

PERMANENT COURT OF INTERNATIONAL JUSTICE

PCIJ Series A. No 2

THE MAVROMMATIS PALESTINE CONCESSIONS

JUDGMENT (OBJECTION TO THE JURISDICTION OF THE COURT)

30 August 1924

Tribunal:

[Charles André Weiss](#) (Vice-President); [Robert Finlay](#) (Judge); [Didrik Nyholm](#) (Judge); [John Bassett Moore](#) (Judge); [Antonio Sánchez de Bustamante y Sirven](#) (Judge); [Rafael Altamira y Crevea](#) (Judge); [Yorozu Oda](#) (Judge); [Dionisio Anzilotti](#) (Judge); [Epitácio da Silva Pessôa](#) (Judge); [Bernard Loder](#) (President); [Max Huber](#) (Judge); [Megalos Caloyanni](#) (Judge Ad-hoc)

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Judgment (Objection to the Jurisdiction of the Court)

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The Court, composed as above, having heard the observations and conclusions of the Parties, delivers the following judgment :

The facts :

The Government of the Greek Republic, by an application instituting proceedings filed with the Registry of the Court on May 13th, 1924, in conformity with Article 40 of the Statute and Article 35 of the Rules of Court, has submitted to the Permanent Court of International Justice a suit arising out of the alleged refusal on the part of the Government of Palestine, and consequently also on the part of His Britannic Majesty's Government, since the year 1921 to recognise to their full extent the rights acquired by M. Mavrommatis, a Greek subject, under contracts and agreements concluded by him with the Ottoman authorities in regard to concessions for certain public works to be constructed in Palestine.

This application concludes with a request that the Court may be pleased to give judgment to the effect that the Government of Palestine and consequently also the Government of His Britannic Majesty, have, since 1921, wrongfully refused to recognise to their full extent the rights acquired by M. Mavrommatis under the contracts and agreements concluded by him with the Ottoman authorities in regard to the works specified above, and that the Government of His Britannic Majesty shall make reparation for the consequent loss incurred by the said Greek subject, a loss which is estimated at £234,339 together with interest at six per cent as from July 20th, 1923, the date on which this estimate was made.

The considerations leading up to these conclusions have been developed in the Case filed with the Court by the claimant on May 23rd, 1924. It is therein specified that the Greek Government, abandoning a portion of its original claim relating to the irrigation works in the Jordan Valley, asks for judgment only in respect of two groups of concessions, namely : those relating to the construction and working of an electric tramway system, the supply of electric light and power and of drinking water in

the city of Jerusalem, and those relating to the construction and working of an electric tramway system, the supply of electric light and power and of drinking water in the city of Jaffa and the irrigation of its gardens from the waters of El-Hodja.

On the grounds stated in the Case, the Greek Government asks the Court to give judgment as follows :

The Jerusalem Concessions :

(1) That, these concessions having begun to be put into operation, the British Government, in its capacity as Mandatory for Palestine, is bound to maintain them and to agree to their adaptation to the new economic conditions of the country, or to redeem them by paying to the claimant reasonable compensation ;

(2) that, having in fact already made its choice, by rendering impossible, directly or indirectly, the carrying out of the works for which the claimant holds a concession, it must pay him compensation ;

(3) that, taking into account all the various elements of the loss occasioned to the claimant, he shall receive fair and reasonable compensation by means of the payment to him of the sum of £121,045, together with interest at six per cent from July 20th, 1923, until the date on which judgment is given.

The Jaffa Concessions :

(1) that the fact that these were granted after October 29th, 1914, does not justify the British Government in refusing to recognise them ;

(2) that the fact that they were not confirmed by Imperial iradé, which is a simple formality not to be withheld at discretion, does not deprive them of their international value ;

(3) that, though the British Government, in its capacity as Mandatory for Palestine, is at liberty not to maintain them, it is nevertheless under an international obligation to compensate their holder for the loss which it has inflicted upon him by deciding—as it has done—not to allow him to proceed with them ;

(4) that, taking into account all the elements of the loss thus sustained by the claimant, he shall receive fair and reasonable compensation by means of the payment to him of the sum of

£113,294, together with interest at six per cent from July 20th, 1923, until the date on which judgment is given.

The application instituting proceedings was, in accordance with Article 40 of the Statute, communicated to the Government of His Britannic Majesty on May 15th, 1924, and the Greek Case was transmitted to that Government on May 31st. On June 3rd, His Britannic Majesty's Government informed the Court that it found itself obliged to make a preliminary objection on the ground that the Court had no jurisdiction to entertain the proceedings in question. In agreement with His Britannic Majesty's Government, the President fixed June 16th as the date for the filing of the objection to the Court's jurisdiction.

On that date, the Agent of His Britannic Majesty's Government filed with the Registry of the Court a preliminary objection to the Court's jurisdiction and a preliminary counter-case in the proceedings respecting the Mavrommatis Palestine Concessions.

The objection concludes with a request that the Court may be pleased to give judgment on the preliminary objection filed on behalf of His Britannic Majesty's Government and, without entering at the present stage upon the merits of the case, to dismiss the proceedings instituted by the Greek Government ; whilst in conclusion of the preliminary counter-case it is submitted on behalf of His Britannic Majesty's Government that the proceedings instituted by the Government of the Greek Republic should be dismissed upon the ground that the Court has no jurisdiction to entertain them.

The Agent of the Government of the Greek Republic (having been informed of the filing of the objection made by the British Government) requested permission, on behalf of his Government, to make a written reply to this objection.

He was requested to submit his reply on June 30th.

Accordingly, on the day fixed, the Greek Agent filed his Government's reply to the British preliminary counter-case concerning the Court's jurisdiction.

This reply, in conclusion, requests the Court to declare that the objection to the jurisdiction of the Court has not been established and to dismiss it ; and to reserve the suit for judgment on its merits.

In support of their conclusions, the Parties have handed in to the Court a number of documents as annexes to the case or preliminary counter-case.

Furthermore, the Court has heard, in the course of public sittings held on July 15th and 16th, 1924, the statements of H.E. M. Politis, counsel for the applicant Government, and of the Agent of the respondent Government.

The Law.

