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INTERNATIONAL COURT OF JUSTICE

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PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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**NOTTEBOHM CASE**

(LIECHTENSTEIN *v.* GUATEMALA)

**VOLUME I**

**Application.—Pleadings**

COUR INTERNATIONALE DE JUSTICE

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MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

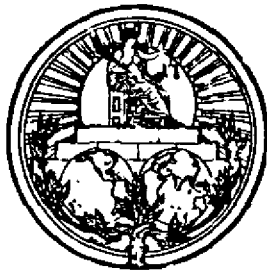
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**AFFAIRE NOTTEBOHM**

(LIECHTENSTEIN *c.* GUATEMALA)

**VOLUME I**

**Requête. — Pièces écrites**



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**NOTTEBOHM CASE**  
(LIECHTENSTEIN *v.* GUATEMALA)

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**AFFAIRE NOTTEBOHM**  
(LIECHTENSTEIN *c.* GUATEMALA)

INTERNATIONAL COURT OF JUSTICE

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PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

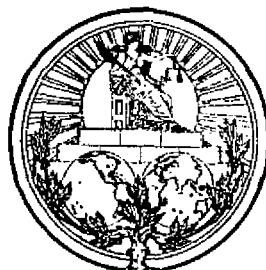
# NOTTEBOHM CASE

(LIECHTENSTEIN *v.* GUATEMALA)

JUDGMENTS OF NOVEMBER 18th, 1953 (PRELIMINARY OBJECTION)  
AND APRIL 6th, 1955 (SECOND PHASE OF THE CASE)

**VOLUME I**

**Application.—Pleadings**



COUR INTERNATIONALE DE JUSTICE

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MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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# AFFAIRE NOTTEBOHM

(LIECHTENSTEIN c. GUATEMALA)

ARRÊTS DU 18 NOVEMBRE 1953 (EXCEPTION PRÉLIMINAIRE)  
ET DU 6 AVRIL 1955 (DEUXIÈME PHASE DE L'AFFAIRE)

**VOLUME I**

**Requête. — Mémoires**



PRINTED IN THE NETHERLANDS

PART I

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APPLICATION INSTITUTING PROCEEDINGS  
AND PLEADINGS  
(MERITS AND PRELIMINARY OBJECTION)

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PREMIÈRE PARTIE

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REQUÊTE INTRODUCTIVE D'INSTANCE  
ET PIÈCES DE LA PROCÉDURE ÉCRITE  
(FOND ET EXCEPTION PRÉLIMINAIRE)



## SECTION A.—APPLICATION INSTITUTING PROCEEDINGS

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### THE AGENT OF THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN TO THE REGISTRAR OF THE COURT

As from the Swiss Legation,  
The Hague, 10 December 1951.

Sir,

In accordance with Articles 36 (2) and 40 (1) of the Statute of the International Court and of Article 32 (2) of the Rules of the Court, I have the honour to submit the present Application instituting proceedings in the name of the Government of the Principality of Liechtenstein against the Government of Guatemala.

2. The subject of the dispute and the statement of what in the view of the Government of the Principality of Liechtenstein are the relevant facts are contained in the Note addressed on 6 July 1951 by the Government of the Principality of Liechtenstein to the Government of Guatemala and appended as Annex No. 1 to the present Application. In the said Note the Government of the Principality of Liechtenstein drew the attention of the Government of Guatemala to the fact that the latter Government have acted towards the person and property of Mr. Friedrich Nottebohm, a citizen of Liechtenstein, in a manner contrary to international law; that, in particular, they have treated Mr. Nottebohm, a citizen of a neutral State, as an enemy national; that they have exposed him to unjustifiable measures of detention, internment and expulsion; and that they have sequestered and subsequently confiscated his property. In the above-mentioned Note the Government of the Principality of Liechtenstein expressed the view that the Government of Guatemala are bound by international law to restore the property of Mr. Nottebohm and to compensate him for the losses suffered as the result of the unlawful action of the Government of Guatemala. In the same Note the Government of the Principality of Liechtenstein intimated that in the absence of a satisfactory settlement they would have no alternative but to submit the case to the International Court of Justice. On 24 July 1951 the Ministry of Foreign Affairs of Guatemala acknowledged the receipt of the above Note (Annex No. 2). On 24 October 1951 the Government of the Principality of Liechtenstein informed the Government of Guatemala that as

no reply had been received to their Note of 6 July 1951 they were taking the necessary steps for bringing the case before the International Court of Justice in accordance with the Declarations made, respectively, on 27 January 1947 and 29 March 1950 by the Governments of Guatemala and of the Principality of Liechtenstein in the matter of the compulsory jurisdiction of the Court as provided in Article 36 of its Statute (Annex No. 3).

