I.C.J. Communiqué no. 62/3
(Unofficial)

The following information from the Registry of the International Court of Justice is communicated to the Press:

When he opened the hearing of Thursday, 1 March 1962, at 10.30 a.m., for the oral presentation of their arguments by the Parties in the case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (merits), the President of the International Court of Justice made the following statement:

Before opening the oral proceedings in this case, I should like to address myself to a day which is outstanding in the history of international law, the 15th of February 1922. On that day, forty years ago, in this same great court-room, the Permanent Court of International Justice held its first sitting, to which the presence of the Queen of the Netherlands and of eminent Netherlands and foreign public figures gave a special distinction.

While the settlement of disputes between States by arbitration has its origins in antiquity, and while it rendered great services and in particular contributed to defining the rules of international law, it is in fact only with the establishment of the Permanent Court as a body of independent judges ready at all times to perform their task that the institution of international justice became truly permanent and readily accessible to all States desirous of recourse to it for the settlement of their legal disputes. The originality and importance of the element of permanency cannot be over-stressed; to it is owed the fact that the Permanent Court of International Justice became an institution in the real sense of the term.

It has been said that institutionalization implies a belief in the all-importance of external instrumentalities. But if this is to be taken also to mean coercion, those in the League of Nations who set up the Permanent Court realized that the only way to succeed was to have confidence in States. The permanent nature of the Court made possible acceptance of its compulsory jurisdiction, but through the ingenious device of the optional clause such acceptance remained freely given and within the limitations set by the accepting State. This solution has been criticised, but it has been found to be the only possible one in the present state of international law, and it was endorsed by the Statute of the new Court. More than that, the idea has made progress, and in several hundred bilateral and multilateral treaties States have accepted the compulsory jurisdiction of the Court for disputes arising out of the application and interpretation of those treaties. While the Charter leaves to the parties to a dispute the choice of the peaceful means with a view to its settlement, the Security Council, in the appropriate circumstances, is required also to "take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice".

In its twenty years of activity, the Permanent Court delivered some dozens of decisions in contentious cases and in advisory proceedings, and these decisions are authoritative in the field of international law. The cataclysm of the Second World War put the Court to a difficult test, but did not destroy it; and, when the war was over, if the United Nations decided to replace the Permanent Court by a new Court, that was for reasons of a practical nature. The Charter stated that the Statute of the new Court was based upon

the Statute ...

the Statute of the Permanent Court of International Justice, and the modifications were not fundamental. The title of the Court is simpler and more correct. The system of partial renewal of the Court better secures its unity and that esprit de corps which welds into a single sense the personal responsibility of the Judges and that of the Court. The Statute of the Court now forms an integral part of the Charter, and the Court is "the principal judicial organ of the United Nations", while remaining, within the framework of the Organization, an independent judicial body. As the Permanent Court had said on a number of occasions, the Court is first and foremost the organ of international law; the new Statute emphasizes this, prescribing that the function of the Court "is to decide in accordance with international law such disputes as are submitted to it".

The present Court has since the beginning been conscious of the need to maintain a continuity of tradition, case law and methods of work. Its first President was Judge Guerrero, the last President of the former Court. It adopted the rules of the former Court, with a few modifications of minor importance, and even its external forms. Above all, without being bound by stare decisis as a principle or rule, it often seeks guidance in the body of decisions ofthe former Court, and the result is a remarkable unity of precedent, an important factor in the development of international law.

The function of the Court is to state the law as it is; it contributes to its development, but in the manner of a judicial body, for instance when it analyses out a rule contained by implication in another, or when, having to apply a rule to a specific instance, which is always individualized and with its own clear-cut features, it gives precision to the meaning of that rule, which is sometimes surrounded by what the great jurist, Vittorio Scialoja, called, without intending the expression critically, the chiaroscuro of international law. Recently it has also been rightly said that there are problems of international law which cannot be studied without referring to the decisions of both Courts.

In a period such as the present, the function of the Court is sometimes a particularly arduous one, but it must not be forgotten that alongside rules in evolution that are part of customary or treaty law, which in the main are rules of particular application, there are almost immutable rules and principles which are necessary because they meet the deep-seated needs of the international community and of which von Liszt said in his positivist construct that they constitute "den festen Grundstock des ungeschriebenen Volkerrechts, seinen ältesten, wichtigsten, heiligsten Bestand" (the firm basis of the unwritten law of nations, its oldest, most important, and most sacred core).

It would seem that forty years of operation of a permanent international tribunal justify all reasonable hopes.

The President then announced that for reasons of health Judge Córdova and Judge Spiropoulos were prevented from taking part in the consideration of the present case; that Judge Jessup had stated that, in pursuance of Article 17 of the Statute, he would not be able to participate in the decision of this case, and that Judge Badawi was detained by indisposition and was not able to be present at this hearing.

Having ....

Having noted the presence in Court of the Agents of the Parties and their Counsel and Advocates, the President called upon the Agent for the Government of Cambodia.

His Excellency Truong Cang addressed the Court after which he asked the Court to hear the Honourable Dean Acheson.

At the hearing tomorrow morning at 10.30 a.m. the Court will hear the next address on behalf of the Government of Cambodia.

Note for representatives of the Press with regard to communiqués issued during the hearings in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)

Since representatives of the Press can be present at each sitting and obtain at the end of each day the verbatim record of the day's proceedings, the Registry does not propose to publish during the hearing, the customary communiqués which merely indicate the names of the speakers and the date of the next hearing. However, an exception will be made whenever the next hearing is fixed for a date other than the following day.

The Hague, 1 March 1962.