Before entering on the proceedings in the case of the Mavrommatis concessions, the Permanent Court of International Justice has been made cognisant of an objection taken by His Britannic Majesty's Government to the effect that the Court cannot entertain the proceedings. The Court has not to ascertain what are, in the various codes of procedure and in the various legal terminologies, the specific characteristics of such an objection ; in particular it need not consider whether "competence" and "jurisdiction", *incompétence* and *fin de non-recevoir* should invariably and in every connection be regarded as synonymous expressions. It will suffice to observe that the extremely wide bearing of the objection upon which, before the case can be argued on its merits, the Court has to take a decision (without, however, in so doing, in any way prejudging the final outcome of such argument) has been indicated by the Parties themselves in their preliminary counter-case and reply or in the course of the oral statements made on their behalf. It appears in fact from the documents before the Court and from the speeches of Sir Cecil Hurst and of H.E. M. Politis that the preliminary question to be decided is not merely whether the nature and subject of the dispute laid before the Court are such that the Court derives from them jurisdiction to entertain it, but also whether the conditions upon which the exercise of this jurisdiction is dependent are all fulfilled in the present case.

The general basis of the jurisdiction given to the Permanent Court of International Justice is set down in Articles 34 and 36 of the Statute, according to which, in the first place, only States, or Members of the League of Nations may appear before it and, in the second place, it has jurisdiction to hear and determine "all cases which the Parties refer to it and all matters specially provided for in Treaties and Conventions in force".

In the application instituting proceedings the Greek Government relies on the following :

Article 9 of Protocol XII annexed to the Peace [Treaty of Lausanne of July 24th, 1923](#) ;

Articles 11 and 26 of [the Mandate for Palestine conferred on His Britannic Majesty on July 24th, 1922](#) ;

Article 36, first paragraph, and Article 40 of the Statute of the Court and Article 35, paragraph 2, of the Rules of Court.

The Parties in the present case agree that Article 26 of the [Mandate](#) falls within the category of "matters specially provided for in Treaties and Conventions in force" under the terms of Article 36 of the Statute and the British Government does not dispute the fact that proceedings have been duly initiated in accordance with Article 40 of the Statute.

Article 26 of the [Mandate](#) contains the following clause :

"The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the [Mandate](#), such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations."

The question therefore arises whether the conditions laid down by Article 26 in regard to the acceptance of the Court's jurisdiction, the absence of which would render such acceptance inoperative, are fulfilled in the case before the Court.

Before considering whether the case of the Mavrommatis concessions relates to the *interpretation of application* of the [Mandate](#) and whether consequently its nature and subject are such as to bring it within the jurisdiction of the Court as defined in the article quoted above, it is essential to ascertain whether the case fulfils all the other conditions laid down in this clause. Does the matter before the Court constitute a dispute between the Mandatory and another Member of the League of Nations ? Is it a dispute which cannot be settled by negotiation ?

I.

A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons. The present suit between Great Britain and Greece certainly possesses these characteristics. The latter Power is asserting its own rights by

claiming from His Britannic Majesty's Government an indemnity on the ground that M. Mavrommatis, one of its subjects, has been treated by the Palestine or British authorities in a manner incompatible with certain international obligations which they were bound to observe.

In the case of the Mavrommatis concessions it is true that the dispute was at first between a private person and a State — i.e. between M. Mavrommatis and Great Britain. Subsequently, the Greek Government took up the case. The dispute then entered upon a new phase ; it entered the domain of international law, and became a dispute between two States. Henceforward therefore it is a dispute which may or may not fall under the jurisdiction of the Permanent Court of International Justice.

Article 26 of the Mandate, in giving jurisdiction to the Permanent Court of International Justice does not, in fact, merely lay down that there must be a dispute which requires to be settled. It goes on to say that the dispute must be between the Mandatory and another Member of the League of Nations. This is undoubtedly the case in the present suit, since the claimant State Greece, like Great Britain, has from the outset belonged to the League of Nations. It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights — its right to ensure, in the person of its subjects, respect for the rules of international law.

The question, therefore, whether the present dispute originates in an injury to a private interest, which in point of fact is the case in many international disputes, is irrelevant from this standpoint. Once a State has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of the latter the State is sole claimant. The fact that Great Britain and Greece are the opposing Parties to the dispute arising out of the Mavrommatis concessions is sufficient to make it a dispute between two States within the meaning of Article 26 of the Palestine Mandate.

II.

The second condition by which this article defines and limits the jurisdiction of the Permanent Court in questions arising out of the interpretation and application of the Mandate, *is that the dispute cannot be settled by negotiation*. It has been contended that this condition is not fulfilled in the present case ; and leaving out of account the correspondence previous to 1924 between Mavrommatis or his solicitors and the British Government, emphasis has been laid on the very small number and brevity of the subsequent communications exchanged between the two Governments, which communications appear to be irreconcilable with the idea of negotiations properly so-called. The true value of this objection will readily be seen if it be remembered that the question of the importance and chances of success of diplomatic negotiations is essentially a relative one. Negotiations do not of necessity always presuppose a more or less lengthy series of notes and despatches ; it may suffice that a discussion should have been commenced, and this discussion may have been very short ; this will be the case if a dead lock is reached, or if finally a point is reached at which one of the Parties definitely declares himself unable, or refuses, to give way, and there can therefore be no doubt that *the dispute cannot be settled by diplomatic negotiation*. This will also be the case, in certain circumstances, if the conversations between the Governments are only the continuation of previous negotiations between a private individual and a government.

It is true that the State does not substitute itself for its subject ; it is asserting its own rights and, consequently, factors foreign to the previous discussions between the individual and the competent authorities may enter into the diplomatic negotiations. But it is equally true that if the diplomatic negotiations between the Governments commence at the point where the previous discussions left off, it may well happen that the nature of the latter was such as to render superfluous renewed discussion of the opposing contentions in which the dispute originated. No general and absolute rule can be laid down in this respect. It is a matter for consideration in each case. In the case now before the Court, the negotiations between M. Mavrommatis or his representatives and the Palestine or British authorities had covered precisely the points on which the Greek Government decided to rely, and did in fact rely as against

the British Government with regard to the recognition of the Mavrommatis concessions. And the negotiations between the concessions holder and the authorities were throughout conducted on the basis of international instruments subsequently relied on by the Greek Government when it approached His Britannic Majesty's Government. That this is the case appears from the whole of the correspondence placed before the Court and more especially from the letter sent by the Foreign Office on April 1st, 1924 to the Greek Legation in London, in which all the questions which had previously been discussed between the interested person and the Colonial Office were recapitulated. One proof that the Greek Government took this view is the fact that it had associated itself with the steps taken by its subject by transmitting to the Foreign Office the letter sent to the Greek Legation by M. Mavrommatis on December 18th, 1922. The Greek Government moreover had already realised from two letters, dated January 22nd and February 2nd, 1923, sent by Mr. G. Agar Robartes of the Foreign Office to M. Mêlas, Secretary of the Greek Legation in London, that the British Government was indisposed to enter into direct negotiation with it regarding the claim of its subject. A year later, on January 26th, 1924, the Greek Legation in London wrote to the Foreign Office in order to ascertain whether in the opinion of the British Government, "M. Mavrommatis' claims could not be satisfactorily met" or submitted to arbitration either by a member of the High Court of Justice or by a tribunal of which the president, failing agreement between the Parties, should be appointed by the British Government itself ; and the note of His Britannic Majesty's Secretary of State for Foreign Affairs, dated April 1st, 1924, was regarded by Greece as a definitely negative reply.

