INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE TEMPLE OF PREAH VIHEAR

(CAMBODIA *v.* THAILAND)

PRELIMINARY OBJECTIONS

JUDGMENT OF 26 MAY 1961

1961

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU TEMPLE DE PRÉAH VIHÉAR

(CAMBODGE c. THAÏLANDE)

EXCEPTIONS PRÉLIMINAIRES

ARRÊT DU 26 MAI 1961

This Judgment should be cited as follows:

"Case concerning the Temple of Preah Vihear (Cambodia v. *Thailand), Preliminary Objections, Judgment of 26 May 1961: I.C.J. Reports 1961, p. 17."*

Le présent arrêt doit être cité comme suit:

« *Affaire du temple de Préah Vihéar (Cambodge c. Thaïlande), Exceptions préliminaires, Arrêt du 26 mai 1961: C. I. J. Recueil 1961, p. 17.* »

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INTERNATIONAL COURT OF JUSTICE

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26 May 1961

CASE CONCERNING THE TEMPLE OF PREAH VIHEAR

(CAMBODIA *v.* THAILAND)

PRELIMINARY OBJECTIONS

Compulsory jurisdiction.—Declaration of 1950, deposited with Secretary-General of United Nations in accordance with Statute of International Court of Justice, "renewing" declarations of 1929 and 1940 recognizing as compulsory jurisdiction of Permanent Court.—Article 36, paragraph 5, of Statute.—Decision in Israel *v.* Bulgaria *case.—Distinction between present case and that of* Israel *v.* Bulgaria. *—Renewal of an existing, and revival of a lapsed, declaration.—Error and consent.—Forms and formalities as to declarations of acceptance. —Rules of interpretation of legal instruments.—Communications made under Article 36, paragraph 4, of Statute.—Effect of Thailand's 1950 Declaration of Acceptance.*

JUDGMENT

Present: President WINIARSKI; *Vice-President* ALFARO; *Judges* BADAWI, MORENO QUINTANA, WELLINGTON KOO, SPIROPOULOS, Sir Percy SPENDER, Sir Gerald FITZMAURICE, KORETSKY, TANAKA, BUSTAMANTE Y RIVERO, MORELLI; *Registrar* GARNIER-COIGNET.

In the case concerning the Temple of Preah Vihear,

between

the Kingdom of Cambodia,

represented by

H.E. Truong Cang, Member of the *Haut Conseil du Trône*,

as Agent,

assisted by

Hon. Dean Acheson, Member of the Bar of the Supreme Court of the United States of America,

M. Roger Pinto, Professor at the Paris Law Faculty,

M. Paul Reuter, Professor at the Paris Law Faculty,

as Counsel,

and

the Kingdom of Thailand,

represented by

H.S.H. Prince Vongsamahip Jayankura, Ambassador of Thailand to the Netherlands,

as Agent,

assisted by

The Rt. Hon. Sir Frank Soskice, Q.C., M.P., former Attorney-General of England,

Mr. Seni Promoj, Member of the Thai Bar,

Mr. James Nevins Hyde, Member of the Bar of the State of New York and Member of the Bar of the Supreme Court of the United States,

Me. Marcel Slusny, Member of the Bar of the Brussels Court of Appeal,

Mr. J. G. Le Quesne, Member of the English Bar,

as Advocates and Counsel,

and

Mr. David S. Downs, Solicitor, Supreme Court of Judicature, England,

Mr. Sompong Sucharitkul, Member of the Legal Division, Ministry of Foreign Affairs,

as Advisers,

THE COURT,

composed as above,

delivers the following Judgment:

On 6 October 1959, the Minister-Counsellor of the Royal Cambodian Embassy in Paris handed to the Registrar an Application by the Government of Cambodia, dated 30 September 1959, instituting proceedings before the Court against the Government of the Kingdom of Thailand with regard to the territorial sovereignty over the Temple of Preah Vihear.

The Application invoked Article 36 of the Statute of the Court and the Declarations of 20 May 1950 and 9 September 1957 by which Thailand and Cambodia respectively recognized as compulsory the jurisdiction of the International Court of Justice, as well as the General Act for the Pacific Settlement of International Disputes of 26 September 1928.

In accordance with Article 40, paragraph 2, of the Statute, the Application was communicated to the Government of Thailand. In accordance with paragraph 3 of the same Article, the other Members of the United Nations and the non-Member States entitled to appear before the Court were notified.

Time-limits for the filing of the Memorial and the Counter-Memorial were fixed by an Order of 5 December 1959. The Memorial was filed within the time-limit fixed for this purpose. Within the time-limit fixed for the filing of the Counter-Memorial, the Government of Thailand filed preliminary objections to the jurisdiction of the Court. On 10 June 1960, an Order, recording that the proceedings on the merits were suspended under the provisions of Article 62, paragraph 3, of the Rules of Court, granted the Government of Cambodia a time-limit expiring on 22 July 1960 for the submission of a written statement of its observations and submissions on the preliminary objections. The written statement was filed on that date and the case became ready for hearing in respect of the preliminary objections.

On 10, 11, 12, 14 and 15 April 1961, hearings were held in the course of which the Court heard the oral arguments and replies of Prince Vongsamahip Jayankura, Agent, Sir Frank Soskice, Mr. James Nevins Hyde and Me. Marcel Slusny, Advocates and Counsel, on behalf of the Government of the Kingdom of Thailand, and of M. Truong Cang, Agent, and Mr. Dean Acheson, M. Roger Pinto and M. Paul Reuter, Counsel, on behalf of the Government of Cambodia.

