COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE NOTTEBOHM

(LIECHTENSTEIN c. GUATEMALA)

DEUXIÈME PHASE

ARRÊT DU 6 AVRIL 1955

1955

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

NOTTEBOHM CASE

(LIECHTENSTEIN *v.* GUATEMALA)

SECOND PHASE

JUDGMENT OF APRIL 6th, 1955

Le présent arrêt doit être cité comme suit :

« *Affaire Nottebohm (deuxième phase), Arrêt du 6 avril 1955 : C. I. J. Recueil 1955, p. 4.* »

This Judgment should be cited as follows :

"*Nottebohm Case (second phase), Judgment of April 6th, 1955 : I.C.J. Reports 1955, p. 4.*"

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NOTTEBOHM CASE

(LIECHTENSTEIN *v.* GUATEMALA)

SECOND PHASE

Proceedings instituted by Application.—Objection to admissibility.—Final Conclusions of the Parties.—Nationality as a condition for the exercise of diplomatic protection and for international judicial proceedings.—Liechtenstein Nationality Law of January 4th, 1934.—Naturalization in Liechtenstein.—Domestic jurisdiction with regard to nationality.—Refusal by Guatemala to recognize nationality acquired by naturalization in Liechtenstein.—Conditions to be satisfied in order that nationality conferred upon an individual by a State may be relied upon as against another State and give a title to the exercise of protection against that State.—Real and effective character of nationality.—Real link between the naturalized person and the naturalizing State.

JUDGMENT

Present: *President* HACKWORTH; *Vice-President* BADAWI; *Judges* BASDEVANT, ZORIČIĆ, KLAESTAD, READ, HSU MO, ARMAND-UGON, KOJEVNIKOV, Sir Muhammad ZAFRULLA KHAN, MORENO QUINTANA, CORDOVA; M. GUGGENHEIM and M. GARCÍA BAUER, *Judges* ad hoc; *Registrar* LÓPEZ OLIVÁN.

In the Nottebohm Case,

between

the Principality of Liechtenstein,

represented by :

Dr. Erwin H. Loewenfeld, LL.B., Solicitor of the Supreme Court,
as Agent,

assisted by :

Professor Georges Sauser-Hall, Honorary Professor at the Universities of Geneva and of Neuchâtel,
Mr. James E. S. Fawcett, D.S.C., of the English Bar,
Mr. Kurt Lipstein, Ph.D., of the English Bar,
as Counsel,

and

the Republic of Guatemala,

represented by :

M. V. S. Pinto J., Minister Plenipotentiary,
as Agent,

assisted by :

Me. Henri Rolin, Professor of Law at the Free University of Brussels,
M. Adolfo Molina Orantes, Dean of the Faculty of Jurisprudence of the University of Guatemala,
as Counsel,

and by

Me. A. Dupont-Willemin, of the Geneva Bar,
as Secretary,

THE COURT,

composed as above,

delivers the following Judgment :

By its Judgment of November 18th, 1953, the Court rejected the Preliminary Objection raised by the Government of the Republic of Guatemala to the Application of the Government of the Principality of Liechtenstein. At the same time it fixed time-limits for the further pleadings on the merits. These time-limits were subsequently extended by Orders of January 15th, May 8th and September 13th, 1954. The second phase of the case was ready

for hearing on November 2nd, 1954, when the Rejoinder of the Government of Guatemala was filed.

Public hearings were held on February 10th, 11th, 14th to 19th, 21st to 24th and on March 2nd, 3rd, 4th, 7th and 8th, 1955. The Court included on the Bench M. Paul Guggenheim, Professor at the Graduate Institute of International Studies of Geneva and a Member of the Permanent Court of Arbitration, chosen as Judge *ad hoc* by the Government of Liechtenstein, and M. Carlos García Bauer, Professor of the University of San Carlos, former Chairman of the Guatemalan Delegation to the General Assembly of the United Nations, chosen as Judge *ad hoc* by the Government of Guatemala.

The Agent for the Government of Guatemala having filed a number of new documents, after the closure of the written proceedings, without the consent of the other Party, the Court, in accordance with the provisions of Article 48, paragraph 2, of its Rules, had, after hearing the Parties, to give its decision. Dr. Loewenfeld and Mr. Fawcett, on behalf of the Government of Liechtenstein, and M. Rolin, on behalf of the Government of Guatemala, addressed the Court on this question at the hearings on February 10th and 11th, 1955. The decision of the Court was given at the opening of the hearing on February 14th, 1955. Having taken note of the fact that during the course of the hearings the Agent of the Government of Liechtenstein had given his consent to the production of certain of the new documents; taking into account the special circumstances in connection with the search for, and classification and presentation of, the documents in respect of which consent had been refused, the Court permitted the production of all the documents and reserved to the Agent of the Government of Liechtenstein the right, if he so desired, to avail himself of the opportunity provided for in the second paragraph of Article 48 of the Rules of Court, after having heard the contentions of the Agent of the Government of Guatemala based on these documents, and after such lapse of time as the Court might, on his request, deem just. The Agent of the Government of Liechtenstein, availing himself of this right, filed a number of documents on February 26th, 1955.

At the hearings on February 14th, 1955, and at the subsequent hearings, the Court heard the oral arguments and replies of Dr. Loewenfeld, Professor Sauser-Hall, Mr. Fawcett and Mr. Lipstein, on behalf of the Government of Liechtenstein, and of M. Pinto, M. Rolin and M. Molina, on behalf of the Government of Guatemala.

The following Submissions were presented by the Parties:

On behalf of the Government of Liechtenstein:

in the Memorial:

> "The Government of Liechtenstein submit that the Court should adjudge and declare that:
>
> 1. The Government of Guatemala in arresting, detaining, expelling and refusing to readmit Mr. Nottebohm and in seizing and

retaining his property without compensation acted in breach of their obligations under international law and consequently in a manner requiring the payment of reparation.

