3. STATEMENT OF THE OBSERVATIONS OF THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN

ON THE COMMUNICATION (No. 12580) OF THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA OF THE 9th SEPTEMBER 1952

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1. In pursuance of the Order of the Court dated the 21st March 1953, the Government of Liechtenstein submit the following Observations upon the communication dated the 9th September 1952 addressed by the Government of Guatemala to the President of the Court.

2. The communication of the Government of Guatemala appears to advance the following three contentions: (1) In the first place, the Government of Guatemala assert that the Court has no jurisdiction to consider the present dispute between Liechtenstein and Guatemala on the ground that the period laid down in the Declaration made by Guatemala under Article 36 (2) of the Statute of the Court has expired. (2) Secondly, the Government of Guatemala seem to contend that the Court is not competent to decide upon that objection to its jurisdiction for the alleged reason that the power, conferred upon the Court in paragraph 6 of Article 36 of the Statute, to settle disputes as to its jurisdiction refers only to questions as to whether any particular dispute falls within one of the four categories of disputes enumerated in paragraph 2 of Article 36. (3) Finally, the Government of Guatemala appear to put forward the argument that the assumption of jurisdiction by the Court would be contrary to certain notions and provisions of the municipal law of Guatemala.

3. In accordance with the Order of the Court, the Government of Liechtenstein now propose to make observations on these three principal contentions of the Government of Guatemala. However, before doing so, the Government of Liechtenstein deem it necessary to comment on the juridical character of the communication of the Government of Guatemala of the 9th September 1952.

I

THE NATURE OF THE COMMUNICATION OF THE 9th SEPTEMBER 1952

4. The Government of Liechtenstein observe that the communication of the 9th September 1952 does not expressly and affirmatively indicate in the accepted language of the Statute and of the Rules of the Court what part that communication is intended to play in the present proceedings. Sub-paragraph VI of paragraph 22 of the communication states (and thereby purports to limit the effect of the communication) : "That in no case should all or any part of this note be considered as a reply, affirmative or negative, or a default or voluntary absence, but as a statement of the reasons for the impossibility of appearance before this High Tribunal." The communication, however, nowhere expressly states that it is not to be considered as a Preliminary Objection. It is clear that the inclusion or exclusion of any particular term in the communication cannot affect what, upon proper interpretation, may be its true nature. The Government of Liechtenstein further observe that in its Order of the 21st March 1953 the Court summarizes the tenor of the communication in the following terms : ".... by reason of the expiry on January 26th, 1952, of the Declaration of acceptance of the compulsory jurisdiction of the Court, his Government [the Government of Guatemala] considered that the Court had no jurisdiction to deal with a case affecting Guatemala, and that consequently the said Government was unable, for the moment, to appear before the Court". Accordingly, while the Government of Liechtenstein find themselves in some doubt as to the precise nature of the communication of the 9th September 1952, they are prepared, in conformity with the language of the Order of the Court, to treat that communication as constituting a Preliminary Objection to the jurisdiction of the Court.

5. In fact, it is difficult to see what other course is open to the Government of Liechtenstein and, indeed, to the Court. The communication of the Government of Guatemala is clearly not the Counter-Memorial which that Government, by Order of the Court dated the 7th March 1952, was called upon to deliver by the 15th September 1952. The only other alternative which the Statute and the Rules of Court contemplate in this connection is that the document submitted to the Court constitutes a Preliminary Objec-

tion unless, indeed, it amounts to a default in the sense of Article 53 of the Statute. Without prejudice to any rights which they might be obliged to claim under Article 53 of the Statute of the Court, the Government of Liechtenstein are prepared to treat the communication of the 9th September 1952 as a Preliminary Objection.

6. At the same time, even while treating the communication as a Preliminary Objection, the Government of Liechtenstein desire, should any other objections be raised to the exercise of the jurisdiction of the Court, to reserve their right to deal with them as and when they may be made.