In the course of the written and oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Cambodia, in the Application:

"The submissions of the Kingdom of Cambodia are as follows:

May it please the Court to adjudge and declare, whether the Kingdom of Thailand appears or not:

(1) that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954 in the ruins of the Temple of Preah Vihear;

(2) that the territorial sovereignty over the Temple of Preah Vihear belongs to the Kingdom of Cambodia."

On behalf of the same Government, in the Memorial:

"The submissions of the Kingdom of Cambodia are as follows:

May it please the Court to find in favour of the submissions contained in its Application instituting proceedings and, in particular, to adjudge and declare, whether the Kingdom of Thailand appears or not:

(1) that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954 in the ruins of the Temple of Preah Vihear;

(2) that the territorial sovereignty over the Temple of Preah Vihear belongs to the Kingdom of Cambodia."

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

"The Government of Thailand respectfully asks the Court to declare and pronounce that it has no jurisdiction to entertain the Cambodian Application of the 6th October, 1959, for the following reasons:

(A)

(i) that the Siamese declaration of the 20th September, 1929 lapsed on the dissolution of the Permanent Court of International Justice on the 19th April, 1946, and thereafter could not be renewed;

(ii) that the Thai declaration of the 20th May, 1950 purported to do no more than renew the said declaration of the 20th September, 1929, and so was ineffective *ab initio;*

(iii) that consequently Thailand has never accepted the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute.

(B)

(i) that neither Thailand nor Cambodia has ever been a party to the General Act for the Pacific Settlement of International Disputes of the 26th September, 1928;

(ii) that consequently the said Act does not constitute an agreement of the parties to submit the said dispute to the jurisdiction of the Court.

(C)

(i) that Cambodia has not sought to found the jurisdiction of the Court upon the Franco-Siamese Treaty of Friendship, Commerce and Navigation of the 7th December, 1937;

(ii) that Cambodia is not a party to the said Treaty, nor has she succeeded to any of the rights of France thereunder;

(iii) that consequently the said Treaty does not constitute an agreement of the parties to submit the said dispute to the jurisdiction of the Court."

On behalf of the Government of Cambodia, in its Written Observations on the Preliminary Objections:

"Having regard to Articles 36 and 37 of the Statute of the International Court of Justice;

Having regard to Articles 21 and 22 of the Franco-Siamese Treaty of 7 December 1937, Article 2 of the Settlement Agreement of 17 November 1946 and the General Act for the Pacific Settlement of International Disputes dated 26 September 1928;

The submissions of the Kingdom of Cambodia are as follows:

May it please the Court:

to dismiss the Preliminary Objections lodged by the Government of Thailand;

to adjudge and declare that it has jurisdiction to decide the dispute brought before it on 6 October 1959 by the Application of the Government of Cambodia."

On behalf of the Government of Thailand, Submissions read at the hearing on 11 April 1961:

"The Government of Thailand respectfully asks the Court to declare and pronounce that it has no jurisdiction to entertain the Cambodian Application of the 6th October, 1959, for the following reasons:

(A)

(i) that the Siamese declaration of the 20th September, 1929 lapsed on the dissolution of the Permanent Court of International Justice on the 19th April, 1946, and thereafter could not be renewed;

(ii) that the Thai declaration of the 20th May, 1950 purported to do no more than renew the said declaration of the 20th September, 1929, and so was ineffective *ab initio;*

(iii) that consequently Thailand has never accepted the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute.

(B)

(i) that neither Thailand nor Cambodia has ever been a party to the General Act for the Pacific Settlement of International Disputes of the 26th September, 1928;

(ii) that consequently the said Act does not constitute an agreement of the parties to submit the said dispute to the jurisdiction of the Court.

(C)

(i) that Cambodia is not a party to the Franco-Siamese Treaty of Friendship, Commerce and Navigation of the 7th December 1937, nor has she succeeded to any of the rights of France thereunder;

(ii) that consequently the said Treaty does not constitute an agreement of the parties to submit the said dispute to the jurisdiction of the Court;

(iii) that Cambodia is not a party to the Franco-Siamese Settlement Agreement of the 17th November 1946, nor has she succeeded to any of the rights of France thereunder;

(iv) that consequently the said Agreement does not constitute an agreement of the parties to submit the said dispute to the jurisdiction of the Court."

At the end of the oral arguments, the Agent for the Government of Cambodia, by way of submission that the Court had jurisdiction, stated that the arguments advanced on the principal and alternative issues on behalf of his Government in the course of the hearings were maintained.

* * *

In the present case, Cambodia alleges a violation on the part of Thailand of Cambodia's territorial sovereignty over the region of the Temple of Preah Vihear and its precincts. Thailand replies by affirming that the area in question lies on the Thai side of the common frontier between the two countries, and is under the sovereignty of Thailand. This is a dispute about territorial sovereignty; but as Thailand has raised certain objections to the competence of the Court to hear and determine the substantive merits of the dispute, the sole task of the Court in the present proceedings is to consider and decide whether it has this competence or not.

In invoking the jurisdiction of the Court, Cambodia has based herself first, and principally, on the combined effect of her own acceptance of the compulsory jurisdiction of the Court, given by a Declaration made under paragraphs 2-4 of Article 36 of the Court's Statute, and dated 9 September 1957, coupled with the Declaration made by Thailand on 20 May 1950, by which, in Cambodia's view, Thailand equally accepted the compulsory jurisdiction of the Court in such a manner as to cover the present dispute.

