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 Party(ies): Germany vs. Poland  
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<sup>1</sup> date when the request for an advisory opinion or application was filed with the court Registry.

Permanent Court of International Justice.

*Before:* Mm. Huber, | *President,*  
Loder, | *Former President,*  
Lord Finlay, |  
MM. Nyholm, | *Judges,*  
Altamira,  
Oda,  
Anzilotti,  
Beichmann, | *Deputy-Judges,*  
Negulesco,  
Mm Rabel, | *National Judges.*  
Ehrlich,

The Government of Germany, represented by Dr. Erich Kaufmann, Professor at Bonn,  
*Applicant,*

*versus*

The Government of Poland, represented by Dr. Thadeus Sobolewski, Agent of the Polish  
Government before the Polish-German Mixed Arbitral Tribunal,

*Respondent.* [5]

THE COURT,

composed as above,

having heard the observations and conclusions of the Parties,

delivers the following judgment:

The German Government, by an Application filed with the Registry of the Court on October 18th, 1927, in conformity with Article 60 of the Statute and Article 66 of the Rules of Court, has submitted to the Permanent Court of International Justice a request for an interpretation of Judgments Nos. 7 and 8 given by the Court on May 25th, 1926, and July 26th, 1927, respectively, in suits between the German and Polish Governments, a divergence of opinion

having, according to the Application, arisen between the two Governments in regard to the meaning and scope of these two judgments.

It is submitted in the Application:

"that the contention

- (1) that in Judgment No. 7 the Court reserved to the Polish Government the right to annul by process of law, even after the rendering of that judgment, the Agreement of December 24th, 1919, and the entry, based on that agreement, of the name of the Oberschlesische as owner in the land registers;
- (2) that the action brought by the Polish Government against the Oberschlesische Stickstoffwerke A.-G. before the Civil Tribunal of Kattowitz, with a view to effecting this annulment, is of international importance in connection with the suit concerning the Chorzów factory (claim for indemnity) now pending before the Court,

is not in accordance with the true construction of Judgments Nos. 7 and 8."

Notice of the German Government's Application was given, on the date of filing, in conformity with the terms of Article 66, paragraph 2, of the Rules, to the Polish Government, which was at the same time informed that it might, if it desired to do so, submit its observations upon the request for an interpretation within a time-limit subsequently fixed by the Court to expire on November 7th, 1927. When notifying [6] the Parties of the decision in regard to this time-limit, the Court duly drew their attention to the fact that it corresponded, as regards the proceedings for an interpretation, to the time-limit for the submission of the Counter-Case provided for, in the case of ordinary proceedings, by Article 38, paragraph 1, of the Rules of Court.

On November 7th, 1927, the Polish Government filed with the Registry "Observations" upon the request for an interpretation of Judgments Nos. 7 and 8 made by the German Government. In these observations it was submitted,

"that effect should not be given to the Request of the German Government dated October 17th, 1927".

On receipt of this submission and of the observations leading up to it, the Court, on November 9th, adopted the following Resolution which was in due course communicated to the

Parties in the case:

"The Court, having regard to Article 60 of the Statute and Articles 38 and 66 of the Rules of Court, decides:

(1) to invite the German Government to submit, should it so desire, on or before November 21st, a written statement containing, together with further explanations regarding the submissions of its Application of October 17th, 1927, its observations and conclusions in regard to the observations filed by the Polish Government;

(2) to invite the Polish Government to submit, should it so desire, within the same limit of time, further explanations regarding the submissions of the German Application of October 17th, 1927."

Within the time laid down, the German Government, in accordance with the Court's decision, filed a "Statement" in which it was submitted

"(1) that the proceedings in regard to the preliminary objections raised by the Polish Government should be joined to the proceedings on the merits;

(2) that effect should be given to the request made by the German Government with a view to obtaining an interpretation of Judgments Nos. 7 and 8 in conformity with Article 60 of the Statute;

(3) that judgment should be given in accordance with the submissions of the German Application." [7]

The Polish Government, for its part, announced that it

"did not intend to file further explanations in regard to the request for an interpretation of Judgments Nos. 7 and 8".

In these circumstances, the Court, in accordance with its Resolution of November 9th, 1927, held a public sitting on November 28th, 1927, at which it heard the oral statements of MM. Kaufmann and Sobolewski, the Agents of the Governments concerned in the case. At the conclusion of these statements, the Court decided to close the hearing, after having given the Agents an opportunity of replying; where-upon M. Kaufmann replied briefly, and M. Sobolewski, stating that in his opinion the previous discussions had completely exhausted the question, waived his right to reply.

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## THE FACTS.

