COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE RELATIVE A CERTAINS EMPRUNTS NORVÉGIENS

(FRANCE c. NORVÈGE)

ARRÊT DU 6 JUILLET 1957

1957

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE OF CERTAIN NORWEGIAN LOANS

(FRANCE *v.* NORWAY)

JUDGMENT OF JULY 6th, 1957

Le présent arrêt doit être cité comme suit :

« *Affaire relative à certains emprunts norvégiens, Arrêt du 6 juillet 1957 : C. I. J. Recueil 1957, p. 9.* »

This Judgment should be cited as follows :

"*Case of Certain Norwegian Loans, Judgment of July 6th, 1957 : I.C.J. Reports 1957, p. 9.*"

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INTERNATIONAL COURT OF JUSTICE

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YEAR 1957

July 6th, 1957

CASE OF CERTAIN NORWEGIAN LOANS

(FRANCE *v.* NORWAY)

International loans, question of gold clause.—Obligations of borrowing State.—Preliminary Objections.—Municipal law, international law.—Second Hague Convention, 1907.—Compulsory jurisdiction.—Declarations under Article 36, paragraph 2, of Statute ; reservation of national jurisdiction as understood by declarant State.—Effect of condition of reciprocity.—Competence of Court.

JUDGMENT

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

In the case of Certain Norwegian Loans,

between

the French Republic,
represented by:

M. André Gros, Professor of the Faculties of Law, Legal Adviser to the Ministry for Foreign Affairs,
as Agent,

assisted by:

M. Paul Reuter, Professor of the Faculty of Law of Paris, Assistant Legal Adviser to the Ministry for Foreign Affairs,
as Counsel,

Me. Marcel Poignard, of the Paris Bar, former Bâtonnier,
as Advocate,

and by:

M. Claude Chayet, Legal Adviser in the Ministry for Foreign Affairs,
M. Robert Monod, *Administrateur civil* in the Ministry of Finance,

M. J. J. de Bresson, *Procureur de la République*, detached to the Ministry for Foreign Affairs,
Me. Henri Monneray, of the Bar of the Paris Court of Appeal,
as Expert Advisers,

and

the Kingdom of Norway,
represented by:

M. Sven Arntzen, Advocate at the Supreme Court of Norway,
as Agent and Advocate,

M. Lars J. Jorstad, Ambassador of Norway at The Hague,
as Agent,

assisted by:

M. Maurice Bourquin, Professor at the University of Geneva and at the Graduate Institute of International Studies,
M. Jens Evensen, Advocate at the Supreme Court of Norway,
as Advocates,

M. Frede Castberg, Rector of the University of Oslo,
M. Johannes Andenaes, Professor at the University of Oslo,
M. Bredo Stabell, Director at the Ministry for Foreign Affairs,
M. Pierre Lalive, Professor at the University of Geneva,
as Expert Advisers,

and by

M. Einar Löchen, Chief of Division in the Ministry for Foreign Affairs,

as Secretary,

THE COURT,

composed as above,

delivers the following Judgment:

In a letter of July 6th, 1955, filed in the Registry on the same day, the Ambassador of France to the Netherlands forwarded a letter from the Agent of the Government of the French Republic dated July 5th, 1955, transmitting an Application instituting Proceedings in a dispute with the Government of the Kingdom of Norway concerning the payment of various Norwegian Loans issued in France. At the same time, the Ambassador of France notified to the Registry the appointment of Professor Gros as Agent of the French Government in the case.

The Application thus filed in the Registry on July 6th, 1955, expressly refers to Article 36, paragraph 2, of the Statute of the Court and to the acceptance of the compulsory jurisdiction of the International Court of Justice by the Kingdom of Norway on November 16th, 1946, and by the French Republic on March 1st, 1949. It refers to and enumerates certain loans floated by the Kingdom of Norway, by the Mortgage Bank of the Kingdom of Norway and by the Small Holding and Workers' Housing Bank; it relies upon the fact that bonds of these loans are in the hands of French holders; it alleges that the said loans contain a gold clause; and it is designed to request the Court to determine the manner in which the borrower should discharge the substance of his debt.

Pursuant to Article 40, paragraph 2, of the Statute, the Application was communicated to the Government of the Kingdom of Norway and, pursuant to paragraph 3 of the same Article, other Members of the United Nations as well as non-member States entitled to appear before the Court were notified of it.

By Order of September 19th, 1955, the President, taking account of an agreement between the Parties, fixed the time-limits for the filing of the Memorial and Counter-Memorial. On the date of the expiry of the second of these time-limits, the Government of the Kingdom of Norway filed a document setting out certain preliminary objections designed, on various grounds stated therein, to obtain a finding from the Court that the Application was inadmissible.