II

The effect of the expiry of the Declaration accepting the Compulsory Jurisdiction of the Court

7. The principal objection raised by the Government of Guatemala to the jurisdiction of the Court is expressed in sub-paragraph *(d)* of paragraph 11 of the communication of the 9th September 1952 in the following terms : ".... the effect of its [the Government of Guatemala] Declaration of January 27th, 1947, expired with the last hour of January 26th, 1952, and that from this moment the International Court of Justice has no jurisdiction to treat, elucidate or decide cases which would affect Guatemala....". This objection raises clearly the issue whether the Court has jurisdiction to hear and decide the case upon its merits when the period of acceptance of the jurisdiction of the Court by the defendant State expires subsequent to the date of the application instituting proceedings. In the submission of the Government of Liechtenstein it is clear, both on authority and in principle, that if at the date on which an application is filed there is in existence a valid Declaration by the defendant State, made under Article 36 (2) of the Statute, accepting the jurisdiction of the Court, the Court has jurisdiction to hear and finally determine the dispute irrespective of the date on which the Declaration may subsequently expire.

8. So far as the Government of Liechtenstein are aware, the only judicial authority bearing directly upon the point is a statement made by Judge Hudson in the course of his Dissenting Opinion in the case of the *Electricity Company of Sofia* (P.C.I.J., Series A/B, No. 77, at p. 123). The issue before the Court was whether it possessed jurisdiction over the dispute between Belgium and Bulgaria by virtue of the Declaration of Acceptance made by both Parties under Article 36 of the Statute of the Court or by virtue of a Treaty of Conciliation, Arbitration and Judicial Settlement concluded between the two countries on the 27th June 1931. The Court held that it had jurisdiction by virtue of the Declaration

made by the Parties under Article 36 of the Statute. Judge Hudson (dissenting) held that, if the Court had jurisdiction at all, it enjoyed it by virtue of the Treaty of Conciliation. In the course of reaching this conclusion the Judge said: ".... the Court must say what law obtained between Bulgaria and Belgium on January 26th, 1938, the date of the filing of the Belgian Application. The fact that the Treaty of 1931 ceased to be in force some nine days later can have no bearing on the Court's jurisdiction with respect to this case. If the jurisdiction existed on January 26th, 1938, it will continue until the case is disposed of in due course ; this is expressly recognized, indeed, in Article 37 (4) of the Treaty[1]." In the view of the Government of Liechtenstein this passage remains unaffected either by its context or by the reference in the last clause to the express recognition of the continuance of the Court's jurisdiction by Article 37 (4) of the Treaty. Judge Hudson was, in effect, saying that, provided the Treaty conferring jurisdiction upon the Court was in force at the date of the application, the subsequent lapse of the Treaty could make no difference. It appears that Judge Hudson considered Article 37 (4) of the Treaty to be no more than declaratory of the position which would have existed if no specific provision of that nature had been made.

9. Moreover, in the two cases commenced before the Permanent Court of International Justice under Article 36 (2) of the Statute of the Court in which the period of the validity of the declaration made by the defendant State expired after the date of the application, neither the parties nor the Court raised any doubts as to the jurisdiction of the Court. The two cases in question were the *Losinger case* and the *Phosphates in Morocco case*.

10. In the *Losinger case* (P.C.I.J., Series A/B, No. 67), proceedings were instituted by Switzerland against Yugoslavia by an Application filed on the 23rd November 1935. The Declaration of Yugoslavia accepting the jurisdiction of the Court under Article 36 (2) for a period of five years became effective on the 24th November 1930 and expired, therefore, at midnight of the day on which Switzerland filed its Application. The Preliminary Objection filed by the Government of Yugoslavia, though raising various objections to the jurisdiction of the Court, placed no reliance on the fact that the period for which the jurisdiction of the Court had been accepted by Yugoslavia expired after the institution of the proceedings before the Court. The Parties to that case discontinued the proceedings in December 1936.

11. In the *Phosphates in Morocco case* (P.C.I.J., Series A/B, No. 74, p. 23), the Italian Application instituting proceedings

[1] Article 37 (4) provided: "Notwithstanding denunciation by one of the High Contracting Parties, the proceedings pending at the expiration of the current period of the Treaty shall be duly completed."

against France was filed on the 30th March 1936. The French Declaration accepting the compulsory jurisdiction of the Court for a period of five years became effective on the 24th April 1931 and expired therefore at midnight on the 23rd April 1936. The Italian Declaration made for a similar period expired on the 6th September 1936. On the 14th June 1938, the Court upheld the Preliminary Objection of France, but no reliance was placed upon nor was any reference made either by the Court or the Parties to the point now raised by the Government of Guatemala.