In the terms of Judgment No. 7 given by the Court on May 25th, 1926, in the case between the German and Polish Governments, in regard to "certain German interests in Polish Upper Silesia" - which interests, according to the Judgment, related, amongst other things, to the "deletion from the land registers of the name of the Oberschlesische Stickstoffwerke A.-G. as owner of certain landed property at Chorzów, and the entry, in its place, of the Polish Treasury" - it was declared "that the attitude of the Polish Government in regard to the Oberschlesische Stickstoffwerke .... was not in conformity with.... the Geneva Convention" concluded on May 15th, 1922, between Germany and Poland.

On the basis of this decision of the Court, the two Governments entered upon negotiations with a view to a settlement by friendly arrangement in regard to the claims of the above-mentioned Company amongst others, by means of the payment of pecuniary compensation.

These negotiations failed, and the German Government, having informed the Polish Government that the points of view of the two Governments seemed so different that it appeared impossible to avoid recourse to an international [8] tribunal, filed with the Court on February 8th, 1927, an Application submitting, amongst other things, "that the Polish Government is under an obligation to make good the injury sustained" by the Oberschlesische in consequence of the attitude of that Government in respect of the Company mentioned. The Polish Government having disputed the jurisdiction of the Court to entertain the suit thus brought, the Court, on July 26th, 1927, delivered judgment (No. 8) upon this objection, deciding to reserve the suit for judgment on the merits, and to instruct the President to fix the times for the deposit of the documents of the written proceedings; these times were subsequently fixed in such a way as to enable the suit on the merits to be ready for hearing on March 1st, 1928.

According to the Application deposited by the German Government with the Registry on October 18th, 1927, the Polish Government had filed with the District Court of Katowice, within the jurisdiction of which are situated the landed properties in question, known as "the factory of Chorzów", a claim against the Oberschlesische, which claim was served upon that Company on September 16th, 1927. In this claim it is - according to the German Government's Application - submitted:

- "(1) that it should be declared that the defendant Company has not become the owner of the landed property at Chorzów (vol. XXIII, fol. 725, etc.);
- (2) that it should be declared that the entry of the change of ownership in favour of the defendant Company, made on January 29th, 1920, was null and void, and that the landed properties mentioned under No. (1) of these submissions remained the property of the German Reich, notwithstanding the *Auflassung* and entry in the register on January 29th, 1920, of the defendant Company as owner;
- (3) that it should be declared that, independently of the laws of July 14th, 1920 (*Legal Gazette of the Polish Republic* - pos. 400), and of June 16th, 1922 (*Gazette* -pos. 388), the ownership of the landed properties mentioned under No. (1) falls to the Polish Treasury."

The statement of the grounds on which these submissions are based is said to contain the following passage amongst others: [9]

"The Judgment [i.e. No. 7 of the Court] has decided the dispute from the standpoint of the rules of international law; and the Court observes in its reasoning that it does not pass any opinion on the question whether the transfer of ownership and entry in the land registers were valid at municipal law. The Polish argument based on the objection that the transaction of December 24th, 1919, was not valid at municipal law and that consequently the entry of January 29th, 1920, was also invalid, is not discussed by the Court, which simply relies on the mere fact of the existence of the entry. At the same time, however, the Court says that if Poland wishes to dispute the validity of this entry, it can, in any case, only be annulled in pursuance of a decision given by the competent tribunal.

Relying on this judgment, the German Reich, on February 8th, 1927, filed with the Permanent Court of International Justice at The Hague a new application respecting the indemnity due in consequence of the violation of the rights of the defendant Company and of those of the Bayerische Stickstoffwerke, which violation consisted in the taking over of the factory by the Polish State.

In these circumstances, the Treasury avails itself of the possibility, reserved to it by the judgment of the Hague Court, of disputing before the competent tribunal both the validity of the change of ownership and the entry in the land register."

The correctness of these quotations has not been disputed by the Polish Government.

On the other hand, the complete text of the claim served upon the Oberschlesische on September 16th, 1927, has not been laid before the Court in the present proceedings. Similarly, the text of the decision which, according to information given during the oral proceedings, has been rendered by default by the District Court of Katowice upon this claim, and which is said to have granted to the Polish Government the relief sought, has not been placed before the Court.

\* \* \*

## THE LAW.

The request for an interpretation submitted by the German Government, the conclusions of which are reproduced above, [10] was made under Article 60 of the Statute of the Court, which runs as follows:

"The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any Party"

The Polish Government having refused to admit the existence in this case of the conditions required by the article in question in order that a request for interpretation may be proceeded with, it is necessary in the first place to consider whether this contention is well-founded.

From the article it appears that these conditions are the following:

- (1) there must be a dispute as to the meaning and scope of a judgment of the Court;
- (2) the request should have for its object an interpretation of the judgment.