2. In respect of the wrongful arrest, detention, expulsion and refusal to readmit Mr. Nottebohm the Government of Guatemala should pay to the Government of Liechtenstein :
   (i) special damages amounting, according to the data received so far, to not less than 20,000 Swiss francs ;
   (ii) general damages to the amount of 645,000 Swiss francs.
3. In respect of the seizure and retention of the property of Mr. Nottebohm, the Government of Guatemala should submit an account of the profits accruing in respect of the various parts of the property since the dates on which they were seized and should pay the equivalent in Swiss francs (with interest at 6 % from the date of accrual) of such sum as may be found in that account to be owing by them. Further, the Government of Guatemala should pay damages (at present estimated at 300,000 Swiss francs per annum) representing the additional income which in the opinion of the Court would have been earned by the property if it had remained under the control of its lawful owner.
4. Further, the Government of Guatemala should restore to Mr. Nottebohm all his property which they have seized and retained together with damages for the deterioration of that property. Alternatively, they should pay to the Government of Liechtenstein the sum of 6,510,596 Swiss francs representing the estimated present market value of the seized property had it been maintained in its original condition."

in the Reply :

"May it please the Court to hold and declare,

As to the pleas of non-admissibility of the claim of Liechtenstein in respect of Mr. Nottebohm :

(1) that there is a dispute between Liechtenstein and Guatemala which is the subject-matter of the application to the Court by the Government of Liechtenstein and that it is admissible for adjudication by the Court without further diplomatic exchanges or negotiations between the Parties;

(2) that the naturalization of Mr. Nottebohm in Liechtenstein on October 20th, 1939, was granted in accordance with the municipal law of Liechtenstein and was not contrary to international law ; that in consequence Mr. Nottebohm was from that date divested of his German nationality ; and that Liechtenstein's claim on behalf of Mr. Nottebohm as a national of Liechtenstein is admissible before the Court ;

(3) that the plea by Guatemala of the non-exhaustion of local remedies by Mr. Nottebohm is excluded by the prorogation in this case of the jurisdiction of the Court ; or *alternatively* that

the plea goes properly not to the admissibility of Liechtenstein's claim on his behalf but to the merits of that claim ;

(4) that in any event Mr. Nottebohm exhausted all the local remedies in Guatemala which he was able or required to exhaust under the municipal law of Guatemala and under international law.

As to the merits of its claim, the Government of Liechtenstein repeats the Final Conclusions set out in its Memorial at p. 51 and with reference to paragraphs 2, 3 and 4 of those Final Conclusions, will further ask the Court to order, under Article 50 of the Statute, such inquiry as may be necessary into the account of profits and quantification of damages."

as final Submissions presented at the hearing of March 4th, 1955 :

"May it please the Court,

I. as to the pleas of non-admissibility of the claim of Liechtenstein in respect of Mr. Frederic Nottebohm :

(1) to hold and declare that there is a dispute between Liechtenstein and Guatemala, that it forms the subject-matter of the present application to the Court by the Government of Liechtenstein and that it is admissible for adjudication by the Court without further diplomatic communication or negotiations between the parties ;

(2) to find and declare that the naturalization of Mr. Frederic Nottebohm in Liechtenstein on October 13th, 1939, was not contrary to international law ; and that Liechtenstein's claim on behalf of Mr. Nottebohm as a national of Liechtenstein is admissible before the Court ;

(3) to hold and declare :

(a) that in regard to the person of Mr. Frederic Nottebohm he was prevented from exhausting the local remedies and that in any case such remedies would have been ineffective ;

(b) (aa) that in regard to the properties in respect to which no decision was given by the Minister upon the application for exoneration, lodged by Mr. Frederic Nottebohm, Mr. Frederic Nottebohm has exhausted the remedies which were available to him in Guatemala and which he was required to exhaust under the municipal law of Guatemala and under international law ;
(bb) that in regard to the properties in which a decision was given by the Minister, Mr. Frederic Nottebohm was not required to exhaust the local remedies under international law ;

(4) if the Court should not hold and declare in favour of conclusion (3) above

to declare nevertheless

that the claim is admissible since the facts disclose a breach of international law by Guatemala in the treatment of the person and property of Mr. Frederic Nottebohm.

II. As to the Merits of its claim :

(5) to adjourn the oral pleadings for not less than three months in order that the Government of Liechtenstein may obtain and assemble documents in support of comments on the new documents produced by the Government of Guatemala ;

(6) to request the Government of Guatemala to produce the original or certified copy of the original of the 1922 agreements referred to in the agreements of 8th January, 1924 (Document numbered VIII) and of 15th March, 1938 (Document numbered XI) ;

(7) to fix in due course a date for the completion of the oral hearings on the Merits ;

(8) if the Court should not make any Order as requested in (5)-(7), the Government of Liechtenstein repeats the final conclusions set out in its Memorial at page 51, and with reference to the paragraphs 2, 3 and 4 of those final conclusions further asks the Court to order under Article 50 of the Statute such enquiry as may be necessary into the account of profits and quantification of damages."