Secondly, Cambodia relies on the alleged effect of certain treaty provisions entered into between France, said to be acting on

behalf of the former territory of French Indo-China, of which Cambodia was then a component part; and Siam, as Thailand was then called. Cambodia considers that she is entitled to claim the benefit of certain of these provisions, namely provisions for the judicial settlement of any disputes of the kind involved in the present case, including provisions for recourse to the International Court of Justice.

Thailand has taken exception to both these alleged bases of jurisdiction: as regards the first, on the ground that her Declaration of May 1950, referred to above, did not constitute a valid acceptance on her part of the compulsory jurisdiction of the Court; and as regards the second, on the ground, *inter alia*, that even if the treaty provisions in question would effectively have conferred compulsory jurisdiction on the Court in a similar dispute between Thailand and France, Cambodia as such cannot make an independent claim to the benefit of these provisions in a dispute which lies between Thailand and herself.

* * *

The Court will now address itself to the first preliminary objection of Thailand, relating to the effect of her Declaration of 20 May 1950.

It is common ground between the Parties that if this Declaration did constitute a valid acceptance by Thailand of the compulsory jurisdiction of the Court, then Cambodia, because of her own Declaration of Acceptance of 9 September 1957, was entitled to require the submission of the present dispute to the Court. It is solely the validity of Thailand's Declaration that is in issue in the present proceedings.

* * *

It is to be noted, before proceeding to examine the facts, that as early as 20 September 1929 Thailand accepted the compulsory jurisdiction of the Permanent Court in the following terms:

> "On behalf of the Siamese Government, I recognize, subject to ratification, in relation to any other Member or State which accepts the same obligation, that is to say, on the condition of reciprocity, the jurisdiction of the Court as compulsory *ipso facto* and without any special convention, in conformity with Article 36, paragraph 2, of the Statute of the Court, for a period of ten years, in all disputes as to which no other means of pacific settlement is agreed upon between the Parties."

This Declaration was renewed for a further period by another Declaration, dated 3 May 1940, due to expire on 6 May 1950.

This was, in its turn, followed by yet another Declaration, dated 20 May 1950, and deposited on 13 June 1950, which is the one the effect of which the Court is now called upon to consider.

* * *

Thailand's Declaration of 20 May 1950 was framed as follows:

> "I have the honour to inform you that by a declaration dated September 20, 1929, His Majesty's Government had accepted the compulsory jurisdiction of the Permanent Court of International Justice in conformity with Article 36, paragraph 2, of the Statute for a period of ten years and on condition of reciprocity. That declaration has been renewed on May 3, 1940, for another period of ten years.
>
> In accordance with the provisions of Article 36, paragraph 4, of the Statute of the International Court of Justice, I have now the honour to inform you that His Majesty's Government hereby renew the declaration above mentioned for a further period of ten years as from May 3, 1950, with the limits and subject to the same conditions and reservations as set forth in the first declaration of Sept. 20, 1929."

On the face of it, this Declaration appears to be a straightforward renewal, for another period of years, of a previous acceptance of the Court's compulsory jurisdiction, in a manner commonly adopted by States when they wish simply to prolong an existing obligation or renew a previous obligation without having to set out again in detail the precise terms of it—as to which, accordingly. they content themselves with a reference to previous instruments containing those terms. The latter then become incorporated in the new instrument as an integral part of it.

This is the construction which undoubtedly would normally be placed on such an instrument as Thailand's Declaration of May 1950. Thailand points out, however, that since she made her Declaration of 1950, there has intervened the decision of the Court of 26 May 1959, in the case of the *Aerial Incident of July 27th, 1955 (Israel* v. *Bulgaria)*. Thailand contends that this decision revealed that the assumptions on which the language of her 1950 Declaration was based were incorrect and that her Declaration, in the light of that decision, was meaningless. Thailand in no way denies that by this Declaration she fully intended to accept, and equally fully believed she was accepting, the compulsory jurisdiction of the present Court. But, according to her present argument, that intention, however definitely it may have existed, and did exist, in the mind of Thailand, was never carried out as a matter of objective fact, because Thailand, though all unwittingly, drafted her Declaration of May 1950 in terms which subsequent events—

in particular the Court's decision in the *Israel* v. *Bulgaria* case—revealed as having been ineffectual to achieve Thailand's purpose.

* * *

In order to appreciate the precise implications of Thailand's first preliminary objection, it is necessary at this point to refer to Article 36, paragraph 5, of the Statute of the Court, which reads 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."

The intention of this paragraph was to provide a means whereby, within certain limits, existing declarations in acceptance of the compulsory jurisdiction of the Permanent Court of International Justice would become *ipso jure* transformed into acceptances of the compulsory jurisdiction of the present Court as respects States parties to the Statute of the Court, without such States having to make any new declarations specifically in relation to the present Court. In the *Israel* v. *Bulgaria* case, however, the Court, interpreting paragraph 5 of Article 36, came to the conclusion that it did not apply indiscriminately to all States which, having accepted the compulsory jurisdiction of the former Permanent Court, might at any subsequent date become parties to the Statute of the Court, but only to such of those States as were original parties. The Court furthermore came to the conclusion that on 19 April 1946, date when the Permanent Court ceased to exist, all declarations in acceptance of the compulsory jurisdiction of the Permanent Court which had not already, by then, been "transformed" by the operation of Article 36, paragraph 5, into acceptances of the compulsory jurisdiction of the present Court, lapsed and ceased to be in force, since they would, as from then, have related to a tribunal—the former Permanent Court—which no longer existed. Consequently, so the Court found, all declarations not having been thus transformed by 19 April 1946 ceased as from that date to be susceptible of the process of transformation *ipso jure* provided for by Article 36, paragraph 5.