As regards the latter condition, the Court is of the opinion that the expression "to construe" must be understood as meaning to give a precise definition of the meaning and scope which the Court intended to give to the judgment in question, and the Polish Government does not appear to claim that this is not its meaning. But it denies the existence of a dispute between the two Governments as to the meaning and scope of the judgments referred to in the German Request, and its submission is that there is no ground for proceeding with the Request.

\* \* \*

Before examining the question which has thus been raised, the Court thinks it advisable to define the meaning which should be given to the terms "dispute" and "meaning or scope of

the judgment", as employed in Article 60 of the Statute.

In so far as concerns the word "dispute", the Court observes that, according to the tenor of Article 60 of the Statute, the manifestation of the existence of the dispute in a specific manner, as for instance by diplomatic negotiations, is not required. It would no doubt be desirable that a State should not proceed to take as serious a step as summoning [11] another State to appear before the Court without having previously, within reasonable limits, endeavoured to make it quite clear that a difference of views is in question which has not been capable of being otherwise overcome. But in view of the wording of the article, the Court considers that it cannot require that the dispute should have manifested itself in a formal way; according to the Court's view, it should be sufficient if the two Governments have in fact shown themselves as holding opposite views in regard to the meaning or scope of a judgment of the Court. The Court in this respect recalls the fact that in its Judgment No. 6 (relating to the objection to the jurisdiction raised by Poland in regard to the application made by the German Government under Article 23 of the Geneva Convention concerning Upper Silesia), it expressed the opinion that, the article in question not requiring preliminary diplomatic negotiations as a condition precedent, recourse could be had to the Court as soon as one of the Parties considered that there was a difference of opinion arising out of the interpretation and application of Articles 6 to 22 of the Convention.

In order to realize the meaning of the expression "meaning or scope of the judgment" in Article 60 of the Statute, this expression should be compared with the terms of the preceding article of the Statute, which states that a decision of the Court has no binding force except between the Parties and in respect of the particular case decided.

The natural inference to be drawn is that the second sentence of Article 60 was inserted in order, if necessary, to enable the Court to make quite clear the points which had been settled with binding force in a judgment, and, on the other hand, that a request which has not that object does not come within the terms of this provision. In order that a difference of opinion should become the subject of a request for an interpretation under Article 60 of the Statute, there must therefore exist a difference of opinion between the Parties as to those points in the judgment in question which have been decided with binding force. That does not imply that it must be beyond dispute that the point the meaning of which is questioned is related to a part of the judgment having binding force. A difference of opinion as to whether [12] a particular point has

or has not been decided with binding force also constitutes a case which comes within the terms of the provision in question, and the Court cannot avoid the duty incumbent upon it of interpreting the judgment in so far as necessary, in order to adjudicate upon such a difference of opinion.

It thus becomes necessary to ascertain whether such a difference of opinion has in fact become manifest in the present case between the two Governments, as regards the meaning or scope of Judgments Nos. 7 and 8. The Court will deal with this question separately in relation to each of the judgments in question and each of the two contentions which the conclusions of the German Government impute to the Polish Government.

In this respect, the facts which preceded the submission of the Application for an interpretation by the German Government should be recalled.

In the course of the negotiations entered upon on the basis of Judgment No. 7, the Polish Government, by a letter of September 9th, 1926, addressed to the German Government, had already expressed the opinion that - in so far as the compensation of the Oberschlesische for the damages which they claimed to have sustained was concerned - the question whether, at municipal law, the entry in the land register of the Company in question as owners of the factory of Chorzów was valid, remained open, independently of the judgment of the Court. The German Government replied, on October 2nd, pointing out that the Court had expressly decided that there was no ground justifying the contention that the transfer of the factory of Chorzów to the Oberschlesische did not constitute an alienation valid at law, and that, consequently, at the time when the transfer of sovereignty to Poland took place, the ownership of the factory unquestionably belonged to that Company and not to the German Reich. "The whole matter", the German Government stated, "has been finally settled and decided by the judgment of the Permanent Court at The Hague." The negotiations having failed, and the question of indemnities having been brought before the Court by the German Government, Counsel for the Polish Government, in the course of his pleadings on June 22nd, 1927, in relation [13] to the jurisdiction of the Court to adjudicate upon this question, again took up the point of view put forward by the Polish Government in its letter of September 9th, 1926; and he then expressly stated that the principle of the right of the Oberschlesische to compensation was still in dispute, on the very basis of the said Judgment (Judgment No. 7), which was said to have reserved to Poland "the right to dispute the validity of this entry". From that he inferred that the question

relating to the recognition of the principle of the compensation claimed did not as yet constitute an issue as far as concerned the Oberschlesische, pending the decision by the competent tribunals, that is to say by the Polish tribunals - before which the Polish Government was on the point of bringing the matter - , of the question of the validity of the registration of its title as owner, a question said to have been reserved by the Court.