12. A similar situation arose before the present Court. On the 26th May 1951, the Government of the United Kingdom instituted proceedings against the Government of Iran in the *Anglo-Iranian Oil Company case*. The United Kingdom invoked the Iranian Declaration under Article 36 (2) of the Court as the basis for the Court's jurisdiction. On the 9th July 1951, the Iranian Government, in accordance with the terms of its Declaration of Acceptance, withdrew its acceptance of the compulsory jurisdiction of the Court. Yet the proceedings continued and when, on the 22nd July 1952, the Court upheld the Iranian Preliminary Objection to the jurisdiction of the Court, it did so on other grounds and made no reference to the withdrawal of the Iranian Declaration.

13. The Government of Liechtenstein acknowledge that in general it is not permissible to deny the existence of a rule of law simply because in cases where it might properly have been applied no attempt was made to rely upon it. At the same time, the Government of Liechtenstein submit that there is at least one category of cases in which the fact that a particular rule is not applied or even referred to by the Court indicates that in the view of the Court no such rule exists. The cases in question are those in which the jurisdiction of the Court is or may be in issue. In such cases the principle is now well established that the Court is bound to satisfy itself that it possesses jurisdiction. Thus President McNair stated in his Individual Opinion in the *Anglo-Iranian Oil Company case (Preliminary Objection) (I.C.J. Reports 1952*, p. 116) as follows: "An international tribunal cannot regard a question of jurisdiction solely as a question *inter partes*. That aspect does not exhaust the matter. The Court itself, acting *proprio motu*, must be satisfied that any State which is brought before it by virtue of such a declaration has consented to the jurisdiction." The same principle was expressed in a similar manner by Judge Urrutia in the case of the *Electricity Company of Sofia*: "..... it is not only the right but the duty of the Court *ex officio* to make sure of its jurisdiction, that is of its power to take cognizance of a case in accordance with the texts governing the said jurisdiction". (Series A/B, No. 77, pp. 102-103.) See also Hudson, *The Permanent Court of International Justice* (revised edition, 1943), page 418.

14. In the submission of the Government of Liechtenstein these statements of principle—that it is the duty of the Court to satisfy itself in each case that it has jurisdiction—refer as much to the past practice of the Court as they do to the future treatment by the Court of questions of jurisdiction. It is, therefore, a clear implication of the principle that if, in the past experience of the Court, such a case as the present had arisen, and if the contention of the Government of Guatemala that in such cases the Court has no jurisdiction were valid, the Court would have declined jurisdiction *proprio motu*. Yet in the three cases referred to above, which are the only relevant cases, the Court did not decline jurisdiction nor even advert to the point which the Government of Guatemala now raise.

15. In the opinion of the Government of Liechtenstein, the above interpretation of the practice of the Court is supported by compelling considerations of principle. It is well known that governments appearing as defendants before the Court have little hesitation in invoking grounds, even if offering remote chances of success, militating against the jurisdiction of the Court. Yet although, as has been shown, in a number of cases a situation arose identical with that now before the Court, no defendant government has ever invoked a plea such as that now presented to the Court by the Government of Guatemala. It is not surprising, having regard to the consequences, bordering on absurdity, following from the principle now contended for by the Government of Guatemala, that governments should have refrained from relying on an argument of that nature. If the principle underlying the argument advanced by the Government of Guatemala were valid, then the Court might find itself deprived of jurisdiction by the expiry of the Declaration at some moment between the written proceedings and the oral proceedings, or between the hearings and the delivery of judgment, or between giving judgment and (if it were so called upon) interpreting that judgment, or between judgment and the subsequent assessment of compensation. Again, in these few cases in which a State has reserved to itself the right unilaterally to terminate at any moment its acceptance of the jurisdiction of the Court, it is possible to visualize situations in which, after having appreciated the full strength of its opponent's case at the hearings, it might promptly determine its Declaration and thereby deprive the Court of jurisdiction to continue with the case. The legal principle governing the matter is obvious and inescapable. That principle is that the institution of proceedings crystallizes the rights of the parties in relation to the jurisdiction of the Court[1].

