2. PRELIMINARY OBJECTIONS OF THE GOVERNMENT OF THAILAND

Introduction

1. On the 6th October, 1959 the Government of the Kingdom of Cambodia filed in the Registry of the International Court of Justice an Application, attempting to bring before the Court a dispute between Cambodia and Thailand. By that Application, the Government of Cambodia asked 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".

These conclusions were repeated in the Cambodian Memorial, submitted to the Court in January, 1960.

2. In accordance with article 62 of the Rules of Court, the Government of Thailand has the honour to submit by this pleading two preliminary objections to the jurisdiction of the Court to entertain this case. Since, by virtue of paragraph 3 of article 62 of the Rules of Court, the proceedings on the merits are suspended upon receipt by the Registrar of a preliminary objection, the Government of Thailand feels justified in refraining at present from filing a Counter-Memorial, notwithstanding the order of the Court dated the 5th December, 1959. Accordingly, the present pleading contains no discussion of the merits of the issue raised by the Cambodian application, except a few observations, of which the purpose is to make clear the attitude of the Government of Thailand and the reasons for which that Government respectfully challenges the jurisdiction of the Court.

3. The boundary line between Thailand and Cambodia in the region in which the temple of Phra Viharn ("Preah Vihear" is the Cambodian spelling) stands was laid down by the Franco-Siamese Treaty of the 13th February, 1904, the relevant part of the text of which is set out in Annex 1 hereto. (Cambodia at that time formed part of French Indo-China and was under the protection of France. Thailand was then, and during long periods of her history, known as Siam.) This Treaty provided that the boundary should follow the line of the watershed between the basin of the Nam Sen

and the Mekong, on one side, and the basin of the Nam Moun, on the other side, this watershed being by nature a fixed physical feature. The result was to leave the temple of Phra Viharn in Thai territory, as is shown by the map which is Annex 2 hereto. Therefore, the Government of Thailand would approach an investigation of the merits willingly and with confidence, if the present case lay properly within the jurisdiction of the Court. However, in spite of the strength of the Thai case on the merits, there are other considerations which oblige the Government of Thailand to raise the objections to the jurisdiction which are set out in this pleading.

4. The Government of Cambodia seeks to found the jurisdiction of the Court principally upon the declaration of the 20th May, 1950, by which the Government of Thailand purported to renew the Siamese declaration of the 20th September, 1929, accepting the compulsory jurisdiction of the Permanent Court of International Justice. The declaration of the 20th May, 1950 was made in good faith; but the Government of Thailand submits, for the reasons set out in paragraphs 12 to 15 hereof, that in fact it was founded upon a view of the Statute of the Court which the Court has since held to be wrong, and in consequence was void *ab initio* and incapable of taking any effect. This is a matter of great importance to Thailand. Upon the validity or invalidity of the declaration of the 20th May, 1950 depends, not only her liability to be brought before the Court in this case or in other cases, but also her right herself to institute proceedings against States which have accepted the Court's compulsory jurisdiction. For this reason it is, in the view of the Government of Thailand, essential that this question be raised, so that from the Court's decision Thailand may know whether she has ever effectively accepted the compulsory jurisdiction under Article 36 (2) of the Statute.

First Objection

5. The first objection of the Government of Thailand is that the Thai declaration of the 20th May, 1950, purporting to renew for a further period of ten years the declaration of the 20th September, 1929, by which the Siamese Government recognized as compulsory *ipso facto* and without any special convention, on condition of reciprocity, the jurisdiction of the Permanent Court of International Justice, was wholly ineffective, because the declaration of the 20th September, 1929 lapsed on the dissolution of the Permanent Court on the 19th April, 1946 and thereafter was incapable of renewal; and that, in consequence, the Government of Cambodia, when it filed its application on the 6th October, 1959, was not entitled to invoke against Thailand the jurisdiction of the Court under Article 36, paragraph 2 of the Statute.

THE FACTS

6. The following is the text of the Siamese declaration of the 20th September, 1929 accepting the compulsory jurisdiction of the Permanent Court:

> "On behalf of the Siamese Government, I recognise, 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 came into force on the 7th May, 1930, when its ratification was deposited with the Secretary-General of the League of Nations. It was renewed on the 3rd May, 1940 for a further period of ten years, within the same limits and subject to the same conditions and restrictions.

7. The following is the text of the Thai declaration of the 20th May, 1950:

> "I have the honour to inform you that by a declaration dated September 20, 1920 (sic) 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, 1920 *(sic)*."