The German Agent replied in his pleadings on June 24th : he disputed the contention that the Court had not so far given a definite ruling and that it had made a reservation as to the lawful character under municipal law of the transactions which took place in 1919; he maintained that, in his opinion, having regard to the grounds and the operative part of the Judgment, there could be no doubt that the phrase invoked by Counsel for the Polish Government could not have the meaning which it was given by that Government, and that consequently that phrase could not be quoted in argument against the claims of the German Government. It should be observed that the Agent for the Polish Government, who was present at these pleadings before the Court, said nothing calculated to impugn or modify the said remarks of Counsel for that Government. On the contrary, he alluded to them in his own statement before the Court. There is thus no room for doubt that at the time those were the views of the Polish Government.

Shortly after the question of jurisdiction had been decided by the Court (Judgment No. 8), the Polish Government brought against the Oberschlesische the application announced by its representative during the hearings in June; and the grounds upon which this application is based, which are given above, appear to confirm the view that it was indeed brought [14] for the purpose indicated at the time of the hearing in question.

From a consideration of these facts, it follows that - whereas the German Government contends that Judgment No. 7 of the Court finally decided, with binding effect as concerns the claim for compensation put forward on behalf of the Oberschlesische, the question relating to the right of ownership possessed by that Company over the factory at Chorzów, also under municipal law - the Polish Government supported the opposite view and, at the same time, relied on a certain passage in the judgment in question (p. 42) which, according to its opinion, showed the soundness of this view, and which might in one sense be described as a reservation. There is therefore, in so far as the first of the submissions of the German Government is concerned, a true dispute over a point which, in accordance with the explanations set out above, relates to the meaning and scope of Judgment No. 7.

The Polish Government contends that the passage in question was not invoked by it as conferring a right of bringing before the Tribunal of Katowice the Application actually submitted to that Tribunal, but only as an affirmation by the Court of a right which that Government already possessed, apart from any reservation. The Polish Government also contends that the German request for an interpretation does not relate to the operative part of the judgment (which, according to the former Government, can alone be the subject of a request for interpretation), and asserts that it does not claim that the operative part contains a reservation of the kind referred to in submission No.1 of the German Government. The Court, however, is unable to take this view. For it is clear in any case that, although it is not contested that the terms of the operative part of the judgment do not contain the reservation in question, the fact that the grounds for the judgment contain a passage which one of the Parties construes as a reservation (the effect of which would be to restrict the binding force of Judgment No.7) or as affirming a right inconsistent with the situation at law which the other Party considers as established with binding force, allows of the Court's being validly requested to give an interpretation fixing the true meaning and scope of the judgment in question. [15]

On the other hand, as regards Judgment No. 8, the Court considers that the meaning and scope of that Judgment are not directly affected by the first of the German submissions. For that Judgment only decides as to the jurisdiction of the Court to entertain the case submitted by the German Application of February 8th, 1927. It may, however, be stated that certain passages of that Judgment may in this connection be taken into account as showing the meaning and scope which the Court, when it pronounced Judgment No. 8, attributed to Judgment No. 7.

The second of the submissions of the German Government appears to raise the question of the effect which the application made to the Katowice Tribunal might have on the case pending before the Court with regard to the indemnity claimed by Germany on the basis of Judgment No. 7. According to the reasoning put forward, it is nevertheless clear that this submission relates to the application to a particular case of a point which the German Government considers as having been settled with binding effect by the judgments already rendered, but which, according to the Polish Government, leaves open the question as to the validity under municipal law of the transfer of the ownership to the Oberschlesische and of its entry in the land register. This second submission thus also refers, implicitly, to a disputed question relating to the meaning and scope of Judgment No. 7. On the other hand, as regards

Judgment No. 8, the Court confines itself to a reference to what it has stated on this subject in relation to the first of the German submissions.

\* \* \*

Having thus shown that the submissions of the German Government both comprise requests for the interpretation of the Court's Judgment No. 7, the Court must now proceed to consider what may be regarded as the merits of the suit.

In so doing, the Court does not consider itself as bound simply to reply "yes" or "no" to the propositions formulated in the submissions of the German Application. It adopts this attitude because, for the purpose of the interpretation of a judgment, it cannot be bound by formulas chosen by the [16] Parties concerned, but must be able to take an unhampered decision. This view is consistent with the present terms of Article 66 of the Rules of Court. In fact, according to this article - which was intended by the Court to furnish information indispensable in regard to proceedings for interpretation - , the application submitting the request for an interpretation shall contain:

- "(a) a specification of the judgment the interpretation of which is requested;
- "(b) an indication of the precise point or points in dispute."

