

WORLD LAW

This section of the *Journal*, inaugurated in the last preceding issue,¹ maintains the objective of providing current information in regard to the judgments and other pronouncements of the World Court, international acts of legal significance, and national acts and judicial opinions having international implications. Shortly after its judgment in the *Interhandel Case*,² the Court rendered two other judgments. They are digested in the following pages.

The Case Concerning the Aerial Incident of July 27, 1955 (Israel v. Bulgaria), like the *Interhandel Case*, deals with the Court's jurisdiction—a subject of great and especial interest in the United States because of President Eisenhower's call for a re-examination of the United States' acceptance of that jurisdiction under article 36(2) of the Statute. The later case, however, is concerned with article 36(5), by which certain acceptances declared under the old Court of the League of Nations were continued in effect under the present Statute. The finding of the Court that, in the particular instance, it lacked jurisdiction has halted certain other—but not all—claims for damages that would have been argued before it had the decision been otherwise. Accordingly, interest in the case is widespread not only for its interpretation of article 36(5), but for its practical effect with respect to international disputes that might have been—or may eventually be—settled on their merits in accordance with law. The decision must be accounted a refutation of any charge that the Court seeks unduly to extend its jurisdiction.

The second adjudication here reviewed is that of the *Case Concerning Sovereignty over Certain Frontier Land (Belgium/The Netherlands)*, notable less for its determination of the ownership of the tiny area in controversy than for its apparent settlement of a century-old dispute, for its findings of law, and for the circumstance that, though no national of either litigant sat upon the Court as constituted, neither availed itself of its right under article 31(3) of the Statute to appoint a judge *ad hoc*. Belgium and The Netherlands thus displayed a most commendable sensitiveness to the true nature of a Court and its judges—wherein nationality has no permissible place.

¹ 1960 DUKE L.J. 73.

² [1959] I.C.J. Rep. 6.

In addition to the two World Court cases, a digest is presented of a judgment of the United States Court of Appeals for the District of Columbia, dealing with the relationship between a treaty and national law as enacted by Congress. Both pertain to private property rights. The act of Congress confers sweeping powers over such property upon an administrative agency possessing well-nigh unlimited discretion, the Office of Alien Property, now absorbed into the Department of Justice and constituting a section thereof. If reviewed by the Supreme Court, an opportunity will be afforded for a far-reaching re-examination of national law in relation to both treaties and international customary law.

—The Editors

AERIAL INCIDENT OF JULY 27, 1955: ISRAEL V. BULGARIA¹

THE UNCONTESTED FACTS in this case, as laid before the World Court, were that:²

. . . on the morning of July 27th, 1955, the civil Constellation aircraft No. 4X-AKC, wearing the Israel colours and belonging to the Israel Company El Al Israel Airlines, Ltd., making a scheduled commercial flight between Vienna, Austria, and Lod (Lydda) in Israel, having, without previous authorization, penetrated over Bulgarian territory, was shot down by aircraft of the Bulgarian anti-aircraft defence forces. After catching fire, the Israel aircraft crashed in flames near the town of Petritch, Bulgaria, and all the crew, consisting of seven members, and also the fifty-one passengers of various nationalities were killed.

Diplomatic approaches not leading to results satisfactory to the parties, the Government of Israel, on October 16, 1957, instituted proceedings against the Government of the Peoples Republic of Bulgaria. The two governments had become members of the United Nations some years after the Charter became effective (October 24, 1945) and had accepted the Statute of the Court on May 11, 1949, and December 14, 1955, respectively. Israel had accepted the jurisdiction of the Court, under article

¹ Case Concerning the Aerial Incident of July 27, 1955 (Israel v. Bulgaria), [1959] I.C.J. Rep. 127. See also [1958-59] I.C.J.Y.B. 97. The Court was composed of President Klaestad; Vice-President Zafrulla Khan; Judges Basdevant, Hackworth, Winiarski, Badawi, Armand-Ugon, Kojevnikov, Sir Hersch Lauterpacht, Moreno Quintana, Córdova, Wellington Koo, Spiropoulos, Sir Percy Spender; Judges *ad hoc* Goitein and Zourek.