By Order of April 24th, 1956, the Court, noting that the proceedings on the merits were suspended by virtue of the provisions of Article 62, paragraph 3, of the Rules of Court, fixed June 4th, 1956, as the time-limit for the presentation by the Government of the French

Republic of a written statement of its Observations and Submissions in regard to the Preliminary Objections. In notifying the Agents of this decision, the Registrar informed them that it was the Court's intention to open the oral hearings on June 25th, 1956.

On May 15th, 1956, the Agent of the Government of the Kingdom of Norway acquainted the Court with the desire of his Government that, because of unforeseen circumstances, the oral proceedings should be postponed until the autumn. Consequently the Court, after ascertaining the views of the Parties and having decided to postpone the opening of the oral proceedings, by Order of May 29th, 1956, extended to August 31st, 1956, the time-limit for the filing, by the French Government, of its Observations and Submissions on the Preliminary Objections raised by the Norwegian Government.

Within this time-limit, the French Government presented its Observations and Submissions on the Preliminary Objections. Whilst stating the grounds on which it requested the Court not to uphold the Objections, it asked the Court to join the Preliminary Objections to the Merits.

The Court decided, on September 21st, 1956, to open the oral hearings on the Preliminary Objections on October 15th, 1956, and the Agents of the Parties were advised of this decision on the same date. In a letter of the same date, which was handed to the Registrar on September 22nd, the Agent of the Government of the Kingdom of Norway, noting that, in its Observations on the Preliminary Objections, the Government of the French Republic had asked that it might please the Court to join the Objections to the merits, stated that his Government, whilst maintaining in their entirety the Objections which it had raised, did not consider that it should object to the joinder of these Objections to the merits.

By Order of September 28th, 1956, the Court, considering that there was no objection to taking into account the understanding thus reached, joined the Objections to the merits and, after ascertaining the views of the Parties, fixed time-limits for the filing of the further pleadings, the last of these time-limits expiring on April 25th, 1957. The Parties having respectively filed their Counter-Memorial, Reply and Rejoinder within the time-limits so fixed, the case was ready for hearing on the last-named date.

In the course of hearings held on May 13th, 14th, 15th, 17th, 20th, 21st, 22nd, 23rd, 24th, 25th and 28th, 1957, the Court heard the oral arguments and replies of M. André Gros and Me. Marcel Poignard, on behalf of the Government of the French Republic, and of M. Sven Arntzen, M. Maurice Bourquin and M. Jens Evensen, on behalf of the Government of the Kingdom of Norway.

During the written and oral proceedings, the following Submissions were presented by the Parties:

On behalf of the French Government, in the Application:

"May it please the Court:

To take note that for the purpose of all notifications and communications relating to the present case, the Agent of the Government of the French Republic selects for his address for service the French Embassy at The Hague;

To notify the present Application, in accordance with Article 40, paragraph 2, of the Statute of the Court, to the Government of the Kingdom of Norway;

To adjudge and declare, whether the Government of the Kingdom of Norway appears or not, and after such time-limits as the Court may fix in the absence of an agreement between the Parties:

That the international loans issued by the Kingdom of Norway in 1896 (3% gold), 1900 (3½% gold), 1902 (3½% gold), 1903 (3% gold), 1904 (3½% gold), 1905 (3½% gold), the international loans issued by the Mortgage Bank of the Kingdom of Norway, 3½% gold 1885-1898, 1902, 1905, 1907, 1909 and 4% gold 1900, the international loan issued by the Small Holding and Workers' Housing Bank 3½% gold in 1904, stipulate in gold the amount of the borrower's obligation for the service of coupons and the redemption of bonds;

And that the borrower can only discharge the substance of his debt by the payment of the gold value of the coupons on the date of payment and of the gold value of the redeemed bonds on the date of repayment."

On behalf of the French Government, in the Memorial:

"The Government of the French Republic therefore maintains the submissions filed in its Application of July 6th, 1955, and requests the Court to adjudge and declare:

That the international loans issued by the Kingdom of Norway in 1896 (3% gold), 1900 (3½% gold), 1902 (3½% gold), 1903 (3% gold), 1904 (3½% gold), 1905 (3½% gold), the international loans issued by the Mortgage Bank of the Kingdom of Norway, 3½% gold 1885-1898, 1902, 1905, 1907, 1909 and 4% gold 1900, the international loan issued by the Small Holding and Workers' Housing Bank 3½% gold in 1904, stipulate in gold the amount of the borrower's obligation for the service of coupons and the redemption of bonds;

And that the borrower must discharge the substance of his debt by the payment of the gold value of the coupons on the date of payment and of the gold value of the redeemed bonds on the date of repayment."

