

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE NOTTEBOHM

(LIECHTENSTEIN *c.* GUATEMALA)

EXCEPTION PRÉLIMINAIRE

ARRÊT DU 18 NOVEMBRE 1953

1953

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

NOTTEBOHM CASE

(LIECHTENSTEIN *v.* GUATEMALA)

PRELIMINARY OBJECTION

JUDGMENT OF NOVEMBER 18th, 1953

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SOCIÉTÉ D'ÉDITIONS
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Le présent arrêt doit être cité comme suit :
« *Affaire Nottebohm (exception préliminaire),*
Arrêt du 18 novembre 1953 : C. I. J. Recueil 1953, p. III. »

This Judgment should be cited as follows :
“*Nottebohm case (Preliminary Objection),*
Judgment of November 18th, 1953 : I.C.J. Reports 1953, p. III.”

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INTERNATIONAL COURT OF JUSTICE

YEAR 1953

1953
November 18th
General List:
No. 18

November 18th, 1953

NOTTEBOHM CASE

(LIECHTENSTEIN *v.* GUATEMALA)

PRELIMINARY OBJECTION

Jurisdiction of the Court.—Compulsory jurisdiction accepted by Respondent State by Declaration valid for fixed period.—Effect of expiry of this period after filing of Application.—Court competent to adjudicate upon challenge to its jurisdiction in accordance with general international law and by virtue of Article 36 (6) of Statute.—Statutory power not confined to question whether the dispute is within categories enumerated in Article 36 (2).—Lapse of Declaration after Court has been properly seised does not affect jurisdiction of Court.

JUDGMENT

Present: President SIR ARNOLD McNAIR; *Vice-President* GUERRERO; *Judges* ALVAREZ, BASDEVANT, HACKWORTH, WINIARSKI, KLAESTAD, BADAWI, READ, HSU MO, LEVI CARNEIRO, ARMAND-UGON; *Deputy-Registrar* GARNIER-COIGNET.

In the Nottebohm case,

between

the Principality of Liechtenstein,

represented by :

Dr. Erwin H. Loewenfeld, LL.B.,

as Agent,

assisted by :

Professor Georges Sauser-Hall, Professor of International Law of
the University of Geneva,

Mr. E. Lauterpacht, Member of the English Bar,

as Counsel,

and

the Republic of Guatemala,

THE COURT,

composed as above,

adjudicating on the Preliminary Objection of the Government of
Guatemala,

delivers the following Judgment :

On December 17th, 1951, the Government of the Principality of Liechtenstein filed an Application instituting proceedings before the Court against the Republic of Guatemala. This Application referred to the Declaration of January 27th, 1947, whereby the Government of Guatemala accepted the compulsory jurisdiction of the Court in accordance with Article 36 of the Statute ; it also referred to the Declaration deposited on March 29th, 1950, with the Secretary-General of the United Nations, by which the Principality of Liechtenstein became a Party to the Statute of the Court, and to the Declaration dated March 10th, 1950, and deposited on March 29th, whereby the Government of Liechtenstein accepted the compulsory jurisdiction of the Court in accordance with Article 36 of the Statute. The Application stated that Mr. Friedrich Nottebohm was a national of Liechtenstein and that the Government of Guatemala had acted towards his person and property in a manner contrary to international law, and submitted the following claims :

“(a) that the Government of Guatemala has acted contrary to international law and has incurred international responsibility by the unjustified detention, internment and expulsion of

Mr. Nottebohm and by the sequestration and confiscation of his property ;

- (b) that the Government of Guatemala is bound to restore to Mr. Nottebohm his movable and immovable assets as shown in the list appended to the Note of 6 July 1951 (Annex No. 1) ;
- (c) that the Government of Guatemala is bound to grant full compensation to Mr. Nottebohm in respect of such property as it is not in a position to restore to him owing to physical destruction or for other reasons ;
- (d) that the Government of Guatemala is bound to pay full compensation for the use of and profits derived from the sequestered and confiscated assets and properties as well as for damage, depreciation and other losses sustained in respect of the said assets and properties as the result of or in connection with their sequestration or confiscation ;
- (e) that the Government of Guatemala is bound to pay full compensation for the unlawful detention and internment of Mr. Nottebohm as well as for preventing him, in a manner amounting to unjustified expulsion, from returning to Guatemala ;
- (f) that the Court shall determine the amount of compensation due to the Government of the Principality of Liechtenstein under (c), (d) and (e) above."