This note moreover is also of great importance from another point of view. For it tends to show the official character of the correspondence which had taken place regarding the Mavrommatis concessions between the Greek Legation in London and the Foreign Office or certain of their officials. Thus the note of the Secretary of State refers expressly to the note—above mentioned—signed by M. Collas on January 26th, 1924 ; and the latter in its turn refers to the letter sent by Mr. Robartes to M. Mêlas on February 2nd, 1923. It should also be observed that all this correspondence bears the registration numbers of the Legation and of the Foreign Office.

The matter had reached this stage when the Greek Government, considering that there was no hope of effecting a settlement by further negotiation and acting upon a suggestion made by M. Mavrommatis' solicitors in their letter of April 1st, 1924, to the Greek Legation in London, sent to the Foreign Office a dispatch dated May 12th, 1924, informing His Britannic Majesty's Government of its decision to refer the dispute to the Court, a decision which—doubtless in view of the approaching opening of the Court's ordinary Session—it proceeded to carry out on the following day, when it filed the application instituting proceedings with the Registry.

The Court realises to the full the importance of the rule laying down that only disputes which cannot be settled by negotiation should be brought before it. It recognises, in fact, that before a dispute can be made the subject of an action at law, its subject matter should have been clearly defined by means of diplomatic negotiations. Nevertheless, in applying this rule, the Court cannot disregard, amongst other considerations, the views of the States concerned, who are in the best position to judge as to political reasons which may prevent the settlement of a given dispute by diplomatic negotiation. When negotiations between the private person and the authorities have already—as in the present case—defined all the points at issue between the two Governments, it would be incompatible with the flexibility which should characterise international relations to require the two Governments to reopen a discussion which has in fact already taken place and on which they rely. It should be observed in this connection that the Foreign Office, in its reply of April 1st, states that the competent department to which the negotiations had been entrusted had fully and carefully examined the question.

III.

The Court has now to consider the condition which Article 26 of the Mandate imposes upon its jurisdiction when laying down that the dispute must relate "to the interpretation or the application of the provisions of the Mandate". The dispute may be of any nature; the language of the article in this respect is as comprehensive as possible (*any dispute whatever — tout différend, quel qu'il*

soit) ; but in every case it must relate to the interpretation or the application of the provisions of the Mandate.

In the first place, the exact scope must be ascertained of the investigations which the Court must, under Article 36, last paragraph, of the Statute, pursue in order to arrive at the conclusion that the dispute before it does or does not relate to the interpretation or the application of the Mandate, and, consequently, is or is not within its jurisdiction under the terms of Article 26. Neither the Statute nor the Rules of Court contain any rule regarding the procedure to be followed in the event of an objection being taken *in limine litis* to the Court's jurisdiction. The Court therefore is at liberty to adopt the principle which it considers best calculated to ensure the administration of justice, most suited to procedure before an international tribunal and most in conformity with the fundamental principles of international law.

For this reason the Court, bearing in mind the fact that its jurisdiction is limited, that it is invariably based on the consent of the respondent and only exists in so far as this consent has been given, cannot content itself with the provisional conclusion that the dispute falls or not within the terms of the Mandate. The Court, before giving judgment on the merits of the case, will satisfy itself that the suit before it, in the form in which it has been submitted and on the basis of the facts hitherto established, falls to be decided by application of the clauses of the Mandate. For the Mandatory has only accepted the Court's jurisdiction for such disputes.

It is true that in [Advisory Opinion No. 4 regarding the Nationality Decrees in Tunis and Morocco](#) (French Zone), the Court, which had to take a decision upon a plea to the jurisdiction, declared that the jurisdiction of the Council of the League of Nations must be considered to exist provided that the legal grounds (*titres*) of an international character advanced by the Parties are such as to justify the provisional conclusion that they are of juridical importance for the dispute.

In that case, the plea was made under paragraph 8 of Article 15 of the Covenant and was directed against the very general jurisdiction given by the first paragraph to the Council of the League of Nations covering all disputes likely to lead to a rupture. Whereas in the present case, the objection to the Court's jurisdiction taken by the British Government relates to a jurisdiction limited to

certain categories of disputes, which are determined according to a legal criterion (the interpretation and application of the terms of the Mandate), and tends therefore to assert the general rule that States may or may not submit their disputes to the Court at their discretion.

The dispute brought before the Court by the Greek Government's application relates to the question whether the Government of Palestine and consequently also the British Government have, since 1921, wrongfully refused to recognise to their full extent the rights acquired by M. Mavrommatis under the contracts and agreements concluded by him with the Ottoman authorities in regard to certain public works.

In support of its application, the Greek Government cites Article 11 of the Mandate, which runs as follows :

"The Administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, subject to any international obligations accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein. It shall introduce a land system appropriate to the needs of the country, having regard among other things to the desirability of promoting the close settlement and intensive cultivation of the land.

"The Administration may arrange with the Jewish Agency mentioned in Article 4 to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the Administration. Any such arrangements shall provide that no profits distributed by such agency, directly or indirectly, shall exceed a reasonable rate of interest on the capital, and any further profits shall be utilised by it for the benefit of the country in a manner approved by the Administration."

The question to be solved is whether the dispute above mentioned should be dealt with on the basis of this clause. Taken as a whole, Article 11 purports to regulate the powers of the Palestine Administration as regards : a) public ownership or control of the natural

resources of the country or of the public works, services and utilities ; b) the introduction of a land system appropriate to the needs of the country and, c) arrangements with the Jewish agency to construct or operate, upon fair and equitable terms, any public works, services and utilities and to develop any of the natural resources of the country.

The Court feels that the present judgment should be based principally on the first part of paragraph 1 of Article 11.