8. Thailand was not invited to participate in the San Francisco conference of 1945, and consequently was not a signatory of the Charter of the United Nations, including the Statute of the International Court of Justice. She made her first preliminary inquiry about the inclusion of her name among the members of the United Nations on the 20th May, 1946. A formal application for membership followed on the 31st July, 1946. When this application was considered by the Security Council's Committee on the Admission of New Members, the representatives of two permanent members stated that they could not then support the Thai application, and the Thai Government requested that the consideration of its application by the Security Council be adjourned. Thereafter, on the 29th November, 1946, the representative of France (one of the two permanent members mentioned above) told the Security Council that in his Government's view there was no longer any objection to the admission of Thailand to the United Nations, and France would support her application. He had brought to the Security Council's attention an agreement of the 17th November, 1946 between Thailand and France, which by its second Article stated that France would no longer oppose the admission of Thailand. (Security Council Records, First Year, Second Series, No. 23, 81st Meeting, 29th November, 1946, pp. 505-506.) The Security Council thereupon recommended Thailand's admission to the United Nations, and this recommendation was accepted by the General Assembly on the 15th December, 1946. The process was completed by the signing of the Instrument of Adherence by Thailand on the 16th December, 1946, after the close of the Assembly's session. Thailand thereby became a party to the Statute of the International Court of Justice. (Resolutions adopted by the General Assembly, First Session, Second Part, p. 53.) The date of Thailand's admission to the United Nations, 16th December, 1946, is significant, because almost eight months had by then elapsed since the dissolution of the Permanent Court of International Justice on the 19th April, 1946. The Assembly of the League of Nations, meeting on the 18th April, 1946, adopted a resolution providing that the Permanent Court of International Justice be for all purposes regarded as dissolved with effect from the day following the close of that session of the Assembly. (Resolutions of the League of Nations Assembly of the 18th April, 1946.)

THE LAW

9. At the time at which Thailand became a party to the Statute of the Court (i.e. on the 16th December, 1946), it was generally

considered that a State which had made a declaration accepting the compulsory jurisdiction of the Permanent Court, and became a party to the Statute of the International Court before the expiry of the period of that declaration's validity, was deemed to accept the compulsory jurisdiction of the International Court for the rest of that period. This was thought to be the effect of 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."

10. Taking this view of Article 36, paragraph 5 of the Statute, Thailand did not make a declaration accepting the compulsory jurisdiction of the Court upon her admission to the United Nations. She believed that her declaration of the 20th September, 1929, renewed on the 3rd May, 1940, remained in force and was deemed to be an acceptance of the Court's compulsory jurisdiction by virtue of Article 36, paragraph 5.

11. The Court's judgment of the 26th May, 1959, in the *Case concerning the Aerial Incident of July 27th, 1955 (Israel* v. *Bulgaria), Preliminary Objections* (I.C.J. Reports, 1959, p. 127) has now shown this view of Article 36, paragraph 5 of the Statute to be wrong. The Court decided in that case that Article 36, paragraph 5 binds only States which were represented at the San Francisco conference and were signatories of the Charter of the United Nations. (There are suggestions in the judgment that Article 36, paragraph 5 might also have bound a State which had become a party to the Statute of the International Court between the San Francisco conference and the dissolution of the Permanent Court. In fact, no State did become a party to the Statute during that period.) The reason for this decision is put thus in the judgment (at p. 138):

> "Since this provision (i.e. Article 36, paragraph 5) was originally subscribed to only by the signatory States, it was without legal force so far as non-signatory States were concerned: it could not preserve their declarations from the lapsing with which they were threatened by the impending dissolution of the Permanent Court. . . In the case of signatory States, by an agreement between them having full legal effect, Article 36, paragraph 5 governed the transfer from one Court to the other of still-existing declarations; in so doing, it maintained an existing obligation while modifying its subject-matter. So far as non-signatory States were concerned, something entirely different was involved: the Statute, in the absence of their consent, could neither maintain nor transform their original obligation. Shortly after the entry into force of the Statute, the dissolution of the Permanent Court freed them from that obligation."

12. Since the judgment of the Court in the case of *Israel* v. *Bulgaria*, it cannot be doubted that Thailand's acceptance of the compulsory jurisdiction of the Permanent Court was not converted into an acceptance of the compulsory jurisdiction of the International Court by Article 36, paragraph 5. The Siamese declaration of the 20th September, 1929, as renewed on the 3rd May, 1940, lapsed on the dissolution of the Permanent Court on the 19th April, 1946. To take another expression used by the Court in the case of *Israel* v. *Bulgaria*, on the 19th April, 1946 Thailand was "freed from the obligation" which she had accepted by her declaration of the 20th September, 1929. On the 16th December, 1946, when Thailand was admitted to the United Nations and became a party to the Statute of the International Court, she did not accept any such new obligation. It is only by her declaration of the 20th May, 1950 that Thailand can be alleged to have accepted the compulsory jurisdiction of the International Court subsequently. The question therefore arises, What was the true effect of the declaration of the 20th May, 1950?