On behalf of the Government of Guatemala :

in the Counter-Memorial :

"May it please the Court,

subject to all reservations and without prejudice,

As to admissibility :

to declare that the claim of the Principality of Liechtenstein is inadmissible

(i) by reason of the absence of any prior diplomatic negotiations ;
(ii) because the Principality of Liechtenstein has failed to prove that M. Nottebohm, for whose protection it is acting, properly acquired Liechtenstein nationality in accordance with the law of the Principality ;

because, even if such proof were provided, the legal provisions which would have been applied cannot be regarded as in conformity with international law ;

and because M. Nottebohm appears in any event not to have lost, or not validly to have lost, his German nationality ;

(iii) on the ground of M. Nottebohm's failure to exhaust local remedies ;

In the alternative, on the Merits :

to hold that neither in the legislative measures of Guatemala applied in the case of M. Nottebohm, nor in the administrative or

judicial measures taken with regard to him in pursuance of the said laws, there has been proved any fault such as to involve the responsibility of the Respondent State to the Principality of Liechtenstein;

Consequently, to dismiss the claim of the Principality of Liechtenstein;

In the further alternative, as to the question of the amount claimed:

To hold that there is no case for damages, except in relation to the property personally owned by Friedrich Nottebohm, and excluding the shares which he possessed in the firm of Nottebohm Hermanos, and

further to declare that the Government of Guatemala shall be discharged from all responsibility on its acting in accordance with the provisions of Decree No. 900, which contains the law relating to Agrarian reform."

in the Rejoinder:

"May it please the Court,

subject to all reservations and without prejudice as to admissibility:

to declare that the claim of the Principality of Liechtenstein is inadmissible

(1) on the ground of the absence of any prior diplomatic negotiations.

In the alternative, on this point:

to declare it inadmissible on this ground at least in so far as it relates to reparation for injury allegedly caused to the person of Friedrich Nottebohm

(2) on the ground that Nottebohm is not of Liechtenstein nationality.

In the alternative on this point:

to order the production by Liechtenstein of the original documents in the archives of the central administration and the communal administration of Mauren, together with the records of the Diet relating to the naturalization of Nottebohm

(3) on the ground of the failure previously to exhaust the local remedies.

In the alternative on this point:

to declare that this contention is well founded at least in respect of reparation for injury allegedly caused to the person of Nottebohm and for the expropriation of property other than his immovable property and his interests in the immovable property held in the name of the firm of Nottebohm Hermanos.

In the alternative, on the Merits:

to hold that the laws of Guatemala applied to M. Nottebohm have violated no rule of international law and that no fault has been established on the part of the Guatemalan authorities in

their conduct in relation to him such as to involve the responsibility of the Respondent State ;

consequently, to dismiss the claim of Liechtenstein.

In the further alternative, in the event of the ordering of an expert opinion to determine the quantum of damages :

to hold that the amount of damages to be awarded should be calculated in accordance with the Guatemalan law, namely, Decree 529 and, in respect of certain immovable property, the Agrarian Reform Law."

as final Submissions presented at the hearing of March 7th, 1955 :

"May it please the Court,

subject to all reservations and without prejudice,

as to admissibility :

to declare that the claim of the Principality of Liechtenstein is inadmissible

(1) on the ground of the absence of any prior diplomatic negotiations between the Principality of Liechtenstein and Guatemala such as would disclose the existence of a dispute between the two States before the filing of the Application instituting proceedings ;

in the alternative on this point :

to declare that the claim of the Principality on this ground is inadmissible, at least in so far as it relates to reparation for injury allegedly caused to the person of Friedrich Nottebohm ;

(2) *(a)* on the ground that Mr. Nottebohm, for whose protection the Principality of Liechtenstein is acting before the Court, has not properly acquired Liechtenstein nationality in accordance with the law of the Principality ;

(b) on the ground that naturalization was not granted to Mr. Nottebohm in accordance with the generally recognized principles in regard to nationality ;

(c) in any case, on the ground that Mr. Nottebohm appears to have solicited Liechtenstein nationality fraudulently, that is to say, with the sole object of acquiring the status of a neutral national before returning to Guatemala, and without any genuine intention to establish a durable link, excluding German nationality, between the Principality and himself ;

in the alternative on this point :

to invite Liechtenstein to produce to the Court, within a time-limit to be fixed by the latter, all original documents in the archives relating to the naturalization of Nottebohm and, in particular, the convocations of members of the Diet to the sitting on October 14th, 1939, and those of the Assembly of Mauren citizens on October 15th, 1939, the agenda and minutes of the aforesaid sittings, together with the instrument conferring naturalization allegedly signed by His Highness the Prince Regnant ;

(3) on the ground of the non-exhaustion by Friedrich Nottebohm of the local remedies available to him under the Guatemalan legislation, whether in regard to his person or his property, even if

it should appear that the complaints against Guatemala were concerned with an alleged original breach of international law ;

in the alternative on this point :

to declare that this contention is well founded, at least in respect of reparation for injury allegedly caused to the person of Nottebohm, and to the property, other than immovable property, or shares that he may have owned in immovable property registered as belonging to the Nottebohm Hermanos Company ;

in the further alternative on the Merits :

to declare that there is no occasion to order the supplementary enquiry proposed, since it was incumbent on the Principality, on its own initiative, to discover the nature of Friedrich Nottebohm's interests in the Nottebohm Hermanos Company and the successive changes effected in the status of that Company and in its direct or indirect relations with the Nottebohm Company of Hamburg ;

to hold that no violation of international law has been shown to have been committed by Guatemala in regard to Mr. Nottebohm, either in respect of his property or his person ;

more especially in regard to the liquidation of his property, to declare that Guatemala was not obliged to regard the naturalization of Friedrich Nottebohm in the Principality of Liechtenstein as binding upon her, or as a bar to his treatment as an enemy national in the circumstances of the case ;

consequently, to dismiss the claim of Liechtenstein together with her conclusions ;

as a final alternative in regard to the amount of the damages claimed :

to record a finding on behalf of Guatemala that she expressly disputes the proposed valuations, which have no valid justification."

* * *

By the Application filed on December 17th, 1951, the Government of Liechtenstein instituted proceedings before the Court in which it claimed restitution and compensation on the ground that the Government of Guatemala had "acted towards the person and property of Mr. Friedrich Nottebohm, a citizen of Liechtenstein, in a manner contrary to international law". In its Counter-Memorial, the Government of Guatemala contended that this claim was inadmissible on a number of grounds, and one of its objections to the admissibility of the claim related to the nationality of the person for whose protection Liechtenstein had seised the Court.

