JOINT DISSENTING OPINION BY JUDGES SIR HERSCH LAUTERPACHT, WELLINGTON KOO AND SIR PERCY SPENDER

Paragraph 5 of Article 36 of the Statute of this Court provides as follows:

> « Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms."

On 29th July, 1921, Bulgaria accepted unconditionally for an unlimited period the jurisdiction of the Permanent Court of International Justice under Article 36, paragraph 2, of the Statute of that Court. On 14th December, 1955, Bulgaria became a Member of the United Nations and a party to the Statute of this Court. According to paragraph 5 of Article 36, as cited above, the following two conditions must be fulfilled for the transfer to the International Court of Justice of the declarations of acceptance made with respect to the Permanent Court: (1) the declarant State must become a party to the Statute of the International Court of Justice; (2) its declaration must be "still in force", that is to say, the period for which it has been made must not have expired. By virtue of these conditions the obligations of the Declaration made by Bulgaria on 29th July, 1921, were transferred to the International Court of Justice on 14th December, 1955, when she became a party to the Statute of the International Court of Justice. On that day, paragraph 5 became applicable to Bulgaria. We are of the view that, so far as that provision is concerned, the Court, contrary to the conclusions of the First Preliminary Objection of the Government of Bulgaria, is competent to adjudicate upon the application of the Government of Israel brought before the Court in reliance upon its declaration of acceptance of 17th October, 1956.

To the express conditions, as stated, of paragraph 5 of Article 36 of the Statute, the present Judgment of the Court adds two further conditions: (1) the declarant State must have participated in the Conference of San Francisco; (2) the declarant State must have become a party to the Statute of this Court prior to the date of the dissolution of the Permanent Court, namely, prior to 18th April, 1946. As neither of these two conditions were fulfilled in the case of Bulgaria the Court has held that the obligations of her Declaration of Acceptance made in 1921 were not transferred to the International Court of Justice when in 1955 she became a party to its Statute and,

therefore, that the Court has no jurisdiction by reference to that declaration. We regret that we are compelled to dissent from the Judgment of the Court based on a text of an article of the Statute thus amended and amplified.

* * *

The First Preliminary Objection of the Government of Bulgaria as advanced in the written Preliminary Objections and during the oral hearing is based exclusively on the contention that the Bulgarian Declaration of Acceptance of 1921 had finally and irrevocably lapsed on 18th April, 1946, namely, on the date of the dissolution of the Permanent Court of International Justice, and that it cannot therefore accurately be maintained that it was "still in force" when Bulgaria became a party to the Statute by virtue of her admission to the United Nations.

The principal argument put forward in this connection by the Government of Bulgaria and admitted by the Court was that, as the Bulgarian Declaration of Acceptance of 1921 was indissolubly linked with the Statute of the Permanent Court, it ceased to exist with the dissolution of that Court on 18th April, 1946, unless prior to that date the declaring State had become a party to the Statute of the International Court of Justice. According to that contention the words "which are still in force" were intended to cover not the question of the expiration of the time for which the Declaration was made but an altogether different matter, namely, the contingency of the dissolution of the Permanent Court. On that interpretation the declarations of States which became parties to the Statute subsequent to 18th April, 1946, ceased to be in force with the result that subsequent to that date they were no longer covered by paragraph 5 of Article 36. It is by reference to these asserted effects of the dissolution of the Permanent Court that the Government of Bulgaria has advanced the contention that the words "which are still in force" do not possess the meaning normally attributed to them in relation to the validity of international undertakings. Ordinarily these words refer to instruments which have not come to an end in consequence of either denunciation or termination as the result of the lapse of the period provided in the instrument.

Upon that text of paragraph 5 of Article 36 the principal contention of the Government of Bulgaria engrafted a new text. The Government of Bulgaria contended, in effect, that the Court must omit from the text of Article 36, paragraph 5, the words "which are still in force" and replace them by other words. It was contended that the Court must read the relevant part of Article 36, paragraph 5, as follows: "Declarations made under Article 36 of the Statute of the Permanent Court shall be deemed as between the

parties to the present Statute who have become parties thereto prior to the dissolution of that Court to be acceptances of the compulsory jurisdiction of the International Court of Justice..." We are unable to accept that emendation of a clear provision of the Statute. We are unable to do so for two reasons: The first is that the interpretation thus advanced is contrary to the clear terms of paragraph 5; the second is that that interpretation is contrary to the manifest purpose of that provision. We will now examine separately these two aspects of the interpretation of paragraph 5.

* * *

The essential issue arising out of the First Preliminary Objection of Bulgaria is whether the Bulgarian Declaration of 29th July, 1921, accepting the compulsory jurisdiction of the Permanent Court of International Justice is still valid and in force in the sense of Article 36, paragraph 5, of the Statute of this Court. The issue is one of determining the true meaning of that paragraph, both in its own context and in that of the Statute and the Charter of the United Nations.

While the conclusions of the present Opinion are based on the text of Article 36, paragraph 5, it is useful to give an account, by reference to the avowed purpose of that provision, of the historical background of the creation of the International Court of Justice.

Although the establishment of the International Court of Justice and the dissolution of the Permanent Court were two separate acts, they were closely linked by the common intention to ensure, as far as possible, the continuity of administration of international justice. In its Resolution of April 18th, 1946, the Assembly of the League of Nations made express reference to Article 92 of the Charter of the United Nations providing for the creation of an International Court of Justice as the principal judicial organ of the United Nations and to the Resolution of the Preparatory Commission of the United Nations of December 18th, 1945, which declared that it would welcome the taking of appropriate steps by the League of Nations for the purpose of dissolving the Permanent Court.

The dissolution of the Permanent Court was not an ordinary act of liquidation whereby everything connected with that Court disappeared as a consequence of the termination of its existence. While various considerations urged the dissolution of the Permanent Court and the creation of the International Court of Justice, there was general agreement as to the substantial identity of these two organs. In particular, every effort was made to secure continuity in the administration of international justice. In the Resolution adopted by the Permanent Court at its final session at The Hague at the end of October 1945, it is stated: "The Permanent

Court of International Justice attaches the greatest importance to the principle of continuity in the administration of international justice. Accordingly, it desires to do everything possible to facilitate the inauguration of the International Court of Justice, which was referred to at the San Francisco Conference as the 'successor' to the present Court." (*I.C.J. Yearbook*, 1946-1947, p. 26.) It is not without significance that the International Court of Justice was inaugurated at The Hague on April 18th, 1946—one day before the Resolution of the League of Nations dissolving the Permanent Court took effect. Previously, the Report of Committee 1 of Commission IV on Judicial Organization of the Conference of San Francisco had stated as follows:

> "The creation of the new Court will not break the chain of continuity with the past. Not only will the Statute of the new Court be based upon the Statute of the old Court but this fact will be expressly set down in the Charter. In general, the new Court will have the same organization as the old, and the provisions concerning its jurisdiction will follow very closely those in the old Statute... To make possible the use of precedents under the old Statute, the same numbering of the Articles has been followed in the new Statute.
>
> In a sense, therefore, the new Court may be looked upon as the successor to the old Court which is replaced. The succession will be explicitly contemplated in some of the provisions of the new Statute, notably in Article 36, paragraph 4 [which subsequently became paragraph 5], and Article 37." *(United Nations Conference on International Organization, Documents*, Vol. 13, p. 384.)

The passage quoted shows clearly that, although certain considerations called for the creation of a new Court, that Court was to be in substance a continuation of the Permanent Court. The formal and, in effect, insignificant changes in the Statute of the new Court were not to be permitted to stand in the way of the then existing compulsory jurisdiction of the Permanent Court being taken over by the International Court. It was specifically contemplated that the continuity of the two Courts should be given expression by recognizing the continuity of the compulsory jurisdiction at that time existing. It would have been difficult to use more specific terms: "The succession will be expressly contemplated..."

In fact, a study of the records of the Conference shows that the determination to secure the continuity of the two Courts was closely linked with the question of the compulsory jurisdiction of the new Court in a manner which is directly relevant to the interpretation of paragraph 5 of Article 36.

With regard to the question of the jurisdiction of the new Court, the discussions in both the Washington Committee of Jurists and

Committee 1 of Commission IV of the San Francisco Conference had disclosed a preponderance of sentiment in favour of compulsory jurisdiction. The Committee of Jurists, considering the question of compulsory jurisdiction to be of a political character, took no decision on the subject. Instead, in its final report it presented alternative texts—one leaving the acceptance of compulsory jurisdiction over legal disputes to a free decision of each State which is a party to the Statute; the other providing for the immediate acceptance of such compulsory jurisdiction by all parties to the Statute.

At San Francisco, the First Committee of Commission IV had these two texts before it, as well as some other proposals. These proposals were, subject to some variations, all in favour of compulsory jurisdiction of the New Court. The prolonged debate which took place showed the existence of a preponderant volume of support for the immediate recognition, throughout the membership of the new international organization, of the principle of the compulsory jurisdiction of the Court. The United Kingdom representative urged the adoption of a compromise between the advocates and the opponents of the principle of compulsory jurisdiction to be incorporated into the Statute. He stated: "If the Committee decides to retain the optional clause, it could provide for the continuing validity of existing adherences to it." A Sub-Committee was created to "seek an acceptable formula". It presented the existing text of paragraph 5 of Article 36 of the Statute.

In fact, the two questions—the continuity of the existing compulsory jurisdiction as provided in paragraph 5 of Article 36 (as well as in Article 37) and the general question of compulsory jurisdiction—were treated as two aspects of the same wider question at the same meetings, in the same speeches, in the same reports. This is clearly shown in the documents containing the Reports of the Seventeenth Meeting of Committee IV/1 (*Documents of the Conference*, Vol. 13, pp. 246-250) and, in particular, in the Report of the Sub-Committee of Committee IV/1 on Article 36 (pp. 557-559).