After an introductory phrase laying down in general terms the fundamental duty of the Administration, namely to "take all necessary measures to safeguard the interests of the community in connection with the development of the country", Article 11 continues to the effect that the Administration of Palestine "shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein" — *aura pleins pouvoirs pour décider quant à la propriété ou au contrôle public de toutes les ressources naturelles du pays, ou des travaux et services d'utilité publique déjà établis ou à y établir.*

The Court considers that, according to the French version, the powers thus attributed to the Palestine Administration may cover every kind of decision regarding public ownership and every form of "contrôle" which the Administration may exercise either as regards the development of the natural resources of the country or over public works, services and utilities. An interpretation restricting these powers to certain only of the measures which the Administration may take in regard to public ownership or to certain only of the ways in which public "contrôle" may be exercised over the activities in question, though not completely excluded by the very general wording of the French text, is not the natural interpretation of its terms : that is to say that the right to grant concessions with a view to the development of the natural resources of the country or of public works, services and utilities, as also the right to annul or cancel existing concessions, might fall within the terms of the French version of the clause under consideration.

The English version, however, seems to have a more restricted meaning. It contemplates the acquisition of "public ownership" or "public control" over any of the natural resources of the country

or over the public works, services and utilities established or to be established therein.

Since no question of "public ownership" is raised in the present case, the Court has devoted its whole attention to the meaning of the expression "public control". It has ascertained that the word "control" may have a very wide sense but that, used in conjunction with the expression "public ownership", it would appear rather to mean the various methods whereby the public administration may take over, or dictate the policy of, undertakings not publicly owned.

The Court is of opinion that, where two versions possessing equal authority exist one of which appears to have a wider bearing than the other, it is bound to adopt the more limited interpretation which can be made to harmonise with both versions and which, as far as it goes, is doubtless in accordance with the common intention of the Parties. In the present case this conclusion is indicated with especial force because the question concerns an instrument laying down the obligations of Great Britain in her capacity as Mandatory for Palestine and because the original draft of this instrument was probably made in English.

The Mavrommatis concessions in themselves are outside the scope of Article 11, but the question before the Court is whether, by granting the Rutenberg concessions—which cover at least a part of the same ground—the Palestine and British authorities have disregarded international obligations assumed by the Mandatory, by which obligations Greece is entitled to benefit.

The connection between the Rutenberg and Mavrommatis concessions arising out of the fact that they partially overlap, may be considered as admitted because the Palestine and British authorities, when the question of the validity of the latter concessions was brought up, invited the interested party to come to an understanding with the Zionist organisation and with Mr. Rutenberg.

If the Rutenberg concessions fall within the scope of Article 11, the dispute undoubtedly relates to that article.

In this connection, the Court has to decide whether the grant of the Rutenberg concessions has given rise to the acquisition or exercise of "public control" in the sense contemplated above.

If the expression "public control" is contrasted with "private control" in the very restricted sense of a public undertaking as opposed to a private undertaking controlled by the public authorities

the Rutenberg concessions cannot be considered as having conferred upon the Palestine Administration "public control" over the services under concession.

But it does not appear to be correct to maintain that the English expression "public control" only covers cases where the Government takes over and itself directs undertakings of one kind or another. The expression is also used to indicate certain forms of action taken by the State with regard to otherwise private undertakings. Even in such cases, the word "control", in the sense in which it is generally used, cannot be employed to describe practically all acts of public authority ; "control" always means measures of a special character in connection with an economic policy consisting in subordinating, in one way or another, private enterprise to public authority. This wider meaning of the English expression appears to be the only one which does not nullify the expression *contrôle public* in the French version : it seems hardly possible to read the latter as referring exclusively to cases where a public administration itself takes in hand an undertaking. It is in this sense that even the grant of a concession of public utility to an individual or to a company may be accompanied by measures which amount to an exercise of "public control".

In this respect it should be observed that Article 28 of the Rutenberg concessions expressly lays down that "the undertaking of the company under this concession shall be recognised as a public utility Body under Government control" : it would not be correct to interpret this clause as reserving to the Government the right, should it see fit, to assume control of the undertaking. This "Government control" appears rather to be connected with the recognition of the undertaking as a public utility body. Moreover, it is clearly of a different nature to the supervision which the Palestine Administration may exercise over the financial operations of the company under Article 36 of the concessions.

Again it may be remarked that the concessions in question have been granted to a company which Mr. Rutenberg undertakes to form and the statutes of which, according to Article 2 of the agreement concerning the grant of the concession for the Jordan and Article 34 of the Jaffa concession, were to be approved by the High Commissioner for Palestine in agreement with the Jewish agency mentioned in the Mandate.

In order to form an idea of the significance of this clause, it must be remembered that this Jewish agency is described as follows in Article 4 of the Mandate :

« An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country. "The Zionist organisation... shall be recognised as such agency."

« Un organisme juif convenable sera officiellement reconnu et aura le droit de donner des avis à l'Administration de la Palestine et de coopérer avec elle dans toutes questions économiques, sociales et autres, susceptibles d'affecter l'établissement du foyer national juif et les intérêts de la population juive en Palestine, et, toujours sous réserve du contrôle de l'Administration, d'aider et de participer au développement du pays. « L'organisation sioniste sera reconnue comme étant l'organisme visé ci-dessus... »

This clause shows that the Jewish agency is in reality a public body, closely connected with the Palestine Administration and that its task is to co-operate, with that Administration and under its control, in the development of the country. The words used in paragraph 2 of Article 11 to indicate the action of the Jewish agency are the same as those used in the first paragraph to indicate the use to be made of the powers granted to the Palestine Administration. It is obviously a program of economic policy which the Administration may carry out, either directly, or through a public body acting under its control.

The conclusion which appears to follow from the preceding argument is that the Rutenberg concessions constitute an application by the Administration of Palestine of the system of, "public control" with the object of developing the natural resources of the country and of operating public works, services and utilities. Thus envisaged, these concessions may fall within the scope of Article 11 of the Mandate.

But even if any doubt on this point remained, the Court believes

that it should disregard it in view of a passage in the Preliminary Counter-case filed by His Britannic Majesty's Government on 16 June 1924, containing a declaration which, no matter in what connection it was made, refers directly to the relations between the Rutenberg concessions and Article 11 of the Mandate. This passage runs as follows :

"The concessions granted to Mr. Rutenberg in September, 1921, for the development of electrical energy and waterpower in Palestine (Annex to the Greek Case, pp. 21—52) were obliged to conform to this Article 11, and it would have been open to any Member of the League to question provisions in those concessions which infringed the international obligations which His Britannic Majesty as Mandatory for Palestine had accepted."

