

CASE CONCERNING THE TEMPLE OF PREAH VIHEAR (PRELIMINARY OBJECTIONS)

Judgment of 26 May 1961

Proceedings in the case concerning the Temple of Preah Vihear (Preliminary Objections) between Cambodia and Thailand, which relates to the territorial sovereignty over the Temple of Preah Vihear, were instituted by an Application by the Government of Cambodia dated 30 September 1959. The Government of Thailand raised two preliminary objections to the jurisdiction.

The Court held, unanimously, that it had jurisdiction. Vice-President Alfaro and Judges Wellington Koo, Sir Gerald Fitzmaurice, and Tanaka appended declarations to the Judgment and Judges Sir Percy Spender and Morelli appended separate opinions.

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In its Judgment the Court noted that, in invoking the jurisdiction of the Court, Cambodia had based herself principally on the combined effect of her own acceptance of the compulsory jurisdiction of the Court and of a declaration made by Thailand on 20 May 1950 which was in the following terms:

"I have the honour to inform you that by a declaration dated September 20, 1929, His Majesty's Government had accepted the compulsory jurisdiction of the Permanent Court of International Justice in conformity with Article 36, paragraph 2, of the Statute for a period of ten years and on condition of reciprocity. That declaration has been renewed on May 3, 1940, for another period of ten years.

"In accordance with the provisions of Article 36, paragraph 4, of the Statute of the International Court of Justice, I have now the honour to inform you that His Majes-

ty's Government hereby renew the declaration above mentioned for a further period of ten years as from May 3, 1950, with the limits and subject to the same conditions and reservations as set forth in the first declaration of Sept. 20, 1929."

Thailand had raised a first preliminary objection on the ground that that declaration did not constitute a valid acceptance on her part of the compulsory jurisdiction of the Court. She in no way denied that she had fully intended to accept the compulsory jurisdiction but, according to her argument, she had drafted her declaration in terms revealed by the decision of the Court of 26 May 1959 in the case concerning the *Aerial Incident of 27 July 1955* (Israel v. Bulgaria) to have been ineffectual. Article 36, paragraph 5, of the Statute of the Court provided that:

"Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties of the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms."

The Court had held that that provision applied only to the original parties to the Statute, and that, Bulgaria not having become a party to the Statute until 14 December 1955, her declaration of acceptance of the compulsory jurisdiction of the Permanent Court must be regarded as having lapsed on 19 April 1946, the date when the Permanent Court had ceased to exist. In the present case, Thailand had proceeded on the basis that her position was the same as that of Bulgaria, since she had become a party to the Statute only on 16 December 1946, some eight months after the demise of the Permanent Court. Her declaration of acceptance of the com-

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pulsory jurisdiction of the Permanent Court would accordingly not have been transformed into an acceptance relating to the present Court, and all she actually would have achieved was a necessarily inoperative renewal of an acceptance of the compulsory jurisdiction of a tribunal that no longer existed.

The Court did not consider that its Judgment of 1959 had the consequences which Thailand claimed. Apart from the fact that that Judgment had no binding force except between the parties, the Court took the view that Thailand, by her declaration of 20 May 1950, had placed herself in a different position from Bulgaria. At that date, not only had Thailand's declaration of 1940 never been transformed into an acceptance of the compulsory jurisdiction of the present Court, but, indeed, it had expired, according to its own terms, two weeks earlier (on 6 May 1950). The declaration of 20 May 1950, a new and independent instrument, had not therefore been made under Article 36, paragraph 5, of the Statute, the operation of which, on any view, was wholly exhausted so far as Thailand was concerned.

In the course of the proceedings there had been some discussion as to whether a lapsed instrument could be renewed, but the Court considered that the real question was, what was the effect of the declaration of 1950. It had also been said that Thailand had in 1950 held a mistaken view and for that reason had used in her declaration language which the decision of 1959 had shown to be inadequate to achieve its purpose, but the Court did not consider that the issue in the present case was really one of error. It had also been argued that the intent without the deed did not suffice to constitute a valid legal transaction, but the Court considered that, in the case of acceptances of the compulsory jurisdiction, the only formality required was that of deposit with the Secretary-General of the United Nations, a formality which had been accomplished by Thailand in accordance with Article 36, paragraph 4, of the Statute.

The sole relevant question was therefore whether the language employed in Thailand's 1950 declaration did reveal a clear intention, in the terms of Article 36, paragraph 2, of the Statute, to recognise as compulsory the jurisdiction of the Court. If the Court applied its normal canons of interpretation, that declaration could have no other meaning than as an acceptance of the compulsory jurisdiction of the present Court, since there was no other Court to which it could have related. Thailand, which was fully aware of the non-existence of the former Court, could have had no other purpose in addressing the Secretary-General of the United Nations under paragraph 4 of Article 36 of the Statute than to recognise the compulsory jurisdiction of the present Court under paragraph 2 of that Article; nor indeed did she pretend otherwise. The remainder of the declaration had to be construed in the light of that cardinal fact, and in the general context of the declaration; the reference to the 1929 and 1940 declarations must be regarded simply as being a convenient method of indicating, without stating them in terms, what were the conditions upon which the acceptance was made.

The Court, therefore, considered that there could not remain any doubt as to what meaning and effect ought to be attributed to the 1950 declaration and it rejected the first preliminary objection of Thailand.

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The Court next found that that conclusion was sufficient to found the Court's jurisdiction and that it became unnecessary to proceed to a consideration of the second basis of jurisdiction invoked by Cambodia (certain treaty provisions for the judicial settlement of any disputes of the kind involved in the present case) and of Thailand's objection to that basis of jurisdiction.