Whereas Article 35 of the Rules, which deals with an application instituting ordinary proceedings, requires "an indication of the claim", Article 66 provides for "an indication of the ... points in dispute". And whereas, in the case of ordinary procedure, Article 40 of the Rules provides for the compulsory submission of Cases containing, as an essential part, "a statement of conclusions", Article 66 only mentions optional "observations" and "further explanations" to be furnished upon the invitation of the Court.

The Court therefore considers that it should interpret the "submissions" of the German Application of October 18th, 1927, as simply constituting an indication, within the meaning of Article 66 of the Rules, of the points the meaning and scope of which are in dispute between the Parties. Construed in any other way, the Application in question would not satisfy the express conditions laid down by the above-mentioned article; and the Court, as it has already had occasion to observe in previous judgments, may within reasonable limits disregard the defects of

form of documents placed before it.

Adopting the standpoint indicated above, it is to be observed that, on analysis, the two submissions formulated in the German Application are seen to refer to the same disputed point regarded from two different aspects. This point, which has been sufficiently defined above, relates to the passage appearing on page 42 of Judgment No. 7, which passage the Polish Government has cited in the claim brought by it before the Tribunal of Katowice ; this passage is as follows: [17]

"If Poland wishes to dispute the validity of this entry, it can, in any case, only be annulled in pursuance of a decision given by the competent tribunal."

In reality, therefore, what the German Government seeks is an interpretation of this passage - considered in relation to the Judgment as a whole - from two aspects, namely that of its meaning and that of its scope.

Proceeding first of all to consider the first of these aspects, the Court observes that, considered by themselves, the terms of the passage above quoted may give the impression that the Court meant to reserve to Poland the right to obtain from the Polish Courts a decision which would apply to the case settled by Judgment No. 7, to the effect that the Oberschlesische was not, from the point of view of municipal law, validly entered as owner of the Chorzów factory.

The argument, in the course of which the lines quoted above occur, is as follows (p. 42):

"With regard to the argument of the Respondent to the effect that the contract of December 24th, 1919, and the transfer of ownership on the following January 28th-29th, by means of *Auflassung* and entry in the land register, are fictitious or fraudulent, it should in the first place be observed that the Court cannot consider this argument, in so far as it may be assumed that the intention of the Respondent is to support it, by considerations of German municipal law, as an independent one ; for the Polish law, the application of which in regard to the Chorzów factory has led to the present dispute between the two Powers, is based neither directly nor indirectly on the validity or invalidity, from the standpoint of German municipal law, of the transfer of the properties covered by it ; it is based exclusively on the date of the transfer in relation to November nth, 1918. In the next place, it must be observed that the Court, in the exercise of the jurisdiction granted by Article 23 of the Geneva Convention, will not examine, save as an incidental or preliminary point, the possible existence of rights under German municipal law.

The Court has already observed that from the point of view of international law, the transaction under consideration must, in its opinion, be regarded as effective and as

entered into in good faith. The Court has found in the arguments advanced by Poland in support of the above-mentioned contention no reasoning calculated to [18] modify, from the standpoint of municipal law, the conclusion at which it has thus arrived on the basis of international law. In the present case, in fact, the Court holds that the Oberschlesische's right of ownership of the Chorzów factory must be regarded as established, its name having been duly entered as owner in the land register. If Poland wishes to dispute the validity of this entry, it can, in any case, only be annulled in pursuance of a decision given by the competent tribunal; this follows from the principle of respect for vested rights, a principle which, as the Court has already had occasion to observe, forms part of generally accepted international law, which, as regards this point, amongst others, constitutes the basis of the Geneva Convention.

This is true, though, as is pointed out by Poland, the contracts of December 24th, 1919, had been concluded at a time when, not having been entered in the commercial register, the Oberschlesische possessed as yet no legal personality. The Court, in fact, notes that the contracts in question were concluded after the creation of the Oberschlesische and by its regularly appointed Directors; it further notes that the transfer of the Chorzów factory was effected by means of the *Auflassung*, a transaction of the nature of a contract, and of the entry in the land register, which formality took place only after the entry of the Oberschlesische in the commercial register. Moreover, by acts extending over a period of more than two years, all the Parties concerned have clearly shown that they still recognized the validity of the contracts in question."

In the first place - and this is expressly stated earlier in the Judgment (p. 35) - it follows from this reasoning that the Court found it necessary, in order to reply to submission 2 a of the German Government's Application in the suit then under consideration, to decide, though as an incidental and preliminary point, the question raised by Poland's contention that the contract of December 24th, 1919, the transfer of ownership (i.e. of the Chorzów factory to the Oberschlesische) effected on January 28th-29th following, the *Auflzassung* and the entry in the land register, were fictitious and fraudulent.