3. On 27 January 1947, the Government of Guatemala made the following Declaration accepting the compulsory jurisdiction of the International Court of Justice under the terms of Article 36 of the Statute of the Court :

“The Government of Guatemala declares that, in accordance with Article 36 (2) and (3) of the Statute of the International Court of Justice, it recognizes as compulsory, *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, and for a period of five years, the jurisdiction of the Court in all legal disputes. This declaration does not cover the dispute between England and Guatemala concerning the restoration of the territory of Belize, which the Government of Guatemala would, as it has proposed, agree to submit to the judgment of the Court, if the case were decided *ex æquo et bono*, in accordance with Article 38 (2) of the said Statute.

Guatemala, 27 January 1947.

(Signed) E. SILVA PENA.”

4. On 29 March 1950, the Government of the Principality of Liechtenstein deposited the following Declaration accepting the compulsory jurisdiction of the International Court of Justice under the terms of Article 36 of the Statute of the Court :

“The Government of the Principality of Liechtenstein, duly authorized by His Serene Highness, the Reigning Prince François Joseph II, in accordance with the Order of the Diet of the Principality of Liechtenstein dated 9th March, 1950, which came into force on 10th March, 1950,

declares by these presents that the Principality of Liechtenstein 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 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 and extent of the reparation to be made for the breach of an international obligation.

The present 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 Principality becomes a party to the Statute and shall take effect as long as the Declaration has not been revoked subject to one year's notice.

Done at Vaduz, 10th March, 1950.

On behalf of the Government  
of the Principality of Liechtenstein:  
Head of Government,  
(Signed) A. FRICK."

5. Previously, on 8 March, 1949, the Government of the Principality of Liechtenstein had expressed the desire to ascertain the conditions on which Liechtenstein might become a party to the Statute of the Court. The General Assembly of the United Nations formulated those conditions on 1 December 1949. On 29 March 1950, the Government of the Principality of Liechtenstein deposited with the Secretary-General of the United Nations a Declaration accepting the conditions laid down by the General Assembly and thus became a party to the Statute of the Court.

6. The claim of the Government of the Principality of Liechtenstein is : (a) that the Government of Guatemala has acted contrary to international law and has incurred international responsibility by the unjustified detention, internment and expulsion of Mr. Nottebohm and by the sequestration and confiscation of his property ; (b) that the Government of Guatemala is bound to restore to Mr. Nottebohm his movable and immovable assets as shown in the list appended to the Note of 6 July 1951 (Annex No. 1) ; (c) that the Government of Guatemala is bound to grant full compensation to Mr. Nottebohm in respect of such property as it is not in a position to restore to him owing to physical destruction or for other reasons ; (d) that the Government of Guatemala is bound to pay full compensation for the use of and profits derived from the sequestered and confiscated assets and properties as well as for damage, depreciation and other losses sustained in respect of the said assets and properties as the result of or in connection with their sequestration or confiscation ; (e) that the Government of Guatemala is bound to pay full compensation for the unlawful detention and internment of Mr. Nottebohm as well as for preventing him, in a manner amounting to unjustified expulsion, from returning to Guatemala ; (f) that the Court shall determine the amount of compensation due to the Government of the Principality of Liechtenstein under (c), (d) and (e) above.

II APPLICATION INSTITUTING PROCEEDINGS (IO XII 51)

7. While the main claim of the Government of the Principality of Liechtenstein is contained in the preceding paragraph as well as in paragraph 4 of its Note of 6 July 1951 addressed to the Government of Guatemala, the Government of the Principality of Liechtenstein must reserve the right of formulating in more detail and of amplifying, in the course of the written proceedings, the claim here set forth.