On behalf of the Norwegian Government, in the Preliminary Objections:

"Whereas:

1. The subject of the dispute, as defined in the Application of the French Government of July 6th, 1955, is within the domain of municipal law and not of international law, whereas the compulsory jurisdiction of the Court in relation to the Parties involved is restricted by their Declarations of November 16th, 1946, and March 1st, 1949, to disputes concerning international law;

2. The 'facts' or 'situations' in respect of which the dispute has arisen are prior to the Declaration by which the French Government accepted the compulsory jurisdiction of the Court, this dispute is therefore excluded from the undertaking given by France and, by virtue of reciprocity, from the undertaking given by Norway *vis-à-vis* France;

3. As regards that part of the claim which relates to the bond certificates issued by the Mortgage Bank of Norway and by the Norwegian Small Holding and Workers' Housing Bank, these two Banks have a legal personality distinct from that of the Norwegian State; proceedings can therefore not be instituted against the latter in its capacity as the borrower; whereas, moreover, the jurisdiction of the Court is limited to disputes between States;

4. The holders of bond certificates on whose behalf the French Government considers itself entitled to institute international proceedings have not previously exhausted the local remedies,

May it please the Court

to adjudge and declare that the claim put forward by the Application of the French Government of July 6th, 1955, is not admissible."

On behalf of the French Government, in the Observations and Submissions on the Preliminary Objections:

"For these reasons, and subject to the subsequent presentation of any evidence or argument,

May it please the Court

to join to the merits the 'Preliminary Objections' raised by the Royal Norwegian Government."

On behalf of the Norwegian Government, in the Counter-Memorial:

"On the Preliminary Objections:

Having regard to the fact that the Norwegian Government maintains Preliminary Objections Nos. 1, 3 and 4 raised in the document submitted to the Court on April 20th, 1956,

May it please the Court

to adjudge and declare that the claim submitted by the Application of the French Government of July 6th, 1955, is not admissible.

On the Merits:

Having regard to the fact that the claim of the French Government is unfounded,

May it please the Court

to dismiss the claim of the French Government."

On behalf of the French Government, in the Reply:

"On the question of admissibility:

May it please the Court

to place on record the abandonment by the Royal Government of Norway of its second Preliminary Objection,

to dismiss the Preliminary Objections of the Royal Government of Norway Nos. 1, 3 and 4,

to adjudge and declare that the claim put forward in the Application of the French Government of July 6th, 1955, is admissible.

On the Merits:

May it please the Court

to uphold the submissions of the Government of the French Republic set out in its Application of July 6th, 1955."

On behalf of the Norwegian Government, in the Rejoinder:

"The Norwegian Government maintains the Submissions of its Counter-Memorial of December 20th, 1956."

On behalf of the French Government, Submissions stated at the hearing of May 15th, 1957, and filed on the same day:

"The Government of the French Republic requests the Court to adjudge and declare:

On Jurisdiction:

That the claim of the Government of the French Republic, which has adopted the cause of its nationals who are holders of bond certificates of the Norwegian loans in question, constitutes a case of the recovery of contract debts within the meaning of Article 1 of the Second Hague Convention of October 18th, 1907; that this claim, not having been settled by diplomatic means, has given rise to a legal dispute of an international character between the two States;

That the two States, by their acceptance of the compulsory jurisdiction of the International Court of Justice, have recognized the competence of the Court in all legal disputes concerning the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation;

That the recovery of a debt due under an international loan, claimed from the Government of the debtor State by the Government which has adopted the cause of its nationals who are holders of bond certificates, raises an issue which, within the meaning of Article 36, paragraph 2, sub-paragraphs *(b)* and *(c)*, falls within the competence of the Court by virtue of the acceptance of both Parties;

That the dispute may be brought before the Court without the need for the exhaustion of local remedies since it has not been shown that such remedies could be effectual.

On the Merits:

That the loans which constitute the subject-matter of the Application of the Government of the French Republic are international loans and that it follows from the nature of the bearer bonds that in respect of all foreign holders the substance of the debt is the same and that payments to foreign holders of an identical certificate must be made without any discrimination;

That the said loans contain an undertaking to pay in gold value interest and amounts due on redemption of the bonds;

That undertakings as to the amount of a debt contracted by a State with foreign nationals, containing express conditions as to performance, cannot be unilaterally modified by that State without negotiation with the holders, with the State which has adopted the cause of its nationals, or without arbitration as to the financial capacity of the debtor State to fulfil its obligations;

That in these circumstances, and without passing upon the financial adjustment of payments which the Government of the French Republic has declared itself ready to study with the Government of the Kingdom of Norway, the claim of the Government of the French Republic should be held to be well-founded;

That the Kingdom of Norway having expressly promised and guaranteed payment in gold value of the sums due in performance of its obligations under the various loans in issue, the debtor cannot validly discharge this obligation except by payments as they fall due in gold value."