Pursuant to Article 40, paragraph 2, of the Statute, the Application was communicated to the Government of Guatemala and, pursuant to paragraph 3 of the same Article, other Members of the United Nations as well as non-member States entitled to appear before the Court were informed of it.

The Guatemalan Declaration of January 27th, 1947, was in the following terms :

[*Translation from the Spanish*]

"The Government of Guatemala declares that, in accordance with Article 36 (ii) and (iii) of the Statute of the International Court of Justice, it recognizes as compulsory, *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, and for a period of five years, the jurisdiction of the Court in all legal disputes. This declaration does not cover the dispute between England and Guatemala concerning the restoration of the territory of Belize, which the Government of Guatemala would, as it has proposed, agree to submit to the judgment of the Court, if the case were decided *ex æquo et bono*, in accordance with Article 38 (ii) of the said Statute.

Guatemala, 27 January 1947.

(Signed) E. SILVA PEÑA."

The Declaration of Liechtenstein of March 10th, 1950, was in the following terms :

"The Government of the Principality of Liechtenstein, duly authorized by His Serene Highness, the reigning Prince François Joseph II, in accordance with the Order of the Diet of the Principality of Liechtenstein dated 9th March 1950, which came into force on 10th March 1950,

declares by these presents that the Principality of Liechtenstein recognizes as compulsory *ipso facto* and without special agreement in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all disputes concerning :

- (a) the interpretation of a treaty ;
- (b) any question of international law ;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation ;
- (d) the nature and extent of the reparation to be made for the breach of an international obligation.

The present Declaration, which is made under Article 36 of the Statute of the International Court of Justice, shall take effect from the date on which the Principality becomes a Party to the Statute and shall take effect as long as the Declaration has not been revoked subject to one year's notice.

Done at Vaduz, 10th March 1950.

On behalf of the Government of the
Principality of Liechtenstein :

Head of Government,

(Signed) A. FRICK."

Within the time-limit fixed by Order of January 26th, 1952, which was extended by Order of March 7th, 1952, the Government of Liechtenstein filed its Memorial.

A communication signed by the Minister for Foreign Affairs of Guatemala, dated September 9th, 1952, and addressed to the President of the Court, was received in the Registry on September 15th, 1952, before the expiry of the time-limit fixed by the Order of March 7th, 1952, for the filing of the Counter-Memorial of the Government of Guatemala. This document, after referring to the Guatemalan Declaration of January 27th, 1947, and to certain Notes exchanged between the Ministry for Foreign Affairs of Guatemala and the Secretariat of the United Nations, which related to the date of the entry into force of the said Declaration, set out the following contentions :

[*Translation from the Spanish*]

- "(a) That the Republic of Guatemala recognized the compulsory jurisdiction of the Court, but not in an absolute and general form, since this would have implied an indefinite submission to the detriment of its sovereignty and not in accordance with

its interest, if by reason of unforeseen circumstances the international situation changed ;

- (b) That it accepted this recognition for a period sufficiently long to enable it, during this period, to elucidate and settle legal disputes which had arisen or which might arise, and sufficiently short to avoid the indefinite prolongation of a judgment or the submission of future questions, the genesis and circumstances of which could not be foreseen and would affect future governments and perhaps future generations of Guatemalans ;
- (c) That during the period of five years which began on January 27th, 1947, and expired on January 26th, 1952, as up to the present date there has not existed and does not exist any legal dispute, since Guatemala has not entered into any lawsuit contesting any claim ;
- (d) That the time-limit provided for in its Declaration of January 27th, 1947, expired with the last hour of January 26th, 1952, and that from this moment the International Court of Justice has no jurisdiction to treat, elucidate or decide cases which would affect Guatemala, except if Guatemala prolongs the duration of its declaration, submits itself by depositing a new declaration with the Secretary-General of the United Nations, or signs a special protocol of submission with any other interested State ;
- (e) That in the absence of these last conditions, the Government of Guatemala is, much to its regret, unable for the moment to appear before the International Court of Justice in any given case."

