

Judge SPIROPOULOS makes the following declaration :

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

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

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

Judge KORETSKY makes the following declaration :

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

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

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

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

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