On behalf of the Norwegian Government, Submissions stated at the hearing of May 23rd, 1957, and filed on the same day:

"On the Preliminary Objections:

Whereas:

1. The subject of the dispute, as defined in the Application, is within the domain of municipal law and not of international law, whereas the compulsory jurisdiction of the Court in relation to the Parties involved is restricted, by their Declarations of November 16th, 1946, and March 1st, 1949, to disputes concerning international law;

2. As regards that part of the claim which relates to the bond certificates issued by the Mortgage Bank of Norway and the Norwegian Small Holding and Workers' Housing Bank, these two Banks have a legal personality distinct from that of the Norwegian State; proceedings can therefore not be instituted against the latter in its capacity as the borrower; whereas moreover the jurisdiction of the Court is limited to disputes between States;

3. The holders of bond certificates for whose protection the French Government considers itself entitled to institute international proceedings have not previously exhausted the local remedies,

May it please the Court,

rejecting all submissions to the contrary,
to adjudge and declare that the claim put forward by the Application of the French Government of July 6th, 1955, is not admissible.

On the Merits:

Whereas the claim of the French Government is unfounded,

May it please the Court,

rejecting all submissions to the contrary,
to dismiss the claim of the French Government."

Certain objections having been raised by the Agent of the Norwegian Government to the tenor and admissibility of the Submissions filed by the Agent of the French Government on May 15th, 1957, the Agent of the French Government made certain alterations in them at the hearing of May 25th, 1957, and filed them on the same day in the following form:

"The Government of the French Republic requests the Court to adjudge and declare:

On Jurisdiction:

1. That the claim of the Government of the French Republic, which has adopted the cause of its nationals who are holders of bond certificates of the Norwegian loans in question, constitutes a case of the recovery of contract debts within the meaning of Article 1 of the Second Hague Convention of October 18th, 1907; that this claim, not having been settled by diplomatic means, has given rise to a legal dispute of an international character between the two States;

2. That the two States, by their acceptance of the compulsory jurisdiction of the International Court of Justice, have recognized the competence of the Court in all legal disputes concerning the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation;

3. That the recovery of the debts due under the loans in question, claimed from the Government of the Norwegian State by the French Government which has adopted the cause of its nationals who are holders of bond certificates, raises an issue which, within the meaning of Article 36, paragraph 2, sub-paragraphs *(b)* and *(c)*, falls within the competence of the Court by virtue of the acceptance of both Parties;

4. That the dispute may be brought before the Court without the need for the exhaustion of local remedies since it has not been shown that such remedies could be effectual.

On the Merits:

1. That the loans which constitute the subject-matter of the Application of the Government of the French Republic are international loans and that it follows from the nature of the bearer bonds that in respect of all foreign holders the substance of the debt is the same and that payments to foreign holders of an identical certificate must be made without any discrimination;

2. That the said loans contain an undertaking to pay in gold value interest and amounts due on redemption of the bonds;

3. That undertakings as to the amount of the debts contracted under the said loans by the Norwegian State with French nationals,

containing express conditions as to performance, cannot be unilaterally modified by that State without negotiation with the holders, with the French State which has adopted the cause of its nationals, or without arbitration as to the financial capacity of the debtor State to fulfil its obligations;

4. That in these circumstances, and without passing upon the financial adjustment of payments which the Government of the French Republic has declared itself ready to study with the Government of the Kingdom of Norway, the claim of the Government of the French Republic should be held to be well-founded;

5. That the Kingdom of Norway having expressly promised and guaranteed payment in gold value of the sums due in performance of its obligations under the various loans in issue, the debtor cannot validly discharge this obligation except by payments as they fall due in gold value."

On behalf of the Norwegian Government, the Agent of that Government declared at the hearing of May 28th, 1957, that he maintained in their entirety his Submissions as formulated on May 23rd, 1957.

The Submissions of the Parties, in the form in which they were given or confirmed at the hearings of May 25th and May 28th, 1957, respectively, constitute their Final Submissions.

* * *

The facts which led the French Government to institute the present proceedings before the Court are as follows:

Between 1896 and 1905, the Norwegian Government floated six public loans on the French market and on other foreign markets. From 1885 to 1909, various loans were floated on foreign markets, including the French market, by the Mortgage Bank of the Kingdom of Norway, an establishment created by the State and whose capital belongs to the State. Finally, in 1904, the Norwegian Small Holding and Workers' Housing Bank floated a loan on the French market and on other foreign markets. The French Government contends that the bonds contain a gold clause which varies in form from bond to bond, but which that Government regards as sufficient in the case of each bond, this being disputed by the Norwegian Government.