The above-mentioned communication then argued that the power conferred on the Court by Article 36, paragraph 6, of its Statute, to determine disputes relating to its jurisdiction, was applicable only to questions as to whether a given dispute fell within the categories enumerated in paragraph 2 of that Article, and went on to make the following statements :

[Translation from the Spanish]

- I. That the Government of the Republic of Guatemala has taken note of the claim presented by the Government of the Principality of Liechtenstein on supposed official acts to the alleged detriment of Mr. Federico Nottebohm.
- II. That this Ministry is quite willing to begin negotiations with the Government of the said Principality, with a view to arriving at an amicable solution, either in the sense of a direct settlement, an arbitration, or judicial settlement, with a preference for the last mentioned by means of the High Tribunal presided over by Your Excellency.
- III. That in the present circumstances, since the jurisdiction of the International Court of Justice in relation to Guatemala has terminated and because it would be contrary to the

- domestic laws of that country, my Government is unable to appear and to contest the claim which has been made.
- IV. That as a consequence, it cannot, for the time being, appoint an Agent in the case in question.
- V. That the attitude of Guatemala is not one of default or of voluntary absence, but, on the contrary, is based on great respect for the domestic laws in force in our country and the need for enforcing them, and for the terms of the Statute of the Court and of the Guatemalan declaration of January 27th, 1947, formulated in accordance with the said Statute.
- VI. That in no case should all or any part of this Note be considered as a reply, affirmative or negative, or a default or voluntary absence, but as a statement of its inability to appear before this High Tribunal.
- VII. That the competent organs of my Government are at present studying the desirability and the terms of a new declaration of submission in conformity with the said Article 36, paragraphs (ii) and (iii), of the Statute of the International Court of Justice.
- VIII. That in its case and as soon as this new declaration of submission is definitely approved by the competent organs of State with a view to accepting the compulsory jurisdiction of the Court, it will immediately deposit this declaration with the Secretary-General of the United Nations in order that it shall serve as a norm for jurisdiction in relation to Guatemala and other States, on a basis of reciprocity, so far as new disputes, as well as those, if any, which were waiting to be dealt with or decided on January 27th, 1952, are concerned.
- IX. And, finally, that notwithstanding the foregoing and while formulating the declaration referred to in the foregoing subparagraphs VII and VIII, this Ministry is perfectly willing to consider, in agreement with any other interested State, the terms of a special protocol submitting to the Court any matter in controversy which may fall within the cases set out in Article 36, paragraphs (ii) and (iii), of the Statute of the International Court of Justice."

By Order of March 21st, 1953, the Court fixed a time-limit for the presentation by the Government of Liechtenstein of a written statement of their observations in regard to the above-mentioned communication of the Government of Guatemala. This statement, which was filed on May 21st, 1953, that is within the time-limit so fixed, submitted the following conclusions :

- "(A) It must be a matter for consideration by the Court whether the communication of the Government of Guatemala of the 9th September 1952 constitutes a Preliminary Objection within the meaning of Rule 62 of the Rules of the Court or a refusal, amounting to a default, to plead before the Court.

- (B) The present observations of the Government of Liechtenstein are based on the assumption that the communication of the 9th September 1952 constitutes a Preliminary Objection to the jurisdiction of the Court. This assumption is adopted without prejudice to the right of the Government of Liechtenstein to invoke the provisions of Article 53 of the Statute of the Court.
- (C) The terms of the Declaration made by Guatemala on the 27th January 1947, in accordance with Article 36 (ii) and (iii) of the Statute of the International Court of Justice and submitting to the jurisdiction of the Court for a period of five years, are sufficient to confer jurisdiction upon the Court to hear and determine any case in which proceedings were instituted prior to midnight, the 26th January 1952.
- (D) The International Court of Justice has the competence, in accordance both with Article 36 (vi) of the Statute and with general principles of international law, to determine questions relating to its own jurisdiction.
- (E) The alleged incapacity (which is not admitted) of the Government of Guatemala under the laws of Guatemala to appear in the present case after the 27th January 1952, in no way affects either the obligations of that Government under international law or the jurisdiction of the Court.
- (F) Accordingly, the Government of Liechtenstein request the Court to assume jurisdiction over the questions raised by the Government of Liechtenstein in their Application of the 10th December 1951, and to reject the contrary contentions of the Government of Guatemala."