13. The document of the 20th May, 1950 did not contain an original declaration. All that the Thai Government professed to do by that document was to "renew the declaration above mentioned", i.e. that of the 20th September, 1929, as renewed on the 3rd May, 1940, from the 3rd May, 1950. Any force which the document might have, therefore, was not original, but derivative. It depended for its operation upon the survival until the 3rd May, 1950 of the renewed declaration of the 20th September, 1929 as an effective instrument capable of being further renewed. In fact, that declaration had lapsed on the 19th April, 1946. As the Court said in the judgment in the case of *Israel* v. *Bulgaria* (at p. 145):

> "... it is one thing to preserve an existing undertaking by changing its subject-matter; it is quite another to revive an undertaking which has already been extinguished."

The document of the 20th May, 1950, drawn up in the belief that the declaration of the 20th September, 1929 had been transformed by article 36, paragraph 5 of the Statute into an acceptance for the rest of its term of the compulsory jurisdiction of the International Court in place of that of the Permanent Court, was framed in terms apt to preserve an existing undertaking. It was not apt to achieve what the Court describes as "quite another" thing, i.e. the revival of an undertaking which had been extinguished years before. As is known from the judgment of the International Court of Justice, the Siamese declaration of the 20th September, 1929, as renewed in 1940, lapsed on the 19th April, 1946. This being the case, the declaration was not capable of being renewed or preserved. It follows that the document of the 20th May, 1950 was devoid of legal effect.

14. Thus, the document of the 20th May, 1950 could not operate to renew the declaration of the 20th September, 1929. This being

so, it may be suggested that it should be regarded as a new and original declaration accepting the compulsory jurisdiction of the International Court. The Government of Thailand submits that such an interpretation is not admissible. To renew a supposedly existing declaration is one thing. To make a new declaration is a different thing. The document of the 20th May, 1950 was clearly doing the former and not the latter. The fact that the supposition upon which that document was based is now found to have been ineffective in law to accomplish that purpose does not justify transmuting it into a document of a different character with a different objective.

15. Furthermore, an obligation to recognise the compulsory jurisdiction of the International Court is not the same as an obligation to recognise the compulsory jurisdiction of the Permanent Court. This was pointed out by the Court in the following passage in the case of *Israel* v. *Bulgaria* (at p. 143):

> "This (i.e. the recognition of the compulsory jurisdiction of the International Court) constituted a new obligation which was, doubtless, no more onerous than the obligation which was to disappear but it was nevertheless a new obligation."

Thailand had until the 19th April, 1946 been under an obligation to recognise the compulsory jurisdiction of the Permanent Court. On the 20th May, 1950 she was not, and never had been, under an obligation to recognise the compulsory jurisdiction of the International Court. To recognise that jurisdiction would have been for Thailand to accept a new obligation. The document of the 20th May, 1950 cannot, in the submission of the Government of Thailand, be interpreted as an acceptance of a new obligation, as opposed to an attempted renewal of an obligation believed already to exist.

THE SUBMISSIONS OF THE GOVERNMENT OF THAILAND

16. The Government of Thailand, for the reasons set out in paragraphs 12 to 15 above, submits:

(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, since it purported to do no more than renew the said declaration of the 20th September, 1929, was ineffective *ab initio;*

(iii) that the Cambodian application of the 6th October, 1959, since it is expressed to found the jurisdiction of the Court upon the said declaration of the 20th May, 1950, is ineffective to establish the compulsory jurisdiction of the Court under Article 36, paragraph 2 of the Statute;

(iv) that in consequence the Court is without jurisdiction to entertain the said application.

Second Objection

17. The jurisdiction of the Court in the present case can only rest upon the consent of the Government of Thailand. The second objection of the Government of Thailand is that such consent cannot be derived or inferred from the invocation by the Government of Cambodia (Application, para. 2) of the General Act for the Pacific Settlement of International Disputes of the 26th September, 1928.

THE FACTS

18. Cambodia became a sovereign State in 1953, having previously been a protectorate of France (Application, para. 29). Cambodia became a member of the United Nations on the 14th December, 1955. Thailand was an original member of the League of Nations. On the 16th December, 1946, she became a member of the United Nations.