[1] Similarly, it may be noted, the institution of proceedings crystallizes the rights of the parties in relation to the merits—a principle which is reflected in the emphasis placed by the Permanent Court of International Justice, in the *South-Eastern Greenland case*, on the notion that a party to a dispute before the

16. It may be observed that the same principle underlies the rule generally accepted in private international law to the effect that municipal courts have jurisdiction over *(inter alia)* such persons as at the time of the institution of the proceedings were within the territory comprised in the Court's jurisdiction. The fact that the defendant may before the date of trial leave that territory does not affect the jurisdiction of the Court.

17. Reference may be made at this point to another argument which the Government of Guatemala summon to their aid. The Government of Guatemala in paragraph 13 of the communication of the 9th September 1952 say : "As to the reference to the definite period for which the Guatemalan Declaration of January 27th, 1947, was in force, it should be noted that this limitation is usual in international tribunals and that it is also stipulated even in such cases as are submitted for decision by means of a special protocol precisely with the object of avoiding a prolonged delay in the decision of contentious cases." The Government of Liechtenstein have the following observation to offer on this passage : If the "special protocols" to which the Government of Guatemala so vaguely refer are examined, it will be found that what they do is to provide expressly that the tribunal shall wind up its proceedings by a specific date. For example, Article I of the Convention supplementary to that establishing the American-Panamanian Claims Commission provided, *inter alia*, as follows : "The Commission shall be bound to *hear, examine and decide*, before July 1st, 1933, all the claims filed on or before October 1st, 1932." There are other treaties in which limits are expressly fixed to the period in which the arbitral tribunal shall render its award or conclude the proceedings. (Some of these treaties will be found in Manning, *Arbitration Treaties among the American Nations* (1924). See also Witenberg, *L'Organisation judiciaire, la Procédure et la Sentence internationales* (1936), pp. 284-286 ; Feller, *The Mexican Claims Commissions* (1935), pp. 34-35.) The object of such clauses is to prevent undue delay in adjudication by specially constituted tribunals. They have nothing to do with the question of the jurisdiction of the tribunal. Thus it is clear that, by reason of the specific provisions of the Convention referred to above, the American-Panamanian Claims Commission would have had no jurisdiction to render an award after the 1st July 1933, even in a case commenced before the 1st October 1932. However, as stated, provisions of that nature have no connection whatsoever with the question of jurisdiction.

Court cannot benefit from unilateral acts which take place after the institution of proceedings. The Court said : "The dispute respecting the legal status of the South-Eastern territory of Greenland has been specifically submitted to the Court by the application of July 18th, 1932, so that no act on the part of the said Governments in the territory in question can have any effect whatever as regards the legal situation which the Court is called upon to define." (Series A/B, No. 48, p. 287.)

If it had been the intention of the Government of Guatemala that upon the lapse of their Declaration the Court should cease to have jurisdiction even in cases already begun, the Government of Guatemala could easily have given precise effect to that intention by the insertion of the appropriate words. But the Government of Guatemala did not do so. In fact there seems to be no treaty in existence in which a provision of that nature has been adopted. On the contrary, there is a long succession of treaties, impressive in their uniformity, which include express provisions to the contrary. It is sufficient to refer generally in this connection to some 100 treaties for the pacific settlement of disputes in which in varying terms specific provision is made that proceedings pending at the expiration of the treaty shall be continued until they are completed. The provisions and details of these treaties may be found at pages 304-308 of the *Systematic Survey of Treaties for the Pacific Settlement of International Disputes 1928-1948* (1948), prepared by the Secretariat of the United Nations.

