federal Courts”.

Germany emphasizes that it is not the “procedural default” rule as such that is at issue in the present proceedings, but the manner in which it was applied in that it “deprived the brothers of the possibility to raise the violations of their right to consular notification in US criminal proceedings”.

82. Furthermore, having examined the relevant United States jurisprudence, Germany contends that the procedural default rule had “made it impossible for the LaGrand brothers to effectively raise the issue of the lack of consular notification after they had at last learned of their rights and established contact with the German consulate in Los Angeles in 1992”.

* * *
83. Finally, Germany states that it seeks

“[n]othing . . . more than compliance, or, at least, a system in place which does not automatically reproduce violation after violation of the Vienna Convention, only interrupted by the apologies of the United States Government”.

84. The United States objects to Germany’s second submission, since it considers that “Germany’s position goes far beyond the wording of the Convention, the intentions of the parties when it was negotiated, and the practice of States, including Germany’s practice”.

85. In the view of the United States:

“[t]he Vienna Convention does not require States Party to create a national law remedy permitting individuals to assert claims involving the Convention in criminal proceedings. If there is no such requirement, it cannot violate the Convention to require that efforts to assert such claims be presented to the first court capable of adjudicating them”.

According to the United States,

“[i]f there is no obligation under the Convention to create such individual remedies in criminal proceedings, the rule of procedural default — requiring that claims seeking such remedies be asserted at an appropriately early stage — cannot violate the Convention”.

86. The United States believes that Article 36, paragraph 2, “has a very clear meaning” and

“means, as it says, that the rights referred to in paragraph 1 shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso that said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under the Article are intended”.

In the view of the United States,

“[i]n the context of a foreign national in detention, the relevant laws and regulations contemplated by Article 36 (2) are those that may affect the exercise of specific rights under Article 36 (1), such as those addressing the timing of communications, visiting hours, and security in a detention facility. There is no suggestion in the text of Article 36 (2) that the rules of criminal law and procedure under which a defendant would be tried or have his conviction and sentence reviewed by appellate courts are also within the scope of this provision.”

87. The United States concludes that Germany’s second submission must be rejected “because it is premised on a misinterpretation of Article 36, paragraph 2, which reads the context of the provision — the exercise of a right under paragraph 1 — out of existence”.

88. Article 36, paragraph 2, of the Vienna Convention reads as follows:

“The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.”

89. The Court cannot accept the argument of the United States which proceeds, in part, on the assumption that paragraph 2 of Article 36 applies only to the rights of the sending State and not also to those of the detained individual. The Court has already determined that Article 36, paragraph 1, creates individual rights for the detained person in addition to the rights accorded the sending State, and that consequently the reference to “rights” in paragraph 2 must be read as applying not only to the rights of the sending State, but also to the rights of the detained individual (see paragraph 77 above).

90. Turning now to the “procedural default” rule, the application of which in the present case Germany alleges violated Article 36, paragraph 2, the Court emphasizes that a distinction must be drawn between that rule as such and its specific application in the present case. In itself, the rule does not violate Article 36 of the Vienna Convention. The problem arises when the procedural default rule does not allow the detained individual to challenge a conviction and sentence by claiming, in reliance on Article 36, paragraph 1, of the Convention, that the competent national authorities failed to comply with their obligation to provide the requisite consular information “without delay”, thus preventing the person from seeking and obtaining consular assistance from the sending State.

91. In this case, Germany had the right at the request of the LaGrands “to arrange for [their legal representation]” and was eventually able to provide some assistance to that effect. By that time, however, because of the failure of the American authorities to comply with their obligation under Article 36, paragraph 1(b), the procedural default rule prevented counsel for the LaGrands to effectively challenge their convictions and sentences other than on United States constitutional grounds. As a result, although United States courts could and did examine the professional competence of counsel assigned to the indigent LaGrands by reference to United States constitutional standards, the procedural default rule prevented them from attaching any legal significance to the fact, inter alia, that the violation of the rights set forth in Article 36, paragraph 1, prevented Germany, in a timely fashion, from retaining private counsel for
them and otherwise assisting in their defence as provided for by the Convention. Under these circumstances, the procedural default rule had the effect of preventing "full effect [from being] given to the purposes for which the rights accorded under this article are intended", and thus violated paragraph 2 of Article 36.

* * *

92. The Court will now consider Germany's third submission, in which it asks the Court to adjudge and declare:

"that the United States, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice on the matter, violated its international legal obligation to comply with the Order on provisional measures issued by the Court on 3 March 1999, and to refrain from any action which might interfere with the subject matter of a dispute while judicial proceedings are pending".

