1892 and subsequently specifically covered by a separate Declaration of December of that year. The Netherlands did not in 1892, or at any time thereafter until the dispute arose between the two States in 1922, repudiate the Belgian assertion of sovereignty.

Having examined the situation which has obtained in respect of the disputed plots and the facts relied upon by the two Governments, the Court reaches the conclusion that Belgian sovereignty established in 1843 over the disputed plots has not been extinguished.

For these reasons,

THE COURT,

by ten votes to four,

finds that sovereignty over the plots shown in the survey and known from 1836 to 1843 as Nos. 91 and 92, Section A, Zondereygen, belongs to the Kingdom of Belgium.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this twentieth day of June, one thousand nine hundred and fifty-nine, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Kingdom of Belgium and the Government of the Kingdom of the Netherlands, respectively.

(Signed) Helge KLAESTAD,
President.

(Signed) GARNIER-COIGNET,
Deputy-Registrar.

Judge Sir Hersch LAUTERPACHT makes the following Declaration:

I have voted in favour of a decision determining that the sovereignty over the plots in dispute belongs to the Netherlands.

Article 90 of the Descriptive Minute of the Boundary Convention of 1843, in assigning these plots to *Belgium*, purports to transcribe word for word the Communal Minute between Baerle-Duc and Bäarle-Nassau which assigns these plots to the *Netherlands*. The Netherlands has produced before the Court what it described as one of the two original copies of the latter Minute. No other copy of the original Minute has been produced before the Court. The authenticity of the Minute produced by the Netherlands has not

been challenged—though it has been alleged by Belgium that a mistake had occurred in the course of transcribing it. On the other hand, it has been alleged by the Netherlands that a mistake, in the contrary direction, had occurred in the process of transcribing that document when the Descriptive Minute was adopted in 1843. In the words of Counsel for Belgium, the accumulation of errors in this case was such "as though some evil genius had presided over the whole affair". I have formed the view that the evidence submitted to the Court in the shape of the formal Minutes, succinct in the extreme, of the Boundary Commission and of fragmentary correspondence lacking in sequence has not wholly dispelled the impact of the confused situation thus created. The circumstances of the adoption, in 1843, of the Descriptive Minute must, to some extent, be in the nature of conjecture. In particular, it has not been proved possible to state a direct conclusion as to the authenticity or otherwise of the cardinal piece of evidence, namely, of the only existing copy of the Communal Minute produced by the Netherlands. Moreover, while the Commissioners who drafted the Descriptive Minute enjoyed wide powers, they had no power to endow with legal efficacy a document in which they purported to transcribe word for word the Communal Minute and to observe the *status quo* but in which they actually modified the Communal Minute and departed from the *status quo*. The law knows of no such power. For these reasons, I am of the opinion that the relevant provisions of the Convention must be considered as void and inapplicable on account of uncertainty and unresolved discrepancy.

The Special Agreement of 26 November, 1957, submitting the dispute to the Court is by design so phrased as not to confine its function to giving a decision based exclusively on the Convention of 1843. By the generality of its terms it leaves it open to the Court to determine the question of sovereignty by reference to all relevant considerations—whether based on the Convention or not. Accordingly, in the circumstances, it seems proper that a decision be rendered by reference to the fact, which is not disputed, that at least during the fifty years following the adoption of the Convention there had been no challenge to the exercise, by the Government of the Netherlands and its officials, of normal administrative authority with regard to the plots in question. In my opinion, there is no room here for applying the exacting rules of prescription in relation to a title acquired by a clear and unequivocal treaty; there is no such treaty. It has been contended that the uninterrupted administrative activity of the Netherlands was due not to any recognition of Netherlands sovereignty on the part of Belgium but to the fact that the plots in question are an enclave within Netherlands territory and that, therefore, it was natural that Netherlands adminis-

trative acts should have been performed there in the ordinary course of affairs. However, the fact that local conditions have necessitated the normal and unchallenged exercise of Netherlands administrative activity provides an additional reason why, in the absence of clear provisions of a treaty, there is no necessity to disturb the existing state of affairs and to perpetuate a geographical anomaly.

Judge SPIROPOULOS makes the following Declaration:

The international legal status of the disputed plots seems to me to be extremely doubtful.

The facts and circumstances (decisions of the Mixed Boundary Commission, letters, etc.) at the basis of the Belgian hypothesis that the copy, which has not been produced before the Court, of the Communal Minute of 1841 attributed the disputed plots to Belgium or that the Boundary Commissioners had corrected it to that effect—which facts go back more than a century—do not, in my opinion, make it possible to conclude with sufficient certainty that the Belgian hypothesis corresponds with the facts.

On the other hand, the thesis of the Netherlands to the effect that an error crept into the Minute attached to Article 90 of the Descriptive Minute of 1843 is also merely based on a hypothesis, i.e. on the mere fact that the text of the Communal Minute of 1841 departs from the text of the Minute attached to Article 90 of the Descriptive Minute of 1843.

Faced as I am with a choice between two hypotheses which lead to opposite results with regard to the question to whom sovereignty over the disputed plots belongs, I consider that preference ought to be given to the hypothesis which seems to me to be the less speculative and that, in my view, is the hypothesis of the Netherlands. For this reason I have hesitated to concur in the Judgment of the Court.

Judges ARMAND-UGON and MORENO QUINTANA, availing themselves of the right conferred upon them by Article 57 of the Statute, append to the Judgment of the Court statements of their Dissenting Opinions.

(Initialled) H. K.

(Initialled) G.-C.