It appears to the Court that this plea in bar is of fundamental importance and that it is therefore desirable to consider it at the outset.

Guatemala has referred to a well-established principle of international law, which it expressed in Counter-Memorial, where it is stated that "it is the bond of nationality between the State and the individual which alone confers upon the State the right of diplomatic protection". This sentence is taken from a Judgment of the Permanent Court of International Justice (Series A/B, No. 76, p. 16), which relates to the form of diplomatic protection constituted by international judicial proceedings.

Liechtenstein considers itself to be acting in conformity with this principle and contends that Nottebohm is its national by virtue of the naturalization conferred upon him.

* * *

Nottebohm was born at Hamburg on September 16th, 1881. He was German by birth, and still possessed German nationality when, in October 1939, he applied for naturalization in Liechtenstein.

In 1905 he went to Guatemala. He took up residence there and made that country the headquarters of his business activities, which increased and prospered; these activities developed in the field of commerce, banking and plantations. Having been an employee in the firm of Nottebohm Hermanos, which had been founded by his brothers Juan and Arturo, he became their partner in 1912 and later, in 1937, he was made head of the firm. After 1905 he sometimes went to Germany on business and to other countries for holidays. He continued to have business connections in Germany. He paid a few visits to a brother who had lived in Liechtenstein since 1931. Some of his other brothers, relatives and friends were in Germany, others in Guatemala. He himself continued to have his fixed abode in Guatemala until 1943, that is to say, until the occurrence of the events which constitute the basis of the present dispute.

In 1939, after having provided for the safeguarding of his interests in Guatemala by a power of attorney given to the firm of Nottebohm Hermanos on March 22nd, he left that country at a date fixed by Counsel for Liechtenstein as at approximately the end of March or the beginning of April, when he seems to have gone to Hamburg, and later to have paid a few brief visits to Vaduz where he was at the beginning of October 1939. It was then, on October 9th, a little more than a month after the opening of the second World War marked by Germany's attack on Poland, that his attorney, Dr. Marxer, submitted an application for naturalization on behalf of Nottebohm.

The Liechtenstein Law of January 4th, 1934, lays down the conditions for the naturalization of foreigners, specifies the supporting documents to be submitted and the undertakings to be given and defines the competent organs for giving a decision and the procedure to be followed. The Law specifies certain mandatory requirements, namely, that the applicant for naturalization should prove: (1)

"that the acceptance into the Home Corporation *(Heimatverband)* of a Liechtenstein commune has been promised to him in case of acquisition of the nationality of the State"; (2) that he will lose his former nationality as a result of naturalization, although this requirement may be waived under stated conditions. It further makes naturalization conditional upon compliance with the requirement of residence for at least three years in the territory of the Principality, although it is provided that "this requirement can be dispensed with in circumstances deserving special consideration and by way of exception". In addition, the applicant for naturalization is required to submit a number of documents, such as evidence of his residence in the territory of the Principality, a certificate of good conduct issued by the competent authority of the place of residence, documents relating to his property and income and, if he is not a resident in the Principality, proof that he has concluded an agreement with the Revenue authorities, "subsequent to the revenue commission of the presumptive home commune having been heard". The Law further provides for the payment by the applicant of a naturalization fee, which is fixed by the Princely Government and amounts to at least one half of the sum payable by the applicant for reception into the Home Corporation of a Liechtenstein commune, the promise of such reception constituting a condition under the Law for the grant of naturalization.

The Law reveals concern that naturalization should only be granted with knowledge of all the pertinent facts, in that it expressly provides for an enquiry into the relations of the applicant with the country of his former nationality, as well as into all other personal and family circumstances, and adds that "the grant of nationality is barred where these relations and circumstances are such as to cause apprehension that prejudice of any kind may enure to the State by reason of the admission to nationality".

As to the consideration of the application by the competent organs and the procedure to be followed by them, the Law provides that the Government, after having examined the application and the documents pertaining thereto, and after having obtained satisfactory information concerning the applicant, shall submit the application to the Diet. If the latter approves the application, the Government shall submit the requisite request to the Prince, who alone is entitled to confer nationality of the Principality.

Finally, the Law empowers the Princely Government, within a period of five years from the date of naturalization, to withdraw Liechtenstein nationality from any person who may have acquired it if it appears that the requirements laid down in the Law were not satisfied ; it likewise provides that the Government may at any time deprive a person of his nationality if the naturalization was fraudulently obtained.

This was the legal position with regard to applications for naturalization at the time when Nottebohm's application was submitted.

* * *

On October 9th, 1939, Nottebohm, "resident in Guatemala since 1905 (at present residing as a visitor with his brother, Hermann Nottebohm, in Vaduz)", applied for admission as a national of Liechtenstein and, at the same time, for the previous conferment of citizenship in the Commune of Mauren. He sought dispensation from the condition of three years' residence as prescribed by law, without indicating the special circumstances warranting such waiver. He submitted a statement of the *Crédit Suisse* in Zurich concerning his assets, and undertook to pay 25,000 Swiss francs to the Commune of Mauren, 12,500 Swiss francs to the State, to which was to be added the payment of dues in connection with the proceedings. He further stated that he had made "arrangements with the Revenue Authorities of the Government of Liechtenstein for the conclusion of a formal agreement to the effect that he will pay an annual tax of naturalization amounting to Swiss francs 1,000, of which Swiss francs 600 are payable to the Commune of Mauren and Swiss francs 400 are payable to the Principality of Liechtenstein, subject to the proviso that the payments of these taxes will be set off against ordinary taxes which will fall due if the applicant takes up residence in one of the Communes of the Principality". He further undertook to deposit as security a sum of 30,000 Swiss francs. He also gave certain general information as to his financial position and indicated that he would never become a burden to the Commune whose citizenship he was seeking.