Following upon the opening of hostilities in Europe, the convertibility of notes of the Bank of Norway was suspended on August 5th, 1914, this measure being later confirmed by Royal Decree of August 18th, 1914. During the ensuing period, the Bank of Norway was authorized to resume the convertibility of notes into gold (1916) and to suspend it anew (1920). This latter measure was in turn abrogated (1928) and notes of the Bank of Norway again became convertible. However, in 1931 the obligation of the Bank to convert notes was once more suspended; this measure is still in force.

During these years of instability, a law concerning pecuniary obligations whose payment was expressed in gold was promulgated on December 15th, 1923. This law which, in accordance with its second Article, came into force at once, provides in Article 1:

> "Where a debtor has lawfully agreed to pay in gold a pecuniary debt in kroner and where the creditor refuses to accept payment in Bank of Norway notes on the basis of their nominal gold value, the debtor may request a postponement of payment for such period as the Bank is exempted from its obligation to redeem its notes in accordance with their nominal value. Where a creditor withdraws his refusal he shall be entitled to require such payment only after the giving of three months' notice. During the period of postponement interest shall be paid at the rate of four per cent per annum. Interest shall be paid in banknotes in accordance with their nominal value.
>
> Prior notice of waiver of the right to request postponement may be given only by the State, municipalities, the Bank of Norway and the Banks which are fully guaranteed by the State (the Mortgage Bank, the Small Holding and Workers' Housing Bank and the Fishery Bank)."

The first representations made by the French Government to the Government of Norway were in the form of a Note dated June 16th, 1925, from the French Legation at Oslo to the Ministry of Foreign Affairs of Norway. This Note referred to the loans floated by the Mortgage Bank of the Kingdom of Norway, which the French Government regarded as subject to a gold clause, and to the above-mentioned Norwegian law of December 15th, 1923. It contained a brief reference to the contradiction which it believed to exist between that law and the obligations which had been assumed, contended "that it would not seem that a unilateral decision can be relied upon as against foreign creditors", and requested that the "Royal Ministry for Foreign Affairs should give its consideration and assistance for the purpose of securing prompt recognition by the Norwegian Government and by the Mortgage Bank of Norway of the rights claimed by the French holders of bonds of the Mortgage Bank of the Kingdom of Norway, the bondholders' claims appearing to the Government of the Republic to be fully justified".

On December 9th, 1925, the Ministry of Foreign Affairs of Norway transmitted to the French Legation a copy of a letter from the Board of Directors of the Mortgage Bank to the Ministry of Finance and declared that the Ministry of Finance shared the view of the Board of Directors of the Mortgage Bank. In this letter the Board disputed the assertions concerning the gold clause and added that "the question has in any case been settled by the law of December 15th, 1923".

Protracted diplomatic correspondence ensued in which the two Governments maintained their points of view. The representations

of the French Government now related to all the Norwegian loans, both the State loans and the loans of the two Banks. Various proposals were put forward, designed to submit the problem to a mixed Commission of Economic and Financial Experts, to arbitration, or to the International Court of Justice; the matter was also brought to the attention of the International Bank for Reconstruction and Development. The Norwegian Government was not prepared to agree to these proposals. It maintained throughout that the claims of the bondholders were within the jurisdiction of the Norwegian courts, that the latter were competent to deal with them, and that these claims involved solely the interpretation and application of Norwegian law. The French bondholders, for their part, refrained from submitting their cases to the Norwegian courts. The French Government did not accept the views of the Norwegian Government. By a Note of January 27th, 1955, it proposed to the Norwegian Government that the dispute should be referred to an international tribunal in order to determine, on the basis of the general principles of international law, whether the clause which, it contended, was contained in the bonds in question (the gold clause) had to be respected. On February 2nd, 1955, the Norwegian Government declined this proposal, maintaining that the normal and proper procedure would be for the bondholders to start proceedings against the respective Norwegian debtors in the Norwegian courts. It added that it could see no reason for making an exception in the present case to the rule of international law under which international proceedings can only be instituted after the exhaustion of local remedies. It was as a result of this refusal that the French Government referred the matter to the Court by an Application on July 6th, 1955.

* * *

In its Application, the French Government requests the Court to adjudge and declare that the international loans issued by the Kingdom of Norway, by the Mortgage Bank of the Kingdom of Norway and by the Small Holding and Workers' Housing Bank, which are listed in the Application, stipulate in gold the amount of the borrower's obligation for the service of coupons and the redemption of bonds; and that the borrower can only discharge the substance of his debt by the payment of the gold value of the coupons on the date of payment and of the gold value of the redeemed bonds on the date of repayment.

The claim in the Application has been maintained in the Memorial and in the Reply which, with regard to the merits, requests the Court to "uphold the Submissions of the Government of the French Republic set out in its Application of July 6th, 1955".