8. The undersigned has been appointed by the Government of the Principality of Liechtenstein as its Agent for the purpose of these proceedings.

I have, etc.

(Signed) E. H. LOEWENFELD.

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*Annex No. 1*

FIRST NOTE (OF 6 JULY 1951)  
OF THE GOVERNMENT OF THE PRINCIPALITY  
OF LIECHTENSTEIN TO THE MINISTRY OF FOREIGN  
AFFAIRS OF THE GOVERNMENT OF GUATEMALA

The Government of the Principality of Liechtenstein have the honour to address themselves to the Government of Guatemala in a matter concerning the interest of Mr. Friedrich Nottebohm in Guatemala, a national of Liechtenstein.

1. The Government of the Principality have been acutely concerned in recent years with the question of the treatment by the Guatemalan Government of the person and property of Mr. Friedrich Nottebohm. The Government of the Principality now desire to bring formally before the Government of Guatemala the circumstances of that case with the view of remedying a situation which, in their opinion, involves a grave violation of generally accepted principles and rules of international law.

2. The facts of this case are as follows : Mr. Friedrich Nottebohm is a national of Liechtenstein at present resident in Vaduz, in the Principality of Liechtenstein. He became a national of Liechtenstein on 13 October 1939, in accordance with the Liechtenstein Law of 10 January 1934 concerning acquisition of nationality. Although he was associated with Liechtenstein in various ways, and although he had, prior to his naturalization, paid frequent visits to Liechtenstein, he was at the time of his naturalization domiciled in Guatemala where he had resided since 1906. He was a German national by birth.

It appears from Article 25 of the German Nationality Law of 22 July 1913 that as the result of the acquisition of Liechtenstein nationality Mr. Friedrich Nottebohm lost his German nationality. It appears also from the documents submitted that after the acquisition of Liechtenstein nationality he was constantly treated, both by Liechtenstein and by Switzerland, as a Liechtenstein national. In particular, the Government of the Principality is in possession of a formal and exhaustive certificate of the Swiss Clearing Office dated 21 July 1946, which shows without qualifications that Switzerland recognized Mr. Friedrich Nottebohm as a Liechtenstein national and as a Liechtenstein national only.

On 5 February 1940, he was duly registered by the Guatemalan authorities as a national of Liechtenstein. He continued to reside in Guatemala until 20 November 1943 when, after having been arrested the previous day, he was taken on board an American

vessel to the United States and interned there. Guatemala entered the war at the end of 1941.

Some time after the beginning of his internment—at the beginning of 1944—the property, movable and immovable, of Mr. Friedrich Nottebohm was sequestered. In so far as the Guatemalan authorities supplied an explanation of the measures taken against Mr. Fr. Nottebohm, they referred to the fact that he had been put on the British and American black list. It may be noted in this connection that on 7 March 1944 the following document was issued by the Civil Attaché of the British Legations in Central America :

“As Civil Attaché to His Britannic Majesty’s Legations in Central America, I conducted a thorough investigation into the firm of Nottebohm Hermanos and its directors. The business transactions of the firm since August 1939 up to September 1943 were scrutinized by myself and by a chartered accountant and we were unable to find any instance of the firm having aided the enemy. As the result of the investigations, I was satisfied that the charges made against Nottebohm Hermanos, which resulted in its being placed on the Statutory List in 1939, were based on erroneous evidence or confused statements given in good faith. At the same time I conducted an investigation into the life of the partners, Frederic Nottebohm and Karl Heinz Nottebohm, and came to the conclusion that neither had aided the Nazis in a business or private capacity. From the investigations and from personal knowledge of the partners, I am of opinion that they should not be considered Nazi sympathizers.

*(Signed)* ARTHUR NEALE.”

At the same time, on 7 March 1944, a document to similar effect was issued by the Swiss Consul in Guatemala.