Lastly, he requested "that naturalization proceedings be initiated and concluded before the Government of the Principality and before the Commune of Mauren without delay, that the application be then placed before the Diet with a favourable recommendation and, finally, that it be submitted with all necessary expedition to His Highness the Reigning Prince".

On the original typewritten application which has been produced in a photostatic copy, it can be seen that the name of the Commune of Mauren and the amounts to be paid were added by hand, a fact which gave rise to some argument on the part of Counsel for the Parties. There is also a reference to the "*Vorausverständnis*" of the Reigning Prince obtained on October 13th, 1939, which Liechtenstein interprets as showing the decision to grant naturalization, which interpretation has, however, been questioned. Finally, there is annexed to the application an otherwise blank sheet bearing the signature of the Reigning Prince, "Franz Josef", but without any date or other explanation.

A document dated October 15th, 1939, certifies that on that date the Commune of Mauren conferred the privilege of its citizenship upon Mr. Nottebohm and requested the Government to transmit it to the Diet for approval. A certificate of October 17th, 1939,

evidences the payment of the taxes required to be paid by Mr. Nottebohm. On October 20th, 1939, Mr. Nottebohm took the oath of allegiance and a final arrangement concerning liability to taxation was concluded on October 23rd.

This was the procedure followed in the case of the naturalization of Nottebohm.

A certificate of nationality has also been produced, signed on behalf of the Government of the Principality and dated October 20th, 1939, to the effect that Nottebohm was naturalized by Supreme Resolution of the Reigning Prince dated October 13th, 1939.

Having obtained a Liechtenstein passport, Nottebohm had it visa-ed by the Consul General of Guatemala in Zurich on December 1st, 1939, and returned to Guatemala at the beginning of 1940, where he resumed his former business activities and in particular the management of the firm of Nottebohm Hermanos.

* * *

Relying on the nationality thus conferred on Nottebohm, Liechtenstein considers itself entitled to seise the Court of its claim on his behalf, and its Final Conclusions contain two submissions in this connection. Liechtenstein requests the Court to find and declare, first, "that the naturalization of Mr. Frederic Nottebohm in Liechtenstein on October 13th, 1939, was not contrary to international law", and, secondly, "that Liechtenstein's claim on behalf of Mr. Nottebohm as a national of Liechtenstein is admissible before the Court".

The Final Conclusions of Guatemala, on the other hand, request the Court "to declare that the claim of the Principality of Liechtenstein is inadmissible", and set forth a number of grounds relating to the nationality of Liechtenstein granted to Nottebohm by naturalization.

Thus, the real issue before the Court is the admissibility of the claim of Liechtenstein in respect of Nottebohm. Liechtenstein's first submission referred to above is a reason advanced for a decision by the Court in favour of Liechtenstein, while the several grounds given by Guatemala on the question of nationality are intended as reasons for the inadmissibility of Liechtenstein's claim. The present task of the Court is limited to adjudicating upon the admissibility of the claim of Liechtenstein in respect of Nottebohm on the basis of such reasons as it may itself consider relevant and proper.

In order to decide upon the admissibility of the Application, the Court must ascertain whether the nationality conferred on Nottebohm by Liechtenstein by means of a naturalization which took

place in the circumstances which have been described, can be validly invoked as against Guatemala, whether it bestows upon Liechtenstein a sufficient title to the exercise of protection in respect of Nottebohm as against Guatemala and therefore entitles it to seise the Court of a claim relating to him. In this connection, Counsel for Liechtenstein said: "the essential question is whether Mr. Nottebohm, having acquired the nationality of Liechtenstein, that acquisition of nationality is one which must be recognized by other States". This formulation is accurate, subject to the twofold reservation that, in the first place, what is involved is not recognition for all purposes but merely for the purposes of the admissibility of the Application, and, secondly, that what is involved is not recognition by all States but only by Guatemala.

The Court does not propose to go beyond the limited scope of the question which it has to decide, namely whether the nationality conferred on Nottebohm can be relied upon as against Guatemala in justification of the proceedings instituted before the Court. It must decide this question on the basis of international law; to do so is consistent with the nature of the question and with the nature of the Court's own function.

* * *

In order to establish that the Application must be held to be admissible, Liechtenstein has argued that Guatemala formerly recognized the naturalization which it now challenges and cannot therefore be heard to put forward a contention which is inconsistent with its former attitude.

Various documents, facts and actions have been relied upon in this connection.

Reliance has been placed on the fact that, on December 1st, 1939, the Consul General of Guatemala in Zurich entered a visa in the Liechtenstein passport of Mr. Nottebohm for his return to Guatemala; that on January 29th, 1940, Nottebohm informed the Ministry of External Affairs in Guatemala that he had adopted the nationality of Liechtenstein and therefore requested that the entry relating to him in the Register of Aliens should be altered accordingly, a request which was granted on January 31st; that on February 9th, 1940, a similar amendment was made to his identity document, and lastly, that a certificate to the same effect was issued to him by the Civil Registry of Guatemala on July 1st, 1940.

The acts of the Guatemalan authorities just referred to proceeded on the basis of the statements made to them by the person concerned. The one led to the other. The only purpose of the first, as appears from Article 9 of the Guatemalan law relating to pass-

ports, was to make possible or facilitate entry into Guatemala, and nothing more. According to the Aliens Act of January 25th, 1936, Article 49, entry in the Register "constitutes a legal presumption that the alien possesses the nationality there attributed to him, but evidence to the contrary is admissible". All of these acts have reference to the control of aliens in Guatemala and not to the exercise of diplomatic protection. When Nottebohm thus presented himself before the Guatemalan authorities, the latter had before them a private individual: there did not thus come into being any relationship between governments. There was nothing in all this to show that Guatemala then recognized that the naturalization conferred upon Nottebohm gave Liechtenstein any title to the exercise of protection.

