SEPARATE OPINION OF JUDGE ARMAND-UGON

[Translation]

Whilst concurring in the Judgment of the Court, I feel bound to state the grounds which impel me to do so by a different reasoning.

1. The First Preliminary Objection raised by the Government of Bulgaria to the Application of the Government of Israel is based on paragraph 5 of Article 36 of the Statute of the Court. The question is whether this paragraph is applicable to the Declaration signed on August 12th, 1921, by the Minister for Foreign Affairs of the Kingdom of Bulgaria. The interpretation of this provision is therefore the question which arises for the Court. The text of the provision is 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 aforementioned Bulgarian Declaration is in the following terms:

> *[Translation]*
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> "On behalf of the Government of the Kingdom of Bulgaria, I recognize, in relation to any other Member or State which accepts the same obligation, the jurisdiction of the Court as compulsory, *ipso facto* and without any special convention, unconditionally."

2. In its Advisory Opinion regarding the *Competence of the General Assembly for the admission of a State to the United Nations*, the Court laid down and recalled certain rules applicable to the interpretation of the Charter which are also valid in respect of the interpretation of the Statute of the Court, which is annexed to the Charter:

> "... the first duty [said the Court] of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean..." (*I.C.J. Reports 1950*, p. 8.)

Consequently, elements for the interpretation of paragraph 5 must in the first place be sought in the text itself, and it is only if those elements are insufficient that reliance may be placed upon elements extraneous to the text. When a text is clear, competence to interpret must be confined to the text itself.

3. Paragraph 5 must be construed restrictively.

In the first place, because that paragraph lays down an exception to the manner of acceptance of the Optional Clause, normally effected by means of a unilateral declaration, as indicated in paragraph 2 of Article 36 of the Statute.

The system of acceptance of the Optional Clause is dominated and governed by a principle adopted in the present Statute and already recognized by the old Statute. That principle is that such acceptance is always optional and particular and not compulsory and general, i.e. in no case can the jurisdiction of the Court be imposed upon a State by other States. Adherence by a government to the Optional Clause constitutes a political decision.

Paragraph 5 makes provision for a collective and automatic regime of acceptance of the jurisdiction of the Court in respect of certain States bound by the Statute of the Permanent Court of International Justice.

This paragraph therefore constitutes a derogation from the general law in the matter of acceptance of the Optional Clause, for it regards certain States having made certain declarations under Article 36 of the old Statute as having accepted the jurisdiction of the new Court on the basis of their former declarations. Such States are therefore bound by the jurisdiction of the International Court of Justice without their having made any voluntary and unilateral declaration. The recognition of the jurisdiction of the Court which follows from paragraph 5 must be confined to the express terms of the paragraph and may not be extended, by means of interpretation, to other cases not included in this provision.

Furthermore, the paragraph in question assumes the form of a legal fiction—to a certain extent an empirical, and purely technical, legal solution; this solution was devised in order to safeguard certain clearly defined interests. When the law is expressed in such a manner, its interpretation must not exceed the limits imposed by the legal formula; the interpretation must be contained in the letter of the text itself: any proposal of an extensive interpretation must here be rejected.

4. A sound interpretation of paragraph 5 must have regard primarily and essentially for its precise text, in order that its content may be ascertained.

It is a well-known fact that declarations accepting the Optional Clause of the Permanent Court of International Justice and of the International Court of Justice may be of two kinds: declarations

of acceptance without a fixed period of time or fixed term, the effects of which are immediate and for ever, and declarations of acceptance with a fixed period of time or fixed term, which produce effects only for the period fixed in them by the declarant State. These different ways of accepting the Optional Clause were naturally in the minds of the draftsmen of paragraph 5. The text of this paragraph refers only to declarations which are "*pour une durée qui n'est pas encore expirée*" (for a period which has not yet expired) and which involve acceptance of the jurisdiction of the International Court of Justice "for the period which they still have to run". These two expressions clearly relate to declarations made for a certain time and refer to legal instruments which expire after a fixed period. The two expressions would have no reasonable meaning if it were sought to apply them to declarations which were made without a time limitation and in respect of which there was therefore no "period which they still have to run." The slight drafting difference between the English and French texts of paragraph 5 of Article 36 does not invalidate this interpretation of the text, in the two languages. It is clear that the only declarations referred to in the paragraph are declarations with a fixed time-limit.

The paragraph in question does not therefore contemplate declarations made without a time-limit, i.e. declarations which do not have a period of time to run. To assert that an obligation has "a period still to run" necessarily presupposes that the obligation will expire on a certain date.

The fact that paragraph 5 refers to declarations made for a certain time involves the exclusion of other declarations which have no fixed term.

In providing for the preservation of certain declarations relating to the jurisdiction of the Permanent Court of International Justice, paragraph 5 did not include the declaration of the Kingdom of Bulgaria, signed on August 12th, 1921, which accepted the jurisdiction of that Court "unconditionally" and without any fixed term, as was permissible under paragraph 3 of Article 36 of the old Statute.

The very careful drafting of paragraph 5, which draws a distinction between the various categories of declarations then in existence, avoided the situation in which States having made declarations without a time-limit would have been permanently bound by the jurisdiction of the International Court of Justice.

This is a case for the application of the old rule: *bene indicat qui bene distinguit.*

To accept the view that full effect ought to be given to paragraph 5 in respect of all declarations, without distinguishing between those which have no fixed period and those which do, would lead to binding Bulgaria to the Optional Clause definitively in respect of all disputes falling within this undertaking and

without any limitation of time. This cannot have been the will which that paragraph purported to express and to attribute this meaning to it would go beyond the limits of its restrictive text. It cannot be held that the legal fiction embodied in this provision can be so extended for it would then manifestly go beyond the content of its formal terms. To impose upon Bulgaria such an undertaking in the matter of jurisdiction which would affect Bulgaria in perpetuity would require a rule leaving no doubt on this point. The text of paragraph 5, however, does not involve such grave consequences; the text must therefore be re-established in its literal meaning and no consideration extraneous to its wording can be allowed to prevail. The legal provision which is formulated in clear terms must be applied without adding anything to, or without taking anything from, it.

It should be observed that the practical purpose which paragraph 5 of Article 36 sought to achieve was none other than to facilitate the immediate exercise of the compulsory jurisdiction of the new Court; this was amply assured by the declarations having a fixed term. It is not permissible to indulge in extensive interpretation where there is nothing to require such an interpretation. The clear and precise consequences of a text are none other than those intended by that text; to seek to attribute other consequences to it presupposes an unjustified modification of the text.

This argument was not discussed in the oral proceedings; there is, however, nothing to prevent the argument being upheld, in accordance with the well-known principle applied by international courts in procedural matters, that the Court may *proprio motu* seek and select the legal basis for its decision on the final submissions of the Parties—*iura novit curia.*

* * *

Consequently, it cannot be considered that paragraph 5 refers to the Bulgarian Declaration.

I should have desired that the Court base its Judgment solely on the grounds which have just been set out in summary form. The Court has preferred a different formulation although it has not rejected the interpretation set out in the present Opinion.

(Signed) ARMAND-UGON.