19. The Application of Cambodia (para. 11) refers to the Treaty of Friendship, Commerce and Navigation of the 7th December, 1937 between France and Siam. Cambodia, however, does not invoke this treaty as a basis for jurisdiction, nor does she cite Article 21 of it, which provides:

Article 21

> "In accordance with the principle embodied in the Covenant of the League of Nations, the High Contracting Parties agree to apply the provisions of the General Act for the Pacific Settlement of International Disputes, adopted on September 26th, 1928, by the Assembly of the League of Nations, for the settlement of any disputed questions which may arise between them in the future and which cannot be settled through the diplomatic channel." [1]

20. The Application of Cambodia (para. 14) further mentions a protocol, or Settlement Agreement, of the 17th November, 1946 between France and Siam, which set up a special Franco-Siamese Commission of Conciliation. Article 3 of this Settlement Agreement, reproduced in Annex V to the Cambodian Memorial, provides:

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[1] This translation is given in the *League of Nations Treaty Series*, Vol. 201, p. 113. The official French text reads as follows:

"Conformément aux principes énoncés dans le Pacte de la Société des Nations, les Hautes Parties Contractantes conviennent d'appliquer les dispositions de l'Acte général pour le règlement pacifique des différends internationaux, adopté le 26 Septembre 1928 par l'Assemblée de la Société des Nations, au règlement des questions litigieuses qui surgiraient entre elles dans l'avenir et qui ne pourraient être résolues par la voie diplomatique."

"Article 3—Immediately after the signing of the present Agreement, France and Siam shall set up, by application of Article 21 of the Franco-Siamese Treaty of December 7th, 1937, a Commission of Conciliation composed of two representatives of the parties and three neutrals, in conformity with the General Act of Geneva of September 26th, 1928 for the pacific settlement of international disputes, which regulates the constitution and the working of the Commission. The Commission shall begin its work as soon as possible after the transfer of the territories specified in the 2nd paragraph of Article 1 shall have been effected. It shall be charged with the examination of ethnical, geographical and economic arguments of the parties in favour of the revision or confirmation of the clauses of the Treaty of October 3rd 1893, the Convention of February 13th 1904 and the Treaty of March 23rd 1907, kept in force by Article 22 of the Treaty of December 7th 1937."

THE LAW

21. Again, Cambodia does not plead this Settlement Agreement between France and Siam as a basis for the Court's jurisdiction. As stated by the Court in the *Case of Certain Norwegian Loans*, (Judgment of July 6th, 1957: I.C.J. Reports of 1957, pp. 9, 25), the reference to these two agreements, which are not pleaded by the Government of Cambodia as a basis for the Court's jurisdiction, would not justify the Court in "seeking a basis for its jurisdiction different from that which" Cambodia "itself set out in its Application". Nevertheless, the complete inapplicability of these two agreements, as well as that of the General Act, will be noted.

22. Thailand is not, and at no time was, a party to the General Act. She never acceded to the General Act as a whole or to any of its procedural Chapters by the methods provided by Article 38 of the General Act, either directly or indirectly. Cambodia is not, and at no time was, a party to the General Act. She, also, never acceded to the Act as a whole or to any of its procedural Chapters either directly or indirectly.

23. The General Act contains special provisions designed to enable States parties to the Act to become aware promptly when the accession of another State might make the Act's provisions applicable to that other State's relations with the existing parties. Article 38 provides:

"Accessions to the present General Act may extend:

A. Either to all the provisions of the Act (Chapters I, II, III and IV);

B. Or to those provisions only which relate to conciliation and judicial settlement (Chapters I and II), together with the general provisions dealing with these procedures (Chapter IV);

C. Or to those provisions only which relate to conciliation (Chapter I), together with the General Provisions concerning that procedure.

The Contracting Parties may benefit by the accessions of other parties only in so far as they have themselves assumed the same obligations."

Article 43 provides:

"1. The present General Act shall be open to accession by all the Heads of States or other competent authorities of the Members of the League of Nations and the non-Member States to which the Council of the League of Nations has communicated a copy for this purpose.

2. The instruments of accession and the additional declarations provided for by Article 40 shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-Member States referred to in the preceding paragraph.

3. The Secretary-General of the League of Nations shall draw up three lists, denominated respectively by the letters A, B and C, corresponding to the three forms of accession to the present Act provided for in Article 38, in which shall be shown the accessions and additional declarations of the Contracting Parties. These lists, *which shall be continually kept up to date*, shall be published in the annual report presented to the Assembly of the League of Nations by the Secretary-General."

Special sources of verification are thus provided to make it possible to determine whether any State was or became a party to the General Act. An examination of these sources shows that neither Thailand (Siam) nor Cambodia was ever considered such a party.

24. In discharging the duties imposed on him by Article 43 of the General Act, the Secretary-General of the League of Nations utilized the practice of attaching to his *Annual Reports* to the League Assembly a series of *Annexes*, to record which States were parties to part or all of the Chapters of the General Act. In none of these *Annual Reports* or *Annexes* was Siam or Cambodia listed as a party to part or all of the provisions of the General Act.