On 26 January 1946, the legal representatives of Mr. Friedrich Nottebohm were informed that his registration as a national of Liechtenstein was cancelled by the Foreign Ministry of Guatemala apparently in pursuance of a provision of a Guatemalan Law which provides that registered aliens whose absence from the country exceeds two years must re-register. While this aspect of the factual situation—in particular the relevant dates—is not quite clear, it appears that as the result of the cancellation of his registration as a national of Liechtenstein Mr. Friedrich Nottebohm was subsequently not in the position to re-enter Guatemala as a Liechtenstein national.

During all this period he was deprived of his property. A list of these assets, as submitted, shows that their total value is estimated at U.S.A. dollars 1,509,566 (or Swiss francs 6,491,133.-). It is also estimated that the normal annual income from these assets is in the neighbourhood of U.S.A. dollars 70,000.

Some time in 1948, the Guatemalan Government published a draft of a Law providing, in effect, for the confiscation of the property of aliens who on 7 October 1938 were nationals of a State which subsequently was engaged in war against the Allies or who were placed on the American black list. That draft, which in its original form was apparently vetoed by the President of Guatemala, became subsequently law on 25 May 1949 (*Ley de Liquidación Asuntos de Guerra*). The Law apparently provides for the possibility of recourse to judicial and other organs with the view to proving that a person *prima facie* affected by its operation falls within some of the complicated exceptions exempting his property from confiscation. The Government of the Principality understands that the legal representatives of Mr. Friedrich Nottebohm in Guatemala have been pursuing, so far without success, the remedies nominally open to them under the Confiscation Law of 1949.

It is not clear whether the continued sequestration of the property of Mr. Friedrich Nottebohm is now taking place by virtue of the provisions of the Confiscation Law of 1949 or of previous wartime legislation affecting alien enemies.

3. It appears from the above statement of the facts that the Government of Guatemala subjected a national of a neutral State to internment and, generally, to treatment which international law permits only in relation to enemy nationals. It proceeded at the same time to deprive him of the use of his entire property. The Government of Guatemala did so by purporting, in effect, to deprive a national of Liechtenstein of his Liechtenstein nationality, which it had previously expressly recognized, and to re-impose upon him his former nationality which he had validly renounced.

After the cessation of hostilities, Guatemala continued to treat the neutral national in question as if he were a national of an enemy State. She has applied to him confiscatory legislation directed against enemy nationals. She has in fact made it impossible for him, without sufficient reasons and in a manner amounting to unjustified expulsion, to return to Guatemala as a national of Liechtenstein. There appears little doubt that the conduct of the Government of Guatemala in the matter was contrary to international law ; that it amounted in many ways to a denial of justice ; that compensation is due in respect of the wrong and the damages

suffered by the Liechtenstein national in question ; and that the Government of Guatemala is bound to abandon formally the attempts at confiscation, to restore the sequestered property to its owner, and, in so far as such restitution is not possible, to grant additional compensation.

4. Seven years have now elapsed since the Government of Guatemala first took measures against Mr. Fr. Nottebohm in violation of generally recognized principles of international law. Over two years have now passed since the latest of the measures, the Confiscation Law of 1949, was enacted. All this time the Government of the Principality abstained from interceding diplomatically on behalf of a national who has suffered grievously and repeatedly at the hands of the Guatemalan authorities in disregard of international law. They have refrained from intercession in the hope that the Government of Guatemala may see their way towards compensating and restoring the property of a person of irreproachable character who had been a loyal resident of Guatemala for over thirty years. They now consider that they would no longer be justified in delaying the fulfilment of their duty towards one of their nationals.

The Government of the Principality will accordingly be glad if the Government of Guatemala will inform them whether they are willing to comply with the following requests which the Government of the Principality is now compelled formally to make :

I. That the Government of Guatemala restore to Mr. Friedrich Nottebohm his sequestered movable and immovable assets as shown on the enclosed list.

II. That in case such restitution should prove impossible for reasons of physical destruction or for other reasons, the Government of Guatemala pay Mr. Friedrich Nottebohm compensation in respect of the property in question, such compensation to be fixed by agreement between the Government of Guatemala and the representatives of Mr. Friedrich Nottebohm or, in case of disagreement, by an umpire agreed jointly by the Government of Guatemala and the Government of the Principality or, if no agreement can be reached on the selection of the umpire, by an umpire appointed by the President of the International Court of Justice.