93. In its Memorial, Germany contended that "[p]rovisional [m]easures indicated by the International Court of Justice [were] binding by virtue of the law of the United Nations Charter and the Statute of the Court". In support of its position, Germany developed a number of arguments in which it referred to the "principle of effectiveness", to the "procedural prerequisites" for the adoption of provisional measures, to the binding nature of provisional measures as a "necessary consequence of the bindingness of the final decision", to "Article 94 (1), of the United Nations Charter", to "Article 41 (1), of the Statute of the Court" and to the "practice of the Court".

Referring to the duty of the "parties to a dispute before the Court... to preserve its subject-matter", Germany added that:

"[a]part from having violated its duties under Art. 94 (1) of the United Nations Charter and Art. 41 (1) of the Statute, the United States has also violated the obligation to refrain from any action which might interfere with the subject-matter of a dispute while judicial proceedings are pending".

At the hearings, Germany further stated the following:

"A judgment by the Court on jurisdiction or merits cannot be treated on exactly the same footing as a provisional measure... Article 59 and Article 60 [of the Statute] do not apply to provisional measures or, to be more exact, apply to them only by implication; that is to say, to the extent that such measures, being both incidental

and provisional, contribute to the exercise of a judicial function whose end-result is, by definition, the delivery of a judicial decision. There is here an inherent logic in the judicial procedure, and to disregard it would be tantamount, as far as the Parties are concerned, to deviating from the principle of good faith and from what the German pleadings call "the principle of institutional effectiveness"... [P]rovisional measures... are indeed legal decisions, but they are decisions of procedure... Since their decisional nature is, however, implied by the logic of urgency and by the need to safeguard the effectiveness of the proceedings, they accordingly create genuine legal obligations on the part of those to whom they are addressed."

94. Germany claims that the United States committed a threefold violation of the Court's Order of 3 March 1999:

"(1) Immediately after the International Court of Justice had rendered its Order on Provisional Measures, Germany appealed to the US Supreme Court in order to reach a stay of the execution of Walter LaGrand, in accordance with the International Court's Order to the same effect. In the course of these proceedings — and in full knowledge of the Order of the International Court — the Office of the Solicitor General, a section of the US Department of Justice — in a letter to the Supreme Court argued once again that: 'an order of the International Court of Justice indicating provisional measures is not binding and does not furnish a basis for judicial relief'.

This statement of a high-ranking official of the Federal Government... had a direct influence on the decision of the Supreme Court.

(2) In the following, the US Supreme Court — an agency of the United States — refused by a majority vote to order that the execution be stayed. In doing so, it rejected the German arguments based essentially on the Order of the International Court of Justice on Provisional Measures..."

(3) Finally, the Governor of Arizona did not order a stay of the execution of Walter LaGrand although she was vested with the right to do so by the laws of the State of Arizona. Moreover, in the present case, the Arizona Executive Board of Clemency — for the first time in the history of this institution — had issued a recommendation for a temporary stay, not least in light of the international legal issues involved in the case...

95. The United States argues that it "did what was called for by the Court's 3 March Order, given the extraordinary and unprecedented cir-
cumstances in which it was forced to act”. It points out in this connection that the United States Government “immediately transmit[ted] the Order to the Governor of Arizona”, that “the United States placed the Order in the hands of the one official who, at that stage, might have had legal authority to stop the execution” and that by a letter from the Legal Counsellor of the United States Embassy in The Hague dated 8 March 1999, it informed the International Court of Justice of all the measures which had been taken in implementation of the Order.

The United States further states that:

“[t]wo central factors constrained the United States ability to act. The first was the extraordinarily short time between issuance of the Court’s Order and the time set for the execution of Walter LaGrand . . .

The second constraining factor was the character of the United States of America as a federal republic of divided powers.”

96. The United States also alleges that the “terms of the Court’s 3 March Order did not create legal obligations binding on [it]”. It argues in this respect that “[t]he language used by the Court in the key portions of its Order is not the language used to create binding legal obligations” and that

“the Court does not need here to decide the difficult and controversial legal question of whether its orders indicating provisional measures would be capable of creating international legal obligations if worded in mandatory . . . terms”.

It nevertheless maintains that those orders cannot have such effects and, in support of that view, develops arguments concerning “the language and history of Article 41 (1) of the Court’s Statute and Article 94 of the Charter of the United Nations”, the “Court’s and State practice under these provisions”, and the “weight of publicists’ commentary”.