25. The Annual Year Books of the Permanent Court of International Justice *(Series E)*, list, *inter alia*, the instruments which govern the jurisdiction of the Court. Here again an examination of these records of the Permanent Court of International Justice shows that neither Thailand nor Cambodia was ever listed as a party to part or all of the General Act.

26. The Reports, *from the Eighth to the Sixteenth volumes inclusive*, also include many bilateral arbitration, conciliation and judicial settlement treaties. These are placed under the heading of "Instruments for the Pacific Settlement of Disputes and concerning the Jurisdiction of the Court", and many of them are based on the models of the General Act. But the 1937 Treaty of Friendship, Commerce and Navigation between Thailand and France is recorded under the section entitled "Other Instruments" providing for the

jurisdiction of the Court, not under the heading of "Instruments for the Pacific Settlement of Disputes and concerning the Jurisdiction of the Court".

27. Thus, since neither Thailand nor Cambodia was ever a party to the General Act for the Pacific Settlement of International Disputes, that convention cannot be invoked by Cambodia to found the jurisdiction of the Court over the matter set forth in the Application.

28. By the time Cambodia acquired independent and sovereign status (in 1953, according to the Application, paragraph 29), and certainly when she attained membership of the United Nations in 1955, the United Nations General Assembly had recognized the limited efficacy of the General Act.

29. The Interim Committee of the General Assembly had discussed the doubtful efficacy of the General Act as to States which had not adhered to it during the life of the League of Nations, and before the dissolution of the Permanent Court of International Justice on the 19th April, 1946. In its Report to the General Assembly, the Interim Committee suggested a new and revised General Act, which would be a new treaty in which references to League of Nations organs would be replaced by references to the appropriate United Nations organs. In describing a Belgian proposal ultimately adopted by the General Assembly, the Report of the Interim Committee stated:

> ". . . Thanks to a few alterations, the new General Act would, for the benefit of those States acceding thereto, restore the original effectiveness of the machinery provided in the Act of 1928, an Act which, though still theoretically in existence, has become largely inapplicable.
>
> "It was noted, for example, that the provisions of the Act relating to the Permanent Court of International Justice had lost much of their effectiveness in respect of parties which are not Members of the United Nations or parties to the Statute of the International Court of Justice."
>
> (*Reports of the Interim Committee of the General Assembly; Third Session Supplement 10*, U.N. Doc. A/605, 13 August 1948, para. 46, pp. 28-29.)

30. The Secretary-General of the United Nations never, in his *Annual Reports* to the General Assembly, reports adherences to the General Act of 1928, presumably because he does not consider that he succeeded to the obligations of the League's Secretary-General. It was, indeed, such doubts as these about the continued efficacy of the 1928 General Act which led the United Nations General Assembly in 1949 by its resolution to instruct the Secretary-General "to prepare a revised text of the General Act ... and to hold it open to accession by States under the title 'Revised General Act for the Pacific Settlement of International Disputes' ". (G.A.

Res. 268 (III), 28 April 1949.) The Secretary-General has since then, in pursuance of Article 43 (3) of the Revised General Act, listed regularly States acceding to the Revised Act.

31. This procedure began with the *Annual Report* of the Secretary-General covering the period from the 15th July, 1949 to the 30th June, 1950. The A, B and C Lists are found under the Revised Act, and the accessions on the part of Belgium and Sweden are recorded (U.N. Doc. A/1287, p. 123). The subsequent report repeats the list (U.N. Doc. A/1844, p. 183). The next report adds the Norwegian and Danish accessions (U.N. Doc. A/2141, p. 157). The reports from the Eighth to the Fourteenth Sessions, inclusive, record no new accessions (U.N. Docs. A/2404, p. 141; A/2663, p. 99; A/2911, p. 104; A/3137, p. 98; A/3594, pp. 122-3; A/3844, p. 82; A/4132, p. 95, respectively).

32. The volume entitled, *Status of Multilateral Conventions of which the Secretary-General Acts as Depositary*, which is constantly kept up to date, also includes the A, B and C Lists and records only these four accessions (U.N. Doc. ST/LEG/3, 10 October 1952).

33. A publication entitled, *Signatures, Ratifications, Acceptances, Accessions, etc., concerning the Multilateral Conventions and Agreements in respect of which the Secretary-General acts as Depositary*, the purpose of which is to continue the League's old practice of publishing lists of agreements and conventions, notes that while the United Nations General Assembly has adopted a number of protocols amending conventions concluded under League auspices, these amendments are not yet binding on all States parties to the original conventions. Therefore, it was considered advisable to publish not only the new, but the old, lists as well. The latter lists only reproduce the parts given in the League's archives or supplied by depositary governments. Under "Pacific Settlement of International Disputes", the Twenty-first League List concerning the General Act is reproduced, although the entry concerning States as to which the Act is open to accession has been deleted. The Revised General Act, with the four accessions, is included (Sales No. 1949, V. 91, pp. 25 and 23, respectively).