² [1959] I.C.J. Rep. at 134-35.

36(2) of the Statute,³ *ipso facto* and without special agreement, by declaration⁴ dated September 4, 1950. Bulgaria had not, since becoming a member of the United Nations, accepted this jurisdiction; but on August 12, 1921, contemporaneously with its ratification of the Protocol of the Permanent Court of International Justice⁵—the “old Court,”—it had ratified the following declaration of its plenipotentiary:⁶

³ 59 Stat. 1031, 1060 (1945).

⁴ [1950-51] I.C.J.Y.B. 193. This declaration has been replaced by one dated October 17, 1956, [1958-59] I.C.J.Y.B. 213. The 1956 declaration is as follows: “On behalf of the Government of Israel I declare that Israel recognizes as compulsory *ipso facto* and without special agreement, in relation to all other Members of the United Nations and to any non-member State which becomes a party to the Statute of the International Court of Justice pursuant to Article 93, paragraph 2, of the Charter, and subject to reciprocity, the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2, of the Statute of the Court in all legal disputes concerning situations or facts which may arise subsequent to 25 October 1951, provided that such dispute does not involve a legal title created or conferred by a Government or authority other than the Government of Israel or an authority under the jurisdiction of that Government.

This declaration does not apply to:

(a) Any dispute in respect to which the parties have agreed or shall agree to have recourse to another means of peaceful settlement;

(b) Any dispute relating to matters which are essentially within the domestic jurisdiction of the State of Israel;

(c) Any dispute between the State of Israel and any other State whether or not a member of the United Nations which does not recognize Israel or which refuses to establish or to maintain normal diplomatic relations with Israel and the absence or breach of normal relations precedes the dispute and exists independently of that dispute;

(d) Disputes arising out of events occurring between 15 May 1948 and 20 July 1949;

(e) Without prejudice to the operation of sub-paragraph (d) above, disputes arising out of, or having reference to, any hostilities, war, state of war, breach of the peace, breach of armistice agreement or belligerent or military occupation (whether such war shall have been declared or not, and whether any state of belligerency shall have been recognized or not) in which the Government of Israel are or have been or may be involved at any time.

The validity of the present Declaration is from 25 October 1956 and it remains in force for disputes arising after 25 October 1951 until such time as notice may be given to terminate it.

IN WITNESS WHEREOF I, Golda Meir, Minister for Foreign Affairs, have hereunto caused the Seal of the Ministry for Foreign Affairs to be affixed, and have subscribed my signature at Jerusalem this Twenty-Eighth day of Tishri, Five Thousand Seven Hundred and Seventeen, which corresponds to the Third day of October, One Thousand Nine Hundred and Fifty-Six.

(Signed) Golda Meir.”

⁵ 6 L.N.T.S. 390, 410; 1 HUDSON, INTERNATIONAL LEGISLATION 530 (1920).

⁶ [1959] I.C.J. Rep. at 135.

On behalf of the Government of the Kingdom of Bulgaria, I recognize, in relation to any other Member or State which accepts the same obligation, the jurisdiction of the Court as compulsory, *ipso facto* and without any special convention, unconditionally.

In making its application to the Court, Israel relied upon this declaration by Bulgaria in the light of article 36, paragraph 5, of the Statute as annexed to and made a part of the United Nations Charter which provides that:⁷

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 to 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.

Israel asked the Court to adjudge Bulgaria liable under international law for the destruction of the aircraft, to determine the amount of the money damages, and to tax the defendant with all costs and expenses. The Israeli Government had computed the financial loss incurred through the destruction to amount to "the sum of U.S. Dollars 2,559,688.65."⁸ It alleged that Bulgaria had admitted that the Bulgarian armed forces had "displayed a certain haste" and had not taken "all the necessary measures to compel the aircraft to land," and that it would "identify and punish the culpable persons and pay compensation";⁹ but that it had failed to do so.