It is thus clear that the purpose of paragraph 5 was to provide "for the continuing validity of the existing adherences" to the Optional Clause. Far from contemplating that any of the then existing declarations of acceptance should disappear with the dissolution of the Permanent Court, the authors of paragraph 5 had in mind the maintenance of the entire group of declarations of acceptance which were still in force and in accordance with their terms, irrespective of the dissolution of the Permanent Court. That purpose was expressed in the widest possible terms intended to eliminate any real or apparent legal difficulties: "They [the Declarations] shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice." Neither, as will be shown later in

the present Opinion, is there any evidence to suggest that the intention of the authors of paragraph 5 was to limit its operation to States which participated in the Conference of San Francisco and which became the original Members of the United Nations as defined in Article 3 of the Charter. It is legitimate to hold that the result of the compromise reached at the Conference and embodied in paragraph 5 should not be whittled down by way of interpretation of the clear and unqualified text of paragraph 5 of Article 36 of the Statute.

* * *

We will now, in the first instance, examine as a matter of interpretation—both in themselves and in their context—the relevant words of paragraph 5 of Article 36 in relation to the contention of Bulgaria that the words "which are still in force" in paragraph 5 refer to the existence of the Permanent Court and do not therefore apply to Bulgaria's Declaration which, it is asserted, ceased to exist with the dissolution of the Permanent Court. It will be shown later in this Opinion that the maintenance or severance of the connection between the Declaration and the existence of the Permanent Court is irrelevant having regard to the clear object of paragraph 5. We are at present concerned with the interpretation of the terms in question as such. We consider that the words "which are still in force", when read in the context of the whole paragraph, can only mean, and are intended to mean, the exclusion of some fourteen declarations of acceptance of the compulsory jurisdiction of the Permanent Court which had already expired and the inclusion, irrespective of the continuance or dissolution of the Permanent Court, of all the declarations the duration of which has not expired. At the Conference of San Francisco there were present a number of States that had in the past made Declarations of Acceptance which, not having been renewed, had lapsed and were therefore no longer in force. This applied, for instance, to the Declarations of China, Egypt, Ethiopia, France, Greece, Peru, Turkey and Yugoslavia. It was clearly necessary, by inserting the expression "which are still in force", to exclude those States from the operation of paragraph 5. That interpretation is supported by the French text which is as authoritative as the English text and which is even more clear and indisputable than the latter. The words *"pour une durée qui n'est pas encore expirée"* (for a duration which has not yet expired) must be regarded as determining the true meaning of the English text in question. The fact that the Chinese, Russian and Spanish texts of that paragraph approximate to the English text does not invalidate or weaken the obvious meaning of the French text. Those three texts were translated from the English version, whereas the French text was that of one of the two official working languages adopted at the San Francisco Conference. However, while

the French text removes any doubt whatsoever as to the meaning of these words, there is in effect no reasonable doubt about them also so far as the English text is concerned. There is no question here of giving preference to the French text. Both texts have the same meaning. The French text is no more than an accurate translation of the English text as generally understood. Or, rather, in so far as it appears that the final version was first formulated in the French language, the English text is no more than an accurate translation from the French.

The Government of Bulgaria contended that the first French version adopted by Committee IV/1—*"déclarations qui sont encore en vigueur"* (declarations which are still in force)—was a faithful translation of the English text; that it was changed at the request of the French delegation into the present wording in French: *"pour une durée qui n'est pas encore expirée"* (for a duration which has not yet expired); and that the French representative had explained in the Committee that the changes which he proposed for insertion did not relate to the substance but were intended to improve the drafting. The account of these successive changes is correct. Yet it provides no support for the argument in aid of which it is adduced. For it must be noted that the French amendment was proposed subsequent to the adoption of the text of the paragraph in question and was approved without dissent at a subsequent meeting of the Committee. There was no change in the substance of the paragraph for the reason that the clear and unambiguous meaning of the French amendment was understood by the whole Committee as conveying the true sense of the English text as well. The Rapporteur of the First Committee, who made his report in the English language, stated, after referring to the question of Article 36, as follows: "A new paragraph 4 [now paragraph 5] was inserted to preserve declarations made under Article 36 of the old Statute *for periods of time which have not expired* and to make these declarations applicable to the jurisdiction of the new Court." There seems to have been no doubt in the minds of the members of the First Committee as to the meaning of the words "still in force" in the English text. The French amendment was made indeed not with a view to any change in substance but only for the purpose of clarification.

Admittedly, an international obligation may cease to exist for reasons other than lapse of time; it may, for instance, terminate because of the fulfilment of its object, denunciation in a manner provided in the instrument, or its dissolution by mutual agreement. However, those various modes of termination and extinction of obligations are not covered by the accepted usage of the phrase "which are still in force". They are clearly not covered by its French version which speaks of "a duration which has not yet expired" *(pour une durée qui n'est pas encore expirée)*. That meaning of the expression "which are still in force" is so well established in

the English language that it was not deemed necessary in the English wording to give a literal translation, word by word, of the French version. Both phrases refer, in their ordinary connotation, to the element of the expiration of time—not to termination as the result of an extraneous event such as the dissolution of the Permanent Court. There is no persuasive power in the argument that these expressions, although ordinarily referring to the element of time, may, by dint of some ingenuity, be made to mean something different from their ordinary connotation.

The same result follows when the terms in question are considered by reference to their context in relation to other provisions of the Charter on cognate matters. The words "still in force" in paragraph 5 cannot, in the absence of express language to the contrary, be interpreted in a sense different from that which they obviously have in paragraph 1 of Article 36 and in Article 37 of the Statute—both of which refer to treaties in force. Neither party has suggested that the latter provisions refer to the validity of the treaties in question by reference to any test other than lapse of time for which they were concluded. We are unable to interpret these words in a manner which is not only contrary to accepted usage in the English text and the explicit wording in the French language in which they were first formulated, but which also departs from the obvious—and uncontroverted—meaning of these terms in the passages, immediately following and preceding, of the Statute.

There is, for reasons which will be elaborated presently in more detail, no merit in the contention that the declarations made under paragraph 2 of Article 36 of the Statute of the Permanent Court were indissolubly linked with that Statute and therefore inevitably and finally lapsed with the dissolution of that Court, while the treaties referred to in Article 37 were not so linked and therefore their transfer to the jurisdiction of the International Court of Justice survived the dissolution of the Permanent Court. The legal authority, as a source of the jurisdiction of the Court, of the jurisdictional provisions of any treaty whatsoever is grounded in paragraph 1 of Article 36 of the Statute which provides that the jurisdiction of the present Court comprises "all matters specially provided for ... in treaties and conventions in force". If, as the result of the injection of extraneous conditions into the clear terms of paragraph 5 of Article 36, the dissolution of the Permanent Court had an effect of putting an end to the declarations made under paragraph 2 of Article 36 of the Statute of the Permanent Court, the same consequences would follow with regard to the treaties and conventions referred to in Article 37 of the present Statute. Yet it is clear that no such consequences follow, and none have been asserted to follow, in this respect in relation to any of these provisions. In relation to all of them the expression "in force" does not possess a meaning different from that ordinarily attached to these terms, namely, as referring to the element of time.

* * *

We do not attach decisive importance to the question, with regard to which the parties were sharply divided, of the date to which the expression "which are still in force" must be attached. That may be either the date on which the Charter entered into force, namely, 24th October, 1945, or the date on which the declarant State has become a party to the Statute of the International Court of Justice. It may be said, in support of the first alternative, as urged by the Government of Israel, that normally a legal instrument speaks as of the date on which it enters into force. However, there is also substance in the view that that expression ought, more properly, to be attached to the date on which the particular State becomes bound by the obligations of the Statute. Retroactive operation of a provision ought not to be assumed without good cause; normally, it is the date of the State becoming a party to the instrument which determines, in relation to that State, the date of the commencement of the operation of its various provisions.

We do not consider that any practical consequences, detrimental to the contentions of either party, follow from the adoption of one of these alternative dates in preference to another. In our view, the validity of paragraph 5 did not lapse on the dissolution of the Permanent Court; its purpose was to render that dissolution irrelevant in the matter of the transfer of declarations; the intention was that it should become operative as soon as a declarant State becomes a party to the Statute—unless its declaration was no longer in force by reason of having expired in conformity with the concluding passage of paragraph 5. Accordingly, the main contention of the Government of Israel is not defeated if the expression "which are still in force" is attached to the date on which Bulgaria became a party to the Statute. On that date—or from that date—her Declaration of 1921, saved from extinction by virtue of paragraph 5 of Article 36, became fully operative.

* * *

Accordingly, we reach the conclusion that, having regard both to the ordinary meaning of their language and their context, the words "which are still in force" refer to the declarations themselves, namely, to a period of time, limited or unlimited, which has not expired, regardless of any prospective or actual date of the dissolution of the Permanent Court. So long as the period of time of declarations made under Article 36 of the Statute of the Permanent Court still has to run at the time when the declarant State concerned becomes a party to the Statute of the International Court of Justice, those declarations fall within the purview of Article 36, paragraph 5, of the new Statute and "shall be deemed to be acceptances of the

compulsory jurisdiction of the International Court for the period which they still have to run and in accordance with their terms".

* * *

We will now examine the meaning of these concrete terms of paragraph 5 by reference to the object of that provision. The jurisdiction of the International Court of Justice is established by the Charter and the Statute of the Court. In law it could not have been, and was not, affected in any way by the action of the Assembly of the League of Nations in dissolving the Permanent Court any more than the establishment of the new Court could have juridically affected the jurisdiction of the Permanent Court. The creation of the one and the termination of the other were two separate legal acts. This was so although there was a close link of cause and effect between them. For a period of time between the enactment of these two measures the two institutions existed in law, though one was not yet organized and the other already preparing for dissolution. In the words of Sub-Committee IV/1/A, "since, however, it is impossible to contemplate the existence of the two World Courts, each with their seat at The Hague ... it is clear that at the earliest possible moment steps will have to be taken to bring the old Court to an end...". (*United Nations Conference on International Organizations*, Vol. 13, p. 521.)