34. The Yearbooks prepared by the Registrar of the International Court of Justice, beginning with that for the year 1949/50, which contain texts governing the Court's jurisdiction, include the Revised General Act, but not the original General Act of 1928. The chronological table reports the Revised General Act as having been signed on the 28th April, 1949, and under Contracting Parties lists the entry: "Resolution of the General Assembly of the United Nations" (*I.C.J. Yearbook, 1949/1950*, pp. 178, 192).

35. Cambodia could have acceded to the Revised General Act, and Thailand could have acceded to it. In fact, the United Nations records examined above confirm that neither State has done so.

36. Although the negotiations which took place between the representatives of Thailand and Cambodia in August and September, 1958 resulted in draft proposals submitted by both delegations in which reference is made to the possible use of the Revised General Act, none of these draft proposals was accepted by the other party. Therefore, no agreement providing for such a settlement was concluded between Cambodia and Thailand.

37. Even if Cambodia's reference to the General Act of the 26th September, 1928 can be interpreted as an invocation of the Revised General Act of 1949, the Government of Cambodia has cited to this Court as the first basis of its jurisdiction a treaty to which neither Cambodia nor Thailand is, or ever has been, a party.

38. The Government of Cambodia cannot legally rely on Article 21 of the 1937 Treaty of Friendship, Commerce and Navigation between France and Siam by invoking the fact that it was formerly a protectorate of France. The Application of Cambodia, as stated above in paragraph 19, refers to this treaty, Article 21 of which provides in general for the utilization of the procedures of the General Act of 1928 for the pacific settlement of unsettled disputed questions between France and Siam. Neither the Application nor the Memorial ventures to invoke this provision directly as a basis for the jurisdiction of the Court.

39. The Treaty of the 7th December, 1937 by express provision negatives the automatic applicability of its terms to dependencies or subdivisions of France. Article 22 in its final paragraph provides:

> "The provisions of the present Treaty may, by a declaration agreed upon between the two Governments, be subsequently extended in whole or in part to French colonies and possessions and to countries placed under French protectorate or mandate [1]."

Apart from the fact that the parties no doubt had in mind the possibility of subsequent extension by agreement of rights of commerce and navigation, and not of the political right to invoke procedures for pacific settlement, no such agreed declaration between France and Thailand was ever concluded with respect to Cambodia.

40. Under the customary international law of state succession, if Cambodia is successor to France in regard to the tracing of frontiers, she is equally bound by treaties of a local nature which determine the methods of marking these frontiers on the spot. However, the general rules of customary international law regarding state succession do not provide that, in case of succession by sepa-

[1] The official French text reads as follows:
"Les dispositions du présent traité pourront être ultérieurement étendues en tout ou en partie aux colonies et possessions françaises ainsi qu'aux pays placés sous le protectorat ou le mandat de la France par une déclaration concertée entre les deux gouvernements."

ration of a part of a State's territory, as in the case of Cambodia's separation from France, the new State succeeds to political provisions in treaties of the former State. Such an interpretation of the treaty would turn it from a bilateral treaty between France and Thailand into a multilateral pacific settlement treaty between France, Thailand and Cambodia (see O'Connell, *The Law of State Succession*, 1956, p. 31). The Government of Thailand does not believe that any precedent can be found to support the proposition that Cambodia, by right of succession, could hold Thailand to the fulfilment of such purely political provisions as those for pacific settlement found in Article 21 of the Treaty of 1937 between Siam and France. The controversial aspects of the law of state succession relate to such matters as the transfer of obligations, the respect for private rights (see Oppenheim, *International Law*, Eighth Ed. by Lauterpacht, Vol. I, pp. 157 ff.), and the status of servitudes (see Vali, *Servitudes of International Law*, 2nd Ed. 1958, pp. 319 ff.). The question whether Thailand is bound to Cambodia by peaceful settlement provisions in a treaty which Thailand concluded with France is very different from such problems as those of the obligations of a successor State to assume certain burdens which can be identified as connected with the territory which the successor acquires after attaining its independence. It is equally different from the question of the applicability of the provisions of the treaty of 1904 for the identification and demarcation on the spot of the boundary which was fixed along the watershed.

41. In the case of the separation of Pakistan from India, the Assistant Secretary-General in charge of the Legal Department of the United Nations wrote a brief opinion, in the course of which he stated that:

> "The territory which breaks off, Pakistan, will be a new State; and it will not, of course, have membership in the United Nations." (U.N. Doc. PM/473, 12 August 1947.)