Concerning Germany’s argument based on the “principle of effectiveness”, the United States contends that

“[i]n an arena where the concerns and sensitivities of States, anc. not abstract logic, have informed the drafting of the Court’s constitutive documents, it is perfectly understandable that the Court might have the power to issue binding final judgments, but a more circumscribed authority with respect to provisional measures”.

Referring to Germany’s argument that the United States “violated the obligation to refrain from any action which might interfere with the subj-

ect matter of a dispute while judicial proceedings are pending”, the United States further asserts that:

“The implications of the rule as presented by Germany are potentially quite dramatic, however. Germany appears to contend that by merely filing a case with the Court, an Applicant can force a Respondent to refrain from continuing any action that the Applicant deems to affect the subject of the dispute. If the law were as Germany contends, the entirety of the Court’s rules and practices relating to provisional measures would be surplusage. This is not the law, and this is not how States or this Court have acted in practice.”

97. Lastly, the United States states that in any case, “[b]ecause of the press of time stemming from Germany’s last-minute filing of the case, basic principles fundamental to the judicial process were not observed in connection with the Court’s 3 March Order” and that

“[t]hus, whatever one might conclude regarding a general rule for provisional measures, it would be anomalous – to say the least – for the Court to construe this Order as a source of binding legal obligations”.

98. Neither the Permanent Court of International Justice, nor the present Court to date, has been called upon to determine the legal effects of orders made under Article 41 of the Statute. As Germany’s third submission refers expressly to an international legal obligation “to comply with the Order on Provisional Measures issued by the Court on 3 March 1999”, and as the United States disputes the existence of such an obligation, the Court is now called upon to rule expressly on this question.

99. The dispute which exists between the Parties with regard to this point essentially concerns the interpretation of Article 41, which is worded in identical terms in the Statute of each Court (apart from the respective references to the Council of the League of Nations and the Security Council). This interpretation has been the subject of extensive controversy in the literature. The Court will therefore now proceed to the interpretation of Article 41 of the Statute. It will do so in accordance with customary international law, reflected in Article 31 of the 1969 Vienna Convention on the Law of Treaties. According to paragraph 1 of Article 31, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of the treaty’s object and purpose.

100. The French text of Article 41 reads as follows:

“1. La Cour a le pouvoir d’indiquer, si elle estime que les circons-
tances l’exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

2. En attendant l’arrêt définitif, l’indication de ces mesures est immédiatement notifiée aux parties et au Conseil de sécurité.”

(Emphasis added.)

In this text, the terms “indiquer” and “l’indication” may be deemed to be neutral as to the mandatory character of the measure concerned; by contrast the words “doivent être prises” have an imperative character.

For its part, the English version of Article 41 reads as follows:

“1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.”

(Emphasis added.)

According to the United States, the use in the English version of “indicate” instead of “order”, of “ought” instead of “must” or “shall”, and of “suggested” instead of “ordered”, is to be understood as implying that decisions under Article 41 lack mandatory effect. It might however be argued, having regard to the fact that in 1920 the French text was the original version, that such terms as “indicate” and “ought” have a meaning equivalent to “order” and “must” or “shall”.

101. Finding itself faced with two texts which are not in total harmony, the Court will first of all note that according to Article 92 of the Charter, the Statute “forms an integral part of the present Charter”. Under Article 111 of the Charter, the French and English texts of the latter are “equally authentic”. The same is equally true of the Statute.

In cases of divergence between the equally authentic versions of the Statute, neither it nor the Charter indicates how to proceed. In the absence of agreement between the parties in this respect, it is appropriate to refer to paragraph 4 of Article 33 of the Vienna Convention on the Law of Treaties, which in the view of the Court again reflects customary international law. This provision reads “when a comparison of the authentic texts discloses a difference of meaning which the application of Articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted”.

The Court will therefore now consider the object and purpose of the Statute together with the context of Article 41.

102. The object and purpose of the Statute is to enable the Court to fulfil the functions provided for therein, and, in particular, the basic function of judicial settlement of international disputes by binding decisions in accordance with Article 59 of the Statute. The context in which Article 41 has to be seen within the Statute is to prevent the Court from being hampered in the exercise of its functions because the respective rights of the parties to a dispute before the Court are not preserved. It follows from the object and purpose of the Statute, as well as from the terms of Article 41 when read in their context, that the power to indicate provisional measures entails that such measures should be binding, inasmuch as the power in question is based on the necessity, when the circumstances call for it, to safeguard, and to avoid prejudice to, the rights of the parties as determined by the final judgment of the Court. The contention that provisional measures indicated under Article 41 might not be binding would be contrary to the object and purpose of that Article.