It is not necessary for present purposes either to examine or to recapitulate the reasoning on which these conclusions were based—reasoning fully set out in the Court's decision in the *Israel* v. *Bulgaria* case. Suffice it to say that, on the basis of this reasoning, the Court held that Bulgaria not having, through its

admission to the United Nations, become a party to the Statute until 14 December 1955, the Declaration which she had made in 1920 accepting the compulsory jurisdiction of the former Permanent Court, for an indeterminate period of years, must be regarded as having lapsed on 19 April 1946, and as not having been transformed by the operation of Article 36, paragraph 5, into an acceptance relative to the present Court. Bulgaria having never at any time made a declaration independently accepting the compulsory jurisdiction of the Court, it followed, on this view, that she was not bound by that jurisdiction.

In the present case, Thailand's first preliminary objection proceeds on the basis that her position is substantially the same as that of Bulgaria. Thailand equally did not, through admission to the United Nations, become a party to the Statute until after the demise of the former Permanent Court on 19 April 1946—namely not until 16 December 1946. However, the demise of the Permanent Court some eight months earlier would, on the basis of the Court's conclusion in the *Israel* v. *Bulgaria* case, have caused the lapse of Thailand's Declaration of 3 May 1940 by which she had renewed for another 10 years her original acceptance, given in 1929, of the compulsory jurisdiction of the Permanent Court. If this 1940 Declaration had thus lapsed, it followed that Article 36, paragraph 5, which related only to declarations "still in force", would have no application to Thailand's Declaration of 1940. Accordingly, this Declaration would not have been transformed into an acceptance of the compulsory jurisdiction of the present Court by reason of the fact that Thailand became a Member of the United Nations, and thus a party to the Statute, on 16 December 1946. Consequently, according to the view which Thailand puts forward, when Thailand made her Declaration of May 1950 purporting to renew for another 10 years her original Declaration of 1929, as itself renewed in 1940, all she actually would have achieved was a necessarily abortive and inoperative renewal of a declaration which had never had any effect except as an acceptance of the compulsory jurisdiction of a tribunal that no longer existed.

The language of renewal of a previous declaration which Thailand employed in her Declaration of 1950 was entirely natural on the assumption that Thailand's previous declaration relative to the Permanent Court had, by the operation of Article 36, paragraph 5, been transformed into an acceptance relative to the present Court when Thailand was admitted as a Member of the United Nations in December 1946. On that basis, she would, in 1950, simply have been renewing a declaration which was itself—or rather had in 1946 become—an acceptance of the compulsory jurisdiction of the present Court. But according to the argument Thailand has now put forward, the decision of the Court in 1959 showed that this was

not in fact the legal position: in 1950, all that existed, or rather remained, was an instrument (the Declaration of 1940) accepting the compulsory jurisdiction of a defunct tribunal. This was the instrument which Thailand "renewed" in 1950; but as this instrument related to a non-existent institution its "renewal" was necessarily devoid of legal effect.

An essential part of the reasoning by which Thailand has supported her contention is that the intentions she may have had in making her Declaration of May 1950 became wholly irrelevant —or rather became insufficient in themselves. However much those intentions are known—and indeed admitted by Thailand herself—to have existed, they were not, Thailand contends, carried out as a matter of objective fact. According to Thailand, her position would be similar to that of a man who desires to make certain testamentary dispositions, and fully intends them; nevertheless, he will not achieve his object, as a matter of law, if he fails to observe the forms and requirements prescribed by the applicable law for the making of testamentary dispositions.

* * *

The first preliminary objection as advanced by Thailand is evidently based wholly on the alleged effect on Thailand's 1950 Declaration of the conclusion reached by the Court in its decision in the *Israel* v. *Bulgaria* case as to the correct sphere of application of Article 36, paragraph 5, of the Statute.

The Court does not share the view that this decision has the consequences concerning the effect of Thailand's 1950 Declaration which Thailand now claims.

The Court's decision in the *Israel* v. *Bulgaria* case was of course concerned with the particular question of Bulgaria's position in relation to the Court and was in any event, by reason of Article 59 of the Statute, only binding, *qua* decision, as between the parties to that case. It cannot therefore, as such, have had the effect of invalidating Thailand's 1950 Declaration. Considered however as a statement of what the Court regarded as the correct legal position, it appears that the sole question, relevant in the present context, with which the Court was concerned in the *Israel* v. *Bulgaria* case was the effect—or more accurately the scope—of Article 36, paragraph 5. Now that provision, as has been explained above, itself related solely to the cases in which declarations accepting the compulsory jurisdiction of the former Permanent Court would be deemed to be transformed into acceptances of the compulsory jurisdiction of the present Court, without any new or specific act on the part of the declarant State other than the act of having become a party to the Statute. It was consequently this process

of transformation *ipso jure*, and the limits to which it was subject, that the Court was concerned with in the *Israel* v. *Bulgaria* case. The Court was not concerned with the question whether it might be possible to effect a similar transformation by other means falling outside Article 36, paragraph 5. Thus, when the Court found that in the case of States becoming parties to the Statute after the demise of the Permanent Court, no transformation under that particular provision could take place, it did not mean thereby to imply that no transformation could take place at all.