« Les concessions accordées en septembre 1921 à M. Rutenberg pour le développement de l'énergie électrique et de la force hydraulique en Palestine (Annexe au Mémoire grec, pages 21 à 52) ont obligatoirement dû être faites en conformité de l'article 11 et il eût été loisible à tout Membre de la Société de mettre en question toute stipulation de ces concessions qui eût porté atteinte aux obligations internationales assumées par Sa Majesté britannique en qualité de Mandataire pour la Palestine. »

The express reference to the "international obligations accepted by the Mandatory" makes it clear that this statement refers to paragraph 1 of Article 11.

Again the British Agent's oral pleading contains the following :

"Article 11 provides in the first part which I have read, that the Government of Palestine may itself develop these natural resources. It shall have full power to provide for public ownership or control of any of the natural resources of the country, subject to the international obligations accepted by the Mandatory. Then comes a second paragraph which enables the Administration to "arrange with the Jewish agency"—that is the Zionist Organisation which had been mentioned in an earlier portion—"to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country" in so far as these

matters are not directly undertaken by the Administration. It will be noticed that there is no repetition in that second paragraph of those words "subject to any international obligations accepted by the Mandatory", but I think it is a limitation upon the powers of the Mandatory which is so obvious that it is implied in the second paragraph just as much as in the first. The Mandatory cannot, in making his arrangements for the development of the natural resources of the country, ignore the international obligations which he has accepted."

The powers accorded under Article 11 to the Administration of Palestine must, as has been seen, be exercised "subject to any international obligations accepted by the Mandatory". This qualification was a necessary one, for the international obligations of the Mandatory are not, *ipso facto*, international obligations of Palestine. Since Article 11 of the Mandate gives the Palestine Administration a wide measure of autonomy, it was necessary to make absolutely certain that the powers granted could not be exercised in a manner incompatible with certain international engagements of the Mandatory. The obligations resulting from these engagements are therefore obligations which the Administration of Palestine must respect ; the Mandatory is internationally responsible for any breach of them since, under Article 12 of the Mandate, the external relations of Palestine are handled by it. It has been contended on behalf of the Greek Government that the Administration of Palestine, by arranging with the Jewish agency for the construction or operation of the works or of a portion of the works for which M. Mavrommatis already held concessions and not paying the latter compensation, had disregarded the international obligations of the Mandatory. At the present stage of the proceedings the question whether there really has been a breach of these obligations can clearly not be gone into ; to do so would involve a decision as to the responsibility of the respondent, a thing which the two Governments concerned do not at the moment ask the Court to do. But, in accordance with the principles set out above, the Court is constrained at once to ascertain whether the international obligations mentioned in Article 11 affect the merits of the case and whether any breach of them would involve a breach of the provisions of this article.

There has been much discussion as to what international obligations of the Mandatory's must be respected by the Administration of Palestine. The Greek Government appears to hold that these are all international obligations in general ; on the other hand the submission of the British Government in its preliminary Counter-case is that only various beneficent principles are intended, to the maintenance of which the League of Nations, on whose behalf His Britannic Majesty exercises the mandate over Palestine, is pledged, such as freedom of transit and communications, equality of commercial opportunity for all Members of the League, suppression of the arms traffic, etc. It is not however certain whether this submission was maintained in the oral proceedings.

The Court, whilst abstaining from giving an opinion on these opposing contentions, feels constrained at once to make certain reservations in regard to them. The former does not appear to take sufficient account of the peculiar importance attaching to the words "accepted by the Mandatory", which obviously contemplate obligations contracted, even though, in a sense, it may be said that the whole body of international law has been accepted by States. Moreover, there would appear to be no reason for such a clause in this connection. The second interpretation is also unsupported by any argument and it is not easy to see any connection between it and the subject matter of the clause of which it forms part. In the opinion of the Court, the international obligations mentioned in Article 11 are obligations contracted having some relation to the powers granted to the Palestine Administration under the same article.

The Court has been informed that in the draft of the Mandate, prepared when it was thought that the Treaty of Sèvres would shortly be ratified, the clause under discussion was worded as follows : "subject to Article 311 of the Treaty of Peace with Turkey", the article of the Mandate being in other respects identical with the final text. Later, when it became clear that the Treaty of Sèvres would never come into force, whilst the new Peace Treaty with Turkey had not yet been drafted, in order to avoid delay in the adoption of the Mandate, the reference to the Treaty of Sèvres was replaced by the words "international obligations accepted by the Mandatory". This phrase therefore—whatever its scope may be in other directions—includes at all events

the provisions which, in the future Peace Treaty with Turkey, were to take the place of the provisions of Article 311 of the Treaty of Sèvres.

This article which is the second of Section VI (*Companies and Concessions*) of Part IX (*Economic Clauses*) of that Treaty, is worded as follows :

"In territories detached from Turkey to be placed under the authority or tutelage of one of the Principal Allied Powers, Allied nationals and companies controlled by Allied groups or nationals holding concessions granted before October 29th, 1914, by the Turkish Government or by any Turkish local authority shall continue in complete enjoyment of their duly acquired rights, and the Power concerned shall maintain the guarantee granted or shall assign equivalent ones.

"Nevertheless, any such Power, if it considers that the maintenance of any of these concessions should be contrary to the public interest, shall be entitled, within a period of six months from the date on which the territory is placed under its authority or tutelage, to buy out such concession or to propose modifications therein ; in that event it shall be bound to pay to the concessionnaire equitable compensation in accordance with the following provisions.

"If the Parties cannot agree on the amount of such compensation, it will be determined by Arbitral Tribunals composed of three members, one designated by the State of which the concessionnaire or the holders of the majority of the capital in the case of a company is or are nationals, one by the Government exercising authority in the territory in question, and the third designated, failing agreement between the Parties, by the Council of the League of Nations.

"The Tribunal shall take into account, from both the legal and equitable standpoints, all relevant matters, on the basis of the maintenance of the contract adapted as indicated in the following paragraph.

"The holder of a concession which is maintained in force

shall have the right, within a period of six months after the expiration of the period specified in the second paragraph of this article, to demand the adaptation of his contract to the new economic conditions, and in the absence of agreement direct with the Government concerned, the decision shall be referred to the Arbitral Commission provided for above."

As Article 311 of the Treaty of Sèvres dealt with concessions in territories detached from Turkey and as that article is now replaced by Protocol XII of the [Treaty of Lausanne](#), it follows that "the international obligations accepted by the Mandatory", referred to in Article 11 of the Mandate, certainly include the obligations arising out of Protocol XII of the Lausanne Treaty.