It is thus clear that the provisions of Article 36, paragraph 5, of the new Statute operate independently of the Permanent Court and that such operation is not affected by its dissolution. As already shown, the preoccupation of the San Francisco Committee IV/1 relating to that paragraph was to preserve as a whole the declarations of acceptance of the compulsory jurisdiction of the Permanent Court for the new Court. It was not concerned with the question whether the Declarations would be valid when detached from the Permanent Court. It was concerned with the drafting and adoption of a formula which would provide for their continuing validity.

The essential object of the Conference of San Francisco as expressed by the First Committee was to provide "for the continuing validity of the existing adherences to it" in a manner consistent with international law. The fact of severance from the Permanent Court of International Justice was taken for granted in respect of declarations of acceptance. It was the attachment of the declarations to the new Court which was considered essential and it was that object which prompted the adoption of the formula provided in paragraph 5 of Article 36 in order to ensure the continued validity of those declarations. Nor was the date of severance from the Permanent Court considered to be of importance. It is therefore immaterial whether that date was October 24th, 1945, on which

the Charter of the United Nations providing for the establishment of the International Court of Justice came into force, or the date of April 18th, 1946, on which day the Permanent Court was formally dissolved to take effect on April 19th. As a matter of fact, the Permanent Court held its final session in October, 1945; all the Judges resigned in January 1946. In view of the imminent dissolution of the League of Nations there was no machinery for the election of new Judges. What is material in respect of the validity of a declaration in relation to the present Court is whether it fulfils the requirements of Article 36, paragraph 5. In other words, the dissolution of the Permanent Court was not intended to have any effect, and had none, upon the declarations of acceptance provided for in Article 36, paragraph 5, so far as the present Court is concerned. Whether these declarations, including the Bulgarian Declaration of 1921, are applicable to the International Court of Justice or not is to be determined solely in accordance with Article 36, paragraph 5, of the new Statute—in which, by deliberate omission, there is no reference to the dissolution of the Permanent Court.

In so far as its relation to the Permanent Court of International Justice and its Statute is concerned, the Bulgarian Declaration of 1921 ceased, both in fact and in the strict sense of the law, to be applicable when that Court was dissolved on April 18th, 1946. However, in relation to the International Court of Justice, the dissolution of the Permanent Court was precisely the situation envisaged by the framers of the new Statute as a reason for the adoption of paragraph 5 and its full operation in consequence of and subsequent to the dissolution of the Permanent Court. It was for the purpose of preserving for the new Court the compulsory jurisdiction which had been conferred upon the old Court and whose period of validity had not expired that paragraph 5 was adopted and inserted in Article 36 of the present Statute and that Article 37 was introduced. By virtue of paragraph 5 of Article 36 the declarations of acceptance still in force of the States which became parties to the Statute on 24th October, 1945, when the Charter came into force, are deemed to be acceptances of the jurisdiction of the new Court. However, the other declarations of acceptance which were still in force were not to be extinguished and forgotten. Their operation was suspended until such time as the declarant State became a party to the Statute by being admitted to the United Nations or by virtue of Article 93 (2) of the Charter. Bulgaria more than once applied for admission to the United Nations. When admitted on December 14th, 1955, she became on that day a party to the Statute. Since the Bulgarian Declaration of 1921 has no time-limit attached to it, it came on the same day within the purview of Article 36, paragraph 5.

* * *

There is a further consideration of a practical nature which precludes the interpretation of the words "which are still in force" as being directed to the contingency of the dissolution of the Permanent Court. If that were the true interpretation of these words, there would have existed a distinct possibility of the object of paragraph 5 being frustrated. The States participating in the Conference of San Francisco, having decided upon the creation of a new Court, were anxious to see the old Court terminated. Of the fifty-one States attending the San Francisco Conference, thirty-one were parties to the old Statute and, with a few exceptions, were Members of the League of Nations. There existed the possibility of the League of Nations meeting and dissolving itself and the Permanent Court before the coming into force of the Charter of the United Nations and the Statute of the new Court. Moreover, the attainment of twenty-nine ratifications of the Charter on October 24th, 1945, including the ratifications of five permanent members of the Security Council, could not have been foreseen with any degree of certainty. It might have been achieved at a later date, possibly after the dissolution of the League and of the old Court. In either eventuality, Article 36, paragraph 5, would have become a dead letter. For in that case, according to the contention of Bulgaria, all the declarations would have lapsed with the dissolution of the Permanent Court and the extinction of the old Statute, and would no longer be in force.

* * *

The intention of paragraph 5 of Article 36 was to eliminate the difficulties connected with the impending dissolution of the Permanent Court and likely to interfere with the continued validity of the declarations. The Bulgarian contention, accepted by the Court, introduced these considerations as an integral part of Article 36. The unqualified language of paragraph 5 suggests that any real or apparent legal difficulty ensuing from the fact that the declarations were annexed to the Statute of the Permanent Court and any other legal difficulties, real or apparent, which did or did not occur to the authors of paragraph 5 were met by the comprehensive provision laying down that these declarations shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the new Court. It is exactly some such obstacles which the authors of Article 36 wished to neutralize. This was the purpose of paragraph 5. They said in effect: Whatever legal obstacles there may be, these declarations, provided that their period of validity has not expired—that is provided that they are still in force on the day of the entry of the Charter into force or on the day on which the declarant State becomes a party to the Statute—shall

continue in respect of the International Court of Justice.

The intention of paragraph 5 which used the words "shall be deemed ... to be acceptances" is to cut clear through any cobweb of legal complications and problems which might arise in this connection. It is not the intention of paragraph 5 to recognize any decisive effect of these difficulties by a form of words—"still in force"—which normally mean something else. It is otherwise incomprehensible why if the words "still in force" were intended to mean only "so long as the Permanent Court has not been dissolved" these latter words should not have been used instead of the words "still in force" which have a clear and different meaning of their own, namely, as referring to termination as the result of lapse of time. Accordingly, to attach decisive importance to the effect of the dissolution of the Permanent Court amounts not only to re-writing paragraph 5; it amounts to adding to it an extraneous condition which it was the purpose of that Article to exclude and to disregard. When it is therefore asserted that the effect of the dissolution of the Permanent Court was to terminate the declarations of acceptance existing on 19th April, 1946, the correct answer to any such assertion is that that was exactly the result which paragraph 5 was intended to prevent.

The governing principle underlying paragraph 5 is that of automatic succession of the International Court of Justice in respect of the engagements undertaken by reference to the Statute of the Permanent Court, the dissolution of which was clearly envisaged and anticipated. We have cited the passage in question from the report of Committee IV/1. We therefore consider that any argument based on the dissolution of the Permanent Court and the lapse of its Statute to which the Declaration of 1921 was attached is irrelevant either in connection with the interpretation of the words "which are still in force" or otherwise. There is, for the same reason, no basis for the argument that the object of paragraph 5 being to ensure the continuity of the jurisdiction of the Court, it cannot be regarded as intended to resuscitate the declarations which had lapsed as the result of the dissolution of the Permanent Court. The object of paragraph 5, clearly expressed in the course of the preparatory work as cited, was precisely to prevent these declarations from lapsing with finality for all purposes. Undoubtedly, they lapsed so far as the Permanent Court was concerned; they did not lapse so far as the present Court is concerned. The object of paragraph 5 was to secure succession in the sphere of the obligatory jurisdiction of the Court.

Admittedly, the declaration of Bulgaria was based on the Statute of the Permanent Court. Admittedly also, the Statute ceased to exist and to be binding upon Bulgaria when the Permanent Court was dissolved, and the Statute of the present Court was not binding upon her unless and until she became a party to its Statute.

However, upon that event, her declaration became subject to the operation of paragraph 5 which maintained the potential force of the declarations in relation to the States covered by the plain terms of that provision, namely, in relation to the States becoming parties to the Statute. Consequently, when in 1955 Bulgaria became a party to the Statute by becoming a Member of the United Nations, paragraph 5 became fully operative in relation to her. Its purpose was not extinguished through the dissolution of the Permanent Court; it was to prevent the dissolution of that Court from becoming a destructive factor in relation to the declarations made under its Statute. Its purpose was to safeguard the existing compulsory jurisdiction in relation to the present Court notwithstanding the event clearly envisaged by the authors of paragraph 5, namely, the dissolution of the Permanent Court. It was exactly that anticipated event which prompted paragraph 5.

There is little persuasive power in the suggestion that paragraph 5 was intended to prevent that result only on condition that the States concerned became parties to the Statute prior to 18th April, 1946. There is no evidence in support of that proposition and no satisfactory explanation of any such intention calculated to reduce the period of the operation of paragraph 5 and to render it vague by introducing the element of uncertainty connected with the date of the dissolution of the Permanent Court. At the time when the text of the Charter was established it was difficult to foresee when the dissolution would take place.

Accordingly, we do not consider it necessary to pursue the arguments propounded, in expressive language, with regard to the possibility of reviving the Bulgarian Declaration of 1921 whose life, it was asserted, was terminated as the result of the dissolution of the Permanent Court. As stated, this was so only subject to the operation of paragraph 5. It may be added that there are obvious limits to the analogy between the death of a person and the cessation of the operation of a legal provision. Nothing can revive the dead; a short paragraph in a treaty can instill new and vigorous life into a treaty or provision of it whose operation is suspended or which had ceased to exist. Some treaties, for instance, are automatically dissolved as the result of war; they are resuscitated by a single provision of the Treaty of Peace either immediately or under certain conditions to be fulfilled in the future. Paragraph 5 intends the same result with regard to declarations which might have been temporarily inoperative in consequence of the contemplated event of the dissolution of the Permanent Court and the termination of its Statute. Legal intercourse between States—as between individuals —abounds in examples of a contractual provision being dormant, and its operation suspended, pending the accomplishment of an event by an act of a party or some extraneous occurrence.