Again it follows, amongst other things, that the Court found in the arguments of Poland nothing calculated to modify, from the standpoint of municipal law, the conclusion at [19] which it arrived on the basis of international law; but that, on the contrary, the Oberschlesische's right of ownership of the Chorzów factory was established, "its name having been duly entered as owner in the land register". This latter part of the sentence cannot be regarded either as constituting the only reason upon which the Court based the result at which it arrived, nor as dependent upon failure to act in the manner indicated in the lines which follow it in the above quotation. These lines are rather to be regarded as containing an additional argument, drawn

from generally accepted international law. Though from the use of the present tense it may be concluded that the Court had in view the possibility of the institution by Poland, even after the judgment, of proceedings with a view to obtaining the annulment of the entry by means of a decision of the competent municipal tribunals, it would be contrary to the whole of the reasoning to construe it as a reservation implying that the binding effect of the Judgment given - and more especially of paragraph 2 *a* of the operative part thereof ("that the attitude of the Polish Government in regard to the Oberschlesische Stickstoffwerke and Bayerische Stickstoffwerke Companies was not in conformity with Article 6 and the following articles of the Geneva Convention") - were to depend on the result of such proceedings instituted subsequently. Such a reservation would in fact have the result of depriving conclusion 2 *a* of the Judgment of its logical and necessary foundation, and would thus give that conclusion merely the character of a provisional decision.

And the Court has also expressed itself to this effect in Judgment No. 8 (p. 15). It there stated, in regard to the transfer of the factory to the Oberschlesische, that it held - amongst other things - "that the Oberschlesische's right of ownership must be regarded as established, and *could have been* disputed only before a competent tribunal". As regards the passage appearing on page 31 of Judgment No. 8, which runs as follows:

". . . . it follows that once dispossession has taken place without previous investigation of the right of ownership, the possible undertaking of this investigation in order to justify such dispossession after it has taken [20] place, cannot undo the fact that a breach of the Geneva Convention has already taken place, or affect the Court's jurisdiction",

this also seems to show that, in the intention of the Court, subsequent action on the part of the Polish Government to justify, after the event, its attitude in respect of the Oberschlesische, could not enter into account.

Having thus established the meaning to be attributed to the passage in regard to which it has been requested to construe Judgment No. 7, the Court will now proceed to consider the scope of the Judgment, which scope forms the subject of submission No. 2 of the German Application.

As has been recalled above, the Court, by that Judgment, decided that the attitude of the Polish Government in regard to the Oberschlesische was not in conformity with the provisions

of the Geneva Convention. This conclusion, which has now indisputably acquired the force of *res judicata*, was based, amongst other things, firstly, on the finding by the Court that, from the standpoint of international law, the German Government was perfectly entitled to alienate the Chorzów factory, and, secondly, on the finding that, from the stand-point of municipal law, the Oberschlesische had validly acquired the right of ownership to the factory - and these findings constitute a condition essential to the Court's decision. The finding that, in municipal law, the factory did belong to the Oberschlesische is consequently included amongst the points decided by the Court in Judgment No. 7, and possessing binding force in accordance with the terms of Article 59 of the Statute. The very context in which the passage in question occurs is calculated to establish the right of ownership of the Oberschlesische from the standpoint of municipal law.

The Court's Judgment No. 7 is in the nature of a declaratory judgment, the intention of which is to ensure recognition of a situation at law, once and for all and with binding force as between the Parties; so that the legal position thus established cannot again be called in question in so far as the legal effects ensuing there from are concerned.

The Court has had occasion in Judgment No. 7 (p. 19) to state its opinion upon the question whether Article 59 of the Court's Statute prevents it from rendering purely [21] declaratory judgments; it answered this question in the negative, stating that the object of Article 59 is simply to prevent legal principles accepted by the Court in a particular case from being binding also upon other States or in other disputes.

In this connection, the Court thinks it right to make the following statement: The proceedings on the merits in the case concerning the compensation claimed by the German Government on the basis of Judgment No. 7 are still pending, and the written procedure will not be terminated until March 1st, 1928. Judging from the observations of the Agent for the Polish Government, it is possible that that Government may wish in this suit to rely, on the result of the action brought by it before the Tribunal of Katowice against the Oberschlesische. No plea of litispendency has been formulated in this connection. At all events, the obligation incumbent upon the Court under Article 60 of the Statute to construe its judgments at the request of any Party, cannot be set aside merely because the interpretation to be given by the Court might possibly be of importance in another case which is pending. The interpretation adds nothing to the decision, which has acquired the force of *res judicata*, and can only have binding force within the limits of what was decided in the judgment construed.

Moreover, the Court, when giving an interpretation, refrains from any examination of facts other than those which it has considered in the judgment under interpretation, and consequently all facts subsequent to that judgment. Similarly, the Court abstains from any consideration of the effect which the judgment to be construed might exercise upon submissions made by the Parties in another case or otherwise brought to its knowledge. It confines itself to explaining, by an interpretation, that upon which it has already passed judgment.