103. A related reason which points to the binding character of orders made under Article 41 and to which the Court attaches importance is the existence of a principle which has already been recognized by the Permanent Court of International Justice when it spoke of

“the principle universally accepted by international tribunals and likewise laid down in many conventions . . . to the effect that 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” (Electricity Company of Sofia and Bulgaria, Order of 5 December 1939, P.C.I.J., Series A/B, No. 79, p. 199).


104. Given the conclusions reached by the Court above in interpreting the text of Article 41 of the Statute in the light of its object and purpose, it does not consider it necessary to resort to the preparatory work in order to determine the meaning of that Article. The Court would nevertheless point out that the preparatory work of the Statute
does not preclude the conclusion that orders under Article 41 have binding force.

105. The initial preliminary draft of the Statute of the Permanent Court of International Justice, as prepared by the Committee of Jurists established by the Council of the League of Nations, made no mention of provisional measures. A provision to this effect was inserted only at a later stage in the draft prepared by the Committee, following a proposal from the Brazilian jurist Raul Fernandes.

Basing himself on the Bryan Treaty of 13 October 1914 between the United States and Sweden, Raul Fernandes had submitted the following text:

“Dans le cas où la cause du différend consiste en actes déterminés déjà effectués ou sur le point de l’être, la Cour pourra ordonner, dans le plus bref délai, à titre provisoire, des mesures conservatoires adéquates, en attendant le jugement définitif.” (Comité consultatif de juristes, Procès-verbaux des séances du comité, 16 juin-24 juillet 1920 (avec annexes), La Haye, 1920, p. 609.)

In its English translation this text read as follows:

“In case the cause of the dispute should consist of certain acts already committed or about to be committed, the Court may, provisionally and with the least possible delay, order adequate protective measures to be taken, pending the final judgment of the Court.” (Advisory Committee of Jurists, Procès-verbaux of the Proceedings of the Committee, 16 June-24 July 1920 (with Annexes), The Hague, 1920, p. 609.)

The Drafting Committee prepared a new version of this text, to which two main amendments were made: on the one hand, the words “la Cour pourra ordonner” (“the Court may . . . order”) were replaced by “la Cour a le pouvoir d’indiquer” (“the Court shall have the power to suggest”), while, on the other, a second paragraph was added providing for notice to be given to the parties and to the Council of the “measures suggested” by the Court. The draft Article 2bis as submitted by the Drafting Committee thus read as follows:

“Dans le cas où la cause du différend consiste en un acte effectué ou sur le point de l’être, la Cour a le pouvoir d’indiquer, si elle estime que les circonstances l’exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

En attendant son arrêt, cette suggestion de la Cour est immédiatement transmise aux parties et au Conseil.” (Comité consultatif de juristes, Procès-verbaux des séances du comité, 16 juin-24 juillet 1920 (avec annexes), La Haye, 1920, p. 567-568.)

The English version read:

“If the dispute arises out of an act which has already taken place or which is imminent, the Court shall have the power to suggest, if it considers that circumstances so require, the provisional measures that should be taken to preserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.” (Advisory Committee of Jurists, Procès-verbaux of the Proceedings of the Committee, 16 June-24 July 1920 (with Annexes), The Hague, 1920, pp. 567-568.)

The Committee of Jurists eventually adopted a draft Article 39, which amended the former Article 2bis only in its French version: in the second paragraph, the words “cette suggestion” were replaced in French by the words “l’indication”.

106. When the draft Article 39 was examined by the Sub-Committee of the Third Committee of the first Assembly of the League of Nations, a number of amendments were considered. Raul Fernandes suggested again to use the word “ordonner” in the French version. The Sub-Committee decided to stay with the word “indiquer”, the Chairman of the Sub-Committee observing that the Court lacked the means to execute its decisions. The language of the first paragraph of the English version was then made to conform to the French text: thus the word “suggest” was replaced by “indicate”, and “should” by “ought to”. However, in the second paragraph of the English version, the phrase “measures suggested” remained unchanged.

The provision thus amended in French and in English by the Sub-Committee was adopted as Article 41 of the Statute of the Permanent Court of International Justice. It passed as such into the Statute of the present Court without any discussion in 1945.