Although the request sent by Nottebohm Hermanos to the Minister of Finance and Public Credit on September 13th, 1940, with reference to the inclusion of the firm on the British Statutory List, referred to the fact that only one of the partners was "a national of Liechtenstein/Switzerland", this point was only made incidentally, and the whole request was based on the consideration that the firm "is a wholly Guatemalan business" and on the interests of the "national economy". It was on this basis that the matter was discussed, and no reference whatsoever was made to any intervention by the Government of Liechtenstein at that time.

Similarly unconnected with the exercise of protection was the Note addressed on October 18th, 1943, by the Minister of External Affairs to the Swiss Consul who, having understood that the registration documents indicated that Nottebohm was a Swiss citizen of Liechtenstein, requested, in a Note of September 25th, 1943, that this matter might be clarified. He received the reply that there was no such indication of Swiss nationality in the documents and, although the Consul had referred to the representation of the interests of the Principality abroad by the representatives of the Swiss Government, the reply sent to him made no allusion to the exercise, by or on behalf of Liechtenstein, of protection in favour of Nottebohm.

When, on October 20th, 1943, the Swiss Consul asked that "Mr. Walter Schellenberg of Swiss nationality and Mr. Federico Nottebohm of Liechtenstein", who had been transferred to the United States Military Base for the purpose of being deported, should, "as citizens of neutral countries", be returned home, the Minister of External Affairs of Guatemala replied, on October 22nd, that the action taken was attributable to the authorities of the United States, and made no reference to the nationality of Nottebohm.

In a letter of the Swiss Consul of December 15th, 1944, to the Minister of External Affairs, reference is made to the entry on the Black Lists of "Frederick Nottebohm, a national of Liechtenstein". Neither the text of these lists nor any extract therefrom has been produced, but this is not germane to the present discussion. The important fact is that Guatemala, in its reply dated December 20th, 1944, expressly stated that it could not "recognize that Mr. Nottebohm, a German subject habitually resident in Guatemala, has acquired the nationality of Liechtenstein without changing his habitual residence". The Court has not at present to consider the validity of the ground put forward for disputing Nottebohm's nationality, which was subsequently put forward to justify the cancellation of his registration as a citizen of the "Condado" of Liechtenstein. It is sufficient for it to note that there is here an express denial by Guatemala of Nottebohm's Liechtenstein nationality.

Nottebohm's name having been removed from the Register of Resident Aliens, his relative Karl Heinz Nottebohm Stoltz, on July 24th, 1946, requested the cancellation of the decision and the restoration of Nottebohm's name to the Register as a citizen of Liechtenstein, putting forward a number of considerations, essentially based on the exclusive right of Liechtenstein to decide as to the nationality in question and the duty of Guatemala to conform to such decision. Far from accepting the considerations thus put forward, the Minister of External Affairs rejected the request, on August 1st, 1946, merely saying that it was pointless, since Nottebohm was no longer a resident of Guatemala.

There is nothing here to show that before the institution of proceedings Guatemala had recognized Liechtenstein's title to exercise protection in favour of Nottebohm and that it is thus precluded from denying such a title.

Nor can the Court find any recognition of such title in the communication signed by the Minister of External Affairs of Guatemala, addressed to the President of the Court, on September 9th, 1952. In this communication reference is made to measures taken against Nottebohm "who claims to be a national of the claimant State" *("quien se alega ser ciudadano del Estado reclamante")*. Then, reference having been made to the claim presented by the Government of the Principality of Liechtenstein with regard to these measures, it is stated that the Government of Guatemala "is quite willing to begin negotiations with the Government of the said Principality with a view to arriving at an amicable solution, either in the sense of a direct settlement, an arbitration or judicial settlement". It would constitute an obstacle to the opening of negotiations for the purpose of reaching a settlement of an international dispute or of concluding a special agreement for arbitration and would hamper the use of the means of settlement recommended by Article 33 of the Charter of the United Nations, to interpret an offer to have recourse

to such negotiations or such means, consent to participate in them or actual participation, as implying the abandonment of any defence which a party may consider it is entitled to raise or as implying acceptance of any claim by the other party, when no such abandonment or acceptance has been expressed and where it does not indisputably follow from the attitude adopted. The Court cannot see in the communication of September 9th, 1952, any admission by Guatemala of the possession by Nottebohm of a nationality which it clearly disputed in its last official communication on this subject, namely, the letter of December 20th, 1944, to the Swiss Consul, still less can it find any recognition of Liechtenstein's title, based on such nationality, to exercise its protection and to seise the Court in the present case.

* * *

Since no proof has been adduced that Guatemala has recognized the title to the exercise of protection relied upon by Liechtenstein as being derived from the naturalization which it granted to Nottebohm, the Court must consider whether such an act of granting nationality by Liechtenstein directly entails an obligation on the part of Guatemala to recognize its effect, namely, Liechtenstein's right to exercise its protection. In other words, it must be determined whether that unilateral act by Liechtenstein is one which can be relied upon against Guatemala in regard to the exercise of protection. The Court will deal with this question without considering that of the validity of Nottebohm's naturalization according to the law of Liechtenstein.

It is for Liechtenstein, as it is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation. It is not necessary to determine whether international law imposes any limitations on its freedom of decision in this domain. Furthermore, nationality has its most immediate, its most far-reaching and, for most people, its only effects within the legal system of the State conferring it. Nationality serves above all to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the State in question grants to or imposes on its nationals. This is implied in the wider concept that nationality is within the domestic jurisdiction of the State.

But the issue which the Court must decide is not one which pertains to the legal system of Liechtenstein. It does not depend on the law or on the decision of Liechtenstein whether that State is entitled to exercise its protection, in the case under consideration. To exercise protection, to apply to the Court, is to place one-

self on the plane of international law. It is international law which determines whether a State is entitled to exercise protection and to seise the Court.