As regards Bulgaria, her Declaration of 1921 had, according to the Court's view, lapsed in 1946, and had not been transformed; and Bulgaria had neither made any independent request that her 1921 Declaration should be considered as relating to the present Court, nor taken any other step which could be regarded as constituting an acceptance of the Court's compulsory jurisdiction. In these circumstances, the Court could only conclude that Bulgaria was not obliged to submit to the jurisdicton of the Court.

From the above, it would follow that if Thailand's 1940 Declaration was not thus transformed *ipso jure* in the light of the Court's decision, by the operation of Article 36, paragraph 5, there would still remain the question whether that Declaration was so transformed in some other manner or whether, irrespective of any transformation of her 1940 Declaration as such, Thailand could be held to have independently accepted the compulsory jurisdiction of the Court. It is clear that the fact that Thailand, by a new and voluntary act, made her Declaration of May 1950, placed her in a different position from Bulgaria which had never taken any new step at all subsequent to her admission to the United Nations.

* * *

Such is the question—a question in no way governed by the position in relation to Article 36, paragraph 5—to which the Court must now address itself; but before doing so, it is necessary to determine exactly what the situation was that had been reached by 20 May 1950, the date of Thailand's Declaration.

Thailand did not, either on joining the United Nations, or at any time before 6 May 1950, when Thailand's 1940 Declaration was in any case due to expire according to its own terms, address any communication to the Secretary-General regarding her 1940 Declaration. Consequently, the position in May 1950 was that Thailand's 1940 Declaration had, on the basis of the Court's 1959 decision, never been transformed into an acceptance of the compulsory jurisdiction of the present Court by the operation of Article 36, paragraph 5; and equally had not up to that date (6 May 1950) been transformed by Thailand's own independent act. Furthermore, by 20 May 1950, the 1940 Declaration never

could thenceforth, as such, be so transformed, because, according to its own terms, it had expired two weeks earlier, on 6 May.

Thailand had thus either never been bound since 1946, or had, on any view, ceased to be bound as from 6 May 1950. Thailand was therefore at this point (20 May 1950) entirely unfettered and not bound by the compulsory jurisdiction of this Court. She was completely free at that point either to accept or else not to accept that jurisdiction for the future. In this situation, she proceeded to do what Bulgaria never did, namely to address to the Secretary-General of the United Nations a communication embodying her Declaration of 20 May. By this she at least purported to accept, and clearly intended to accept, the compulsory jurisdiction of the present Court. The question is—and it is really the sole pertinent question in this case—did she effectually carry out her purpose?

This Declaration of May 1950 was a new and independent instrument and has to be dealt with as such. It was not, and could not have been, made under paragraph 5 of Article 36 of the Statute. In the first place, this paragraph contained no provision for the making of specific declarations by States: where it operated, it operated *ipso jure* without any such specific declaration—that indeed was its whole point. In the second place, paragraph 5 was so worded as only to preserve the declarations concerned for the duration of the unexpired portion of the terms for which they still had to run; and Thailand's previous Declaration of 1940, whether or not kept alive by Article 36, paragraph 5, was in any case due to expire on 6 May 1950, by its own terms. The operation of Article 36, paragraph 5, was therefore, on any view, wholly exhausted by that date so far as Thailand was concerned. It follows that Thailand's Declaration of 20 May 1950 was not a declaration which Thailand either did make, or ever could have made, under Article 36, paragraph 5, even if she had wanted to; and from this it follows that the 1950 Declaration must have been one which Thailand was making under paragraphs 2-4 of that Article, and in at least purported or attempted acceptance of the compulsory jurisdiction of the present Court, which is the only tribunal contemplated by those paragraphs.

In answering the question whether this acceptance was an effectual one, it must be borne in mind that although, for the reasons given above, the view taken in the Court's decision in the *Israel* v. *Bulgaria* case as to the scope of Article 36, paragraph 5, of the Statute does not, on any *a priori* basis, exclude the validity of Thailand's 1950 Declaration, this decision has nevertheless to be taken into account in determining what the effect of that Declaration was; for the decision is invoked by Thailand to argue that her previous (1940) Declaration, which the 1950 Declaration renewed, was an "untransformed" one, because the 1940 Declaration

had become lacking in an object: it was therefore incapable of renewal or else related to the compulsory jurisdiction of the old and defunct Court, not of the existing Court.

The Court is unable to share this view of the effect of Thailand's 1950 Declaration. But before stating why, it is desirable to dispose of certain other points raised in the course of the proceedings.

* * *

In the first place, there was a good deal of discussion as to whether a lapsed instrument can be renewed, or rather revived; and distinctions were drawn between, on the one hand, the prolongation of an instrument in force, and, on the other hand, the renewal or revival of lapsed or spent instruments.

The Court considers that much of this discussion had little relevance to the particular circumstances of this case. The real question in the present case is a different one. It is not: could Thailand by her 1950 Declaration renew or revive her 1929 and 1940 Declarations despite the fact that these had lapsed and were no longer in force; the question is, what was the effect of her Declaration of 1950: did she thereby merely revive obligations that could no longer operate because they related to a no longer existent object, or were they revived in such a way as to relate to the present Court? This is the question that the present Judgment is directed to determining.

Next, there was also discussion as to the question of error and its possible effects. Thailand's position, it might be said, is that in 1950 she had a mistaken view of the status of her 1940 Declaration, and for that reason she used in her Declaration of 1950 language which the decision of the Court in the *Israel* v. *Bulgaria* case showed to be inadequate to achieve the purpose for which that Declaration was made. Any error of this kind would evidently have been an error of law, but in any event the Court does not consider that the issue in the present case is really one of error. Furthermore, the principal juridical relevance of error, where it exists, is that it may affect the reality of the consent supposed to have been given. The Court cannot however see in the present case any factor which could, as it were *ex post* and retroactively, impair the reality of the consent Thailand admits and affirms she fully intended to give in 1950. There was in any case a real consent in 1950, whether or not it was embodied in a legally effective instrument—and it could not have been consent to the compulsory jurisdiction of the Permanent Court, which Thailand well knew no longer existed.