107. The preparatory work of Article 41 shows that the preference given in the French text to “indiquer” over “ordonner” was motivated by the consideration that the Court did not have the means to assure the execution of its decisions. However, the lack of means of execution and the lack of binding force are two different matters. Hence, the fact that the Court does not itself have the means to ensure the execution of orders made pursuant to Article 41 is not an argument against the binding nature of such orders.

108. The Court finally needs to consider whether Article 94 of the United Nations Charter precludes attributing binding effect to orders indicating provisional measures. That Article reads as follows:

“1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it
deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”

The question arises as to the meaning to be attributed to the words “the decision of the International Court of Justice” in paragraph 1 of this Article. This wording could be understood as referring not merely to the Court’s judgments but to any decision rendered by it, thus including orders indicating provisional measures. It could also be interpreted to mean only judgments rendered by the Court as provided in paragraph 2 of Article 94. In this regard, the fact that in Articles 56 to 60 of the Court’s Statute both the word “decision” and the word “judgment” are used does little to clarify the matter.

Under the first interpretation of paragraph 1 of Article 94, the text of the paragraph would confirm the binding nature of provisional measures; whereas the second interpretation would in no way preclude their being accorded binding force under Article 41 of the Statute. The Court accordingly concludes that Article 94 of the Charter does not prevent orders made under Article 41 from having a binding character.

109. In short, it is clear that none of the sources of interpretation referred to in the relevant Articles of the Vienna Convention on the Law of Treaties, including the preparatory work, contradict the conclusions drawn from the terms of Article 41 read in their context and in the light of the object and purpose of the Statute. Thus, the Court has reached the conclusion that orders on provisional measures under Article 41 have binding effect.

* *

110. The Court will now consider the Order of 3 March 1999. This Order was not a mere exhortation. It had been adopted pursuant to Article 41 of the Statute. This Order was consequently binding in character and created a legal obligation for the United States.

* *

111. As regards the question whether the United States has complied with the obligation incumbent upon it as a result of the Order of 3 March 1999, the Court observes that the Order indicated two provisional measures, the first of which states that

“[t]he United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order”.

The second measure required the Government of the United States to

112. The Court observes, nevertheless, that the mere transmission of its Order to the Governor of Arizona without any comment, particularly without even so much as a plea for a temporary stay and an explanation that there is no general agreement on the position of the United States that orders of the International Court of Justice on provisional measures are non-binding, was certainly less than could have been done even in the short time available. The same is true of the United States Solicitor General’s categorical statement in his brief letter to the United States Supreme Court that “an order of the International Court of Justice indicating provisional measures is not binding and does not furnish a basis for judicial relief” (see paragraph 33 above). This statement went substantially further than the amicus brief referred to in a mere footnote in his letter, which was filed on behalf of the United States in earlier proceedings before the United States Supreme Court in the case of Angel Francisco Breard (see Breard v. Greene, United States Supreme Court, 14 April 1998, International Legal Materials, Vol. 37 (1998), p. 824; Memorial of Germany, Ann. 34). In that amicus brief, the same Solicitor General had declared less than a year earlier that “there is substantial disagreement among jurists as to whether an ICJ order indicating provisional measures is binding . . . The better reasoned position is that such an order is not binding.”

113. It is also noteworthy that the Governor of Arizona, to whom the
Court's Order had been transmitted, decided not to give effect to it, even though the Arizona Clemency Board had recommended a stay of execution for Walter LaGrand.

114. Finally, the United States Supreme Court rejected a separate application by Germany for a stay of execution, "[g]iven the tardiness of the pleas and the jurisdictional barriers they implicate". Yet it would have been open to the Supreme Court, as one of its members urged, to grant a preliminary stay, which would have given it "time to consider, after briefing from all interested parties, the jurisdictional and international legal issues involved . . ." (Federal Republic of Germany et al. v. United States et al., United States Supreme Court, 3 March 1999).

115. The review of the above steps taken by the authorities of the United States with regard to the Order of the International Court of Justice of 3 March 1999 indicates that the various competent United States authorities failed to take all the steps they could have taken to give effect to the Court's Order. The Order did not require the United States to exercise powers it did not have; but it did impose the obligation to "take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings . . .". The Court finds that the United States did not discharge this obligation.

Under these circumstances the Court concludes that the United States has not complied with the Order of 3 March 1999.