III

THE COMPETENCE OF THE COURT TO DETERMINE QUESTIONS AFFECTING ITS JURISDICTION

18. The second principal argument relied upon by the Government of Guatemala is advanced in paragraphs 16-21 of their communication of the 9th September 1952. The Government of Guatemala appear, in effect, to be contending that in the present case the Court does not possess the right under Article 36 (6) of the Statute to determine whether it has jurisdiction. The Government of Guatemala allege in paragraphs 18 and 19 that the power of the Court under Article 36 (6) is restricted to the determination of whether the issue between the Parties falls within any of the four classes of disputes enumerated in Article 36 (2) and, by implication, they deny that the present case raises a question of that nature. At the same time, they do not expressly indicate what other paragraph of Article 36 governs the dispute which now undeniably exists as to the jurisdiction of the Court. The Government of Liechtenstein submit that any attempt to limit the jurisdiction of the Court under Article 36 (6) to the determination of the question whether a dispute falls into any of the four categories enumerated as *(a)*, *(b)*, *(c)* and *(d)* in Article 36 (2) has no foundation in law. Quite apart from the fact that there is nothing in the general terms of Article 36 (6) to limit its application in this manner, the Government of Liechtenstein are of the opinion that both the practice of the Court and considerations of principle require the rejection of the contention of the Government of Guatemala.

19. The Government of Liechtenstein submit that the proper interpretation of Article 36 (6) is that it gives the Court the power to determine whether any proceeding instituted by a party to the Statute falls within the jurisdiction of the Court as determined by Article 36 as a whole. To suggest, as do the Government of Guatemala, that Article 36 (6) relates only to disputes arising in connection with the four categories of disputes enumerated in Article 36 (2) is to overlook the fact that disputes as to jurisdiction may arise, and have arisen, not only under the portion of Article 36 (2) which precedes the enumeration of the four classes of disputes, but also under Article 36 (1) and under Article 36 (3). If the contention of the Government of Guatemala were adopted, the Court would not have the power under Article 36 (6) to determine an objection raised to its jurisdiction under, for example, Article 36 (2) on the ground that the matter in dispute fell within the scope of some reservation, or Article 36 (3) on the ground of the non-fulfilment of a condition or the absence of reciprocity, or Article 36 (1) on the ground that the matter was not specially provided for in the Charter of the United Nations or that the dispute did not fall within the terms of a treaty or convention in force.

20. An impressive body of precedent in the practice of the International Court of Justice and of its predecessor emphatically contradicts any such assertion. Thus, in the *Phosphates in Morocco case*, the Court interpreted a clause of the Italian Declaration of acceptance referring to "any disputes which may arise after the ratification of the present Declaration with regard to situations or facts subsequent to such ratification" (P.C.I.J., Series A/B, No. 74). The Court did the same in the case of the *Electricity Company of Sofia and Bulgaria* (P.C.I.J., Series A/B, No. 77). Similarly, in the judgment of the Court upon the preliminary objection raised by Iran in the *Anglo-Iranian Oil Company case* (*I.C.J. Reports 1952*, p. 93), the principal dispute as to jurisdiction, as decided by the Court, related to the interpretation of the Iranian Declaration generally and not to any question of the relevance of the four categories enumerated in Article 36 (2). The Court has also had occasion to determine the question of its competence when its jurisdiction has been invoked under Article 36 (1) of the Statute. In the *Corfu Channel case (Preliminary Objection)* (*I.C.J. Reports 1948*, p. 15), the United Kingdom relied *(inter alia)* upon a recommendation of the Security Council as endowing the Court with jurisdiction under Article 36 (1) of the Statute. In all these cases it was never suggested that the Court had no jurisdiction to determine its own competence. Neither was any such allegation made in any of the numerous cases in which the Court was called upon to pass upon its jurisdiction on the basis of instruments other than declaration of acceptance under Article 36 (2) of its Statute.

21. The Government of Liechtenstein refer in this connection to the view expressed by Professor Manley O. Hudson in his work on *The Permanent Court of International Justice* (revised edition, 1943). In discussing Article 36 (4) of the Statute of the Permanent Court of International Justice, which was identical with Article 36 (6) of the present Statute, he says (at p. 416) : "The provision is not limited to disputes arising with reference to the Court's jurisdiction under paragraph 2 of Article 36, though the history of its drafting indicates that such a limit was originally intended ; the Court is competent to decide a question as to its jurisdiction under (1) a special agreement *(compromis)*, (2) a treaty or convention in force, or (3) a declaration made under paragraph 2 of Article 36.... The principal office to be served by paragraph 4 [now paragraph 6] of Article 36 may be to foreclose any possible contention that the Court is incompetent to go on with a proceeding because one party contests its jurisdiction ; it is in itself a provision for obligatory jurisdiction, limited to disputes as to jurisdiction."