These obligations limit the powers of the Palestine Administration to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein. Since—as has been already stated—the Rutenberg concessions fall within the scope of Article 11 of the Mandate, it is obvious that the Palestine Administration is, as regards these concessions, bound to respect obligations which Great Britain has accepted under Protocol XII. If the Administration has, by granting the Rutenberg concessions, committed a breach of these obligations, there has been an infringement of the terms of Article 11 of the Mandate which may be made the subject of an action before the Court under Article 26.

The Court considers that the reservation made in Article 11 regarding international obligations is not a mere statement of fact devoid of immediate legal value, but that, on the contrary, it is intended to afford these obligations within the limits fixed in the article, the same measure of protection as all other provisions of the Mandate.

It now only remains to consider whether there are any international obligations arising out of Protocol XII of Lausanne —hereinafter called "Protocol XII" —which affect the Mavrommatis concessions.

The instrument in question which is entitled "[Protocol relating to certain Concessions granted in the Ottoman Empire](#)", concerns

concessionary contracts duly entered into before October 29th, 1914, between the Ottoman Government or any local authority, on the one hand, and nationals (including Companies) of the Contracting Powers, other than Turkey, on the other. Greece is one of these Powers. [The Protocol](#) includes two sections, the first of which (Articles 1 to 8) concerns concessions in territories which continue to form part of the Ottoman Empire, whereas the second (Articles 9 to 13) concerns concessions in territories which have been detached. The fundamental principle of the Protocol is the maintenance of concessionary contracts concluded before October 29th, 1914. In territories detached from Turkey, the State which acquires the territory is subrogated as regards the rights and the obligations of Turkey ; the greater part of the provisions of Section I also apply to the contracts dealt with in Section II. Beneficiaries under concessionary contracts entered into before October 29th, 1914, which, at the time of the coming into force of the Treaty of Peace, have begun to be put into operation, are entitled to have their contracts readapted to the new economic conditions ; other beneficiaries are not entitled to such réadaptation, but their contracts may be dissolved at their request and in this case they are entitled, if there is ground for it, to an equitable indemnity in respect of survey and investigation work.

It is not disputed that the Jerusalem concessions dated from before October 29th, 1914, and must therefore be dealt with in accordance with the terms of Protocol XII. On the other hand, the Parties do not agree on the question whether the holder of these concessions is entitled to benefit by the provisions of Article 4 of the Protocol and consequently to claim that they should be readapted to the new economic conditions ; or whether, in accordance with Article 6, he is only entitled to request that the contract may be dissolved with reasonable compensation for survey and investigation work. In accordance with the principles enunciated above, the question whether the Administration of Palestine can withhold from M. Mavrommatis the réadaptation of his Jerusalem concessions, is a question concerning the interpretation of Article 11 of the Mandate, and consequently the provisions of Article 26 are applicable to it.

With regard to the Jaffa concessions, the position is as follows : The preliminary agreements are dated January 27th, 1914, and

on March 6th of the same year, the Ministry of Public Works at Constantinople authorised the District of Palestine to grant the proposed concessions. They were not however converted into concessions duly signed by the Ottoman authorities until January 28th, 1916. According to an Ottoman law promulgated in the meantime, they had to be confirmed by Imperial *Firman* ; but this condition was never fulfilled.

It appears from the documents placed before the Court by the Greek Government and dealing with the negotiations which had taken place between those interested, that the Parties do not agree on the question whether Protocol XII has the effect of depriving concessions obtained in Turkey after October 29th, 1914, of any value as against States acquiring former Ottoman territory, or whether, on the contrary, "concessions granted between October 29th, 1914, and the restoration of peace in countries where Turkey continued to exercise sovereign power, hold good, in principle, as against the successor States, though the latter cannot be compelled to maintain them."

The Court has not to give an opinion on the merits of this contention. It will suffice to observe that if on the one hand, Protocol XII being silent regarding concessions subsequent to October 29th, 1914, leaves intact the general principle of subrogation, it is, on the other hand, impossible to maintain that this principle falls within the international obligations contemplated in Article 11 of the Mandate as interpreted in this judgment. The Administration of Palestine would be bound to recognise the Jaffa concessions, not in consequence of an obligation undertaken by the Mandatory, but in virtue of a general principle of international law to the application of which the obligations entered into by the Mandatory created no exception.

Though it is true that for the purpose of the settlement of a dispute of this kind the extent and effect of the international obligations arising out of Protocol XII must be ascertained, it is equally the fact that the Court is not competent to interpret and apply, upon a unilateral application, that Protocol as such, for it contains no clause submitting to the Court disputes on this subject.

On the other hand, the Court has jurisdiction to apply the Protocol of Lausanne in so far as this is made necessary by Article 11 of the Mandate.

The foregoing reasoning leads to the following conclusions :

(a) That the dispute between the British and Greek Governments concerning M. Mavrommatis' claim in respect of the Jerusalem concessions must be decided on the basis of the provisions of Article 11 of the Mandate and that consequently it is within the category of disputes for which the Mandatory has accepted the jurisdiction of the Court ;

(b) that, on the other hand, the dispute between these Governments concerning M. Mavrommatis' claims in respect of the Jaffa concessions has no connection with Article 11 of the Mandate and consequently does not fall within the category of disputes for which the Mandatory has accepted the jurisdiction of the Court.

Although a single application has been filed with the Court for the payment by Great Britain of a lump sum ; and although the case of the Mavrommatis concessions, throughout the negotiations preceding the present action, has, all things considered, been dealt with as one single question, the fact remains that, in its Case, the Greek Government submitted its claim under three different headings. One of these—that relating to the Jordan works—has been abandoned in the Case itself ; the other two relating to Jerusalem and Jaffa respectively are dealt with separately and separate claims for compensation are submitted. The Court therefore, having ascertained that it only has jurisdiction to entertain the claim relating to Jerusalem, reserves this claim for judgment on its merits and declares that its jurisdiction does not extend to the claim relating to the works at Jaffa.

IV

Having thus established its jurisdiction under Articles 26 and 11 of the Palestine Mandate, the Court has to consider whether as concerns the dispute regarding the Jerusalem concessions, this jurisdiction may not be limited by another international instrument which might overrule the provisions of the Mandate. If a State has recourse to the Court under a clause establishing the latter's compulsory jurisdiction, it must be prepared for the contingency that the other Party may cite agreements entered into

between the opposing Parties which may prevent the exercise of the Court's jurisdiction. Now His Britannic Majesty's Agent in his "Preliminary Objection to the Jurisdiction of the Court", introducing the "Preliminary Counter-Case", bases his request for the dismissal of the proceedings instituted by the Greek Government, firstly on the contention that Article 26 of the Mandate is not applicable in this case and, secondly on the contention that the only international instrument dealing with the recognition of concessions in Palestine is Protocol XII, and that this instrument contains no provision giving the Permanent Court of International Justice jurisdiction to decide disputes relating to the interpretation or application of that Protocol.