116. The Court observes finally that in the third submission Germany requests the Court to adjudge and declare only that the United States violated its international legal obligation to comply with the Order of 3 March 1999; it contains no other request regarding that violation. Moreover, the Court points out that the United States was under great time pressure in this case, due to the circumstances in which Germany had instituted the proceedings. The Court notes moreover that at the time when the United States authorities took their decision the question of the binding character of orders indicating provisional measures had been extensively discussed in the literature, but had not been settled by its jurisprudence. The Court would have taken these factors into consideration had Germany's submission included a claim for indemnification.

* * *

117. Finally, the Court will consider Germany's fourth submission, in which it asks the Court to adjudge and declare

"that the United States shall provide Germany an assurance that it will not repeat its unlawful acts and that, in any future cases of detention of or criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations. In particular in cases involving the death penalty, this requires the United States to provide effective review of and remedies for criminal convictions impaired by a violation of the rights under Article 36."

118. Germany states that:

"[c]oncerning the requested assurances and guarantees of non-repetition of the United States, they are appropriate because of the existence of a real risk of repetition and the seriousness of the injury suffered by Germany. Further, the choice of means by which full conformity of the future conduct of the United States with Article 36 of the Vienna Convention is to be ensured may be left to the United States."

Germany explains that:

"the effective exercise of the right to consular notification embodied in [Article 36,] paragraph 2, requires that, where it cannot be excluded that the judgment was impaired by the violation of the right to consular notification, appellate proceedings allow for a reversal of the judgment and for either a retrial or a re-sentencing."

Finally, Germany points out that its fourth submission has been so worded "as to . . . leave the choice of means by which to implement the remedy [it seeks] to the United States".

119. In reply, the United States argues as follows:

"Germany's fourth submission is clearly of a wholly different nature than its first three submissions. Each of the first three submissions seeks a judgment and declaration by the Court that a violation of a stated international legal obligation has occurred. Such judgments are at the core of the Court's function, as an aspect of reparation."

In contrast, however, to the character of the relief sought in the first three submissions, the requirement of assurances of non-repetition sought in the fourth submission has no precedent in the jurisprudence of this Court and would exceed the Court's jurisdiction and authority in this case. It is exceptional even as a non-legal undertaking in State practice, and it would be entirely inappropriate for the Court to require such assurances with respect to the duty to inform undertaken in the Consular Convention in the circumstances of this case."
It points out that “US authorities are working energetically to strengthen the regime of consular notification at the state and local level throughout the United States, in order to reduce the chances of cases such as this recurring” and adds that:

“the German request for an assurance as to the duty to inform foreign nationals without delay of their right to consular notification... seeks to have the Court require the United States to assure that it will never again fail to inform a German foreign national of his or her right to consular notification”,

and that “the Court is aware that the United States is not in a position to provide such an assurance”. The United States further contends that it “has already provided appropriate assurances to Germany on this point”. Finally, the United States recalls that:

“[w]ith respect to the alleged breach of Article 36, paragraph 2... Germany seeks an assurance that, ‘in any future cases of detention or criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under Article 36’”.

According to the United States, “[such an assurance] is again absolute in character... [and] seeks to create obligations on the United States that exceed those that are contained in the Vienna Convention. For example, the requirement of consular notification under Article 36, paragraph 1 (b), of the Convention applies when a foreign national is arrested, committed to prison or to custody pending trial or detained in any other manner. It does not apply, as the submission would have it, to any future criminal proceedings. That is a new obligation, and it does not arise out of the Vienna Convention.”

The United States further observes that:

“[e]ven if this Court were to agree that, as a result of the application of procedural default with respect to the claims of the LaGrands, the United States committed a second internationally wrongful act, it should limit that judgment to the application of that law in the particular case of the LaGrands. It should resist the invitation to require an absolute assurance as to the application of US domestic law in all such future cases. The imposition of such an additional obligation on the United States would... be unprecedented in international jurisprudence and would exceed the Court’s authority and jurisdiction.”

120. The Court observes that in its fourth submission Germany seeks several assurances. First it seeks a straightforward assurance that the United States will not repeat its unlawful acts. This request does not specify the means by which non-repetition is to be assured.

Additionally, Germany seeks from the United States that “in any future cases of detention of or criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations”.

This request goes further, for, by referring to the law of the United States, it appears to require specific measures as a means of preventing recurrence.

Germany finally requests that “[i]n particular in cases involving the death penalty, this requires the United States to provide effective review of and remedies for criminal convictions impaired by a violation of the rights under Article 36”.