On behalf of the People's Republic of Bulgaria, preliminary objections were raised and maintained; it is upon the first of them that the judgment of the Court is based. Submissions were filed in support of the others pleading, that:¹⁰

a. The dispute arose out of situations occurring "prior to the alleged acceptance of the compulsory jurisdiction of the International Court of Justice which is said to result from the accession of . . . Bulgaria to the Statute of that Court on December 14th, 1955." Since Israel excludes disputes arising prior to its acceptance of such jurisdiction, Bulgaria, on the basis of reciprocity, cannot in any event be regarded as having accepted such jurisdiction before December 14, 1955.

b. Israel can act only on behalf of its nationals, whereas the actual

⁷ *Id.* at 135-36.

⁸ *Id.* at 130.

⁹ *Ibid.*

¹⁰ *Id.* at 133-34.

incidence of the loss was in whole or in part upon insurers, of whose Israeli nationality no evidence has been given.

c. The dispute, arising from the action of anti-aircraft forces in Bulgarian airspace, is "essentially within the domestic jurisdiction of the Bulgarian State"; on the basis of reciprocity resulting from the reservation of domestic jurisdiction in Israel's declaration of acceptance of the Court's jurisdiction, such dispute cannot be adjudicated.

d. The nationals of Israel not having exhausted local remedies available in Bulgarian courts, the claim of Israel on their behalf is inadmissible.

The Court found it unnecessary to consider the foregoing objections because it disposed of the application by sustaining the following submission:¹¹

May it please the Court,

On the First Preliminary Objection,

Whereas the Declaration of August 12th, 1921, by which the Kingdom of Bulgaria had accepted the compulsory jurisdiction of the Permanent Court of International Justice and which formed part of the Protocol of Signature of the Statute of that Court, ceased to be in force on the dissolution of the Permanent Court, pronounced by the Assembly of the League of Nations on April 18th, 1946;

Whereas that Declaration was therefore no longer in force on the date on which the People's Republic of Bulgaria became a party to the Statute of the International Court of Justice; and whereas it cannot accordingly be regarded as constituting an acceptance of the compulsory jurisdiction of the International Court of Justice, by virtue of Article 36, paragraph 5, of the Statute of that Court,

For these reasons,

To adjudge and declare that the Court is without jurisdiction to adjudicate upon the Application of the Government of Israel relating to the aerial incident of July 27th, 1955.

Essentially, the Court was confronted with the question, did Bulgaria's acceptance, "unconditionally," of the jurisdiction of the old Court in 1921 under the Protocol of that Court, which ceased to exist in 1946 along with the League of Nations Covenant and the League and Court as created by these international acts, revive and re-enter into force by virtue of Bulgaria's becoming party to the Charter of the United Nations including the Statute of the Court, a decade after that combined instrument entered into effect? To answer this question, the Court

¹¹ *Id.* at 132. The judges stood 12-4.

necessarily had to determine whether article 36(5) above-quoted was applicable to the Bulgarian declaration of 1921. The Charter and Statute¹² were drafted at the United Nations conference held at San Francisco in 1945 and signed on June 25th of that year by the delegates of the states there represented. Bulgaria was not represented; Israel had not come into existence. Some forty states in addition to Bulgaria were accounted as acceptors of the jurisdiction of the old Court under the Statute of the Court as it existed before 1945. Their declarations of acceptance were of varying content and ran for varying terms.

"The object of Article 36 paragraph 5" of the Statute as adopted at San Francisco, the Court said,¹³

is to introduce a modification in the declarations to which it refers by substituting the International Court of Justice for the Permanent Court of International Justice, the latter alone being mentioned in those declarations, and by thus transferring the legal effect of those declarations from one Court to the other. That Article 36, paragraph 5, should do this in respect of declarations made by States which were represented at the San Francisco Conference and were signatories of the Charter and of the Statute, can easily be understood. This corresponds indeed to the very object of this provision. But is this provision meant also to cover declarations made by other States, including Bulgaria?