The naturalization of Nottebohm was an act performed by Liechtenstein in the exercise of its domestic jurisdiction. The question to be decided is whether that act has the international effect here under consideration.

International practice provides many examples of acts performed by States in the exercise of their domestic jurisdiction which do not necessarily or automatically have international effect, which are not necessarily and automatically binding on other States or which are binding on them only subject to certain conditions : this is the case, for instance, of a judgment given by the competent court of a State which it is sought to invoke in another State.

In the present case it is necessary to determine whether the naturalization conferred on Nottebohm can be successfully invoked against Guatemala, whether, as has already been stated, it can be relied upon as against that State, so that Liechtenstein is thereby entitled to exercise its protection in favour of Nottebohm against Guatemala.

When one State has conferred its nationality upon an individual and another State has conferred its own nationality on the same person, it may occur that each of these States, considering itself to have acted in the exercise of its domestic jurisdiction, adheres to its own view and bases itself thereon in so far as its own actions are concerned. In so doing, each State remains within the limits of its domestic jurisdiction.

This situation may arise on the international plane and fall to be considered by international arbitrators or by the courts of a third State. If the arbitrators or the courts of such a State should confine themselves to the view that nationality is exclusively within the domestic jurisdiction of the State, it would be necessary for them to find that they were confronted by two contradictory assertions made by two sovereign States, assertions which they would consequently have to regard as of equal weight, which would oblige them to allow the contradiction to subsist and thus fail to resolve the conflict submitted to them.

In most cases arbitrators have not strictly speaking had to decide a conflict of nationality as between States, but rather to determine whether the nationality invoked by the applicant State was one which could be relied upon as against the respondent State, that is to say, whether it entitled the applicant State to exercise protection. International arbitrators, having before them allegations of nationality by the applicant State which were contested by the respondent State, have sought to ascertain whether nationality had been conferred by the applicant State in circumstances such as to give rise to an obligation on the part

of the respondent State to recognize the effect of that nationality. In order to decide this question arbitrators have evolved certain principles for determining whether full international effect was to be attributed to the nationality invoked. The same issue is now before the Court: it must be resolved by applying the same principles.

The courts of third States, when confronted by a similar situation, have dealt with it in the same way. They have done so not in connection with the exercise of protection, which did not arise before them, but where two different nationalities have been invoked before them they have had, not indeed to decide such a dispute as between the two States concerned, but to determine whether a given foreign nationality which had been invoked before them was one which they ought to recognize.

International arbitrators have decided in the same way numerous cases of dual nationality, where the question arose with regard to the exercise of protection. They have given their preference to the real and effective nationality, that which accorded with the facts, that based on stronger factual ties between the person concerned and one of the States whose nationality is involved. Different factors are taken into consideration, and their importance will vary from one case to the next: the habitual residence of the individual concerned is an important factor, but there are other factors such as the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc.

Similarly, the courts of third States, when they have before them an individual whom two other States hold to be their national, seek to resolve the conflict by having recourse to international criteria and their prevailing tendency is to prefer the real and effective nationality.

The same tendency prevails in the writings of publicists and in practice. This notion is inherent in the provisions of Article 3, paragraph 2, of the Statute of the Court. National laws reflect this tendency when, *inter alia*, they make naturalization dependent on conditions indicating the existence of a link, which may vary in their purpose or in their nature but which are essentially concerned with this idea. The Liechtenstein Law of January 4th, 1934, is a good example.

The practice of certain States which refrain from exercising protection in favour of a naturalized person when the latter has in fact, by his prolonged absence, severed his links with what is no longer for him anything but his nominal country, manifests the view of these States that, in order to be capable of being invoked against another State, nationality must correspond with the factual situation. A similar view is manifested in the relevant provisions of the bilateral nationality treaties concluded between the United States of America and other States since 1868, such as

those sometimes referred to as the Bancroft Treaties, and in the Pan-American Convention, signed at Rio de Janeiro on August 13th, 1906, on the status of naturalized citizens who resume residence in their country of origin.

The character thus recognized on the international level as pertaining to nationality is in no way inconsistent with the fact that international law leaves it to each State to lay down the rules governing the grant of its own nationality. The reason for this is that the diversity of demographic conditions has thus far made it impossible for any general agreement to be reached on the rules relating to nationality, although the latter by its very nature affects international relations. It has been considered that the best way of making such rules accord with the varying demographic conditions in different countries is to leave the fixing of such rules to the competence of each State. On the other hand, a State cannot claim that the rules it has thus laid down are entitled to recognition by another State unless it has acted in conformity with this general aim of making the legal bond of nationality accord with the individual's genuine connection with the State which assumes the defence of its citizens by means of protection as against other States.

The requirement that such a concordance must exist is to be found in the studies carried on in the course of the last thirty years upon the initiative and under the auspices of the League of Nations and the United Nations. It explains the provision which the Conference for the Codification of International Law, held at The Hague in 1930, inserted in Article 1 of the Convention relating to the Conflict of Nationality Laws, laying down that the law enacted by a State for the purpose of determining who are its nationals "shall be recognized by other States in so far as it is consistent with .... international custom, and the principles of law generally recognized with regard to nationality". In the same spirit, Article 5 of the Convention refers to criteria of the individual's genuine connections for the purpose of resolving questions of dual nationality which arise in third States.

According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Conferred by a State, it only entitles that State to exercise protection vis-à-vis another State, if it constitutes a translation into juridical terms of the individual's connection with the State which has made him its national.

Diplomatic protection and protection by means of international judicial proceedings constitute measures for the defence of the rights of the State. As the Permanent Court of International Justice has said and has repeated, "by taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights—its right to ensure, in the person of its subjects, respect for the rules of international law" (P.C.I.J., Series A, No. 2, p. 12, and Series A/B, Nos. 20-21, p. 17).