The matter was subsequently considered in the Sixth Committee of the General Assembly, which eventually reached the conclusion, *inter alia*,

> "That when a new State is created, whatever may be the territory and the populations which it comprises and whether or not they formed part of a State Member of the United Nations, it cannot under the system of the Charter claim the status of a Member of the United Nations unless it has been formally admitted as such in conformity with the provisions of the Charter." (U.N. Doc. A/C. 1/212, 11 October 1947.)

In subsequent comment, the Senior Legal Adviser, United Nations Legal Department, expressed the following views:

> "Another aspect of the problem of succession of rights and duties is presented by the agreement between India and Pakistan relating

to international arrangements. It is provided in this agreement that both India and Pakistan succeed to the rights and obligations under all the international agreements to which India has been a party, with the exception of membership in international organizations and agreements which apply exclusively to the territory of only one of the dominions. The intended effect of this provision appears to be to extend to Pakistan treaty rights and duties which would not devolve upon it under the generally accepted rule of law. For it has been recognized that when a territory breaks off and becomes a state, succession takes place only 'with regard to such international rights and duties of the predecessor as are logically connected with the part of the territory ceded or broken off, and with regard to the fiscal property found on that part of the territory'. Conversely, *it has been clear that no succession occurs in regard to rights and duties of the old State which arise from its political treaties such as treaties of alliance or of pacific settlement.* It has also been the view of the majority of writers that the new State does not succeed to other non-local agreements, such as treaties of commerce and extradition.

"In view of these principles, what effect must be given to the bilateral agreement between the two dominions purporting to transfer to the new State all treaty rights and obligations? It may be doubted that it will be given effect (even if intended) with respect to agreements which are essentially political, since both precedent and principle are contrary to recognizing succession in these matters. On the other hand, it does not appear improbable that succession will be recognized with respect to multipartite treaties concerned with social, economic, and technical matters. As an indication of this development, it may be observed that the Secretariat, as depositary, raised no objection to Pakistan signing the protocols providing for the transfer of functions under the Convention for the Suppression of Traffic in Women and Children of 1921 and under the Convention on Obscene Publications of 1923. Since these protocols were open only to parties to the conventions, Pakistan submitted a declaration stating that it considered itself a party to these conventions 'by the fact that India became a party to the above-mentioned international conventions before the 15th day of August, 1947'. Although the conventions in question cannot be regarded as local or territorial, they are essentially nonpolitical agreements intended to have universal application; accordingly, it does not seem unreasonable to extend the rule regarding succession by new states to such treaties." (Schachter, "*The Development of International Law Through the Legal Opinions of the United Nations Secretariat*", XXV B.Y.I.L. (1948), pp. 91, 106-107; emphasis supplied, six footnotes omitted.)

42. In a provision analogous to Article 36 (5) of the Statute of this Court, Article 37 of the Statute provides that, whenever a treaty or convention in force provides for reference 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".

43. The history of the Revised General Act in the Interim Committee (see paragraph 29 above) suggested in 1948 that the General Act had lost much of its effectiveness as to parties not members of the United Nations or not parties to this Court's Statute. As to Thailand, not a signatory of the Charter or the Statute, the General Act would not be applied by virtue of Article 37 of the Statute of the Court. This follows from the judgment and reasoning of the Court in the *Case concerning the Aerial Incident of July 27th, 1955 (Israel* v. *Bulgaria), Preliminary Objections Judgment of May 26th, 1959:* I.C.J. Reports 1959, p. 127: cf. paragraph 11 above.

44. If the Court were now to interpret Article 21 of the 1937 Treaty between France and Siam as constituting consent in advance to its jurisdiction through a broad reference to the General Act, then this case would be the first instance in the history of the General Act of its provisions being interpreted as giving either the Permanent Court or this Court jurisdiction in the absence of more specific consent by the parties. In no case has the jurisdiction of either Court been founded on the General Act. It would also involve this Court in interpreting Article 37 of its Statute as constituting consent to its jurisdiction by Thailand, although Thailand was not represented at the San Francisco conference and was not an original member of the United Nations.

THE SUBMISSIONS OF THE GOVERNMENT OF THAILAND

45. The Government of Thailand, for the reasons set out in paragraphs 17 to 44 above, submits:

(i) that jurisdiction of the Court to entertain the Cambodian Application cannot be based on the General Act for the Pacific Settlement of International Disputes of the 26th September, 1928, because neither Thailand nor Cambodia has ever been a party to that Act;

(ii) that jurisdiction of the Court to entertain the Cambodian Application cannot be based on the Franco-Siamese Treaty of Friendship, Commerce and Navigation of the 7th December, 1937, because

(a) Cambodia does not in her pleadings rely on that Treaty as a source of jurisdiction,

(b) Cambodia is not a party to that Treaty, and

(c) Cambodia has not succeeded to any of the rights of France under that Treaty.