The Court's considered view was that "at the time of the adoption of the Statute a fundamental difference existed between the position of the signatory States and of the other States which might subsequently be admitted to the United Nations."¹⁴ The difference derived from the situation which article 36(5) was meant to regulate—namely, "the transfer to the International Court of Justice of declarations relating to the Permanent Court of International Justice which was on the point of disappearing when the Statute [of the new Court] was drawn up."¹⁵ The states represented and about to become signatories were acting with full knowledge of the facts, and they had the power to transfer as among themselves the jurisdiction from the one to the other tribunal. States signatory to the United Nations Charter and Statute could not regard as more or less imminent the admission to the United Nations of any of the other states, or that declarations regarding jurisdiction of the old Court would still be in effect. But as between such states, "the dissolu-

¹² 9 HUDSON, *op. cit. supra* note 5, at 327, 510.

¹³ [1959] I.C.J. Rep. at 136-39.

¹⁴ *Id.* at 136.

¹⁵ *Ibid.*

tion of the old Court and the institution of a new Court" were "two events which, while not absolutely coincident, were sufficiently close The transformation enacted was in their case contemporaneous with this double event."¹⁶ Unless in case of the possibility (which did not, in fact, materialize) of a nonsignatory becoming a party to the Statute before the dissolution of the old Court, "the operation of transferring from one Court to the other acceptances of the compulsory jurisdiction by non-signatory States could not constitute a simple operation, capable of being dealt with immediately and completely by Article 36, paragraph 5," but¹⁷

must necessarily involve two distinct operations which might be separated by a considerable interval of time. On the one hand, old declarations would have had to have been preserved with immediate effect as from the entry into force of the Statute, and, on the other hand, they would have had to be transferred to the jurisdiction of the International Court of Justice, a transfer which could only have been operated by the acceptance by the State concerned of the new Statute, in practice, by its admission to the United Nations. Immediate preservation of the declaration was necessary in order to save it from the lapsing by which it was threatened by the imminent dissolution of the Permanent Court which was then in contemplation.

The Court felt that these circumstances confirmed a fundamental difference between states signatory and nonsignatory of the international act drawn up at San Francisco.

There appeared to the Court to be, in addition, special difficulties in accepting the plaintiff's contention. The international act in question "was without legal force so far as nonsignatory States were concerned: it could not preserve their declarations from the lapsing with which they were threatened"¹⁸ by the impending dissolution of the old Court. Since it could not maintain them in being, it could not transfer their effect. Because their being was not maintained, it would have been necessary "to reinstate lapsed declarations, then to transport their subject-matter" to the jurisdiction of the new Court—for which no provision was made in article 36(5) of its Statute. Without the non-signatories' consent, the Statute "could neither maintain nor transform their original obligation."¹⁹ After the dissolution of the old Court,²⁰

¹⁶ *Id.* at 137.

¹⁷ *Ibid.*

¹⁸ *Id.* at 138.

¹⁹ *Ibid.*

²⁰ *Ibid.*

. . . the question of a transformation of an existing obligation could no longer arise so far as they were concerned: all that could be envisaged in their case was the creation of a new obligation binding upon them. To extend Article 36, paragraph 5, to those States would be to allow that provision to do in their case something quite different from what it did in the case of signatory States.

For the signatory states, article 36(5) was simply a transitory provision. "If nothing had been done there would have been a backward step in relation to what had been achieved in the way of international jurisdiction. Rather than expecting that the States signatories of the new Statute would deposit new declarations of acceptance, it was sought to provide for this transitory situation by a transitional provision."²¹

The Court found substantiation for its holding that article 36(5) could be applied only with respect to states signatory to the Charter of the United Nations and the Statute of the new Court in the preparatory documents and records of the San Francisco conference—for example, a report by the committee that had drafted article 36(5) to the effect that:²²

Acceptances of the jurisdiction of the old Court over disputes arising between parties to the new Statute and other States, or between other States, should also be covered in some way and it seems desirable that negotiations should be initiated with a view to agreement that such acceptances will apply to the jurisdiction of the new Court. This matter cannot be dealt with in the Charter or the Statute, but it may later be possible for the General Assembly to facilitate such negotiations.