22. In any event, it is the further submission of the Government of Liechtenstein that, even if Article 36 (6) had been omitted from the Statute of the Court, the Court would nevertheless have possessed under customary international law and under general principles of law the power which the Government of Guatemala now seek to deny it. It is an elementary and firmly established rule of international arbitral jurisprudence that an international tribunal has the power to determine in the light of the *compromis* or of the constituent instrument of the tribunal what matters are included within its jurisdiction.

23. This principle has received expression not only in the jurisprudence of the Permanent Court of International Justice but also in that of other international tribunals and in the writings of publicists. The Permanent Court of International Justice in its Advisory Opinion relative to the *Interpretation of the Greco-Turkish Agreement of 1926* said : "It is clear—having regard, among other things, to the principle that, as a general rule, any body possessing jurisdictional powers has the right in the first place itself to determine the extent of its jurisdiction—that questions affecting .... the jurisdiction of the mixed commission must be settled by the commission itself...." (Series B, No. 16, p. 20). The recognition of that principle goes back to the origins of modern international arbitration. Thus Mr. Gore, one of the American commissioners sitting in the Mixed Commission under Article 7 of the Jay Treaty in the case of the *Betsey*, said : "A power to decide whether a claim preferred to this board is within its jurisdiction appears to me inherent in its very constitution, and indispensably necessary to the discharge of any of its duties...." (quoted in Ralston, *Law and Procedure of International Tribunals*

(revised edition, 1926), p. 45). Likewise, the Brazilian-Bolivian Arbitral Tribunal stated that : "A tribunal which does not in fact have the capacity to consider, to affirm and to determine its own jurisdiction is a juridical countersense" (quoted in Ralston, *op. cit.*, p. 48). Again, the principle is stated in Oppenheim, *International Law*, Vol. II (7th edition), at page 28, in these words : "The other principle is that in case of doubt the arbitrator is entitled to interpret a *compromis* or the treaty and thus to determine the scope of its jurisdiction." Professor Lauterpacht, in *Private Law Sources and Analogies of International Law* (1927), states at page 208 that : "It would be an idle task to enquire whether it is due to a conscious application of a private law rule or to the intrinsic merits of the matter, that there is now a unanimous consensus of opinion and of practice in giving an affirmative answer to this question [i.e. of whether the competence of an international tribunal to determine its own jurisdiction has become a recognized principle]." See also Carlston, *The Progress of International Arbitration* (1946), pages 74-81, and the authorities therein cited.

24. In the view of the Government of Liechtenstein, there is nothing in the Declaration of the Government of Guatemala to exclude the normal operation of Article 36 (6) of the Statute. Nor is there anything—assuming (which is not admitted) that Article 36 (6) of the Statute is inapplicable—to exclude the operation of the rule of customary international law that every arbitral tribunal has (in the absence of an express provision to the contrary) the power to determine its own jurisdiction.

IV

The relevance of the municipal law of Guatemala

25. In their communication of the 9th September 1952, the Government of Guatemala refer on three occasions to an alleged limitation imposed by the law of Guatemala upon their right to appear before the Court. In paragraph 15 of the communication, the Minister of Foreign Affairs states that "in the matter of jurisdiction, my Government must respect the internal laws of the country in all that refers to its definition and limits". The Minister then refers to the definition of "jurisdiction" in Article 130 of the Constitutional Law of the Judicial Organism as "the power to administer justice". The power of the Court to administer justice expired, in respect of Guatemala, the Minister continues, on the 26th January 1952. The Government of Guatemala revert to a similar argument in paragraph 21 where, after referring to Article 24 of the Constitution of Guatemala, the Minister of Foreign Affairs again asserts that : "No law authorizes any government to submit questions to an international tribunal if this has not jurisdiction expressly

conferred by a law of the Republic or a sovereign act approved by Congress." Finally, in sub-paragraph V of paragraph 22, the Government of Guatemala summarize their position in this respect by alleging that their attitude is based "on compliance with the domestic laws in force in our country".