The Application expressly refers to Article 36, paragraph 2, of the Statute of the Court and to the acceptance of the compulsory

jurisdiction of the Court by Norway on November 16th, 1946, and by France on March 1st, 1949. The Norwegian Declaration reads:

> "I declare on behalf of the Norwegian Government that Norway recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the International Court of Justice in conformity with Article 36, paragraph 2, of the Statute of the Court, for a period of ten years as from 3rd October 1946."

The French Declaration reads:

> "On behalf of the Government of the French Republic, and subject to ratification, I declare that I recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, that is on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with Article 36, paragraph 2, of the Statute of the said Court, for all disputes which may arise in respect of facts or situations subsequent to the ratification of the present declaration, with the exception of those with regard to which the parties may have agreed or may agree to have recourse to another method of peaceful settlement.
>
> This declaration does not apply to differences relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic.
>
> The present declaration has been made for five years from the date of the deposit of the instrument of ratification. It shall continue in force thereafter until notice to the contrary is given by the French Government."

On April 20th, 1956, the Norwegian Government filed four Preliminary Objections. The first Objection consisted of two parts. In the first part the Norwegian Government maintained that the subject of the dispute was within the exclusive domain of the municipal law of Norway, and that it did not fall within any of the categories of disputes enumerated in Article 36, paragraph 2, of the Statute, by reference to which both Parties had by their Declarations accepted the compulsory jurisdiction of the Court. In the second part of that Objection the Norwegian Government relied upon the reservation in the French Declaration with regard to differences relating to matters which are essentially within the national jurisdiction as understood by the French Government. It challenged the jurisdiction of the Court on both grounds.

The second Objection was based on the fact that the French Declaration limited its acceptance of the compulsory jurisdiction of the Court to "all disputes which may arise in respect of facts or situations subsequent to the ratification" of the Declaration. It was contended that the dispute before the Court arose in respect of facts or situations prior to March 1st, 1949, and that, by virtue

of the condition of reciprocity, it was excluded from the undertaking subscribed to by the Parties.

The third Objection was designed to obtain a finding that the Application was inadmissible as regards that part of the claim which relates to the bonds of the two Norwegian Banks on the ground that they possess a legal personality distinct from that of the Norwegian State.

Lastly, the fourth Objection sought a finding of the Court that the Application of the French Government was inadmissible on the ground that the French holders of the Norwegian bonds had not previously exhausted the local remedies.

The French Government in its Observations and Submissions requested the Court to join the Preliminary Objections raised by the Norwegian Government to the merits. The latter Government did not oppose this request. Accordingly, the Court, taking into account this understanding between the Parties, by Order of September 28th, 1956, joined the Objections to the merits "in order that it may adjudicate in one and the same judgment upon these Objections and, if need be, on the merits".

In the Counter-Memorial, the Norwegian Government declared its "immediate and unconditional abandonment of its second Objection". Accordingly, in the Counter-Memorial, the Reply, and the Rejoinder, as well as in the oral proceedings, both Parties discussed Objections 1, 3 and 4, and the merits.

* * *

The Court will at the outset direct its attention to the Preliminary Objections of the Norwegian Government. The first of these Objections relates directly to the jurisdiction of the Court to adjudicate upon the dispute submitted to it by the French Application. It is this Objection that the Court will examine first.

As previously stated, this Objection, as presented by the Norwegian Government, has two aspects. In the first place, it is contended that the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, can be seised, by means of a unilateral Application, only of legal disputes falling within one of the four categories enumerated in paragraph 2 of Article 36 of the Statute and relating to international law. It is urged that the Application of the French Government asks the Court to interpret loan contracts which, in the view of the Norwegian Government, are governed by municipal law and not by international law.

After presenting the first ground of its first Preliminary Objection on the basis that the loan contracts are governed by municipal law, the Norwegian Government continues in its Preliminary Objections:

"There can be no possible doubt on this point. If, however, there should still be some doubt, the Norwegian Government would rely upon the reservations made by the French Government in its Declaration of March 1st, 1949. By virtue of the principle of reciprocity, which is embodied in Article 36, paragraph 2, of the Statute of the Court and which has been clearly expressed in the Norwegian Declaration of November 16th, 1946, the Norwegian Government cannot be bound, *vis-à-vis* the French Government, by undertakings which are either broader or stricter than those given by the latter Government."

It is this second ground of the first Preliminary Objection which the Court will proceed to consider.

It will be recalled that the French Declaration accepting the compulsory jurisdiction of the Court contains the following reservation:

"This declaration does not apply to differences relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic."

In the Preliminary Objections filed by the Norwegian Government it is stated:

"The Norwegian Government did not insert any such reservation in its own Declaration. But it has the right to rely upon the restrictions placed by France upon her own undertakings.