\* \* \*

FOR THESE REASONS,

The Court, having heard both Parties,

gives judgment as follows, by eight votes to three: [22]

That, in Judgment No. 7, the Court did not reserve to the Polish Government the right of asking by process of law, even after the rendering of that Judgment and with application to that particular case, for a declaration that the entry, in pursuance of the Agreement of December 24th, 1919, of the name of the Oberschlesische Stickstoffwerke A.-G. in the land registers as owners of the Chorzów factory is null and void; but that, by the aforesaid Judgment, the Court meant to recognize, with binding effect between the Parties concerned and in respect of that particular case, amongst other things, the right of ownership of the Oberschlesische Stickstoffwerke A.-G. in the Chorzów factory under municipal law.

Done in English and French, the French text being authoritative, at the Peace Palace, The Hague, this sixteenth day of December 1927, in three copies, one of which is to be placed in the archives of the Court and the others to be forwarded to the Agents of the applicant and respondent Parties respectively.

*(Signed)* Max Huber,  
President.

*(Signed)* A. Hammarskjöld;  
Registrar.

Mr. Moore, Judge, took part in the discussion and voted for the adoption of the present Judgment, but had to leave The Hague before judgment was delivered.

M. Anzilotti, Judge, declaring that he is unable to concur in the Judgment delivered by the Court, and availing himself of the right conferred on him by Article 57 of the Statute, has delivered the separate opinion which follows hereafter.

*(Initialled)* M. H.

*(Initialled)* A. H.

[23] Dissenting Opinion by M. Anzilotti.

[*Translation.*]

In my opinion the Court should have ruled that the request for an interpretation by the German Government could not be entertained; and that on the following grounds:

1. - The question which arises in the first place is what is to be understood by a "dispute as to the meaning or scope of the judgment" in the terms of Article 60 of the Statute.

I must begin by saying that I regard proceedings for interpretation as contentious proceedings, the subject matter of which is constituted by the dispute contemplated in the article, and in which the Court has to give judgment upon the sub-missions of the Parties just as in any other contentious proceedings. In my opinion Article 60 of the Statute contains a clause establishing the compulsory jurisdiction of the Court for a certain category of disputes.

The first object of Article 60 being to ensure, by excluding every ordinary means of appeal against them, that the Court's judgments shall possess the formal value of *res judicata*, it is evident that that article is closely connected with Article 59 which determines the material limits of *res judicata* when stating that "the decision of the Court has no binding force except between the Parties and in respect of that particular case" : we have here the three traditional elements for identification, *persona, petitum, causa petendi*, for it is clear that "that particular case" (*le cas qui a été décidé*) covers both the object and the grounds of the claim.

It is within these limits that the Court's judgment is binding, and it is within these same limits that Article 60 provides that any Party shall have the right, in the event of a dispute, to request the Court to construe it. It appears to me to be clear that a binding interpretation of a judgment can only have reference to the binding portion of the judgment construed.

2. - To say that the request for an interpretation can only relate to the binding part of the judgment is equivalent to [24] saying that it can only relate to the meaning and scope of the operative part thereof, as it is certain that the binding effect attaches only to the operative part of the judgment and not to the statement of reasons.

The grounds of a judgment are simply logical arguments, the aim of which is to lead up to the formulation of what the law is in the case in question. And for this purpose there is no

need to distinguish between essential and non-essential grounds, a more or less arbitrary distinction which rests on no solid basis and which can only be regarded as an inaccurate way of expressing the different degree of importance which the various grounds of a judgment may possess for the interpretation of its operative part.

When I say that only the terms of a judgment are binding, I do not mean that only what is actually written in the operative part constitutes the Court's decision. On the contrary, it is certain that it is almost always necessary to refer to the statement of reasons to understand clearly the operative part and above all to ascertain the *causa petendi*. But, at all events, it is the operative part which contains the Court's binding decision and which, consequently, may form the subject of a request for an interpretation.

3. - Having said this, it seems to me that in so far as the first of the submissions made by the German Government is concerned, the Court need merely place on record the following declaration, which is to be found on page 6 of the *Observations of the Polish Government upon the request for interpretation of Judgments Nos. 7 and 8* :

[*Translation.*] - "Passing now from the grounds for Judgment No. 7 to its operative part, it should be observed that the Polish Government has never claimed, nor does it now claim, that by the latter a right was reserved to that Government of cancelling by process of law the agreement of December 24th, 1919, and the entry in the land registers, in pursuance of this agreement, of the Oberschlesische as owners. Such a reservation, or even a recognition of the right in question, would moreover have been purposeless."

This declaration is incompatible with the existence of any dispute coming within the terms of Article 60 of the Statute, [25] as interpreted above, and reduces the divergence between the views of the two Governments to a question of words.