After the filing of the written statement of the observations of the Government of Liechtenstein, the issue raised in the Guatemalan communication of September 9th was ready for hearing.

The Court, having taken into account the declared intention of the Parties to seek a settlement of their dispute by negotiation, but not having been informed that such negotiation had achieved any result, fixed a hearing for November 10th, 1953, in order to allow the Parties to submit their arguments. This decision was notified to the two Governments.

On November 9th, the day before the hearing, the Chargé d'affaires of Guatemala in Paris transmitted to the Registry a message, addressed to the Court by the Minister for Foreign Affairs of Guatemala. In this message, the Court was requested to postpone the oral proceedings to a later date and, furthermore, in the event of the postponement not being granted, to confine its decision exclusively to the objection lodged by Guatemala.

At the hearing of November 10th, 1953, the date originally fixed, which the Court did not consider it proper to change, the Government of Liechtenstein was represented by its Agent, assisted by Counsel; the Government of Guatemala was not represented.

At this sitting, the Court heard Dr. Loewenfeld, Agent, and Professor Sauser-Hall, Counsel, on behalf of the Government of Liechtenstein. At the end of their argument, the Agent said that he would maintain the conclusions contained in the statement of May 21st, 1953, and that an additional conclusion would be filed with the Registry in writing. That conclusion was as follows :

"(G) The Government of Liechtenstein reserve their right to invoke, should the necessity arise, the provisions of Article 53 of the Statute of the Court in relation to the merits of the present dispute."

* * *

By challenging, in its communication of September 9th, 1952, the jurisdiction of the Court to deal with the claim which was the subject of the Application filed by the Government of Liechtenstein and by refraining in consequence from presenting a Counter-Memorial, the Government of Guatemala has raised a Preliminary Objection as it has recognized in its message of November 9th, 1953.

The Court has, for the present, to examine only this Preliminary Objection, and this Judgment will be concerned with it alone. In its communication of September 9th, 1952, the Government of Guatemala set forth the considerations of fact and of law on which it based this Objection. The Objection was discussed by the Government of Liechtenstein in its Observations and in the arguments of its Agent and Counsel at the hearing on November 10th, 1953.

In its communication of September 9th, 1952, the Government of Guatemala drew attention to the fact that the Declaration by which it accepted the compulsory jurisdiction of the Court had, in accordance with what was stated therein, ceased to be in force after January 26th, 1952 ; it stated that it therefore considered that the Court had no jurisdiction to deal with the case brought before it by Liechtenstein.

The Government of Liechtenstein requests the Court to adjudicate upon this challenge of its jurisdiction. It contends that the Court is empowered to do so by Article 36, paragraph 6, of the Statute, which provides that :

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

The Government of Guatemala, for its part, after stating that it originally contemplated asking the Court to adjudicate upon this point, added, in its communication of September 9th, 1952, that it had come to the conclusion that this course would not be practicable since it would be contrary to the Statute.

The Government of Guatemala indeed considers that paragraph 6 of Article 36 only relates to disputes concerning jurisdiction in respect of the application of paragraph 2 of that Article, and that it is therefore confined to disputes for the solution of which it is necessary to ascertain whether the claim falls within one of the categories enumerated under letters *a*, *b*, *c* and *d* of that paragraph. But, it is pointed out by the Government of Guatemala, the question which must be decided at this stage is not whether the claim of Liechtenstein falls within one of these categories, but rather whether the expiry of the Declaration by which Guatemala accepted the compulsory jurisdiction of the Court has put an end to the Court's jurisdiction to deal with the claim of Liechtenstein.

Paragraph 6 of Article 36 is drafted in the broadest terms ; there is nothing in it to indicate the restriction which the Government of Guatemala seeks to introduce by means of an interpretation.