Though His Britannic Majesty's Agent does not expressly contend that the Court's jurisdiction under the Mandate—which he disputes—is incompatible with the provisions of Protocol XII, the Court considers that the citation of this document by the British Agent must be regarded as one of the grounds for the objection to the Court's jurisdiction. In the circumstances, it will therefore not be necessary to consider whether the Court, whose jurisdiction is dependent on the will of the States concerned in the dispute, would be entitled, when giving judgment in regard to its jurisdiction, to consider arguments other than those advanced by the Parties.

It is certain that Protocol XII is an international instrument, quite distinct from and independent of the Mandate for Palestine. It deals specifically and in explicit terms with concessions such as those of M. Mavrommatis, whereas Article 11 of the Mandate deals with them only implicitly. Furthermore it is more recent in date than the Mandate. All the conditions therefore are fulfilled which might make the clauses of the Protocol overrule those of the Mandate. Although the provisions of the Mandate possess a special character by reason of the fact that they have been drawn up by the Council of the League of Nations, neither of the Parties has attempted to argue that a Member of the League of Nations cannot renounce rights which he possesses under the terms of the Mandate.

Before considering whether, and, if so, to what extent, the jurisdiction of the Court under Article 26 might be affected by Protocol XII, it should be observed that, as has already been established, Article 11 refers to Protocol XII. This international instrument

must be examined by the Court not merely as a body of rules which may limit its jurisdiction, but also and above all as applicable under the terms of Article 11 of the Mandate which is the very clause from which the Court derives its jurisdiction. In this respect, the Protocol is the complement of the provisions of the Mandate in the same way as a set of regulations alluded to in a law indirectly form part of it. Nevertheless, from whichever of the two aspects it is regarded, Protocol XII remains the same and has the same effect.

The fact that Article 11 only refers to the Protocol in general terms, and that the Protocol is more recent in date than the Mandate, does not justify the conclusion that the Protocol would only be applicable in Palestine in so far as it is compatible with the Mandate. On the contrary, in cases of doubt, the Protocol, being a special and more recent agreement, should prevail.

If this is true, it is equally true that the provisions of the Mandate and more particularly those regarding the jurisdiction of the Court are applicable in so far as they are compatible with the Protocol. The reservation in Article 11 regarding international obligations makes it quite clear that the intention is that these are to be respected in their entirety but that they are not to have any general limitative effect as regards the provisions of Article 11. The silence of Protocol XII concerning the Mandate and the jurisdiction of the Permanent Court of International Justice, does not justify the conclusion that the Parties intended to exclude such jurisdiction ; for the Protocol does not only deal with mandated territories, and it includes amongst its signatories a State which is not a Member of the League of Nations. Though respect for Protocol XII, in so far as it constitutes a body of rules applicable in Palestine as concerns any Member of the League of Nations, is assured by Article 11 of the Mandate, the provision of Article 26 definitely establishing the jurisdiction of the Court in disputes relating to Article 11 cannot be in any way affected by the silence of the Protocol regarding this jurisdiction.

The Protocol XII and Article 11 of the Mandate are in no way incompatible. This may clearly be seen by a comparison of the two documents. Article 11 does not expressly mention concessions ; it is confined to a definition of certain powers of the Mandatory and of certain of the objects of the economic policy of the Palestine Administration. On the other hand, the Protocol deals exclusively

and in detail with concessions ; it establishes tests according to which certain concessions must be recognised ; it lays down rules for the subrogation of the successor States as regards the rights and obligations of the Turkish authorities. This is substantive law. But the Protocol also contains clauses concerning the procedure to be followed : provision is made for administrative negotiations regarding the readaptation of certain concessions ; times are fixed within which these negotiations may take place or certain declarations on the part of concession holders may be made ; lastly it lays down a special procedure for the valuation by experts of the indemnities to be granted to concession holders.

It is these provisions of the Protocol concerning procedure which may be regarded as incompatible, not with Article II of the Mandate, but with the jurisdiction derived by the Court from that article. This incompatibility is twofold. In so far as the Protocol establishes in Article 5 a special jurisdiction for the assessment of indemnities, this special jurisdiction—provided that it operates under the conditions laid down—excludes as regards these matters the general jurisdiction given to the Court in disputes concerning the interpretation and application of the Mandate. On the other hand, the provisions regarding administrative negotiations and time limits in no way exclude the jurisdiction of the Court ; their effect is merely to suspend the exercise of this jurisdiction until negotiations have proved fruitless and the times have expired. Subject to the special powers given to the experts, and to the time limits and the declarations provided for, the Court's jurisdiction remains intact in so far as it is based on Article 11. In particular, this is the case as regards disputes relating to the interpretation and application of the provisions of the Protocol itself.

Now in the present case it would appear that the dispute between the two Parties relates to points which are preliminary points as regards the application of Articles 9, 1 and 4 to 6 of the Protocol. Whilst a difference of opinion prevails regarding the question whether the Mavrommatis concessions at Jerusalem fall under the terms of Article 4 or Article 6 of the Protocol, the provisions relating to the procedure to be followed in either event cannot be used in argument against the Court's jurisdiction. For these reasons, neither the jurisdiction of the Court, nor the exercise of its jurisdiction, is, at the present stage of the dispute, affected by the

provisions of Protocol XII regarding the special tribunal provided for in Article 5 of the time limits mentioned in Articles 4 and 6. Nor can the argument that the concession holder has not exercised the right of option provided for in Article 4 be used against the Greek Government. The British Government cannot insist on the exercise of this right so long as it denies that the concessions fall under the terms of that article. The question remains to be considered whether the negotiations which have taken place with regard to the application of the Protocol in anticipation of its coming into force can exert any influence as regards the expiration of the times in question. This question however cannot arise until it has been decided whether the time limits applicable to the concession are those laid down in Article 4 or in Article 6.

V.

