Judge SPIROPOULOS makes the following declaration :

I regret that I am unable to share the view of the Court in regard to the second, third and fourth Preliminary Objections.

As to the second Preliminary Objection, my position is determined by the Court's Judgment in the case concerning the *Aerial Incident* (*Israel* v. *Bulgaria*). Starting from the concept that the purpose of Article 37 of the Statute of the Court is the same as that of Article 36, paragraph 5, and basing myself on the considerations of the Judgment in question, I consider that the Court should have found that it is without jurisdiction.

As to the third Preliminary Objection, I think the Court should have considered as relevant the arguments on which the Spanish Government founds its third Preliminary Objection.

Judge KORETSKY makes the following declaration :

I agree with the Judgment and its reasoning. I venture to make some additional observations as regards the first Preliminary Objection.

Much has been said in the written documents and in the oral proceedings about discontinuance of the action *(désistement d'action)* and discontinuance of the proceedings *(désistement d'instance)*. But this dichotomy is unknown to the Rules of Court. Articles 68 and 69 know only discontinuance of the proceedings in its two possible forms—either by mutual agreement of the parties (Article 68), or by unilateral declaration of the applicant (Article 69).

Under Article 68 the parties inform the Court in writing either that they have concluded an agreement as to the settlement of the dispute *or* that they are not going on with the proceedings, whilst under Article 69 the applicant informs the Court that it is not going on with the proceedings. In either case the Court directs the removal of the case from its list. Under Article 68 however it officially records the conclusion of the settlement or the mutual agreement to discontinue, whilst under Article 69 it officially records the discontinuance of the proceedings.

The conclusion of a settlement is not the discontinuance of an action (if one tried to understand the latter expression as the abandonment of a substantive right), for a settlement is usually the realization of a right which was in dispute. A dispute may subsequently arise in connection with the implementation of this settlement giving rise (possibly) to new proceedings.

It is to be recalled that the heading for Articles 68 and 69 is "Settlement and Discontinuance". At the time of the deliberations on the Rules of Court in 1935 Judge Fromageot (*P.C.I.J., Series D, Acts and*

Documents concerning the Organization of the Court, Third Addendum to No. 2, pp. 313 *et seq.*) said that he "wished to change the heading of the whole section. The word 'agreement' was not sufficiently explicit as an indication of its contents." He was of the opinion that the section should have been headed: "Settlement *and* abandonment of proceedings."

The emphasis on the settlement of the dispute in Article 68 and in the heading of the section was to all appearances not accidental. Generally speaking, the main task of the Court is to *settle* disputes between States. Article 33 of the Charter in the section headed "Pacific settlement of disputes" provides that "the parties to any dispute ... shall ... seek a solution by [among the peaceful means mentioned there] judicial *settlement*".

In Article 68 settlement occupies the first position. In the light of the Court's task in the settlement of disputes, we have to resolve the procedural questions in this case, especially the question of the consequences of the discontinuance of the proceedings, the question of the permissibility of a reinstitution of the proceedings after discontinuance.

The discontinuance of the proceedings in this case was in a sense a conditional one. Though the Belgian Government made no reservation of its substantive rights the conditionality of the discontinuance is evident. One may consider this conditionality as tacit (from a formal point of view), implied, but the documents show that a withdrawal of the proceedings instituted before the Court was demanded of Belgium as a precondition for the opening of negotiations proper (Preliminary Objections, Introduction, paragraph 4, and Observations, paragraph 25); it was then evident that the demand was related to Belgium's Application to the Court, but not to the substantive right, about which the proceedings were instituted. About what then was it intended to carry on negotiations if it be considered that the Belgian Government, by the withdrawal of its Application, decided not to remove an obstacle to promising negotiations but to abandon even its (and its nationals') substantive rights? If no substantive rights existed there would be no subject for negotiations. And we may conclude that discontinuance of the proceedings does not involve an abandonment of a corresponding substantive right. Discontinuance even by mutual agreement is not necessarily a *pactum de non petendo*, which supposes not only discontinuance of a given action but an obligation not to sue at all, which is tantamount to the abandonment of the claim. And it has not been proved in this case that the renunciation of a substantive right has taken place.

Judge JESSUP makes the following declaration:

I am in full agreement with the Court that no one of the Preliminary Objections could be upheld at this stage, and that the first two must