As to the second of the submissions made by the German Government, the situation is different. In my opinion, the real proposition, which is concealed in somewhat obscure language, must be understood as follows: The Court, on being made cognizant of the German Government's Application of May 15th, 1925, found it necessary to give a decision, and did in

fact do so, in regard to the Oberschlesische's right of ownership, and this decision is final and binding even in respect of the claim for compensation now pending before the Court.

I shall now proceed to consider the question whether a request for an interpretation having this object can be entertained.

4. - It is a well-known principle that the objective limits of *res judicata* are determined by the claim.

The German Government's claim on which Judgment No. 7 was based was, in so far as relates to the present case, formulated as follows in No. 2 a of the submissions of that Government:

"To give judgment .... that the attitude of the Polish Government in regard to the Oberschlesische Stickstoffwerke and Bayerische Stickstoffwerke Companies was not in conformity with Article 6 and the following articles of the Geneva Convention."

No claim for restitution or compensation was then made by the German Government, which, according to the statements of its Agent, only sought to obtain a declaratory judgment. It should also be recalled that the claim reproduced above and relating to the Oberschlesische and Bayerische Companies was submitted as being the application in an individual case, chosen from amongst several of a more general claim, that is to say the claim to the effect that Articles 2 and 5 of the Polish law of July 14th, 1920, were not in conformity with Article 6 and the following articles of the Geneva Convention.

In accordance with the German Government's claim, the Court, after having decided that the application both of Article 2 and of Article 5 of the Polish law of July 14th, 1920, in Polish Upper Silesia constituted a measure contrary to [26] Article 6 and the following articles of the Convention in question, laid down in paragraph 2a of the operative part of the judgment, "that the attitude of the Polish Government in regard to the Oberschlesische Stickstoffwerke and Bayerische Stickstoffwerke Companies was not in conformity with Article 6 and the following articles of the Geneva Convention".

5. - It is certain that before arriving at this conclusion the Court had also to consider the question whether, under German municipal law, the Oberschlesische Company was indeed the

owner of the Chorzów factory ; for only if that was the case would the dispossession of the Company by the Polish Government constitute a measure contrary to the Geneva Convention.

And the Court did in fact say that it would consider the question from this point of view also. At the same time, however, it expressly stated that, in the exercise of the jurisdiction bestowed by Article 23 of the Geneva Convention, it would only consider as an incidental or preliminary point the question whether any rights existed under German law.

It is therefore clear that the decision in regard to the question whether the Oberschlesische was the owner of the property of which it was dispossessed, can only be regarded as an incidental or, more exactly, as a preliminary decision to that which the Court had to give upon the claim of the Applicant. The German Government expressly admits this.

6. - No one denies or could deny that the Oberschlesische's right of ownership is to be regarded as having been established once and for all in so far as concerns the question decided by Judgment No.7; that is to say, the non-conformity of the attitude adopted by the Polish Government in regard to-that Company with Article 6 and the following articles of the Geneva Convention.

It is, moreover, clear that, under a generally accepted rule which is derived from the very conception of *res judicata*, decisions on incidental or preliminary questions which have been rendered with the sole object of adjudicating upon the Parties' claims (*incidenter tantum*) are not binding in another case. [27]

Does this general rule also cover the case of an action for indemnity following upon a declaratory judgment in which the preliminary question has been decided ?

In my opinion that is in reality the question submitted to the Court; and there seems to me to be no doubt that that question is neither a question involving the interpretation of the operative part of Judgment No. 7, which has been referred to earlier in this note, nor a question involving the interpretation of the operative part of Judgment No.8, which was merely a decision as to the jurisdiction of the Court to take cognizance of the action for indemnity. It is a question which exclusively relates to proceedings actually pending before the Court, and must consequently be

considered and adjudicated upon in those proceedings and not by the indirect method of an interpretative judgment.

7. - In coming to this conclusion, I have relied upon principles obtaining in civil procedure; this I feel justified in doing for the following reasons:

As I have already observed, the Court's Statute, in Article 59, clearly refers to a traditional and generally accepted theory in regard to the material limits of *res judicata*; it was only natural therefore to keep to the essential factors and fundamental data of that theory, failing any indication to the contrary, which I find nowhere, either in the Statute itself or in international law.

In the second place, it appears to me that if there be a case in which it is legitimate to have recourse, in the absence of conventions and custom, to "the general principles of law recognized by civilized nations", mentioned in No. 3 of Article 38 of the Statute, that case is assuredly the present one. Not without reason was the binding effect of *res judicata* expressly mentioned by the Committee of Jurists entrusted with the preparation of a plan for the establishment of a Permanent Court of International Justice, amongst the principles included in the above-mentioned article (Minutes, p.335).

(Signed) D. Anzilotti.