The real case for Thailand lies in the contention that her 1950 Declaration was vitiated despite her clear intentions, because, as she maintains, this Declaration was expressed in terms which rendered it legally ineffective for want of an object. Evidently no defect could be more fundamental than to renew a declaration lacking in an object. But to reach an immediate conclusion on that basis would be gratuitous, for in the light of the reasoning that has been set out above, the effect of the 1950 Declaration can only be established by an independent examination of that Declaration, considered as a whole and in the light of its known purpose.

Before undertaking this examination, which really constitutes the crux of the matter, the Court wishes to refer to the argument presented on behalf of Thailand that, in legal transactions, just as the deed without the intent is not enough, so equally the will without the deed does not suffice to constitute a valid legal transaction. It should be noted here that there was certainly no will on Thailand's part in 1950 to accept the compulsory jurisdiction of the former Permanent Court. This does not of course by itself mean that the 1950 Declaration constituted an acceptance in relation to the present Court. Nevertheless the sheer impossibility that, in 1950, any acceptance could either have been intended, or could in fact have operated, as an acceptance relative to the Permanent Court is a factor to be borne in mind in considering the effect of the 1950 Declaration.

As regards the question of forms and formalities, as distinct from intentions, the Court considers that, to cite examples drawn from the field of private law, there are cases where, for the protection of the interested parties, or for reasons of public policy, or on other grounds, the law prescribes as mandatory certain formalities which, hence, become essential for the validity of certain transactions, such as for instance testamentary dispositions; and another example, amongst many possible ones, would be that of a marriage ceremony. But the position in the cases just mentioned (wills, marriage, etc.) arises because of the existence in those cases of mandatory requirements of law as to forms and formalities. Where, on the other hand, as is generally the case in international law, which places the principal emphasis on the intentions of the parties, the law prescribes no particular form, parties are free to choose what form they please provided their intention clearly results from it.

It is this last position which obtains in the case of acceptances of the compulsory jurisdiction of the Court. The only formality required is the deposit of the acceptance with the Secretary-General of the United Nations under paragraph 4 of Article 36 of the Statute. This formality was accomplished by Thailand. For the rest—as regards form—paragraph 2 of Article 36 merely provides that States parties to the Statute "may at any time declare

that they recognize as compulsory ... the jurisdiction of the Court", etc. The precise form and language in which they do this is left to them, and there is no suggestion that any particular form is required, or that any declarations not in such form will be invalid. No doubt custom and tradition have brought it about that a certain pattern of terminology is normally, as a matter of fact and convenience, employed by countries accepting the compulsory jurisdiction of the Court; but there is nothing mandatory about the employment of this language. Nor is there any obligation, notwithstanding paragraphs 2 and 3 of Article 36, to mention such matters as periods of duration, conditions or reservations, and there are acceptances which have in one or more, or even in all, of these respects maintained silence.

Such being, according to the view taken by the Court, the position in respect of the form of declarations accepting its compulsory jurisdiction, the sole relevant question is whether the language employed in any given declaration does reveal a clear intention, in the terms of paragraph 2 of Article 36 of the Statute, to "recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes" concerning the categories of questions enumerated in that paragraph.

* * *

In the light of all the foregoing considerations, the Court considers that it must interpret Thailand's 1950 Declaration on its own merits, and without any preconceptions of an *a priori* kind, in order to determine what is its real meaning and effect if that Declaration is read as a whole and in the light of its known purpose, which has never been in doubt.

In so doing, the Court must apply its normal canons of interpretation, the first of which, according to the established jurisprudence of the Court, is that words are to be interpreted according to their natural and ordinary meaning in the context in which they occur. If the 1950 Declaration is considered in this way, it can have no other sense or meaning than as an acceptance of the compulsory jurisdiction of the present Court, for there was no other Court to which it can have related. Thailand's 1950 Declaration, by the mere fact of being embodied in a communication addressed to the Secretary-General of the United Nations, affords clear evidence of acceptance relative to the present Court, since this was the only Court in relation to which a communication so addressed could have had any significance.

Moreover, the Court has held in the *Anglo-Iranian Oil Co.* case (*I.C.J. Reports 1952*, p. 104) that the principle of the ordinary meaning does not entail that words and phrases are always to be interpreted in a purely literal way; and the Permanent Court, in the

case of the *Polish Postal Service in Danzig* (P.C.I.J., Series B, No. 11, p. 39), held that this principle did not apply where it would lead to "something unreasonable or absurd". The case of a contradiction would clearly come under that head. Now, if, on a literal reading, part of Thailand's 1950 Declaration had, *ex post* and because of the decision of the Court in the *Israel* v. *Bulgaria* case, to be considered as a purported acceptance of the jurisdiction of a defunct Court, this would be in clear contradiction to the reference in another part of the Declaration to Article 36, paragraph 4, of the Statute (and *via* that paragraph to paragraphs 2 and 3), which clearly evidenced acceptance of the jurisdiction of the present Court, and in contradiction also with the fact that a communication under paragraph 4 could only relate to the present Court.