This request goes even further, since it is directed entirely towards securing specific measures in cases involving the death penalty.

121. Turning first to the general demand for an assurance of non-repetition, the Court observes that it has been informed by the United States of the “substantial measures [which it is taking] aimed at preventing any recurrence” of the breach of Article 36, paragraph 1 (b). Throughout these proceedings, oral as well as written, the United States has insisted that it “keenly appreciates the importance of the Vienna Convention’s consular notification obligation for foreign citizens in the United States as well as for United States citizens travelling and living abroad”; that “effective compliance with the consular notification requirements of Article 36 of the Vienna Convention requires constant effort and attention”; and that

“the Department of State is working intensively to improve understanding of and compliance with consular notification and access requirements throughout the United States, so as to guard against future violations of these requirements”.

The United States points out that “[this effort has included the January 1998 publication of a booklet entitled ‘Consular Notification and Access: Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding
Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them, and development of a small reference card designed to be carried by individual arresting officers’.

According to the United States, it is estimated that until now over 60,000 copies of the brochure as well as over 400,000 copies of the pocket card have been distributed to federal, state and local law enforcement and judicial officials throughout the United States. The United States is also conducting training programmes reaching out to all levels of government. In the Department of State a permanent office to focus on United States and foreign compliance with consular notification and access requirements has been created.

122. Germany has stated that it “does not consider the so-called ‘assurances’ offered by the Respondent as adequate”. It says

“[v]iolations of Article 36 followed by death sentences and executions cannot be remedied by apologies or the distribution of leaflets. An effective remedy requires certain changes in US law and practice”.

In order to illustrate its point, Germany has presented to the Court a “[l]ist of German nationals detained after January 1, 1998, who claim not to have been informed of their consular rights”. The United States has criticized this list as misleading and inaccurate.

123. The Court notes that the United States has acknowledged that, in the case of the LaGrand brothers, it did not comply with its obligations to give consular notification. The United States has presented an apology to Germany for this breach. The Court considers however that an apology is not sufficient in this case, as it would not be in other cases where foreign nationals have not been advised without delay of their rights under Article 36, paragraph 1, of the Vienna Convention and have been subjected to prolonged detention or sentenced to severe penalties.

In this respect, the Court has taken note of the fact that the United States repeated in all phases of these proceedings that it is carrying out a vast and detailed programme in order to ensure compliance by its competent authorities at the federal as well as at the state and local levels with its obligation under Article 36 of the Vienna Convention.

124. The United States has provided the Court with information, which it considers important, on its programme. If a State, in proceedings before this Court, repeatedly refers to substantial activities which it

is carrying out in order to achieve compliance with certain obligations under a treaty, then this expresses a commitment to follow through with the efforts in this regard. The programme in question certainly cannot provide an assurance that there will never again be a failure by the United States to observe the obligation of notification under Article 36 of the Vienna Convention. But no State could give such a guarantee and Germany does not seek it. The Court considers that the commitment expressed by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), must be regarded as meeting Germany’s request for a general assurance of non-repetition.

125. The Court will now examine the other assurances sought by Germany in its fourth submission. The Court observes in this regard that it can determine the existence of a violation of an international obligation. If necessary, it can also hold that a domestic law has been the cause of this violation. In the present case the Court has made its findings of violations of the obligations under Article 36 of the Vienna Convention when it dealt with the first and the second submission of Germany. But it has not found that a United States law, whether substantive or procedural in character, is inherently inconsistent with the obligations undertaken by the United States in the Vienna Convention. In the present case the violation of Article 36, paragraph 2, was caused by the circumstances in which the procedural default rule was applied, and not by the rule as such.

In the present proceedings the United States has apologized to Germany for the breach of Article 36, paragraph 1, and Germany has not requested material reparation for this injury to itself and to the LaGrand brothers. It does, however, seek assurances:

“that, in any future cases of detention or of criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations”,

and that

“[i]n particular in cases involving the death penalty, this requires the United States to provide effective review of and remedies for criminal convictions impaired by the violation of the rights under Article 36”.

The Court considers in this respect that if the United States, notwithstanding its commitment referred to in paragraph 124 above, should fail in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned have been subjected to prolonged detention or convicted and
sentenced to severe penalties. In the case of such a conviction and sentence, it would be incumbent upon the United States to allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention. This obligation can be carried out in various ways. The choice of means must be left to the United States.