When, the Court added,²³

. . . as in the present case, a State has for many years remained a stranger to the Statute, to hold that that State has consented to the transfer, by the fact of its admission to the United Nations, would be to regard its request for admission as equivalent to an express declaration by that State as provided for by Article 36, paragraph 2, of the Statute. It would be to disregard both that latter provision and the principle according to which the jurisdiction of the Court is conditional upon the consent of the respondent, and to regard as sufficient a consent which is merely presumed.

²¹ *Id.* at 139.

²² *Id.* at 141. In this connection, the Court quoted from one of its previous judgments that it would be careful not to "run counter to a well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent." Case of the Monetary Gold Removed from Rome in 1943, [1954] I.C.J. Rep. 19, 32.

²³ [1959] I.C.J. Rep. at 142.

Moreover, if Bulgaria,²⁴

. . . which at the time of its admission to the United Nations was under no obligation of that kind in consequence of the lapse of its Declaration of 1921, were to be regarded as subject to the compulsory jurisdiction as a result of its admission to the United Nations, the Statute of the Court would, in the case of Bulgaria, have a legal consequence, namely, compulsory jurisdiction, which that Statute does not impose upon other States.

At the time Bulgaria was admitted to the United Nations, the Court reiterated,²⁵

. . . its acceptance of the compulsory jurisdiction of the Permanent Court had long since lapsed. There is nothing in Article 36, paragraph 5, to indicate any intention to revive an undertaking which is no longer in force. That provision does not relate to the position of Bulgaria at the time of its entry into the United Nations; Bulgaria's acceptance of the provision does not constitute consent to the compulsory jurisdiction of the International Court of Justice; such consent can validly be given by Bulgaria only in accordance with Article 36, paragraph 2.

Vice President Zafrulla Khan, concurring,²⁶ called attention to the fact that, as article 36(5) is not in its application statedly limited to states that become signatories to the United Nations Charter, Bulgaria, had it become a member of the United Nations before the dissolution of the old Court, would have become bound by that article of the Statute.

Judges Badawi and Armand-Ugon appended separate opinions. The former²⁷ considered that article 36(5) related only to those states which had accepted the Court's jurisdiction for a definite period of time, not, as in the case of Bulgaria, without limitation of time; moreover, the obligations under the Charter and Statute, in the case of states admitted to the United Nations subsequent to the date when the combined instrument became effective, assumed obligations as of the dates of their admission, respectively. He also remarked:²⁸

The Treaty of Peace concluded with Bulgaria, which effaced the latter's enemy status, and Bulgaria's admission to the United Nations under Article 4 of the Charter, constitute for Bulgaria a new career so far as both the Charter

²⁴ *Id.* at 145.

²⁵ *Ibid.*

²⁶ *Id.* at 146.

²⁷ *Id.* at 148.

²⁸ *Id.* at 151.

and the Statute are concerned, to which any provision linking the past with the present must be extraneous.

Judge Armand-Ugon,²⁹ likewise concurring in the operative effect of the judgment of the Court, and, like Judge Badawi, considering that article 36(5) applied only to acceptances of jurisdiction for definite periods of time, laid emphasis upon the rule of interpretation that a "legal provision which is formulated in clear terms must be applied without adding anything to, or without taking anything from, it."³⁰

Judge *ad hoc* Goitein, dissenting,³¹ took the position that the Court "should refuse to exercise jurisdiction only if its Statute clearly and unequivocally withholds jurisdiction from it."³² The question whether the Court had jurisdiction depended, he agreed, on the true interpretation of article 36(5) of the Statute. The words "still in force" in article 36(5) could have no other meaning than at the date the Statute entered into force, that is, October 24, 1945; under article 93 of the Charter, the members of the United Nations are the "parties to the present Statute." This is true of a state whenever it is accepted as a member of the United Nations. So, when Bulgaria became a member, Judge Goitein concluded, it became *ipso facto* a party to the Statute; and "the single presumption made by the Statute" was that Bulgaria's "voluntary declaration recognizing as compulsory the jurisdiction" of the old Court "was a declaration recognizing as compulsory the jurisdiction" of its successor.³³

