SEPARATE OPINION OF SIR PERCY SPENDER

I agree with the conclusion of the Court.

Since I do not find it necessary, having regard to the approach I make to the first preliminary objection, to consider a number of matters to which the Judgment of the Court directs its attention, I desire to state briefly the reasons why I think this objection is unfounded.

* * *

The question raised by the first preliminary objection is whether Thailand's letter of 20 May 1950, deposited with the Secretary-General of the United Nations under the provisions of Article 36 (4) of the Statute of this Court, is in form and substance a declaration recognizing the compulsory jurisdiction of this Court within the meaning of Article 36 (2) of that Statute.

Thailand states that this letter was drawn up by it in the belief that its declaration of 3 May 1940 made under the provisions of Article 36 of the Statute of the Permanent Court and which renewed a previous declaration made by it on 20 September 1929 under the same provisions, had, on its becoming a party to the Statute of this Court, been transformed by virtue of Article 36 (5) of that Statute into an acceptance of the compulsory jurisdiction of this Court, for the period of time for which, in accordance with its terms, that declaration of 1940 still had to run.

However, the decision of this Court in *Israel* v. *Bulgaria (I.C.J. Reports 1959)* established, it asserts, that this belief was unfounded; that, contrary to its belief, the declarations made by it to the Permanent Court lapsed on the dissolution of that Court and thereafter could not be renewed. Since, so it contended, its letter purported to do no more than renew a declaration made by it to the Permanent Court, that letter was ineffective *ab initio* and consequently Thailand never accepted the compulsory jurisdiction of this Court under Article 36 (2) of its Statute.

* * *

I do not think there can be any doubt that Thailand's belief as at 20 May 1950 was as stated by it. It accorded with the view commonly held at that time as to the meaning and effect of Article 36 (5). The

terms of its letter of that date are not reasonably consistent with any other conclusion. Had it believed that it had at no time theretofore been subject to the compulsory jurisdiction of this Court, it is wholly unlikely that its letter would have been drafted in the language in which it was.

* * *

On 20 May 1950 Thailand knew that the period of time for which its declaration of 1940 was to run had expired. It knew that the only way in which it could thereafter become subject to the compulsory jurisdiction of this Court was by a free and unfettered decision on its part to accept this Court's jurisdiction under Article 36. This could only be done by virtue of paragraph (2) thereof. That it fully understood that this was so is abundantly established by the opening words of the second paragraph of its letter.

The letter was accordingly one which purported to be made under the provisions of Article 36 (2) of this Court's Statute. Its objective Thailand freely concedes was to submit itself to the compulsory jurisdiction of this Court.

Did the objective fail to be achieved for any reason of form or substance?

* * *

No requirements of form are called for by paragraph (2) of Article 36. If consent to recognize this Court's jurisdiction in terms of that paragraph is clearly manifested, it matters not in what form the declaration containing that consent is cast.

Did then Thailand by its letter of 20 May 1950 clearly manifest its consent to recognize this Court's jurisdiction?

The answer to the question is to be found in an examination and interpretation of the language employed by it in its letter.

The task of the Court is to ascertain Thailand's intention. In order to do this the language employed should, in the first place, be read in its natural and ordinary meaning to see if it makes sense. The terms in which Thailand expressed itself should be read in the general sense in which they would have been understood at the time its letter was written. The letter should be interpreted however so as to harmonize with, not to thwart, the purpose Thailand had at that time.

* * *

By the terms of its letter of 20 May 1950 Thailand purported to "renew" a certain declaration. That declaration is described as

"the declaration above mentioned". It purports to renew *that* declaration with the limits and subject to the same conditions and reservations "as set forth in the *first* declaration" of Sept. 20, 1929.

Used side by side one with the other, the phrases "the declaration above mentioned" and "the first declaration of September 20, 1920" *(sic)* refer evidently not to the same but to different declarations. The declaration "above mentioned" which was being renewed was apparently that of 1940, not that of 1929.

However, whichever way they are looked at, the words "the declaration above mentioned" refer to a declaration which although made to the Permanent Court was, in 1950, commonly believed to have been transformed, upon Thailand becoming a party to the Statute of this Court, into an acceptance of the compulsory jurisdiction of this Court by virtue of the operation of Article 36 (5) of its Statute.

At the time when it was made there could have been no doubt what Thailand intended to do by its declaration of 1950 and what its language was meant to convey. The declaration would have been understood to mean that Thailand, previously subject to the jurisdiction of this Court by virtue of its declaration of 1940 and the operation of Article 36 (5) of this Court's Statute, was recognizing that jurisdiction afresh under the provisions of Article 36 (2) of that Statute, for another ten-year period, further to that mentioned in its 1940 declaration. It would have been apparent to those who read it in a natural and reasonable way that it was just a commonplace and straightforward renewal of a previous obligation to the same Court, an obligation which had just expired.

This is precisely how Thailand intended its declaration of 1950 should be understood. So understood the word "renew", of which so much has during this case been said, is both apt and normal and, in the context in which it was used, admits of no difficulty.

It is evident, and it is not without its significance, that when the 1950 declaration was drafted, Thailand had before it a letter of 11 November 1949 directed to it by the Registrar of this Court which was in the following terms:

> "In the interests of the administration of the Court I have the honour to invite your ... attention to the fact that, on 3 May 1940, by a Declaration made pursuant to Article 36 of the Statute of the Permanent Court of International Justice and considered as being still in force (Article 36, paragraph 5, of the Statute of the present Court), the Government of Thailand recognized as compulsory the jurisdiction of the Court in the circumstances provided for in Article 36 quoted above.
>
> This acceptance, which was valid for a period of ten years, will expire on 2 May 1950."

* * *

Adhering as I do to the views expressed in the Joint Dissenting Opinion of my late colleague Sir Hersch Lauterpacht, Judge Wellington Koo and myself in *Israel* v. *Bulgaria (I.C.J. Reports 1955)*, I do not find it necessary to address myself to the position which would exist if, contrary to its belief, Thailand's declaration of 1940 had, in accordance with the reasoning of the Court in that case, lapsed on the dissolution of the Permanent Court and thereafter was devoid of object. I am of the opinion, for reasons which appear in the Joint Dissenting Opinion, that, on becoming a party to the Statute of the Court as a consequence of its admission to membership of the United Nations in December 1946, Thailand, as it believed was so, did become subject to the compulsory jurisdiction of this Court by virtue of Article 36 (5) of this Court's Statute and so remained until the expiry of the period of time its 1940 declaration still had to run.

The letter of 20 May 1950 in my judgment gave effect to the intention of Thailand and was a valid declaration under Article 36 (2) of this Court's Statute.

(Signed) Percy C. SPENDER.