Paragraph 6 of Article 36 merely adopted, in respect of the Court, a rule consistently accepted by general international law in the matter of international arbitration. Since the *Alabama* case, it has been generally recognized, following the earlier precedents, that, in the absence of any agreement to the contrary, an international tribunal has the right to decide as to its own jurisdiction and has the power to interpret for this purpose the instruments which govern that jurisdiction. This principle was expressly recognized in Articles 48 and 73 of the Hague Conventions of July 29th, 1899, and October 18th, 1907, for the Pacific Settlement of International Disputes, to which Guatemala became a Party. The Rapporteur of the Convention of 1899 had emphasized the necessity of this principle, presented by him as being "of the very essence of the arbitral function and one of the inherent requirements for the exercise of this function". This principle has been frequently applied and at times expressly stated.

This principle, which is accepted by general international law in the matter of arbitration, assumes particular force when the international tribunal is no longer an arbitral tribunal constituted by virtue of a special agreement between the parties for the purpose of adjudicating on a particular dispute, but is an institution which has been pre-established by an international instrument defining its jurisdiction and regulating its operation, and is, in the present case, the principal judicial organ of the United Nations.

Consequently, the Court has not hesitated to adjudicate on the question of its own jurisdiction in cases in which the dispute which had arisen in this respect went beyond the interpretation and application of paragraph 2 of Article 36. In the *Corfu Channel* case (Judgment of April 9th, 1949, *I.C.J. Reports 1949*, pp. 23-26 and 36), the Court adjudicated on a dispute as to whether it had jurisdiction to assess the amount of compensation, a dispute which related to the interpretation of a Special Agreement ; in the *Amba-*

tielos case (Judgment of July 1st, 1952, *I.C.J. Reports 1952*, p. 28), the Court adjudicated upon a dispute as to its jurisdiction which related to the interpretation of a jurisdictional clause embodied in a treaty; in both cases the dispute as to the Court's jurisdiction related to paragraph 1 and not to paragraph 2 of Article 36.

Article 36, paragraph 6, suffices to invest the Court with power to adjudicate on its jurisdiction in the present case. But even if this were not the case, the Court, "whose function is to decide in accordance with international law such disputes as are submitted to it" (Article 38, paragraph 1, of the Statute), should follow in this connection what is laid down by general international law. The judicial character of the Court and the rule of general international law referred to above are sufficient to establish that the Court is competent to adjudicate on its own jurisdiction in the present case.

Consequently, the Court must ascertain and decide whether the expiry on January 26th, 1952, of the Declaration by which Guatemala accepted the compulsory jurisdiction of the Court has had the effect of depriving the Court of its jurisdiction to adjudicate on the claim stated in the Application, of which it was seised on December 17th, 1951, by the Government of Liechtenstein.

* * *

The Application was filed in the Registry of the Court on December 17th, 1951. At the time of its filing, the Declarations of acceptance of the compulsory jurisdiction of the Court by Guatemala and by Liechtenstein were both in force. Article 36 of the Statute and these Declarations determined the law governing the Application. In accordance with these Declarations, the Application was filed in sufficient time validly to effect the seisin of the Court under Articles 36 and 40 of the Statute and Article 32 of the Rules.

The Government of Guatemala has stated that, in conformity with what was said in its Declaration of acceptance of the compulsory jurisdiction of the Court, the effect of that Declaration came to an end on January 26th, 1952. It draws the conclusion that after that date the Court ceased to have jurisdiction to deal with a dispute affecting Guatemala and, consequently, to deal with the dispute which was the subject of the Application filed on behalf of the Government of Liechtenstein on December 17th, 1951. The latter Government does not contest the expiry of the Declaration of Guatemala but it does contest that the Court has, by reason thereof, become incompetent to deal with the dispute of which it had been seised.

Guatemala is here putting forward a new interpretation of the effect attaching to the limited period (of five years) for which in 1947 it accepted the compulsory jurisdiction of the Court. It is new, in the first place, in the sense that it had never before advanced

it. In particular, when on August 6th, 1947, it indicated to the Secretary-General of the United Nations that its Declaration was to be regarded as having come into force on the previous January 27th, it said nothing with regard to the effect which might attach to the expiry of the period in respect of which the Declaration was made.

This interpretation is new also in the sense that it appears never before to have been advanced and, indeed, Guatemala has cited no authority in support of it.