This reference to Article 36, paragraph 4, was not merely procedural, as has been contended on behalf of Thailand. It was of course procedural in so far as it was in obedience to the requirement that such a declaration should be addressed to the Secretary-General of the United Nations. But the Secretary-General was to be addressed because, as the language of paragraph 4 ("Such declarations") indicates, the declarations referred to in paragraph 4 are the same declarations as are specified in paragraphs 2 and 3, namely declarations accepting the compulsory jurisdiction of the present Court, which is the principal judicial organ of the United Nations. Thailand, which was fully aware of the non-existence of the former Permanent Court, could have had no other purpose in addressing the Secretary-General under paragraph 4 than to recognize the compulsory jurisdiction of the present Court under paragraph 2—nor does she pretend otherwise.

On 20 May 1950, Thailand knew that her Declaration of 1940 had expired in accordance with its terms and that in so far as this was material, Article 36, paragraph 5, had, on any interpretation, exhausted itself. Thailand knew she was free of any obligation to submit to the Court's jurisdiction except by virtue of a new and independent, voluntary, act of submission on her part. The only way in which she could, at that stage, take action under Article 36 was pursuant to paragraph 2 thereof; and the declaration which she then made was pursuant to that paragraph, as is clearly shown by the terms of the Declaration itself in its reference to Article 36, paragraph 4, and *via* that to paragraph 2.

If, however, there should appear to be a contradiction between, on the one hand, this reference to paragraph 4 of Article 36, and *via* that to paragraph 2, indicating acceptance of the compulsory jurisdiction of the present Court; and, on the other hand, the references to the "untransformed" Declarations of 1929 and

1940, from which an apparent acceptance of the jurisdiction of the former Permanent Court might be inferred—that is to say a nullity—then, according to a long-established jurisprudence, the Court becomes entitled to go outside the terms of the Declaration in order to resolve this contradiction and, *inter alia*, can have regard to other relevant circumstances; and when these circumstances are considered, there cannot remain any doubt as to what meaning and effect should be attributed to Thailand's Declaration. In this connection, it is scarcely necessary to do more than refer to the history of Thailand's consistent attitude to the compulsory jurisdiction, first of the Permanent Court, and later of the present Court, as set out in an earlier paragraph of this Judgment. To ignore this would indeed be to honour the letter rather than the spirit; but the Court considers that, for the reasons which have been indicated, even the letter does not bear out the view Thailand seeks to maintain concerning the effect of her 1950 Declaration.

* * *

To sum up, when a country has evinced as clearly as Thailand did in 1950, and indeed by its consistent attitude over many years, an intention to submit itself to the compulsory jurisdiction of what constituted at the time the principal international tribunal, the Court could not accept the plea that this intention had been defeated and nullified by some defect not involving any flaw in the consent given, unless it could be shown that this defect was so fundamental that it vitiated the instrument by failing to conform to some mandatory legal requirement. The Court does not consider that this was the case and it is the duty of the Court not to allow the clear purpose of a party to be defeated by reason of possible defects which, in the general context, in no way affected the substance of the matter, and did not cause the instrument to run counter to any mandatory requirement of law.

The Court therefore considers that the reference in the Declaration of 1950 to paragraph 4 of Article 36 of the Statute gave the Declaration, for reasons already given, the character of an acceptance under paragraph 2 of that Article. Such an acceptance could only have been an acceptance in relation to the present Court. The remainder of the Declaration must be construed in the light of that cardinal fact, and in the general context of the Declaration; and the reference to the 1929 and 1940 Declarations must, as was clearly intended, be regarded simply as being a convenient method of indicating, without stating them in terms, what were the conditions upon which the acceptance was made.

* * *

Since the above conclusion is sufficient in itself to found the Court's jurisdiction, and the issue of jurisdiction is the only one which the Court has to determine at this stage of the case, it becomes unnecessary to proceed to a consideration of the second basis of jurisdiction invoked by Cambodia, and Thailand's objection to that basis of jurisdiction.

For these reasons,

THE COURT,

unanimously,

rejects the first preliminary objection of Thailand, and finds that it has jurisdiction to adjudicate upon the dispute submitted to it on 6 October 1959 by the Application of Cambodia.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-sixth day of May, one thousand nine hundred and sixty-one, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Kingdom of Cambodia and to the Government of the Kingdom of Thailand, respectively.

(Signed) B. WINIARSKI,
President.

(Signed) GARNIER-COIGNET,
Registrar.

Vice-President ALFARO makes the following Declaration:

The fact that in the present case Thailand has based her first preliminary objection to the jurisdiction of the Court on the conclusions of the Judgment rendered in the case of the *Aerial Incident of July 27th, 1955 (Israel* v. *Bulgaria)* establishes a close connection between that case and the present case, and it may be open to doubt whether concurrence in the present Judgment implies agreement with the conclusions of the Court in the above-mentioned case. For this reason I consider it necessary to declare that much to my regret I find myself unable to agree with those conclusions, but even on the assumption that I agreed with them,

it is my opinion that the conclusions of the Court in the *Israel* v. *Bulgaria* case concerning the scope and effect of paragraph 5 of Article 36 of the Statute are not applicable to the case now decided, for the abundant reasons stated in the present Judgment.

Judge WELLINGTON KOO makes the following Declaration:

Since some of the grounds given in the Judgment relate to the decision of the Court in the case of the *Aerial Incident of July 27th, 1955 (Israel* v. *Bulgaria), Preliminary Objections,* I desire to say that while I concur in the conclusion of the Court in the present case and generally in the reasoning which leads to it, I do not mean thereby to imply that I now concur or acquiesce in that decision but that, on the contrary, I continue to hold the views and the conclusion stated in the Joint Dissenting Opinion appended to that decision.