[The Treaty of Lausanne](#) and Protocol XII were signed by Great Britain and Greece on July 24th, 1923. When the final negotiations between Greece and Great Britain in regard to the Mavrommatis concessions took place (January to April 1924), and at the moment when Greece filed its application (May 13th, 1924) the deposit of ratifications, which was provided for in [Article 143 of the Treaty of Lausanne](#), had not taken place. This condition had to be fulfilled before the Treaty and its supplementary instruments could come into effect as regards signatories having then ratified it. The deposit was effected on August 6th, 1924. Already before that date Greece (Greek law of August 25th, 1923 : Greek official Gazette of the same date) and Great Britain (Treaty of Peace — Turkey — Act of April 15th, 1924) had taken the necessary steps for ratification of the Treaty. Since the Treaty is now in force and Protocol XII has become applicable as regards Great Britain and Greece, it is not necessary to consider what the legal position would have been if the Treaty had not been ratified at the time of the Court's judgment.

As His Britannic Majesty's Agent relied on the fact that the Protocol was not in force, the Court is constrained to state its opinion on the question whether its jurisdiction may be affected by the fact that this Protocol is only effective as from August 6th, 1924.

Protocol XII was drawn up in order to fix the conditions governing the recognition and treatment by the contracting Parties of certain concessions granted by the Ottoman authorities before the conclusion of the Protocol. An essential characteristic therefore of Protocol XII is that its effects extend to legal situations dating from a time previous to its own existence. If provision were not made in the clauses of the Protocol for the protection of the rights recognised therein as against infringements before the coming into force of that instrument, the Protocol would be ineffective as regards the very period at which the rights in question are most in need of protection. The Court therefore considers that the Protocol guarantees the rights recognised in it against any violation regardless of the date at which it may have taken place.

In the same connection it must also be considered whether the validity of the institution of proceedings can be disputed on the ground that the application was filed before Protocol XII had become applicable. This is not the case. Even assuming that before that time the Court had no jurisdiction because the international obligation referred to in Article 11 was not yet effective, it would always have been possible for the applicant to re-submit his application in the same terms after the coming into force of the Treaty of Lausanne, and in that case, the argument in question could not have been advanced. Even if the grounds on which the institution of proceedings was based were defective for the reason stated, this would not be an adequate reason for the dismissal of the applicant's suit. The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law. Even, therefore, if the application were premature because the Treaty of Lausanne had not yet been ratified, this circumstance would now be covered by the subsequent deposit of the necessary ratifications.

As has been explained above, the dispute relates to points preliminary to the application of certain provisions of Protocol XII, namely those dealing with negotiations to be undertaken and time limits to be observed. For this reason it cannot be argued against the applicant that he is under an immediate obligation to conform to these provisions. This conclusion is, in the present case, also pointed to for another reason : the Parties, and before them, the

persons interested, have by mutual consent and at the instance of His Britannic Majesty's Government, conducted their negotiations, since the signature of the Treaty of Lausanne, on the basis of Protocol XII. There would appear to be precedents for this.

Finally one last point remains which concerns the question of retrospective effect raised by His Britannic Majesty's Agent. If the Court's jurisdiction is based on Article 11 of the Mandate, this clause must be applicable to the dispute, not merely *ratione materiae*, but also *ratione temporis*.

It must in the first place be remembered that at the time when the opposing views of the two Governments took definite shape (April 1924), and at the time when proceedings were instituted, the Mandate for Palestine was in force. The Court is of opinion that, in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment. In the present case, this interpretation appears to be indicated by the terms of Article 26 itself where it is laid down that "any dispute whatsoever... which may arise" shall be submitted to the Court. The reservation made in many arbitration treaties regarding disputes arising out of events previous to the conclusion of the treaty seems to prove the necessity for an explicit limitation of jurisdiction and, consequently, the correctness of the rule of interpretation enunciated above. The fact of a dispute having arisen at a given moment between two States is a sufficient basis for determining whether as regards tests of time, jurisdiction exists, whereas any definition of the events leading up to a dispute is in many cases inextricably bound up with the actual merits of the dispute.

Nevertheless, even supposing that it were admitted as essential that the act alleged by the Applicant to be contrary to the provisions of the Mandate should have taken place at a period when the Mandate was in force, the Court believes that this condition is fulfilled in the present case. If the grant of the Rutenberg Concessions, in so far as they may be regarded as incompatible, at least in part, with those of Mavrommatis, constitutes the alleged breach of the terms of the Mandate, this breach, no matter on what date it was first committed, still subsists, and the provisions of the Mandate are therefore applicable to it. There is no doubt that the Mandatory régime was in force when the British Government, in its letter

of April 1st, 1924, adopted the attitude which, in the opinion of the Greek Government, rendered it impossible to continue negotiations with a view to a settlement and, by so doing, imparted to the breach of the Mandate, alleged by Greece to have occurred, a definitive character.

For these reasons the Court does not feel called to consider whether the provisions of the Mandate, once they are in force, apply retrospectively to the period when, according to the Greek application, the British Armies utilised, after 1918, certain of M. Mavrommatis' surveys, and when the Palestine Authorities and the Colonial Office, in 1921, failed to regard themselves as bound to respect the concessions in question to the extent claimed by M. Mavrommatis.

Without dwelling further on this aspect of the problem, the Court feels constrained to observe that the Mandate system including the Mandates to be established for territories formerly belonging to the Ottoman Empire, dates back to Article 22 of the Covenant of the League of Nations ; furthermore that the Mandate for Palestine was entrusted to Great Britain by the Principal Allied Powers in 1920, and, finally, that in 1921 the draft of the Mandate for Palestine contained a reservation regarding Articles 311 and 312 of the Treaty of Sèvres.

DISPOSITIF.

FOR THESE REASONS

The Court, having heard both Parties,

Upholds the preliminary objection submitted by His Britannic Majesty's Government in so far as it relates to the claim in respect of the works at Jaffa and dismisses it in so far as it relates to the claim in respect of the works at Jerusalem ;

Reserves this part of the suit for judgment on the merits ;

And instructs the President to fix, in accordance with Article 33 of the Rules of Court, the times for the deposit of further documents of the written proceedings.

Done in French and English, the French text being authoritative.

At the Peace Palace, The Hague, this thirtieth day of August one thousand nine hundred and twenty four, in three copies, one of which is to be placed in the archives of the Court and the others to be forwarded to the Agents of the Governments of His Britannic Majesty and of the Greek Republic respectively. Lord Finlay and MM. Moore, de Bustamante, Oda and Pessôa, declaring that they are unable to concur in the judgment delivered by the Court, and availing themselves of the right conferred on them by Article 57 of the Court Statute, have delivered the separate opinions which follow hereafter.