The Permanent Court of International Justice was on occasion confronted with a situation not unlike the present one, but it was never alleged by an interested party that the expiry of the period in respect of which a Declaration of acceptance of compulsory jurisdiction had been made, involved the removal from the Court's list of a case brought before the Court before the expiry of that period. This arose in the *Losinger* case and in the *Phosphates in Morocco* case, where the Parties confined themselves to raising other objections to the jurisdiction and against admissibility.

The attitude of certain States in those cases does not, however, absolve the Court from the duty of examining whether the interpretation put forward is in fact a proper construction of the clause by which Guatemala limited the effect of its Declaration of January 27th, 1947, to a period of five years.

In the Declaration which the Government of Guatemala deposited with the Secretariat of the United Nations on August 27th, 1952, a copy of which appeared in that Government's communication to the Court of September 9th, 1952, it is said that "it was the definite intention of the Government of Guatemala that on the expiry of the period of five years during which it submitted to the compulsory jurisdiction of the Court, this submission should end automatically". The Declaration of Guatemala of January 27th, 1947, makes it clear that this submission was to endure for a period of five years. There can be no doubt that an Application filed after the expiry of this period would not have the effect of legally seising the Court. But neither in its Declaration nor in any other way did Guatemala then indicate that the time-limit provided for in its Declaration meant that the expiry of the period would deprive the Court of jurisdiction to deal with cases of which it had been previously seised.

This interpretation appeared for the first time in the communications of August 27th and September 9th, 1952. In the latter, the Government of Guatemala referred to the definition given by the law of Guatemala to the word "jurisdiction", namely "the power of administering justice", and it drew the conclusion that, since Guatemala had accepted the jurisdiction of the Court for a period ending on January 26th, 1952, the Court, after that date, no longer had the power of administering justice with reference to Guatemala.

The Court is not concerned with defining the meaning of the word "jurisdiction" in general. In the present case, it must determine

the scope and meaning of the Declaration made by Guatemala on the basis of Article 36, paragraph 2, a Declaration which, together with that provision and with the corresponding Declaration by Liechtenstein, contains the law governing the question under consideration. Article 36 determines the cases in respect of which the Court shall have jurisdiction. It indicates that the Court can deal with cases referred to it by agreement of the parties ; and it determines the field of application of what has come to be called the compulsory jurisdiction of the Court. The characteristic of this compulsory jurisdiction is that it results from a previous agreement which makes it possible to seise the Court of a dispute without a Special Agreement, and that in respect of disputes subject to it, the Court may be seised by means of an Application by one of the parties. Paragraph 2 of Article 36 refers to the subject-matter of compulsory jurisdiction, the principle and application of which it governs in conjunction with Articles 32 to 35 of the Rules. It makes use, as do the Declarations relating to it, of the words "compulsory" and "jurisdiction", and the structure of the text is sufficient to show that of these two words the first is the more important. The purpose of Article 36, paragraph 2, and of the Declarations relating thereto, is to regulate the seising of the Court : under the system of the Statute the seising of the Court by means of an Application is not *ipso facto* open to all States parties to the Statute, it is only open to the extent defined in the applicable Declarations. This being so, the lapse of a Declaration by reason of the expiry, before the filing of the Application, of the period fixed therein makes it impossible to invoke that Declaration in order to seise the Court.

The seising of the Court is thus dominated by the Declarations emanating from the parties when recourse is had to the compulsory jurisdiction in accordance with Article 36, paragraph 2. But the seising of the Court is one thing, the administration of justice is another. The latter is governed by the Statute, and by the Rules which the Court has drawn up by virtue of the powers conferred upon it by Article 30 of the Statute. Once the Court has been regularly seised, the Court must exercise its powers, as these are defined in the Statute. After that, the expiry of the period fixed for one of the Declarations on which the Application was founded is an event which is unrelated to the exercise of the powers conferred on the Court by the Statute, which the Court must exercise whenever it has been regularly seised and whenever it has not been shown, on some other ground, that it lacks jurisdiction or that the claim is inadmissible.

At the time when the Application was filed, the Declarations of Guatemala and of Liechtenstein were both in force. The regularity of the seising of the Court by this Application has not been disputed. The subsequent lapse of the Declaration of Guatemala, by reason of the expiry of the period for which it was subscribed, cannot

invalidate the Application if the latter was regular : consequently, the lapse of the Declaration cannot deprive the Court of the jurisdiction which resulted from the combined application of Article 36 of the Statute and the two Declarations.