126. Given the foregoing ruling by the Court regarding the obligation of the United States under certain circumstances to review and reconsider convictions and sentences, the Court need not examine Germany's further argument which seeks to found a like obligation on the contention that the right of a detained person to be informed without delay pursuant to Article 36, paragraph 1, of the Vienna Convention is not only an individual right but has today assumed the character of a human right.

127. In reply to the fourth submission of Germany, the Court will therefore limit itself to taking note of the commitment undertaken by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), of the Vienna Convention, as well as the aforementioned duty of the United States to address violations of that Convention should they still occur in spite of its efforts to achieve compliance.

* * *

128. For these reasons,

THE COURT,

(1) By fourteen votes to one,

Finds that it has jurisdiction, on the basis of Article 1 of the Optional Protocol concerning the Compulsory Settlement of Disputes to the Vienna Convention on Consular Relations of 24 April 1963, to entertain the Application filed by the Federal Republic of Germany on 2 March 1999;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Bedjaoui, Ranjeva, Herzegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;
AGAINST: Judge Parra-Aranguren;

(2) (a) By thirteen votes to two,

Finds that the first submission of the Federal Republic of Germany is admissible;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herzegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;
AGAINST: Judges Oda, Parra-Aranguren;

(b) By fourteen votes to one,

Finds that the second submission of the Federal Republic of Germany is admissible;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herzegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh;
AGAINST: Judge Oda;

(c) By twelve votes to three,

Finds that the third submission of the Federal Republic of Germany is admissible;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herzegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh;
AGAINST: Judges Oda, Parra-Aranguren, Buergenthal;

(d) By fourteen votes to one,

Finds that the fourth submission of the Federal Republic of Germany is admissible;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herzegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;
AGAINST: Judge Oda;

(3) By fourteen votes to one,

Finds that, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36, paragraph 1 (b), of the Convention, and by thereby depriving the Federal Republic of Germany of the possibility, in a timely fashion, to render the assistance provided for by the Convention to the individuals concerned, the United States of America breached its obligations to the Federal Republic of Germany and to the LaGrand brothers under Article 36, paragraph 1;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herzegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;
AGAINST: Judge Oda;

(4) By fourteen votes to one,

Finds that, by not permitting the review and reconsideration, in the light of the rights set forth in the Convention, of the convictions and sentences of the LaGrand brothers after the violations referred to in paragraph (3) above had been established, the United States of America breached its obligation to the Federal Republic of Ger-
many and to the LaGrand brothers under Article 36, paragraph 2, of the Convention;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetic, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;
AGAINST: Judge Oda;

(5) By thirteen votes to two,

Finds that, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice in the case, the United States of America breached the obligation incumbent upon it under the Order indicating provisional measures issued by the Court on 3 March 1999;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetic, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;
AGAINST: Judges Oda, Parra-Aranguren;

(6) Unanimously,

Takes note of the commitment undertaken by the United States of America to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), of the Convention; and finds that this commitment must be regarded as meeting the Federal Republic of Germany’s request for a general assurance of non-repetition;

(7) By fourteen votes to one,

Finds that should nationals of the Federal Republic of Germany nonetheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1 (b), of the Convention having been respected, the United States of America, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention.

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetic, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;
AGAINST: Judge Oda.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-seventh day of June, two thousand and one, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Federal Republic of Germany and the Government of the United States of America, respectively.

(Signed) Gilbert GUILLAUME,
President.

(Signed) Philippe COUVREUR,
Registrar.

President GUILLAUME makes the following declaration:

Subparagraph (7) of the operative part of the Court’s Judgment envisages a situation where, despite the commitment by the United States noted by the Court in subparagraph (6), a severe penalty is imposed upon a German national without his or her rights under Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations having been respected. The Court states that, in such a case, “the United States, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention”.

This subparagraph represents a response to certain submissions by Germany and hence rules only on the obligations of the United States in cases of severe penalties imposed upon German nationals.

Thus, subparagraph (7) does not address the position of nationals of other countries or that of individuals sentenced to penalties that are not of a severe nature. However, in order to avoid any ambiguity, it should be made clear that there can be no question of applying an a contrario interpretation to this paragraph.

(Signed) Gilbert GUILLAUME.

Vice-President Shi appends a separate opinion to the Judgment of the Court; Judge Oda appends a dissenting opinion to the Judgment of the Court; Judges Koroma and Parra-Aranguren append separate opinions to the Judgment of the Court; Judge Buergenthal appends a dissenting opinion to the Judgment of the Court.

(Initialled) G.G.
(Initialled) Ph.C.