* * *

Since this is the character which nationality must present when it is invoked to furnish the State which has granted it with a title to the exercise of protection and to the institution of international judicial proceedings, the Court must ascertain whether the nationality granted to Nottebohm by means of naturalization is of this character or, in other words, whether the factual connection between Nottebohm and Liechtenstein in the period preceding, contemporaneous with and following his naturalization appears to be sufficiently close, so preponderant in relation to any connection which may have existed between him and any other State, that it is possible to regard the nationality conferred upon him as real and effective, as the exact juridical expression of a social fact of a connection which existed previously or came into existence thereafter.

Naturalization is not a matter to be taken lightly. To seek and to obtain it is not something that happens frequently in the life of a human being. It involves his breaking of a bond of allegiance and his establishment of a new bond of allegiance. It may have far-reaching consequences and involve profound changes in the destiny of the individual who obtains it. It concerns him personally, and to consider it only from the point of view of its repercussions with regard to his property would be to misunderstand its profound significance. In order to appraise its international effect, it is impossible to disregard the circumstances in which it was conferred, the serious character which attaches to it, the real and effective, and not merely the verbal preference of the individual seeking it for the country which grants it to him.

At the time of his naturalization does Nottebohm appear to have been more closely attached by his tradition, his establishment, his interests, his activities, his family ties, his intentions for the near future to Liechtenstein than to any other State ?

The essential facts appear with sufficient clarity from the record. The Court considers it unnecessary to have regard to the documents purporting to show that Nottebohm had or had not retained his interests in Germany, or to have regard to the alternative submission of Guatemala relating to a request to Liechten-

stein to produce further documents. It would further point out that the Government of Liechtenstein, in asking in its Final Conclusions for an adjournment of the oral proceedings and an opportunity to present further documents, did so only for the eventuality of the Application being held to be admissible and not for the purpose of throwing further light upon the question of the admissibility of the Application.

The essential facts are as follows :

At the date when he applied for naturalization Nottebohm had been a German national from the time of his birth. He had always retained his connections with members of his family who had remained in Germany and he had always had business connections with that country. His country had been at war for more than a month, and there is nothing to indicate that the application for naturalization then made by Nottebohm was motivated by any desire to dissociate himself from the Government of his country.

He had been settled in Guatemala for 34 years. He had carried on his activities there. It was the main seat of his interests. He returned there shortly after his naturalization, and it remained the centre of his interests and of his business activities. He stayed there until his removal as a result of war measures in 1943. He subsequently attempted to return there, and he now complains of Guatemala's refusal to admit him. There, too, were several members of his family who sought to safeguard his interests.

In contrast, his actual connections with Liechtenstein were extremely tenuous. No settled abode, no prolonged residence in that country at the time of his application for naturalization : the application indicates that he was paying a visit there and confirms the transient character of this visit by its request that the naturalization proceedings should be initiated and concluded without delay. No intention of settling there was shown at that time or realized in the ensuing weeks, months or years—on the contrary, he returned to Guatemala very shortly after his naturalization and showed every intention of remaining there. If Nottebohm went to Liechtenstein in 1946, this was because of the refusal of Guatemala to admit him. No indication is given of the grounds warranting the waiver of the condition of residence, required by the 1934 Nationality Law, which waiver was implicitly granted to him. There is no allegation of any economic interests or of any activities exercised or to be exercised in Liechtenstein, and no manifestation of any intention whatsoever to transfer all or some of his interests and his business activities to Liechtenstein. It is unnecessary in this connection to attribute much importance to the promise to pay the taxes levied at the time of his naturalization. The only links to be discovered between the Principality and Nottebohm are the short sojourns already referred to and the presence in Vaduz of one of his brothers : but his brother's presence is referred

to in his application for naturalization only as a reference to his good conduct. Furthermore, other members of his family have asserted Nottebohm's desire to spend his old age in Guatemala.

These facts clearly establish, on the one hand, the absence of any bond of attachment between Nottebohm and Liechtenstein and, on the other hand, the existence of a long-standing and close connection between him and Guatemala, a link which his naturalization in no way weakened. That naturalization was not based on any real prior connection with Liechtenstein, nor did it in any way alter the manner of life of the person upon whom it was conferred in exceptional circumstances of speed and accommodation. In both respects, it was lacking in the genuineness requisite to an act of such importance, if it is to be entitled to be respected by a State in the position of Guatemala. It was granted without regard to the concept of nationality adopted in international relations.

Naturalization was asked for not so much for the purpose of obtaining a legal recognition of Nottebohm's membership in fact in the population of Liechtenstein, as it was to enable him to substitute for his status as a national of a belligerent State that of a national of a neutral State, with the sole aim of thus coming within the protection of Liechtenstein but not of becoming wedded to its traditions, its interests, its way of life or of assuming the obligations—other than fiscal obligations—and exercising the rights pertaining to the status thus acquired.

Guatemala is under no obligation to recognize a nationality granted in such circumstances. Liechtenstein consequently is not entitled to extend its protection to Nottebohm vis-à-vis Guatemala and its claim must, for this reason, be held to be inadmissible.

The Court is not therefore called upon to deal with the other pleas in bar put forward by Guatemala or the Conclusions of the Parties other than those on which it is adjudicating in accordance with the reasons indicated above.

For these reasons,

THE COURT,

by eleven votes to three,

Holds that the claim submitted by the Government of the Principality of Liechtenstein is inadmissible.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this sixth day of April, one thousand nine hundred and fifty-five, 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 Principality of Liechtenstein and to the Government of the Republic of Guatemala, respectively.

(Signed) Green H. HACKWORTH,
President.

(Signed) J. LÓPEZ OLIVÁN,
Registrar.

Judges KLAESTAD and READ, and M. GUGGENHEIM, Judge *ad hoc*, have availed themselves of the right conferred on them by Article 57 of the Statute and have appended to the Judgment statements of their dissenting opinion.

(Initialled) G. H. H.

(Initialled) J. L. O.