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

Judge WELLINGTON KOO makes the following Declaration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Initialled) B. W.

(Initialled) G.-C.