Indeed, I consider that on the basis of that Opinion Thailand's 1940 Declaration accepting the compulsory jurisdiction of the Permanent Court must be deemed to have been transformed, as had also admittedly been intended by Thailand, when she became a Member of the United Nations and therefore a party to the Statute on 16 December 1946, by operation of Article 36, paragraph 5, of the Statute, into an acceptance in relation to the present Court; and this fact constitutes an additional and simpler reason to meet Thailand's principal argument in support of her first objection.

This is clear, although it is equally true that since the circumstances of the two cases are essentially different, neither the fact, based on the said Opinion, that the said 1940 Declaration had been so transformed prior to its own terminal date, 6 May 1950, nor the fact, based upon the said 1959 decision of the Court, that it had lapsed on 19 April 1946 when the Permanent Court was dissolved, bears any determining legal effect on the only crucial question at issue in the present case, namely, the validity of Thailand's Declaration of 20 May 1950.

Judge Sir Gerald FITZMAURICE and Judge TANAKA make the following Joint Declaration:

Although we are in complete agreement with the substantive conclusion of the Court in this case and with the reasoning on which it is based, we have an additional and, for us, a more immediate reason for rejecting the first preliminary objection of Thailand.

This preliminary objection is based on the conclusion concerning the effect of paragraph 5 of Article 36 of the Statute which the

Court reached in its decision of 26 May 1959, given in the case of the *Aerial Incident of July 27th, 1955 (Israel* v. *Bulgaria)*. The objection necessarily assumes the correctness of that conclusion; for it is only on that basis that it is possible to claim, as Thailand has sought to do, that what she purported to renew, or rather revive, by her Declaration of 20 May 1950, was an acceptance, not of the compulsory jurisdiction of the present Court, but of that of the former Permanent Court, and therefore, in view of the non-existence of that Court in 1950, devoid of any object, and incapable, as such, of renewal or revival. But it is also clear that *except* on the basis of that conclusion, the objection would, to use a serviceable colloquialism, have been "a complete non-starter", and could never have been formulated at all.

Since, therefore, the objection necessarily presupposes the correctness of the conclusion reached in the *Israel* v. *Bulgaria* case, the view that this conclusion was in fact incorrect would, for anyone holding that view, furnish a further reason for rejecting the objection, and a much more immediate one than any of those contained in the present Judgment.

This is precisely our position since, to our regret, we are unable to agree with the conclusion which the Court reached in the *Israel* v. *Bulgaria* case as to the effect of Article 36, paragraph 5, of the Statute. We need not give our reasons for this, for they are substantially the same as those set out in the Joint Dissenting Opinion of Judges Sir Hersch Lauterpacht and Sir Percy Spender, and of Judge Wellington Koo. Furthermore, it is not our purpose to call in question or attempt to reopen the decision in that case.

However, as we do not agree with it, the correct position, for us, in regard to the effect of Article 36, paragraph 5, as it related to Thailand's previous Declaration of May 1940, is that on the demise of the Permanent Court in April 1946, this Declaration which, according to its own terms, still had about four years to run, became dormant (but not extinct) and then, on Thailand becoming a Member of the United Nations in December 1946, was reactivated by the operation of Article 36, paragraph 5, as an acceptance of the compulsory jurisdiction of the present Court.

For us, therefore, Thailand's 1950 Declaration was, as it was intended to be, a perfectly straightforward and normal renewal of a Declaration (that of 1940) which had already been "transformed" into—and had acquired the status of—an acceptance in relation to the present Court, and which had wholly ceased to relate to the former Permanent Court, not merely because of the demise of that Court, but precisely because the Declaration had (by virtue of Article 36, paragraph 5) been transformed into an acceptance of the compulsory jurisdiction of the present Court. On that basis,

the status and validity of the Declaration of May 1950 could not be open to question, and this we believe is the true position.

We have thought it necessary to make our attitude clear in this respect; for otherwise, concurrence in the present Judgment of the Court might be thought to imply agreement with the decision of 26 May 1959. Furthermore, anyone who disagrees with that decision must necessarily reject Thailand's first preliminary objection *a fortiori* on that ground alone. This however in no way affects our view that the first preliminary objection of Thailand must in any case be rejected, for the reasons given in the present Judgment.

As regards the second preliminary objection of Thailand—whilst we are fully in agreement with the view expressed by Sir Hersch Lauterpacht in the *South West Africa—Voting Procedure* case (*I.C.J. Reports 1955*, at pp. 90-93) to the effect that the Court ought not to refrain from pronouncing on issues that a party has argued as central to its case, merely on the ground that these are not essential to the substantive decision of the Court—yet we feel that this view is scarcely applicable to issues of jurisdiction (nor did Sir Hersch imply otherwise). In the present case, Thailand's second preliminary objection was of course fully argued by the Parties. But once the Court, by rejecting the first preliminary objection, has found that it has jurisdiction to go into the merits of the dispute (this being the sole relevant issue at this stage of the case), the matter is, strictly, concluded, and a finding, whether for or against Thailand, on her second preliminary objection, could add nothing material to the conclusion, already arrived at, that the Court is competent. We therefore agree that the Court is not called upon in the circumstances to pronounce on the second preliminary objection.

Judge Sir Percy SPENDER appends to the Judgment of the Court a statement of his Separate Opinion.

Judge MORELLI appends to the Judgment of the Court a statement of his Separate Opinion.

(Initialled) B. W.

(Initialled) G.-C.