It is therefore of no consequence—in view of the specific provisions of Article 36, paragraph 5—whether the acceptance by Bulgaria of the Statute and therefore necessarily of Article 36, paragraph 5, is to be considered, in regard to the Bulgarian Declaration of 1921, as an act of ratification of a declaration previously made but subject to ratification, or as a renewal of a former declaration, or as an act equivalent to the making of a new declaration in the form and with the content of that of 1921 without following the requisite formalities of a declaration of acceptance. In whatever way the matter is viewed there is no doubt as to the clear expression of the sovereign will of Bulgaria—as given through her voluntary acceptance of the Statute, including Article 36, paragraph 5—an expression of will which supplied the consensual basis of a declaration of acceptance of the compulsory jurisdiction of the new Court. That act of acceptance, it may be added, is an implementation of the solemn Declaration made by Bulgaria on 9th October, 1948, of the acceptance of the obligations—of all the obligations—of the Charter of the United Nations. That Declaration reads, in part, as follows: "The People's Republic of Bulgaria hereby accepts without reserve the obligations arising from the United Nations Charter and promises to observe them as inviolable from the date of its accession to the United Nations" (*United Nations Treaty Series*, Vol. 223, p. 33). There could be no clearer expression of the will of Bulgaria to accept and observe the obligations of the Charter of the United Nations and of the Statute. Later in this Opinion we propose to examine in more detail the question of consent on the part of Bulgaria in connection with the alternative basis of the Judgment of the Court, namely, that the operation of paragraph 5 is limited to the original Members of the United Nations.

* * *

As stated we are unable to uphold the main Bulgarian contention according to which the dissolution of the Permanent Court had the effect of finally and irrevocably putting an end to the declarations attached to its Statute. Accordingly, we do not consider it necessary to examine, in detail, the general grounds by reference to which it was maintained that certain additional conditions must be implied in paragraph 5. Thus it was argued that unless the operation of paragraph 5 is limited to States who have become parties to the Statute prior to the dissolution of the Court, the Conference of San Francisco would have to be considered as having attempted a measure which it was legally quite incompetent to attempt and powerless to achieve. That measure would, it was contended, separate the binding force of the declaration from the Statute to which it was

legally attached by an indissoluble link and which had ceased to exist with the dissolution of the Permanent Court. It was further argued that by doing so the Conference of San Francisco would be attempting another drastic step which it was not legally entitled or competent to undertake, namely, to destroy the consensual character, grounded in the Statute, of the declarations of acceptance. We can find no merit in that line of argument.

There is a deceptive element of simplification in some such notion as that the Conference of San Francisco decreed certain measures or that it had no power to decree them—for instance, to deprive the declarations of acceptance of their consensual character or to attach them to something which had ceased to exist. The only step which the Conference did take and could take in this connection was to establish a text. That text did not bind any State. Any signatory of the Charter was free to refuse to ratify it. Any State subsequently contemplating membership of the United Nations was free to treat it as an offer which it was at liberty to accept or to reject. The validity and binding force of the Charter and any of its provisions are due not to the decision of the Conference of San Francisco but to the very will of the States which subscribed voluntarily to its obligations in 1945 and in subsequent years. Like any other Member of the United Nations, Bulgaria, in adhering to the Charter, of her own free will, accepted its obligations, including those of paragraph 5 of Article 36 of the Statute. In doing so, she supplied that very consensual link which, it is asserted, is essential to the declarations of the Optional Clause. She also supplied the consensual link necessary for the modification—however slight in the present case—of her Declaration of Acceptance.

The Statute could have provided that all the declarations, whenever made, which had already expired, should be considered as being revived and as continuing for another twenty years. This would have been an unusual and drastic provision. If a State had consented to it by adhering to the Charter, that would have been the inevitable result of its membership of the United Nations. The consensual link would have been supplied. Paragraph 5 of Article 36, like any other provision of the Statute, is a provision of a consensual character. There is no basis for the suggestion that it is essential for the structure of Article 36 that the consensual link be established only through paragraph 2, and not through any other paragraph. Thus, paragraph 1 of Article 36 establishes the consensual basis of the jurisdiction of the Court with regard to "all cases which the parties refer to it and on matters specially provided for in the Charter of the United Nations or in treaties and conventions in force". In a different sphere, Article 37 provides the consensual link with regard to the succession of the International Court of Justice to the jurisdiction of either the Permanent Court or any other tribunal

established by the League of Nations.

Admittedly, once the text of the Charter had been established by a decision of the Conference, the States which subsequently adhered to it had no option but to agree to all its provisions. However, this does not mean that they did not of their own volition agree, in consideration of the overwhelming advantages of Membership of the United Nations, to the various Articles of the Charter and the Statute. According to established and uniform international practice, a State adhering to an international instrument agrees—unless otherwise expressly provided by the instrument—to accept it as it stands. Moreover, as already stated, there was no innovation in the provision to which they thus elected to agree. It was, on any reasonable estimate, no more than a piece of machinery in the sphere of succession of international judicial organization. Members of the United Nations agreed that their declarations in respect of the Statute of the Permanent Court should continue, notwithstanding the dissolution of that Court, in respect of what was essentially and substantially the same Court. Paragraph 5 expressly laid down that the declarations shall continue "for the period for which they still have to run and in accordance with their terms". Except for their transference to the International Court of Justice, they were not modified. When compared with many other provisions of the Charter restricting the sovereignty of its Members, as enshrined in traditional international law, this was a provision of distinctly limited scope. It is sufficient to compare it, for instance, with the Articles of the Charter which lay down that Members are under a legal obligation to comply with decisions of the Security Council or that they must not resort to force, even if not amounting to war and even against States which are not Members of the United Nations, for the settlement of disputes. There is therefore, also from this point of view, no persuasive power in the argument advanced by Bulgaria and claiming that radical—or, indeed, absurd—legal consequences would result, on that account, from the interpretation of paragraph 5 in accordance with its clear terms.

* * *

For the reasons stated we cannot admit the contention of Bulgaria that the object and the basis of the Declaration of 1921 disappeared for the reason that the Permanent Court was replaced by what was essentially an identical judicial organ. Both the object and the basis of the Declaration remained the same; they were covered, in addition, by the clearly manifested purpose of the authors of the Statute to secure the continuity of the compulsory jurisdiction of the Court. Apart from considerations of a formal character, which it was the very purpose of paragraph 5 to eliminate, what was in

law and in fact the actual consequence of the dissolution of the Permanent Court in relation to the basis and the object of the Bulgarian Declaration of 1921 and of similar declarations? In so far as the Statute of the Permanent Court was the basis of the Declaration of 1921, that basis was hardly affected by the adoption of a new Statute which for all practical purposes was indistinguishable from that of the Permanent Court. The difference in the object of the two declarations as related to the Permanent Court and the International Court of Justice was, if possible, even more nominal: the object of both declarations was exactly the same, namely, to undertake obligations of compulsory judicial settlement with regard to what were, for all practical purposes, identical organs—an identity which corresponded to the articulate and frequently expressed purpose of the Conference to secure the continuity of international jurisdiction in the matter of obligatory judicial settlement.

We attach importance to upholding the spirit of the jurisprudence of the Court on the subject of succession in international organization. In the Advisory Opinion concerning the *International Status of South-West Africa*, the Court was confronted with the contention that the disappearance of the League of Nations, the organ charged with the supervision of the system of Mandates, put an end to the Mandate and the international obligations of the Mandatory. The Court rejected that contention. It held that the United Nations succeeded to the supervisory functions of the League of Nations. It did so although the Charter contained no express provision to that effect and although the United Nations and the League of Nations were different institutions. In the present case, most explicit and unqualified provision is made for the transfer of jurisdiction to what on any reasonable estimate must be regarded as an identical organ. It is also for that additional reason that we are unable to admit the accuracy of the contention that the object and the basis of the Bulgarian Declaration of 1921 disappeared with the dissolution of the Permanent Court.

* * *

These, then, are the two governing factors in the situation: the first is that the expression "which are still in force", when interpreted in its ordinary and accepted meaning, refers to termination as the result of expiration of time, and not to any extraneous event such as the dissolution of the Permanent Court. The second is that it is the very object of paragraph 5 to prevent the dissolution of the Permanent Court from exercising a destructive effect upon the existing declarations. The combined result of these two factors was, in the first instance, to maintain these declarations immediately and automatically with regard to the original Members of the United

Nations. Secondly, the result was to preserve them potentially with regard to the other declaring States until the time—a reasonable time—when they become parties to the Statute. The question of the reasonableness of the period involved is examined later on in this Opinion. In the present context it is sufficient to state that after the dissolution of the Permanent Court paragraph 5 did not cease to be operative in relation to the potential parties to the Statute. Neither, for the purposes of that paragraph, did their declarations. It was of the essence of the purpose of paragraph 5 to prevent any such result. The comprehensive language of that provision—"shall be deemed ... to be acceptances"—renders it useless to speculate on the exact nature of that continuing obligation whose operation remained in suspense so long as the declarant State did not become a party to the Statute. The expression "legal fiction" may or may not be helpful in that connection; so may the notion of a merely dormant obligation. The language and purpose of paragraph 5 render unnecessary any refinement of speculation on the subject.

It is of direct interest to the issue here examined to note the manner in which, at the beginning of 1947, a writer, who is regarded as a most authoritative commentator of the Statute, who was a Judge of the Permanent Court and who was present on behalf of that Court both in the Committee of Jurists at Washington and in the relevant Committee of the Conference of San Francisco, understood the operation of paragraph 5 of Article 36. Professor Manley Hudson stated, at that time, without alluding to any exception, that "under paragraph 5 of Article 36 previous declarations under Article 36 are to be deemed to be still in force, to the extent that they have not expired according to their terms, 'as between the parties to the present Statute' " (*American Journal of International Law*, Vol. 41 (1947), p. 10). He then enumerated the countries whose previous declarations were in force "down to the end of 1946". The enumeration included Thailand. There was no suggestion that the dissolution of the Permanent Court in April 1946 brought about the termination of the declaration of Thailand, which in fact did not become a member of the United Nations till December 1946. Professor Hudson, after mentioning some other States whose declarations expired during 1946 and were subsequently renewed, then referred to the declaration of Sweden which expired "during the year"—namely, as he stated, on August 16th, 1946—and was not renewed. Again there was no suggestion that the declaration of Sweden, who had not become a party to the Statute until 1947, expired simultaneously with the dissolution of the Permanent Court. It expired on 16th August, 1946.