Judges Lauterpacht, Wellington Koo, and Spender,³⁴ dissenting, united in a long and closely reasoned statement of their view, in the course of which they reviewed the historical background of the creation of the International Court of Justice, which was inaugurated at The Hague one day before the resolution of the League of Nations dissolving the old Court took effect. There was to be no break of "continuity with the past."³⁵ It was expected that this continuity would include compulsory jurisdiction. It followed that the words of article 36(5), "which are still in force," referred to the declarations themselves—namely, "to a period of time, limited or unlimited," which had not

²⁹ *Id.* at 152.

³⁰ *Id.* at 155.

³¹ *Id.* at 195-204.

³² *Id.* at 195.

³³ *Id.* at 204.

³⁴ *Id.* at 156-94.

³⁵ Report of Committee I of Commission 4, on Judicial Organization, 13 U.N. CONF. INT'L ORG. DOCS. 384 (1945).

expired, regardless of any prospective or actual date of the dissolution of the old Court.³⁶

So long as the period of time of declarations made under Article 36 of the Statute of the Permanent Court still has to run at the time when the declarant state concerned becomes a party to the Statute of the International Court of Justice, those declarations fall within the purview of Article 36, paragraph 5, of the new Statute and 'shall be deemed to be acceptances of the compulsory jurisdiction of the International Court for the period which they still have to run and in accordance with their terms.'

The declarations of acceptance³⁷

. . . which were still in force were not to be extinguished and forgotten. Their operation was suspended until such time as the declarant State became a party to the Statute by being admitted to the United Nations. . . . Bulgaria more than once applied for admission. . . . When admitted on December 14th, 1955, [Bulgaria] . . . became on that day a party to the Statute. Since the Bulgarian Declaration of 1921 has no time-limit attached to it, it came on the same day within the purview of Article 36, paragraph 5.

This finding was confirmed through other lines of approach undertaking to prove that the jurisdiction of the Court under article 36(2) extended to the case before it.

Twelve days after the Court received the application of Israel in its case against Bulgaria, the United States, on October 28, 1957, transmitted to the Registrar of the Court an application instituting proceedings against Bulgaria "with regard to Damage suffered by American nationals, passengers on board an aircraft of El Al Israel Airlines, Ltd., which was destroyed on July 27, 1955, by Bulgarian fighter aircraft."³⁸ On November 21, 1957, the United Kingdom took similar action "with regard to the losses sustained by citizens of the United Kingdom and Colonies by reason of the destruction, on July 27, 1955, by the Bulgarian anti-aircraft defence forces, of an aircraft belonging to El Al Israel Airlines, Ltd."³⁹

In the words of the Court's order of November 26, 1957, the Application of the United States recites, on the one hand, that it⁴⁰

³⁶ [1959] I.C.J. Rep. at 164-65.

³⁷ *Id.* at 166.

³⁸ Case Concerning the Aerial Incident of July 27, 1955 (United States of America v. Bulgaria), [1957] I.C.J. Rep. 186, 187.

³⁹ Case Concerning the Aerial Incident of July 27, 1955 (United Kingdom v. Bulgaria), [1957] I.C.J. Rep. 190, 191.

⁴⁰ [1957] I.C.J. Rep. 184, 187.

. . . submits to the Court's jurisdiction for the purposes of this case; and, on the other hand, that Bulgaria accepted the compulsory jurisdiction of the Court by virtue of the signature of its representative to the Protocol of Signature of the Statute of the Permanent Court of International Justice and that that acceptance became effective as to jurisdiction of the Court by virtue of Article 36, paragraph 5, of the Statute of the Court, upon the date of admission of Bulgaria into the United Nations.