III. That the Government of Guatemala pay Mr. Friedrich Nottebohm compensation for the use of and for profits derived from the sequestered properties and assets to the amount of U.S.A. dollars 70,000 p.a.



IV. That the Government of Guatemala pay to Mr. Friedrich Nottebohm compensation in respect of damage, depreciation and other losses sustained in respect of the said assets and properties as the result of or in connection with their sequestration by the Government of Guatemala—such compensation to be fixed in the manner set out under II above.

V. That the Government of Guatemala should agree to reinstate upon Mr. Friedrich Nottebohm his registration as a citizen of Liechtenstein.

VI. That the Government of Guatemala will forthwith restore to Mr. Friedrich Nottebohm all his movable and immovable property and assets as shown in the annexed list or any supplementary list—provided that any disagreement as to whether any item has been properly included in the list shall be settled in the manner provided under III above.

5. The Government of the Principality of Liechtenstein is convinced that the Government of Guatemala, which has always strictly observed the principles of international law and has actively contributed to its development, will not refuse to grant reparation of the damage which has been inflicted upon a national of Liechtenstein.

If, however, contrary to the expectation and hope of the Government of the Principality, the Government of Guatemala should not see their way to consider the view taken by the Government of the Principality on this matter, the Government of the Principality would have no other alternative but to resort to the International Court of Justice in accordance with Articles 36 and 40 of its Statute.

The Government of the Principality of Liechtenstein avail themselves of this opportunity to convey to the Ministry of Foreign Affairs of Guatemala the assurances of their high consideration.

(Signed) A. FRICK,

For the Government of the  
Principality of Liechtenstein.

Vaduz, 6 July 1951.

1 enclosure.

*Enclosure to Annex No. 1*STATEMENT OF THE EXPROPRIATED ITEMS OF PROPERTY  
BELONGING TO FRIEDRICH NOTTEBOHM

Portion of the real estates, shares and values, registered under the name of NOTTEBOHM HERMANOS, which are deposited under the name of NOTTEBOHM HERMANOS :

Share :	Plantation	Sta. Cecilia . . . . .	\$ 25,000.—
"	"	El Peru . . . . .	" 40,000.—
"	"	Mediodia . . . . .	" 14,000.—
"	"	Bola de Oro . . . . .	" 14,000.—
"	"	Los Castanos . . . . .	" 5,000.—
"	"	La Florida . . . . .	" 22,000.—
"	"	Las Sabanetas . . . . .	" 21,000.—
"	"	Los Brillantes . . . . .	" 2,000.—
"	"	Monteoristi . . . . .	" 12,000.—
"	Farm	Coatunco . . . . .	" 1,500.—
"	Ground	to be used for colonization for workers in Huehuetenango . . . . .	" 2,000.—
"	House	Casa Grande in Quezaltenango . . . . .	" 3,500.—
"	"	Bodega Boston . . . . .	" 4,000.—
"	"	Business House Nottebohm Her- manos, Guatemala-City . . . . .	" 66,000.—
"	"	No. 38 Ave. del Hipodromo, Guatemala-City . . . . .	" 15,000.—
"	Ground	Building-site Los Arcos, Guate- mala-City . . . . .	" 11,000.—
"	Shares	13 Comp. Com. & Agricola . . . . .	" 8,000.—
"	"	2904 Banco Central . . . . .	" 14,000.—
"	"	Agencia Maritima Nat. Ltd. . . . .	" 5,000.—
"	"	Muelle de Champerico . . . . .	" 500.—
			\$ 285,500.—
"	Credits	of the firm Nottebohm Hermanos \$ 265,576.64 . . . . .	" 99,580.—
		with Banco Central \$ 412,632.94 . . . . .	" 111,486.—
			\$ 496,566.—