* * *

Our conclusion is that we cannot, in the matter of the meaning of the terms "which are still in force", uphold an interpretation which departs from the accepted and ordinary use of terms; which is at variance with the admitted sense of corresponding terms in other provisions, immediately following or preceding, of the Statute; which introduces into paragraph 5 an extraneous factor which it was the very purpose of that provision to exclude; and which, if accepted, might have frustrated or considerably reduced the effect of paragraph 5. We hold that the terms in question refer not to the dissolution of the Permanent Court but to the validity, in point of time, of the declarations of acceptance on the date of the entry into force of the Charter or of the declarant State becoming a party to the Statute. For these reasons we must reject the First Preliminary Objection of Bulgaria in so far as it is based on that particular submission.

* * *

The second main ground by reference to which the First Preliminary Objection is upheld is that paragraph 5 of Article 36 applies only to original Members of the United Nations. Apart from one passing reference, in the course of the oral argument, in connection with the exclusion of former enemy States from the operation of paragraph 5, that particular ground was not invoked by Bulgaria. It was not argued by the Parties either in the written or in the oral proceedings.

There is nothing in paragraph 5, or in the preparatory work of the Conference of San Francisco, or in general principles of international law, or in the various provisions of the Charter to substantiate the view that that paragraph applies only to original Members of the United Nations in the sense of Article 3 of the Charter. Unless otherwise expressly provided, the provisions of the Charter apply in equal measure to every State which becomes a Member of the United Nations. In relation to Members of the United Nations, whatever may be the date of their adherence, no provision of the Charter can be *res inter alios acta* so as to bind some but not other Members. The proposition that the rights and obligations of the Charter vary in this respect as between the various Members of the United Nations is contrary to the entire structure of the Charter and the relevant principles, generally accepted, of international law on the subject. In practice, any such proposition, if accepted, would lead to serious consequences.

Neither can the suggestion be accepted that paragraph 5 does no more than to give expression to an agreement reached *inter se* between the States which participated in the Conference of San Francisco. The Charter nowhere embodies particular agreements between particular Members. Any such method would be wholly alien to its purpose and character. The provisions of the Charter are of general application. The same applies to the Statute, which is part of the Charter.

* * *

In our opinion there is no legal basis for the assertion that, while the original Members of the United Nations could bind themselves in the matter of the transfer of the declarations under paragraph 5 of Article 36 of the Statute, they could not bind other States subsequently adhering to the Charter. It is of the very essence of the Charter that its provisions—all its provisions—bind States which adhere to the Charter subsequent to its coming into force. If Article 36 had provided unconditionally for the obligatory jurisdiction of the Court—and not merely for the maintenance of existing declarations in accordance with their terms—it would be binding not only upon original Members but also upon all States subsequently adhering. It would not be *res inter alios acta* in relation to those States. That proposition is too fundamental to require elaboration. We consider it imperative that in deciding any particular controversy, which may be of a passing character, no countenance should be given to general propositions such as that there is a difference, with regard to any obligations of the Charter, between original Members and others; or that any provision of the Charter can be *res inter alios ácta* in relation to States subsequently adhering; or that the obligations of a judicial settlement must be interpreted by reference to standards more exacting than the interpretation of other obligations of the Charter.

There is not a single provision of the Charter which registers an agreement *inter se* between a limited number of Members of the United Nations. The Charter, in a number of articles—such as Articles 43 (2) and (3), 52-54, 64, 77 (2)—provides for the possibility of such agreements. But these agreements, while contemplated or permitted by the Charter, do not form part thereof. The provisions of the Charter are provisions, applicable to all, of a general legislative treaty which, it was expected, would in due course embrace all members of the international community. It cannot be admitted that a treaty of that character was used as an instrument for embodying private agreements of limited scope and duration between a limited number of Members of the United Nations.

As it was not known at the time of the signature of the Charter how many signatories would ratify it prior to the dissolution of the Permanent Court, it was possible that the number of States eventually bound by what is asserted to be a particular agreement embodied in paragraph 5 would be even smaller than that appearing on the face of that provision. Moreover, if the view is accepted that the operation of paragraph 5 is confined to States which ratified the Charter prior to the dissolution of the Permanent Court, the result would have been not only that that was a particular agreement between a limited number of Members of the United Nations; the result would have also been that that was an agreement valid and operative for a period of six months only—the period between October 1945 and April 1946. We do not find it possible to admit that a truncated agreement of that kind, between a limited number of States, can form part of a Charter laying down the foundations of a universal community of States organized in the United Nations.

There was no question at the Conference of San Francisco of the participant States imposing upon future Members of the United Nations any obligations against their will. What the authors of the Charter were entitled to do, and what in fact they did, was to provide that it should be a condition of membership—whether on the part of the original Members or of States subsequently adhering to the Charter—that the existing declarations in the matter of the Optional Clause should continue in accordance with their terms. All Members of the United Nations, whatever the date of their membership, were to be placed in this respect on an equal footing. The equality of rights and obligations is, unless otherwise expressly provided, a fundamental feature of the Charter. The act of becoming a Member of the United Nations, and thus a party to the Statute, was a consensual act of voluntary choice. But it was an act involving automatic consequences in respect of paragraph 5 of Article 36 —as well as in respect of other obligations of the Charter.

These considerations are specially pertinent when it is borne in mind that the authors of the Charter attached particular importance to using accurate terminology in designating the entities to which the provisions of the Charter were intended to apply. Great care was taken to distinguish, whenever necessary, between "original Members" and "signatory Members" on the one hand and Members of the United Nations" on the other. For instance, Article 3 of the Charter contains a definition of what are "original Members". Article 110 (4) refers explicitly both to "States signatory to the present Charter" and "original Members of the United Nations". Article 107 refers to a State which is "a signatory to the present Charter"; Article 110 (1) again refers to "signatory States". It would have been easy for the authors of paragraph 5—who, it is

asserted, were fully cognizant of the realities of the situation—to use the words "original Members of the United Nations" or "States signatory to the present Charter" instead of "parties to the present Statute". They did not do so. The inference, which is not a strained one, is that they considered these asserted realities to be irrelevant. The Court cannot speculate on the question whether the signatories of the Charter did or did not foresee the long chain of political events which delayed the admission of a number of States to the United Nations. Neither, subject to any considerations of a reasonable application of the Statute, can the Court engage in surmises as to the duration of the delay which the signatories may or may not have considered proper in this connection.

The words "parties to the Statute" occur constantly in the Statute—to mention only Articles 5 (1), 35, 36 (2), 37. All these Articles refer to all the parties to the Statute at any time. It is not permissible to interpret them in relation to paragraph 5 of Article 36, as meaning "present parties to the present Statute". It will therefore be noted that to admit the contention that the operation of paragraph 5 is limited to original Members of the United Nations would involve yet another alteration of the wording of that provision. It would involve a substantial change in the existing text of paragraph 5. The words "as between the parties to the present Statute" would have to be altered to read "as between the present parties to the present Statute".

* * *

Admittedly, unlike in the case of the original Members of the United Nations, the operation of paragraph 5 in relation to States not represented at the Conference could not be immediate and automatic. That did not signify that those States were excluded from its operation. What it meant was that their declarations would be transferred to the International Court of Justice only when they became parties to the Statute. Professor Manley Hudson, to whom reference is made in a previous part of the present Opinion, drew attention to this aspect of the question when writing early in 1946. He pointed out that "the new paragraph 5 was inserted with the purpose of preserving some of the jurisdiction of the Permanent Court for the new Court". After giving the names of the eleven States which had deposited ratifications of the Charter by 24th October, 1945, and whose declarations made under Article 36 were in force, he continued: " 'As between the parties to the Statute', the provision applies to them." He then gave the names of ten other States who participated in the Conference and to whose declarations "the provision will similarly apply from the dates of their deposits of ratifications". He added: "On the other hand, declarations made

by the following States under Article 36, which were also in force on October 24th, 1945, will not be covered by the provision unless these States become parties to the new Statute: Bulgaria, Finland, Ireland, Portugal, Siam, Sweden, and Switzerland" (*American Journal of International Law*, Vol. 40 (1946), p. 34)—a statement showing clearly that in the view of the learned writer those States were to come within the ambit of the operation of paragraph 5 as soon as they became parties to the new Statute.

* * *

It is of interest to note here a statement on the subject by the Australian representative at the First Committee of Commission IV of the Conference of San Francisco—a statement which, unless read carefully, may give the impression of lending some support to the view that the operation of paragraph 5 was intended to be limited to original Members of the United Nations. His contribution to the discussion was preceded by those of the representatives of Canada and the United Kingdom. The first, in referring to the proposed paragraph 5, said: "In view of the new paragraph quoted above, as soon as States sign the Charter, the great majority of them would be automatically under the compulsory jurisdiction of the Court because of existing declarations" (*United Nations Conference on International Organization, Documents*, Vol. 13, pp. 247-248). According to the statement of the representative of the United Kingdom, "some forty States would thereby become automatically subject to the compulsory jurisdiction of the Court" (*ibid.*, p. 249). The representative of Australia then suggested a correction of that estimated number of States which would become automatically bound by the compromise effected through paragraph 5. In the words of the Record of the Committee: "He desired to call attention to the fact that not forty but about twenty States would be automatically bound as the result of the compromise. In this connection he pointed out that of the fifty-one States that have adhered to the Optional Clause, three had ceased to be independent States, seventeen were not represented at the Conference, and about ten of the declarations of other States had expired" (*ibid.*, p. 266). That statement accurately confined the automatic and immediate operation of paragraph 5 to the States represented at the Conference and ratifying the Charter. The declarations of other States were to be transferred to this Court as soon as they became parties to its Statute. In their case there would be no automatic and immediate transfer of declarations.