Convinced that the dispute which has been brought before the Court by the Application of July 6th, 1955, is within the domestic jurisdiction, the Norwegian Government considers itself fully entitled to rely on this right. Accordingly, it requests the Court to decline, on grounds that it lacks jurisdiction, the function which the French Government would have it assume."

In considering this ground of the Objection the Court notes in the first place that the present case has been brought before it on the basis of Article 36, paragraph 2, of the Statute and of the corresponding Declarations of acceptance of compulsory jurisdiction; that in the present case the jurisdiction of the Court depends upon the Declarations made by the Parties in accordance with Article 36, paragraph 2, of the Statute on condition of reciprocity; and that, since two unilateral declarations are involved, such jurisdiction is conferred upon the Court only to the extent to which the Declarations coincide in conferring it. A comparison between the two Declarations shows that the French Declaration accepts the Court's jurisdiction within narrower limits than the Norwegian Declaration; consequently, the common will of the Parties, which is the basis of the Court's jurisdiction, exists within these narrower limits indicated by the French reservation. Following in this connection the jurisprudence of the Permanent Court of International Justice (Phosphates in Morocco case, Judgment of June 14th,

1938, P.C.I.J., Series A/B, No, 74, p. 22; Electricity Company of Sofia and Bulgaria case, Judgment of April 4th, 1939, P.C.I.J., Series A/B, No. 77, p. 81) the Court has reaffirmed this method of defining the limits of its jurisdiction. Thus the judgment of the Court in the *Anglo-Iranian Oil Company* case states:

> "As the Iranian Declaration is more limited in scope than the United Kingdom Declaration, it is the Iranian Declaration on which the Court must base itself." (*I.C.J. Reports 1952*, p. 103.)

France has limited her acceptance of the compulsory jurisdiction of the Court by excluding beforehand disputes "relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic". In accordance with the condition of reciprocity to which acceptance of the compulsory jurisdiction is made subject in both Declarations and which is provided for in Article 36, paragraph 3, of the Statute, Norway, equally with France, is entitled to except from the compulsory jurisdiction of the Court disputes understood by Norway to be essentially within its national jurisdiction.

In its Observations and Submissions on the Preliminary Objections raised by the Norwegian Government, the French Government points to what it regards as a contradiction in the attitude of Norway:

> "Between France and Norway, there exists a treaty which makes the payment of any contractual debt a question of international law. In this connection the two States cannot therefore speak of domestic jurisdiction."

The treaty here referred to is the Second Hague Convention of 1907 respecting the limitation of the employment of force for the recovery of contract debts. The French Government invokes it principally against the first ground of the first Objection and as such it does not fall for consideration here; but the passage quoted from the Observations and Submissions purports to show also that the second ground of the first Objection is not valid since both Parties are signatories of the Second Hague Convention of 1907. This calls for but brief observations by the Court.

The purpose of the Convention in question is that indicated in its title, that is to say "the Limitation of the Employment of Force for the Recovery of Contract Debts". The aim of this Convention is not to introduce compulsory arbitration in the limited field to which it relates. The only obligation imposed by the Convention is that an intervening Power must not have recourse to force before it has tried arbitration. The Court can find no reason why the fact that the two Parties are signatories of the Second Hague Convention of 1907 should deprive Norway of the right to invoke the reservation in the French Declaration.

The French Government also referred to the Franco-Norwegian Arbitration Convention of 1904 and to the General Act of Geneva

of September 26th, 1928, to which both France and Norway are parties, as showing that the two Governments have agreed to submit their disputes to arbitration or judicial settlement in certain circumstances which it is unnecessary here to relate.

These engagements were referred to in the Observations and Submissions of the French Government on the Preliminary Objections and subsequently and more explicitly in the oral presentations of the French Agent. Neither of these references, however, can be regarded as sufficient to justify the view that the Application of the French Government was, so far as the question of jurisdiction is concerned, based upon the Convention or the General Act. If the French Government had intended to proceed upon that basis it would expressly have so stated.

As already shown, the Application of the French Government is based clearly and precisely on the Norwegian and French Declarations under Article 36, paragraph 2, of the Statute. In these circumstances the Court would not be justified in seeking a basis for its jurisdiction different from that which the French Government itself set out in its Application and by reference to which the case has been presented by both Parties to the Court.

From one point of view it might be said that the second ground of the first Objection, namely the ground based on the reservation in the French Declaration, is merely subsidiary in character. It is true that the first ground of the first Preliminary Objection relies upon the proposition that the Court lacks jurisdiction because the dispute falls to be dealt with under the municipal law of Norway. But Norway has also relied upon the second ground of its first Preliminary Objection. Norway requests the Court "to decline, on grounds that it lacks jurisdiction, the function which the French Government would have it assume". It is clear that this request is based on both grounds, the character of the dispute and the French reservation. In the opinion of the Court, the second ground cannot be regarded as subsidiary, in the sense that Norway would invoke the French reservation only in the event of the first ground of its Objection being held to be legally unfounded. The Court's competence is challenged on both grounds and the Court is free to base its decision on the ground which in its judgment is more direct and conclusive.