Brought forward . . . . .	\$ 496,566.—
Real Estates, Registered under the Names of FRIEDRICH NOTTEBOHM/CARLOS NOTTEBOHM :	
Share : Plantation San Rafael Pana . . . . .	„ 100,000.—
„ „ El Potosi y Anexos . . . . .	„ 100,000.—
„ „ Guatelon . . . . .	„ 7,000.—
„ „ Morazan . . . . .	„ 2,000.—
„ „ El Carmen Metzabal . . . . .	„ 10,000.—
„ House Dwelling-house 6 a Calle Tivoli . . . . .	„ 40,000.—
	<u>\$ 755,566.—</u>
Exclusive Property of FRIEDRICH NOTTEBOHM :	
746 shares Vina Zapote . . . . .	„ 373,000.—
285 „ Concepción . . . . .	„ 285,000.—
479 „ Comp. FC Verpaz . . . . .	„ 96,000.—
	<u>\$ 1,509,566.—</u>
at the rate of Sw. Fr. 4.30 = Sw. Fr. 6,491,133.80	

This statement covers neither the profits yielded by the plantations, nor the dividends on the shares since the year 1941. Indications in this respect cannot possibly be given as the Guatemala Government has not handed out any statement of accounts. According to Mr. Nottebohm's estimate, the proceeds on his property amount to \$70,000.— a year at least, due emphasis being placed on the words "at least".

*Annex No. 2*

ACKNOWLEDGMENT BY THE GOVERNMENT OF  
GUATEMALA OF THE RECEIPT OF THE NOTE  
OF THE GOVERNMENT OF THE PRINCIPALITY  
OF LIECHTENSTEIN OF 6 JULY 1951

RECIBO

El Ministerio de Relaciones Exteriores de la República de Guatemala confirma por la presente haber recibido del Consulado de Suiza en Guatemala :

1 NOTA E.50.2.—H. DEL 24 DE JULIO DE 1951; ANEXO: 1 SOBRE DEL ALTO GOBIERNO DEL PRINCIPADO DE LIECHTENSTEIN.

Guatemala, el 24 de Julio de 1951.

BRIGIDO CABRERA MEZA,  
SEGUNDO AYUDANTE DEL PROTOCOLO.

*Annex No. 3*

SECOND NOTE (OF 24 OCTOBER 1951)  
OF THE GOVERNMENT OF THE PRINCIPALITY  
OF LIECHTENSTEIN TO THE MINISTER OF FOREIGN  
AFFAIRS OF THE GOVERNMENT OF GUATEMALA

Your Excellency,

I have the honour to refer to the communication of the Protocol of the Ministry of Foreign Affairs of Guatemala of 24 July 1951 acknowledging the receipt of the Note of the Government of the Principality of Liechtenstein of 6 July 1951 in the matter of Mr. Friedrich Nottebohm, a national of Liechtenstein.

Your Excellency will recall that in the above-mentioned Note the Government of the Principality of Liechtenstein drew the attention of your Excellency to the fact that the Government of Guatemala have treated the person and property of Mr. Friedrich Nottebohm in a manner contrary to international law; that, in particular, they have treated a citizen of Liechtenstein as an enemy national; that they have liquidated and subsequently confiscated his property; and that, in the opinion of the Princely Government, the Government of Guatemala are bound by international law to restore the property of Mr. Nottebohm and to compensate him for the losses suffered as a result of the unlawful action of the Government of Guatemala.

Your Excellency will also recall that in the above-mentioned Note the Princely Government intimated that in the absence of a satisfactory settlement they would have no alternative but to bring the case before the International Court of Justice in accordance with Articles 36 and 40 of its Statute.

Over two months have now elapsed since the Government of Guatemala have acknowledged the receipt of—and left unanswered—the above-mentioned Note of the Princely Government. While that Government always were and are prepared to co-operate in an amicable settlement of the matter, they now see themselves compelled to take the necessary steps for bringing the case before the International Court of Justice in accordance with the Declarations made, respectively, on 27 January 1947 and 29 March 1950 by the Governments of Guatemala and of the Principality of Liechtenstein in the matter of the compulsory jurisdiction of the Court as provided in Article 36 of its Statute.

The Government of the Principality of Liechtenstein takes the opportunity to convey to your Excellency the assurance of their high consideration.

Vaduz, 24 October 1951.

(Signed) A. FRICK,  
For the Government of the  
Principality of Liechtenstein.