Conclusion

46. 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.

(Signed) VOWGSAMAHIP JAYANKURA
Agent of the Government
of Thailand.

May 1960.

Annexes to Preliminary Objections of the Government of Thailand

Annex 1

France, 1904

CONVENTION BETWEEN FRANCE AND SIAM MODIFYING THE STIPULATIONS OF THE TREATY OF THE 3RD OCTOBER, 1893, REGARDING TERRITORIAL BOUNDARIES AND OTHER ARRANGEMENTS

Signed at Paris, February 13, 1904

(Ratifications exchanged at Paris, December 9, 1904.)

[Translation][1]

The President of the French Republic and His Majesty the King of Siam, desiring to render closer and more intimate the friendly relations which exist between their two countries and to settle certain differences which had arisen concerning the interpretation of the Treaty and Convention of the 3rd October, 1893, decided to enter into a new Convention and appointed for this purpose their plenipotentiaries as follows:

The President of the French Republic, M. Théophile Delcassé, Minister of Foreign Affairs, etc.; and

His Majesty the King of Siam, Phya Suriya Nuvatr, his Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic, holder of the First Class of the Royal Order of the Crown of Siam, Grand Officer of the National Order of the Legion of Honour, etc.;

who, after communicating to each other their plenary powers, found to Be in good and due form, have agreed upon the following terms:

Article I

The frontier between Siam and Cambodia starts, on the left bank of the Great Lake, at the mouth of the River Stung-Roluos; from this point it follows the parallel towards the east until it meets the River Prek-Kompong-Tiam, then, turning towards the north, it follows the meridian from this point of meeting as far as the Pnom-Dang-Rek chain of mountains. Thence it follows the line of the watershed between the basins of the Nam-Sen and the Mekong, on one side, and the Nam-Moun, on the other side, and rejoins the Pnom-Padang chain, the crest of which it follows to the east as far as the Mekong. Upstream from this point the Mekong remains the frontier of the Kingdom of Siam, in conformity with Article I of the Treaty of the 3rd October, 1893.

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[1] For original French text, see Annex No. 4 to Counter-Memorial, pp. 220-223. *[Note by the Registry.]*

Article II

As to the frontier between the right bank of the Luang-Prabang and the provinces of Muang-Phichai and Muang-Nan, it leaves the Mekong at its confluence with the Nam-Huong and, following the thalweg of this river as far as its confluence with the Nam-Tang, then following the course of the said Nam-Tang, rejoins the line of the watershed between the basins of the Mekong and the Menam at a point situated close to Pou-Dene-Dine. From this point it turns towards the north, following the line of the watershed between the two basins as far as the sources of the River Nam-Kop, the course of which it follows as far as its meeting with the Mekong.

Article III

The delimitation of the frontiers between the Kingdom of Siam and the territories making up French Indo-China will be taken in hand. This delimitation will be carried out by Mixed Commissions comprised of officers appointed by the two contracting countries. The work will be concerned with the frontier laid down by Articles I and II, as well as the region lying between the Great Lake and the sea.

In order to facilitate the work of the Commissions and to avoid all possibility of difficulty in the delimitation of the region lying between the Great Lake and the sea, the two Governments will reach an agreement, before the nomination of the Mixed Commissions, for fixing the chief points of the delimitation in this region, particularly the point where the frontier shall reach the sea.

The Mixed Commissions will be appointed and will begin their work within four months after the ratification of the present Convention.

Article IV

The Siamese Government gives up all claim to sovereignty over the territories of Luang-Prabang lying on the right bank of the Mekong.

Merchant ships and rafts of timber belonging to Siamese shall have the right of navigating freely that part of the Mekong traversing the territory of Luang-Prabang.

Article V

Immediately the agreement mentioned in Article III, paragraph 2, relating to the delimitation of the frontier between the Great Lake and the sea, has been reached, and immediately the French authorities have been officially informed that the territories resulting from this agreement and the territories lying to the east of the frontier, as it is laid down in Article I and II of the present Treaty, are at their disposition, the French troops which are in provisional occupation of Chantaboun, by virtue of the Convention of the 3rd October, 1893, will leave that town.

[The remaining articles of the Treaty are not relevant to this case.]

Annex 2

MAP OF THE BOUNDARY IN THE DISPUTED AREA, DRAWN BY THE ROYAL SURVEY DEPARTMENT OF THE THAI MINISTRY OF DEFENCE.

[Not reproduced in this edition]