It would thus appear that the preparatory work of the Conference, far from casting doubt upon the applicability of paragraph 5 to

States not represented at the Conference, confirms its operation in relation to them as soon as they become parties to the Statute.

However, the records of the Conference show more directly—in a manner which leaves no room for doubt—that the operation of paragraph 5 of Article 36, as well as that of Article 37, was not intended to be limited to States participating in the Conference of San Francisco. It is sufficient to quote here literally the full text of the relevant part of the Report of the Rapporteur of the Main Committee IV/1 (*United Nations Conference on International Organizations, Documents*, Vol. 13, pp. 384-385). The text of that Report speaks for itself. The Rapporteur said with regard to Article 37:

> "*(a)* It is provided in Article 37 of the draft Statute that where treaties or conventions in force contain provisions for the reference of *disputes* to the old Court such provisions shall be deemed, as between the members of the Organization, to be applicable to the new Court."

It will thus be seen that with regard to Article 37 its operation was to be automatic, "as between the members of the Organization", with no distinction being made between the date of their adherence to the United Nations. With regard to paragraph 5 of Article 36, the language of the Report is even more specific:

> "*(b)* It is provided in paragraph 4 [now paragraph 5] of Article 36 of the draft Statute that *declarations* made under Article 36 of the old Statute and still in force shall be deemed as between parties to the new Statute to apply in accordance with their terms to the compulsory jurisdiction of the new Court."

Nothing could express more clearly the intention that paragraph 5 of Article 36 should be operative "as between the parties to the new Statute", which can only mean States which become Parties to the new Statute at any time.

The Rapporteur, after having thus examined the position of the Members of the United Nations and of the Parties to the Statute, proceeded as follows:

> "*(c)* Acceptances of the jurisdiction of the old Court over disputes arising between parties to the new Statute and other States, or between other States, should also be covered in some way, and it seems desirable that negotiations should be initiated with a view to agreement that such acceptances will apply to the jurisdiction of the new Court. This matter cannot be dealt with in the Charter or the Statute, but it may later be possible for the General Assembly to facilitate such negotiations."

Accordingly, there seems to be no room for doubt that the only acceptances, with regard to which future negotiation and agreement

were required were those relating to "disputes arising between parties to the new Statute and other States, or between other States". No such negotiations and agreements were required with regard to acceptances in cases of disputes when both States were to become parties to the Statute. A State which became a party to the Statute ceased to belong to the category of "other States," and no negotiations with that State were required. Article 36, paragraph 5, became directly applicable to it.

* * *

The final Report, as here literally cited, is—in our view—conclusive on the subject. However, it is instructive for its fuller understanding to give some details of the history of the drafting of the provision in question. In particular, it is useful to draw attention to the successive drafts of Article 37, which was intended to serve a general purpose similar to that underlying paragraph 5 of Article 36.

The First Committee of Commission IV in examining the problem of transferring to the present Court the provisions relating to the reference to the Permanent Court in the treaties and conventions in force at first adopted the following text of Article 37 on June 7th, 1945:

> "Whenever a treaty or convention in force between the parties to this Statute provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice established by the Protocol of December 16, 1920, amended September 14, 1929, the matter shall be referred to the International Court of Justice."

However, on the recommendation of the Advisory Committee of Jurists of the San Francisco Conference the First Committee adopted, on June 14th, 1945, a revised text, which constitutes Article 37 of the present Statute and which is as follows:

> "Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall *as between the parties to the present Statute* be referred to the International Court of Justice."

The considerations which led to the adoption of the recommended revision are explained in the Minute of the First Committee as follows:

> "The Advisory Committee of Jurists in considering Article 37 recommended changes whereby a treaty or convention which refers a matter to a tribunal instituted by the League of Nations or to the Permanent Court of International Justice should be construed,

> as between the parties of the present Statute, to refer the matter to the International Court of Justice. The Article as originally approved by the Committee provided that only treaties between parties to the Statute should be so construed. The Committee agreed that the elimination of this limitation was desirable since Article 37 of the Statute now envisages all treaties, which *will make it unnecessary to negotiate* a new treaty in order to refer a case to the Court." (*Ibid.*, p. 460.)

It was thus made clear that, so far as parties to the Statute were concerned, no additional negotiations and agreements were required. The negotiations with a view to agreement which were at first thought to be indispensable in regard to the subject-matter of Article 37 were made unnecessary by the adoption of precisely the same formula—"shall, as between the parties to the Statute, be..."—for Article 37 as is embodied in Article 36, paragraph 5, with regard to the existing declarations of acceptance. All this confirms the view that paragraph 5 of Article 36 was intended to apply to all parties to the Statute, non-signatory as well as signatory States, without need of negotiation for any special agreement. In relation to both provisions the requirement of consent is supplied by the State concerned accepting membership of the United Nations—an event which makes it a party to the Statute—and by its formal undertaking to observe the obligations of the Charter, of which the Statute is an integral part.

* * *

The case of Thailand is directly instructive on the issue here examined as well as with regard to the asserted effect of the dissolution of the Permanent Court. For reasons which are not relevant in the present context, Thailand did not participate in the Conference of San Francisco. On 3rd May, 1940, she had renewed for a period of ten years her previous declaration of acceptance. She did not become a Member of the United Nations till 16th December, 1946, that is to say, seven months after the dissolution of the Permanent Court. According to the view which excludes non-participating States from the operation of paragraph 5, the Declaration of Thailand, made in 1940 for ten years, became a dead letter on the date of the dissolution of the Permanent Court, namely, on 18th April, 1946. This was not the view of Thailand. She considered herself bound by the Declaration of 1940. Accordingly, she did not deem it necessary to take any action prior to the expiration of the full period of ten years as laid down in her Declaration of 1940. When that period expired, she renewed, as from 3rd May, 1950, her acceptance for another ten years. According to the view which restricts the operation of paragraph 5 to the original

Members of the United Nations, that attitude of the Government of Thailand was due to a mistaken estimate of the legal situation. However, it was an attitude based on a view which met with no contradiction. Moreover, it is significant that the action taken by Thailand was undertaken regardless of any existing controversy. It was an attitude which, having regard to the absence of other State practice bearing directly on the subject, is of particular weight. We have already referred to the analysis undertaken by Professor Hudson and confirming that Thailand—together with some other States who were not original Members of the United Nations—was covered by the provisions of paragraph 5 of Article 36.

* * *

In this connection reference must be made to the assertion—which involves an important issue of interpretation—that the object of Article 36, paragraph 5, must be limited to original Members of the United Nations on account of the realities which confronted the States participating at the Conference of San Francisco and of which they must be presumed to have had knowledge. It is asserted that some such limitation must be implied in that paragraph for the reason that while the original Members were able to assess their own situation as it existed at that time and their future attitude to the obligatory jurisdiction of the Court, they were wholly unable to do so with regard to States which might adhere in the future.

We find it difficult to inderstand what effect any uncertainty as to the future position of those States could have in the matter of continuing, on a footing of equality with other declarant States, their obligations under their declarations of acceptance. It will be noted that, by virtue of Article 93 of the Charter, those States could not subsequently become parties to the Statute without the concurrence of the Security Council and of the General Assembly.

Undoubtedly, the task of interpretation must not be confined to a literal interpretation of the bare letter of a provision. When a treaty is not clear the Court is entitled and bound to take into consideration the circumstances surrounding its adoption. However, we consider that it is not within the province of interpretation to re-write a treaty, by inserting into it extraneous conditions, in reliance on realities of which, it is asserted, the parties were fully cognizant and to which they were in the position to give effect by a form of words of utmost brevity if in fact that had been their intention. They could have done it in the present case by saying in paragraph 5, instead of "as between the parties to the present Statute", "as between the original Members of the United Nations".

This they did not do and, clearly, they did not wish to do. Their intention, as shown at the beginning of this Opinion, was to maintain the maximum—not the minimum—of existing declarations. It is particularly appropriate in this connection to draw attention to the principle of interpretation to which the Court gave emphatic expression in the Advisory Opinion on the *Acquisition of Polish Nationality*: "The Court's task is clearly defined. Having before it a clause which leaves little to be desired in the nature of clearness, it is bound to apply this clause as it stands, without considering whether other provisions might with advantage have been added to or substituted for it." (*P.C.I.J., Series B*, No. 7, p. 20.)

Moreover, a closer examination of the realities in question shows that the problem with which, it is asserted, the authors of the Statute were confronted hardly existed. What were these States whose uncertain status and disposition in the distant future made it imperative to exclude them—not by the normal process of direct exclusion but by the indirect method of silence in relation to an otherwise comprehensive provision—from the operation of paragraph 5 of Article 36? These States were nine in number: Bulgaria, Estonia, Finland, Ireland, Latvia, Portugal, Sweden, Switzerland and Thailand. All other declaring States whose declarations had not expired participated in the Conference of San Francisco and became subsequently original Members of the United Nations. As to the nine States referred to above it may be said, in the first instance, that their future attitudes on the question were irrelevant if, contrary to our view, the binding force of their declarations lapsed in any case with the dissolution of the Permanent Court.

However, it is desirable to consider the asserted position of uncertainty with regard to the nine States referred to above. In all the circumstances, of which the Court must take judicial notice, the position of Estonia and Latvia created no problem. The declarations of Ireland, Sweden and Switzerland were due to expire before long and they did in fact expire before those States became parties to the Statute of the International Court of Justice. There thus remained three States—Bulgaria, Portugal and Thailand—whose future position may have given rise to uncertainty. With regard to these States, any dangers of their premature adherence to the Statute or any kind of uncertainty were fully met by the fact that in order to become parties to the Statute they would have either had to be admitted to the United Nations or comply with the conditions determined by the Security Council and the General Assembly in accordance with Article 93 (2) of the Charter. In our view there is no room for an interpretation which alters the terms of paragraph 5 and reduces its effectiveness by reference to realities of such small compass.