Not only did the Norwegian Government invoke the French reservation, but it maintained this second ground of its first Objection throughout and at no time did it abandon it.

The Submissions in the Counter-Memorial, maintained in the Rejoinder, are formulated as follows:

> "Having regard to the fact that the Norwegian Government maintains Preliminary Objections Nos. 1, 3 and 4 raised in the document submitted to the Court on April 20th, 1956, May it please

the Court to adjudge and declare that the claim submitted by the Application of the French Government of July 6th, 1955, is not admissible."

Since the Preliminary Objections under the head "First Objection" relied upon both grounds—the character of the dispute and the French reservation—it was not necessary, in order to maintain the two grounds, to specify that both were involved. What has just been said also applies to the Final Submissions of the Norwegian Government.

In the course of his oral presentations Counsel for the Norwegian Government stated:

"... the Court has jurisdiction only in so far as undertakings prior to the origin of disputes have conferred upon it the power of adjudicating on such disputes as might arise between France and Norway.

What are these undertakings?

They are the undertakings resulting from the Declarations made by the two Governments on the basis of Article 36, paragraph 2, of the Statute of the Court.

. . . . . .

That is the only basis on which the other Party can rely to show that its Application falls within the limits of the jurisdictional competence of the Court. In so far as the undertakings given by the two Parties are in concordance—to the extent of their reciprocity—it is clear that Norway is bound in relation to France. But she has no other obligation toward France. The Court may therefore adjudicate in this dispute only if it is included within these limits."

From the reply of the French Agent to this argument it appears that in his view the second ground of the first Objection was fully maintained by Norway. Later, in his oral rejoinder, the Agent for the Norwegian Government declared:

"We maintain our positions in their entirety both as regards the merits and as regards the Preliminary Objections."

The Court cannot infer from the attitude of the Parties that the second ground of the first Objection was regarded by them as unimportant and still less that it was abandoned by the Norwegian Government. Abandonment cannot be presumed or inferred; it must be declared expressly, as was done when Norway declared its abandonment of its second Preliminary Objection.

* * *

The Court does not consider that it should examine whether the French reservation is consistent with the undertaking of a legal obligation and is compatible with Article 36, paragraph 6, of the Statute which provides:

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

The validity of the reservation has not been questioned by the Parties. It is clear that France fully maintains its Declaration, including the reservation, and that Norway relies upon the reservation.

In consequence the Court has before it a provision which both Parties to the dispute regard as constituting an expression of their common will relating to the competence of the Court. The Court does not therefore consider that it is called upon to enter into an examination of the reservation in the light of considerations which are not presented by the issues in the proceedings. The Court, without prejudging the question, gives effect to the reservation as it stands and as the Parties recognize it.

* * *

The Court considers that the Norwegian Government is entitled, by virtue of the condition of reciprocity, to invoke the reservation contained in the French Declaration of March 1st, 1949; that this reservation excludes from the jurisdiction of the Court the dispute which has been referred to it by the Application of the French Government; that consequently the Court is without jurisdiction to entertain the Application.

In view of the foregoing it is not necessary for the Court to examine the first ground of the first Objection, or to deal with Objections 3 and 4 presented by the Norwegian Government, or with the Submissions of the Parties other than those upon which it is adjudicating in accordance with the reasons stated above.

For these reasons,

THE COURT,

by twelve votes to three,

finds that it is without jurisdiction to adjudicate upon the dispute which has been brought before it by the Application of the Government of the French Republic of July 6th, 1955.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this sixth day of July, one thousand nine hundred and fifty-seven, in three copies, one of which will be placed in the archives of the Court and the others will be transmitted to the Government of the French Republic and to the Government of the Kingdom of Norway, respectively.

(Signed) GREEN H. HACKWORTH,
President.

(Signed) J. LÓPEZ OLIVÁN,
Registrar.

Judge MORENO QUINTANA, after voting for the Judgment, made the following declaration:

> The reason why I consider that the Court is without jurisdiction in this case is different from that given in the Judgment. I base myself, not on the second ground of the first Objection put forward by the Government of the Kingdom of Norway but on the first ground of that Objection. State loans, as being acts of sovereignty, are governed by municipal law.

Vice-President BADAWI and Judge Sir Hersch LAUTERPACHT, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment of the Court statements of their individual opinions.

Judges GUERRERO, BASDEVANT and READ, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment of the Court statements of their dissenting opinions.

(Initialled) G. H. H.

(Initialled) J. L. O.