The order further states that Bulgaria, while acknowledging receipt of notice of the filing of the application and "reserving the right to raise the preliminary question of the jurisdiction of the Court," would inform the Court without delay of the name of its agent and of his address for service at the seat of the Court.⁴¹ On November 15, 1957, the parties were notified that the Acting President of the Court proposed, pursuant to article 37, paragraph 7, of its rules, to receive their representatives on November 20th for the purpose of ascertaining their views with regard to questions of procedure and, in particular, with regard to the time-limits to be fixed for the filing of the pleadings. Bulgaria, on November 19th, requested postponement of the meeting, which was then set for November 25th. On November 23rd, Bulgaria notified the Court of the appointment of Dr. Nissim Mevorah as its agent, but requested further delay of the meeting. The Court, however, on November 25, 1957, fixed June 2, 1958, as the time-limit for the filing of the United States' memorial and reserved for a subsequent order the fixing of the time-limit for the filing by the respondent of its counter-memorial.

The United Kingdom's application recited, on the one hand, that it⁴²

. . . accepted the compulsory jurisdiction of the Court by its Declaration of April 18th, 1957, replacing the previous Declaration of October 31st, 1955, and covering disputes arising after February 5th, 1930, with regard to situations and facts subsequent to that date, and, alternatively, that the United Kingdom submit unconditionally to the jurisdiction of the Court for all the purposes of the present dispute; and, on the other hand, that Bulgaria accepted the compulsory jurisdiction of the Court on July 29th, 1921, when the instrument of Bulgaria's ratification of the Protocol of Signature of the Permanent Court of International Justice was deposited, and that, by virtue of Article 93, paragraph 1, of the Charter of the United Nations and Article 36, paragraph 5, of the Statute of the Court, that acceptance became effective

⁴¹ *Id.* The United States had announced its agent would be Mr. Loftus E. Becker, Legal Adviser, U.S. Dep't of State.

⁴² *Id.* at 191. The United Kingdom subsequently announced that Miss J. A. C. Gutteridge, Assistant Legal Adviser to the Foreign Office, had been appointed its agent.

as to the jurisdiction of the Court on the date of Bulgaria's admission to membership of the United Nations.

The order of the Court, after setting forth substantially the same matters, *mutatis mutandis*, contained in its order regarding the case of the United States, likewise fixed June 2, 1958, as the time-limit for the filing of the British memorial and reserved the setting of the time-limit for the counter-memorial.

After several postponements, the memorial of the United States was filed within the time-limit of December 2, 1958, and the counter-memorial of Bulgaria within the time-limit of September 9, 1959. The latter consisted of a document setting forth certain preliminary objections and asked the Court to declare that it was without jurisdiction in the case. The Court thereupon, by virtue of article 62, paragraph 3, of its rules, suspended proceedings on the merits and fixed November 9, 1959, as the time-limit within which the United States might present its observations and submissions on the Bulgarian objections.⁴³ This time-limit was subsequently extended to February 9, 1960, at the request of the United States, unobjected to by Bulgaria.⁴⁴ Such request for extension would seem to indicate a sustained intention on the part of the United States to proceed with the case.

Having received the following letter addressed to the Registrar by the agent of the United Kingdom,⁴⁵

By direction of Her Majesty's Principal Secretary of State for Foreign Affairs, and in accordance with Article 69 of the Rules of Court, I have the honour to request you to inform the Court of the decision of the Government of the United Kingdom to discontinue the proceedings instituted by means of the Application dated November 19, 1957,

the Court placed on record the discontinuance by the Government of the United Kingdom of the proceedings instituted on November 22, 1957,⁴⁶ and ordered that the case be removed from the Court's list.

⁴³ Case Concerning the Aerial Incident of July 27, 1955 (United States of America v. Bulgaria), [1959] I.C.J. Rep. 270, 271.

⁴⁴ *Id.* at 283-84; Order of 23 October 1959.

⁴⁵ *Id.* (United Kingdom v. Bulgaria), [1959] I.C.J. Rep. 264; Order of 3 August 1959.

⁴⁶ There appears to be an inconsequential discrepancy of dates between the order of November 26, 1957, and that of August 3, 1959, with reference to this date, the former seeming to give it as November 21, 1957. See notes 39 and 45 *supra*.