These considerations also supply an answer to the contention—referred to by Counsel for Bulgaria and confirmed by the records of the Conference of San Francisco—that the draftsmen of the Charter intended to exclude enemy States from the benefits of immediate access to the new Court. However, that intention was not to pursue a policy of permanent ostracism. As shown in the "transitional security arrangements" of Article 107 of the Charter, the intention was to prevent ex-enemy States from obstructing measures connected with the liquidation of the war. To achieve that object, it is not necessary to maintain the much wider, and inaccurate, proposition to the effect that the operation of paragraph 5 was intended to be limited to the original Members of the United Nations. So far as the International Court of Justice was concerned, the object of excluding ex-enemy States from immediate participation in the Court was achieved by laying down that the transfer of the declarations shall operate only in relation to the "parties to the present Statute"—a condition which could not be fulfilled without the concurrence, in due course, of the Security Council and the General Assembly. Any notion, said to have been entertained in 1945, of permanent ostracism of enemy States became a matter of the past when, in 1947, the applications of a number of them were considered by the Security Council and the General Assembly. On that occasion the stated reason for which the application of Bulgaria was opposed by some Governments was not that she was an ex-enemy State but, *inter alia*, that she had failed to comply with her obligations, contracted in the Treaty of Peace of 1947, to respect human rights and fundamental freedoms. (*Security Council, Official Records*, Second Year, 1947, No. 81, p. 2132.)

* * *

Reference may be made in this connection to the Resolution 171 (II) adopted by the General Assembly on 14th November, 1947. In that Resolution the General Assembly "draws the attention of the States *which have not yet accepted* the compulsory jurisdiction of the Court in accordance with Article 36, paragraphs 2 and 5, of the Statute, to the desirability of the greatest possible number of States accepting this jurisdiction with as few reservations as possible" (Resolution 171 (II)). The italicized words "have not yet accepted" are of particular interest. They suggest that in November 1947, in the view of the General Assembly, the force of paragraph 5 had not yet been spent; on that view paragraph 5 had still some application notwithstanding the dissolution of the Permanent Court. It was in fact acted upon by Thailand when the time came to renew her declaration. It may be added that this part of the Resolution is also of interest inasmuch as it is addressed not to Members of the United Nations, or to States Members, but to

States—an indication that in this matter action by reference to paragraphs 2 and 5 of Article 36 was not limited to original Members or even existing Member States. It is clear from the terms of that Resolution, when read in its entirety, as well as from the general practice of the United Nations, that particular care was taken in the choice of terminology in this respect—namely, whether a Resolution is addressed to a State, or a Member State, or a Signatory.

* * *

The preceding considerations show that having regard to its wording and the history of its adoption, as well as to applicable principles of international law, the operation of paragraph 5 of Article 36 is not limited to the declarations of those States which participated in the Conference and which became parties to the Statute when the Charter entered into force on 24th October, 1945. It is applicable to all declarations which were made under Article 36 of the Statute of the Permanent Court and the time-limit of which by their own terms *ratione temporis*, had not expired. It is applicable to all declarations which, their duration not having been terminated by expiration of time, "are still in force" at the time when the declarant State by its own free will becomes a party to the new Statute. For these reasons, we feel bound to dissent from the Judgment of the Court in so far as it adopts the view that paragraph 5 of Article 36 applies only to original Members of the United Nations and does not therefore apply to the Bulgarian Declaration of 1921.

* * *

For the reasons stated, we are unable to accept the view that paragraph 5 of Article 36 is inapplicable to Bulgaria. We are unable to accept that view either by reference to the ground, relied upon by Bulgaria, that the dissolution of the Permanent Court finally and irrevocably deprived her Declaration of 1921 of all legal force, or by reference to the ground, not invoked by Bulgaria and not argued by the Parties, that paragraph 5 of Article 36 applies only to the original Members of the United Nations. In our opinion that provision of the Statute clearly applies to Bulgaria. By adhering to the Charter and, in addition, by formally and expressly declaring her intention and determination to respect all the obligations of the Charter—of which the Statute is an integral part—Bulgaria gave her consent to the jurisdiction of the Court as confirmed and continued by that provision.

The jurisdiction of the Court is based on the consent of States. That principle is too firmly established in the jurisprudence of the Court and in international law in general to require confirmation by reference to precedents or otherwise. Their authority is beyond challenge. However, such precedents are altogether irrelevant in the present case. The required consent was given by Bulgaria when, on becoming a Member of the United Nations, she accepted the obligations of Article 36, paragraph 5, together with other obligations of the Charter and of the Statute. There is no suggestion that, without her consent, she should be considered bound by her Declaration of 1921 in relation to the International Court of Justice.

If—as is our view in the present case—paragraph 5 of Article 36, when interpreted in accordance with the ordinary meaning of its terms and its clear object as intended by its authors, must be held to be applicable to Bulgaria, her consent is directly established by her adherence to the Charter. It was not necessary that that consent should be given yet another and additional expression. No such additional consent was required with regard to the numerous and more substantial obligations of the Charter by which Bulgaria became bound on becoming a Member of the United Nations. We are unable to accept the view that obligations of judicial settlement of disputes on the basis of international law are so drastic and exceptional as to necessitate such double consent—especially with regard to a provision which, far from creating a new obligation either in substance or in duration, is limited to the transfer, to what is essentially and indisputably an identical judicial organ, of existing declarations "for the period which they still have to run and in accordance with their terms". The meaning and the purport of paragraph 5 of Article 36 must not be confused with paragraph 2 of the same Article which embodies the system of the Optional Clause. The two paragraphs cover two different situations. Paragraph 5, which maintains in force declarations already made, operates automatically by virtue of the declarant State becoming a party to the Statute; no additional consent is required in that case. Paragraph 2 requires consent expressly declared.

Accordingly, we consider that it is irrelevant in this connection to invoke the unchallenged principle that the jurisdiction of the Court must be invariably based on the consent of the parties and that it must not be presumed. The requirement of consent cannot be allowed to degenerate into a negation of consent or, what is the same thing, into a requirement of double consent, namely, of confirmation of consent already given. The Washington Committee of Jurists, mentioned at the beginning of this Opinion, envisaged

the necessity of providing, by way of some special clause, for the maintenance of existing declarations. One of its sub-Committees proposed that "provision should be made at the San Francisco Conference for a special agreement for continuing these acceptances in force for the purpose of this Statute" (*United Nations Conference on International Organization*, Vol. 14, pp. 288-289). That suggested provision assumed at the Conference of San Francisco the form of the existing paragraph 5 of Article 36. It is difficult to imagine that, in addition to that provision, paragraph 5 envisaged the necessity of a further, and more specific, agreement.

* * *

We must now consider whether there is some other legal ground, independent of the interpretation of the terms of paragraph 5 of Article 36, which places an obstacle to its application to Bulgaria in the circumstances of the present case. In particular, having regard to some considerations underlying the Judgment of the Court, it is necessary to consider whether that provision, whose meaning in itself leaves no room for doubt, can be applied consistently with the requirement of reasonableness. Can it be so applied in relation to an application brought before the Court twelve years after the entry into force of the Charter and eleven years after the dissolution of the Permanent Court and the establishment of the International Court of Justice? To what extent can it accurately be maintained that it is that factor of reasonableness which must decisively influence the interpretation of paragraph 5 of Article 36 in the sense that unless that provision is held to have been intended to apply only to the original Members of the United Nations there was a danger that other potential parties to the Statute might be in a position to act upon paragraph 5 at an unreasonably distant future far removed from the establishment of the International Court of Justice?

In applying a legal provision, the Court must not ignore circumstances of fact relevant to the test of reasonableness. Such facts, if relevant, might defeat the claim of the applicant Government to a remedy by the Court although there is nothing in paragraph 5 of Article 36 as such to defeat it. However, we have been unable, after full consideration, to come to the conclusion that in the present case any such circumstances are sufficiently weighty to deprive the applicant State of a remedy to which it may otherwise be entitled.

With regard to the duration of the operation of paragraph 5, it would appear from that provision and the reasons which prompted

its adoption that it was intended to be of a transitional character. Undoubtedly, there is inherent in the very notion of transition a certain limitation of time. Thus it would be unreasonable to maintain that the period of transition from the Permanent Court to the International Court should last half a century. To contend that would be as unreasonable as to maintain that it should last only six months, for instance, for the period between the coming into force of the Charter in October 1945 and the dissolution of the Permanent Court in April 1946. The question bearing on the effect of the lapse of half a century can be disregarded for the reason that the extravagance of an affirmative answer is due largely to the exaggeration inherent in the question.

It is consistent with enlightened practice and principle to apply the test of reasonableness to the interpretation of international instruments—a test which follows from the ever present duty of States to act in good faith. However, the test of reasonableness must itself be applied in a reasonable way; it must not be applied by reference to contingencies which are in themselves of a manifestly exaggerated character; it must not be applied by reference to examples bordering on absurdity. If a State invokes a provision, fully grounded in the treaty, after twelve years from the date of its adoption, it is contrary to the true test of reasonableness to defeat its claim on the ground that it would be wholly unreasonable for it to invoke the treaty after fifty or one hundred years. If the manner in which a State invokes a treaty in a particular case is reasonable, it is unreasonable to suggest that the interpretation on which it relies might in extreme cases produce unreasonable results. The Court is not confronted with a situation arising in 1995. It is faced with a situation which arose in 1957 when Israel invoked the jurisdiction of the Court. That situation is determined by the entry into force of the Charter and the Statute in 1945; by the Bulgarian application for admission to the United Nations in 1947; by her solemn declarations, made in 1948 and subsequently reiterated, accepting all the obligations of the Charter and the Statute; and by her admission to the United Nations in 1955. It is true that the Bulgarian Declaration of 1921 is now the last declaration to which there apply the provisions of paragraph 5 of Article 36. But this cannot properly be a reason for refusing to give effect to it. The periods involved are only twelve years since the Charter came into force and only two years since Bulgaria became a Member of the United Nations. International jurisprudence—including that of the Court itself—shows instances of application of provisions of treaties concluded in the more distant past.