When an Application is filed at a time when the law in force between the parties entails the compulsory jurisdiction of the Court—which was the case between Guatemala and Liechtenstein on December 17th, 1951—the filing of the Application is merely the condition required to enable the clause of compulsory jurisdiction to produce its effects in respect of the claim advanced in the Application. Once this condition has been satisfied, the Court must deal with the claim ; it has jurisdiction to deal with all its aspects, whether they relate to jurisdiction, to admissibility or to the merits. An extrinsic fact such as the subsequent lapse of the Declaration, by reason of the expiry of the period or by denunciation, cannot deprive the Court of the jurisdiction already established.

* * *

On the point here examined, the Government of Guatemala has referred in its communication of September 9th, 1952, to certain provisions in the laws of that country. The Government of Liechtenstein has made use of this in order to contend that the laws of Guatemala cannot take precedence over the rules of international law which are applicable to this case.

The Court does not consider that Liechtenstein in this connection has given a correct interpretation of the view of Guatemala on this point. In the opinion of the Court, the Government of Guatemala, on the premise that the Court lacked jurisdiction in an absolute manner, meant that, by reason of the Court's lack of jurisdiction, the laws of Guatemala did not authorize that Government to be represented before a court which had no power to adjudicate. The Court does not consider it necessary to ascertain what the laws of Guatemala provide in this connection. It will confine itself to stating that, once its jurisdiction has been established by the present Judgment with binding force on the Parties, the difficulty, in which the Government of Guatemala considered that it had been placed, will be removed and there will be nothing to prevent that Government from being represented before the Court in accordance with the provisions of the Statute and Rules. This is, moreover, what that Government appears to have admitted in its communication of September 9th, 1952, No. 22, III, where the Minister for Foreign Affairs stated :

“That in the present circumstances, since the jurisdiction of the Court in relation to Guatemala has terminated and because it would be contrary to the domestic laws of that country, my Government is unable to appear and to contest the claim which has been made.”

This interpretation is confirmed by the final sentence in the message of November 9th, 1953, which reads as follows :

[Translation]

“In case negative decision Court on objection proposed, Guatemala reserves right to be represented dispute and raise further objections.”

* * *

The Court has come to the conclusion that the expiry on January 26th, 1952, of the five-year period for which the Government of Guatemala subscribed to a Declaration accepting the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute, does not affect any jurisdiction which the Court may have to deal with the claim presented in the Application of which it was seised on December 17th, 1951, by the Government of the Principality of Liechtenstein ; the Court will now accordingly resume the proceedings on the merits and fix time-limits for the further Pleadings.

For these reasons,

THE COURT,

unanimously,

rejects the Preliminary Objection presented by the Government of the Republic of Guatemala ;

resumes the proceedings on the merits ;

and fixes the following time-limits for the rest of the procedure :

for the filing of the Counter-Memorial of the Government of Guatemala, January 20th, 1954 ;

for the filing of the Reply of the Government of Liechtenstein, February 25th, 1954 ;

for the filing of the Rejoinder of the Government of Guatemala, April 10th, 1954.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this eighteenth day of November, one thousand nine hundred and fifty-three, in three copies, one of which will be placed in the archives of the Court and the others will be transmitted to the Governments of the Principality of Liechtenstein and of the Republic of Guatemala, respectively.

(Signed) ARNOLD D. McNAIR,
President.

(Signed) GARNIER-COIGNET,
Deputy-Registrar.

Judge KLAESTAD declares that he has voted for the rejection of the Preliminary Objection of Guatemala on the ground, undisputed by the Parties, that the jurisdiction of the Court existed at the moment when the Application of Liechtenstein was filed. The fact that the Declaration by which Guatemala accepted the compulsory jurisdiction of the Court expired some time after the filing of that Application, can have no effect as regards the Court's jurisdiction to deal with and decide the merits of the present dispute—a jurisdiction which was definitively established by the filing of the Application. With regard to the allegations of the Government of Guatemala that provisions of its national law prevent that Government and its officials from appearing before the Court, it suffices to say that such national provisions cannot be invoked against rules of international law.

(Initialed) A. D. McN.

(Initialed) G.-C.