26. In invoking these legal definitions and provisions of their law, the Government of Guatemala assume as a fact that the Court has no jurisdiction in the present case and, therefore, that, having regard to the law of Guatemala, the Government of Guatemala are not entitled to appear before the Court. As, in the view of the Government of Liechtenstein, the Court undoubtedly possesses jurisdiction in this case, the above definitions and provisions of the law of Guatemala are irrelevant. However, out of respect for the Court, the Government of Liechtenstein deem it desirable to add the following brief observations upon the relationship of the municipal law of a State to its obligations under international law. In doing so, the Government of Liechtenstein must not be taken as admitting the accuracy in Guatemalan law of the arguments advanced by the Government of Guatemala in paragraphs 15, 21 and 22 of their communication.

27. The principle, which is so clear as to require the minimum citation of authority, is that no State may rely upon the provisions of its own law as a sufficient excuse for failure to comply with its obligations under international law. In referring to the authorities which follow, the Government of Liechtenstein assume the following propositions to be valid : *(a)* that if the Court has the competence to determine its own jurisdiction, the Government of Guatemala are under an international obligation to submit to the jurisdiction in this respect ; and *(b)* that if the Court determines that it has jurisdiction to hear the merits of the case, the Government of Guatemala will be under an international obligation to appear before the Court and contest the case or alternatively to accept a judgment given in default of appearance.

28. The Government of Liechtenstein refer to the following pronouncements of the Permanent Court of International Justice in support of the principle set out in the preceding paragraph :

(a) In the Advisory Opinion concerning the *Treatment of Polish Nationals in Danzig* (Series A/B, No. 44, p. 24), the Permanent Court of International Justice indicated that "a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force".

(b) In the case of the *Free Zones of Upper Savoy and the District of Gex* (Series A/B, No. 46, p. 167), the Court said : ".... it is certain that France cannot rely on her own legislation to limit the scope of her international obligation....".

(c) In the case of the *Interpretation of the Convention between Greece and Bulgaria* (Series B, No. 17, p. 32), the Court said: "It is a generally accepted principle of international law that in the relation between Powers who are contracting parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty."

V

CONCLUSIONS OF THE GOVERNMENT OF LIECHTENSTEIN

29. In the light of the preceding observations, the Government of Liechtenstein submit the following conclusions in relation to the contents of the communication of the 9th September 1952 addressed by the Foreign Minister of Guatemala to the President of the International Court of Justice:

(A) It must be a matter for consideration by the Court whether the communication of the Government of Guatemala of the 9th September 1952 constitutes a Preliminary Objection within the meaning of Rule 62 of the Rules of the Court or a refusal, amounting to a default, to plead before the Court.

(B) The present observations of the Government of Liechtenstein are based on the assumption that the communication of the 9th September 1952 constitutes a Preliminary Objection to the jurisdiction of the Court. This assumption is adopted without prejudice to the right of the Government of Liechtenstein to invoke the provisions of Article 53 of the Statute of the Court.

(C) The terms of the Declaration made by Guatemala on the 27th January 1947 in accordance with Article 36 (2) and (3) of the Statute of the International Court of Justice and submitting to the jurisdiction of the Court for a period of five years are sufficient to confer jurisdiction upon the Court to hear and determine any case in which proceedings were instituted prior to midnight, the 26th January 1952.

(D) The International Court of Justice has the competence, in accordance both with Article 36 (6) of the Statute and with general principles of international law, to determine questions relating to its own jurisdiction.

(E) The alleged incapacity (which is not admitted) of the Government of Guatemala under the laws of Guatemala to appear in the present case after the 27th January 1952 in no way affects either the obligations of that Government under international law or the jurisdiction of the Court.

(F) Accordingly, the Government of Liechtenstein request the Court to assume jurisdiction over the questions raised by the Govern-

ment of Liechtenstein in their Application of the 10th December 1951 and to reject the contrary contentions of the Government of Guatemala.

(G) The Government of Liechtenstein reserve their right to invoke, should the necessity arise, the provisions of Article 53 of the Statute of the Court in relation to the merits of the present dispute.

Cambridge, 11th May 1953.

(Signed) ERWIN H. LOEWENFELD.