The Bulgarian Government at no time contended that the Declaration of 1921 had escaped its notice—though it explained

that it deemed it unnecessary to take steps for releasing itself of the operation, if any, of the Declaration.

* * *

It may appear singular, at first sight, that the Bulgarian Declaration of 1921, which had ceased to be operative in relation to the Permanent Court of International Justice on the dissolution of that Court, should be deemed to be "still in force" ten years after the entry into force of the Charter—when Bulgaria became a Member of the United Nations and *ipso facto* a party to the Statute of the International Court. However, the delay in its admission was due to external circumstances. In view of the true sense of the phrase "which are still in force", that delay is not relevant to the question of the applicability of Article 36, paragraph 5. That provision is clearly not subject to any time-limit. Bulgaria first applied for membership in 1947. The international situation prevented her early admission and delayed her becoming a party to the new Statute. This is an extrinsic cause which cannot affect the legal force of Article 36, paragraph 5. If Bulgaria had become a Member of the United Nations at the end of 1946, or in 1947, or even 1950, the transitional provisions of the clear terms of paragraph 5 would fully apply to her. We acknowledge that there is room for the view that on and after 1950 the transition may be held to have been accomplished; that by that time, with the exception of declarations of indefinite duration, practically all declarations covered by paragraph 5 had lapsed or been replaced by new declarations; and that the continuity of the Permanent Court was no longer an object to be fulfilled. To that extent it might be contended, without obvious exaggeration, that it is unreasonable to resuscitate the operation of paragraph 5 after that period.

On the other hand, it is of importance not to exaggerate the degree of unreasonableness involved in the contrary solution. There is nothing manifestly unreasonable in itself in invoking in 1956 the Bulgarian Declaration of 1921—a declaration which in 1945 was given a new potential lease of life in the Statute of the Court and which was confirmed by the entry of Bulgaria into the United Nations in 1955 and, in the preceding years, by her repeated affirmation of the intention to be bound by the resulting obligations. Moreover—and this appears to be a material consideration with regard to that aspect of the case—it seems to us inadmissible that a State should be deprived of its rights under an international instrument for the reason that its object has been substantially, though not fully, realized. So far as that State is concerned, it is *its* interest in that instrument which constitutes its main object.

It matters little to that State—in the present case the applicant State—that most or all other parties have already benefited from it and acted upon it. Unless the interested State has been guilty of negligence or bad faith in pursuing its legal rights, it is entitled to expect that the treaty will be given effect.

* * *

For similar reasons there is an obvious objection to introducing into the interpretation of paragraph 5 the extraneous factors of the dissolution of the Permanent Court and of the limitation of its scope to the original signatories of the Charter and justifying such interpretation by asserting that its results constitute all that the framers of the Statute could have reasonably hoped to have achieved. In our view the reasonable expectation is one which results from the interpretation of paragraph 5 in accordance with its terms without adding extraneous considerations. There is a lack of cogency in the suggestion that the result of the interpretation thus adopted by way of introduction of extraneous elements is, today, to exclude in effect only a small number of States—perhaps merely one—from the operation of that provision. The legal right of a State must not be disregarded for the reason that it is the right of one State only. Moreover, as already stated, for all the draftsmen of the Statute knew, the effect of adopting as part of paragraph 5 extraneous tests, such as the dissolution of the Permanent Court or the requirement of original membership of the United Nations, might have been such as to exclude a considerable number of States.

Above all, in judging the reasonableness or otherwise of the reliance by a State on the terms of an international instrument, some regard must be had to the nature of the right invoked. It is one thing for the Court to cut down, by reference to the test of reasonableness, a substantive claim which causes unfair hardship or which, through an abusive reliance upon a legal right, puts in jeopardy important interests of the defendant State. It is another thing to deny, by reference to the test of reasonableness, a demand, based on a valid instrument, that the principal judicial organ of the United Nations should adjudicate upon a controversy by reference to international law. A State ought not to be deemed to be acting improperly if in reliance—even if it be rigid reliance—upon a valid instrument it asks the Court to declare its competence to administer international law. It is only in most exceptional circumstances that a demand, based on a valid treaty, for the exercise of the primary function of the Court to administer justice based on law can be held to be unreasonable. These exceptional circumstances may include the operation of the rule of extinctive prescription after a

prolonged period of inaction on the part of the applicant State. No such ground has been invoked here.

In the matter of its jurisdiction it is fundamental that only the legitimate rights of the parties can supply a basis for the decision of the Court. In this matter we feel bound to adhere to the past jurisprudence of the Court which, while consistently treating the element of consent as the decisive factor, has applied the test of reasonableness as a motive not for defeating but for upholding its jurisdiction. It did so, early in the history of the Permanent Court, when in the *Mavrommatis Palestine Concessions* case it considered that its jurisdiction was not defeated by the fact that the negotiations, required by the Mandate, had taken place not between Governments but between a Government and the interested private party (*P.C.I.J., Series A, No. 2*, pp. 13-15). It did so, on a number of occasions, when it interpreted consent to its competence to decide whether there was a breach of international obligation as implying consent to its competence to award compensation for any breach of international obligation (case of *Certain German interests in Polish Upper Silesia, P.C.I.J., Series A, No. 7*, pp. 23, 25; *Corfu Channel* case, *I.C.J. Reports 1949*, p. 26). It frequently acted in the same way when it interpreted the conduct and the pleadings of the parties as constituting implied consent to its jurisdiction (*Rights of Minorities in Polish Upper Silesia, P.C.I.J., Series A, No. 15*, pp. 23, 24). We see no reason for departing in the present case from that practice of the Court.

* * *

We deem it necessary to examine a contention which, although not referred to in the Judgment of the Court, has acquired some slight prominence and which bears on the interpretation of paragraph 5. That contention is that the words in the concluding passage of paragraph 5—"for the period for which they still have to run"—imply that that paragraph covers only those declarations which contain a time-limit of their validity and that therefore it does not embrace declarations, such as that of Bulgaria, whose duration is not definitely circumscribed by a limited period of time. While that assertion did not appear either in the oral submissions or in the Conclusions of Bulgaria, it found some place in her written Preliminary Objections. From the point of view of purely conceptual interpretation—for it is on that basis that the argument rests—the form of words of the concluding passage as cited may cover declara-

tions of indefinite duration; for, in strict logic, these have still to run for such indefinite time as they may last. However, in our view these words can have only one meaning, namely, that which is conveyed by the clear purpose which underlay them: in providing for the transfer to the present Court of the existing declarations, the Statute cannot be presumed to have intended that they should continue regardless of the period for which they have still to run. They were to be maintained "for the period which they still have to run and in accordance with their terms". If there had been an intention to exclude from the purview of paragraph 5 declarations of unlimited duration, that intention could have been expressed by the addition, at the end of the paragraph, of a simple form of words: "This provision does not apply to declarations which contain no time-limit of their duration."

It is not necessary to examine further this particular contention except to the extent of drawing attention to its consequences. Its result would have been, in 1945, to cut by one half the number of States otherwise contemplated by a provision intended to secure the maintenance of the existing jurisdiction of the Court. It would have eliminated declarations which contain no provision for denunciation as well as those which, although originally containing a provision for possible denunciation, had, by their terms, been transformed into declarations without a time-limit. The latter were declarations of a considerable number of States, such as those of the United Kingdom and Iran which, although expressed initially for a fixed number of years, contained a clause whereby subsequent to that period the declarations were to run for an indefinite period, until denounced. After the expiration of the initial period, the duration of these declarations was indefinite. According to the contention here examined they, too, would have to be considered as having remained outside the operation of paragraph 5 and therefore extinguished as the result of the dissolution of the Permanent Court. Thus the declaration of Iran of 2nd October, 1930, was for a period of six years and, after expiration of that period, until notification of abrogation. If the interpretation excluding declarations of indefinite duration from the operation of paragraph 5 were correct, then the Iranian Declaration was of no validity when on 26th May, 1951, the Government of the United Kingdom lodged with this Court an application invoking that declaration in the case of the *Anglo-Iranian Oil Company*. No such ground of invalidity was advanced by the Iranian Government or referred to by the Court.

Moreover, if the interpretation contended for had been adopted by the Court in the present case, its result would be to invalidate, as from the date of the Judgment of the Court, the existing declarations of a number of States—such as Colombia, Haiti, Nicaragua and Uruguay.

It would be difficult to comprehend the *ratio legis* of the provision in question so unexpectedly expressed by verbal indirection. It is hardly probable that the occasion for maintaining the jurisdiction of the Court was used by the authors of the Statute as an opportunity for freeing a number of States of what has been described as the unreasonable burden of declarations of unlimited duration and for cutting down by one half the number of declarations which would otherwise naturally be in the contemplation of paragraph 5.

It will be noted that the effect of the exclusion from the scope of the operation of paragraph 5 of declarations which are in form or in substance of unlimited duration as well as declarations of States which did not participate in the Conference of San Francisco would be to reduce to seven the number of declarations covered by that paragraph. These would be the declarations of Argentina, Belgium, Bolivia, Brazil, Denmark, the Netherlands and Norway. This does not seem to be an acceptable interpretation of a provision the intention of which was to maintain the jurisdiction of the Permanent Court as a significant measure of compromise between the obligatory and the voluntary jurisdiction of the Court.

* * *

For the foregoing reasons we are of the opinion that the First Preliminary Objection of Bulgaria must be rejected and that the Court should have proceeded to examine and to adjudicate upon the other Preliminary Objections.

(Signed) Hersch LAUTERPACHT.
(Signed) WELLINGTON KOO.
(Signed) Percy C. SPENDER.