

COUR INTERNATIONALE DE JUSTICE

RECUEIL

DES ARRÊTS, AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU DÉTROIT
DE CORFOU

(EXCEPTION PRÉLIMINAIRE)

ARRÊT DU 25 MARS 1948

1948

INTERNATIONAL COURT OF JUSTICE

REPORTS

OF

JUDGMENTS, ADVISORY OPINIONS AND ORDERS

THE CORFU
CHANNEL CASE

(PRELIMINARY OBJECTION)

JUDGMENT OF MARCH 25th, 1948

Le présent arrêt doit être cité comme suit :

« *Affaire du détroit de Corfou, Arrêt sur l'exception préliminaire :*
C. I. J. Recueil 1948, p. 15. »

This Judgment should be cited as follows :

“*Corfu Channel case, Judgment on Preliminary Objection :*
I.C.J. Reports 1948, p. 15.”

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INTERNATIONAL COURT OF JUSTICE

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THE CORFU
CHANNEL CASE
(PRELIMINARY OBJECTION)

Proceedings instituted by application alleging a case of compulsory jurisdiction specially provided for in Charter of United Nations (Article 36, paragraph 1, of Statute ; Articles 25, 32, 36, paragraph 3, of Charter).—Preliminary Objection to admissibility founded on an alleged procedural irregularity, as well as on alleged want of jurisdiction (Articles 40, paragraph 1, and 36, paragraph 1, of Statute ; Article 32, paragraph 2, of Rules).—Jurisdiction founded on voluntary acceptance by respondent.—Waiver of objection to admissibility.—Form of acceptance of jurisdiction.—Acceptance by Parties by means of separate and successive steps.—Recommendation of Security Council to submit a dispute to the Court (Article 36, paragraph 3, of Charter of United Nations).—Reservations upon acceptance of jurisdiction.

JUDGMENT.

Present : President GUERRERO ; Vice-President BASDEVANT ; Judges ALVAREZ, FABELA, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir Arnold McNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO ; M. DAXNER, Judge ad hoc.

In the Corfu Channel case,

between

the Government of the United Kingdom of Great Britain and Northern Ireland, represented by :

Mr. W. E. Beckett, C.M.G., K.C., Legal Adviser to the Foreign Office, as Agent, assisted by

The Right Honourable Sir Hartley Shawcross, K.C., M.P., Attorney-General ;

Dr. H. Lauterpacht, Professor of international law in the University of Cambridge ;

Mr. C. H. M. Waldock, Professor of international law in the University of Oxford ;

Mr. R. O. Wilberforce,

Mr. J. Mervyn Jones,

Mr. M. E. Reed (of the Attorney-General's Office), members of the English Bar, as Counsel,

and

the Government of the People's Republic of Albania, represented by :

M. Kahreman Ylli, Minister Plenipotentiary of Albania in Paris, as Agent, assisted by

Professor Vladimir Vochoč, Professor of international law in Charles University at Prague, and

Professor Ivo Lapenna, Professor of international law in the University at Zagreb, as Counsel,

THE COURT,

composed as above,

delivers the following judgment :

By an Application, transmitted to and filed in the Registry of the Court on May 22nd, 1947, under Article 40, paragraph 1, of the Statute, and Article 32, paragraph 2, of the Rules of Court, the Government of the United Kingdom of Great Britain and Northern Ireland instituted proceedings before the Court against the Government of the People's Republic of Albania. These proceedings concerned the incident which occurred in the Corfu Channel on October 22nd, 1946, when two British destroyers struck mines, the explosion of which caused damage to these vessels and heavy loss of life.

It is stated in the Application that the subject of the dispute and the succinct statement of the facts and grounds on which the claim of the United Kingdom is based are to be found in a note dated December 9th, 1946, transmitted by the Government of the United Kingdom to the Albanian Government, a copy of which is attached to the Application. It is alleged in the Application that the Court has jurisdiction "under Article 36 (1) of its Statute as being a matter, which is one specially provided for in the Charter of the United Nations, on the grounds: (a) that the Security Council of the United Nations, at the conclusion of proceedings in which it dealt with the dispute under Article 36 of the Charter, by a Resolution, decided to recommend both the Government of the United Kingdom and the Albanian Government to refer the present dispute to the International Court of Justice; (b) that the Albanian Government accepted the invitation of the Security Council under Article 32 of the Charter to participate in the discussion of the dispute and accepted the condition laid down by the Security Council, when conveying the invitation, that Albania accepts in the present case all the obligations which a Member of the United Nations would have to assume in a similar case; (c) that Article 25 of the Charter provides that the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

Finally, it is stated in the Application that the purpose of the claim of the Government of the United Kingdom is to secure a decision of the Court that the Albanian Government is internationally responsible for the loss and injury resulting from the fact that two destroyers of the Royal Navy struck mines in Albanian territorial waters in the Corfu Channel, and to have the reparation or compensation due therefor from the Albanian Government determined by the Court.

By a telegram of January 24th, 1947, the Albanian Government accepted the decision of the Security Council inviting it, in accordance with Article 32 of the Charter, to participate, without a vote, in the proceedings with regard to the dispute, on condition that Albania should accept, in the present case, all the obligations which a Member of the United Nations would have to assume in a similar case.

The Resolution of the Security Council of April 9th, 1947, to which the Application refers, is as follows:

"The Security Council having considered statements of representatives of the United Kingdom and Albania concerning a dispute between the United Kingdom and Albania arising out of an incident on 22nd October, 1946, in the Strait of Corfu in which two British ships were damaged by mines with resulting loss of life and injury to their crews recommends that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court."

Notice of the Application of the Government of the United Kingdom was given on May 22nd, 1947, by the Registrar of the Court, to the Albanian Government by telegram and by letter. On the same day, the Application was transmitted by the Registrar to the Secretary-General of the United Nations for communication in accordance with Article 40, paragraph 3, of the Statute.

On June 23rd, 1947, the Registrar received from the Albanian Government, following upon a reminder addressed to the latter, a telegram acknowledging receipt of the letter and telegram of May 22nd, and announcing the despatch of a reply to these communications.

On July 23rd, 1947, the Deputy-Registrar received from the hands of M. Kahreman Ylli, Albanian Minister in Paris, a letter from the Deputy-Minister of Foreign Affairs of Albania, dated at Tirana, July 2nd, 1947, which confirmed the receipt of the Application, and, after referring to the contents of that document, requested the Registrar

“to be good enough to bring the following statement to the knowledge of the Court :

The Government of the People's Republic of Albania finds itself obliged to observe :

1. That the Government of the United Kingdom, in instituting proceedings before the Court, has not complied with the recommendation adopted by the Security Council on 9th April, 1947, whereby that body recommended ‘that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court’.

The Albanian Government considers that, according both to the Court's Statute and to general international law, in the absence of an acceptance by Albania of Article 36 of the Court's Statute or of any other instrument of international law whereby the Albanian Government might have accepted the compulsory jurisdiction of the Court, the Government of the United Kingdom was not entitled to refer this dispute to the Court by unilateral application.

2. It would appear that the Government of the United Kingdom endeavours to justify this proceeding by invoking Article 25 of the Charter of the United Nations.

There can, however, be no doubt that Article 25 of the Charter relates solely to decisions of the Security Council taken on the basis of the provisions of Chapter VII of the Charter and does not apply to recommendations made by the Council with reference to the pacific settlement of disputes, since such recommendations are not binding and consequently cannot afford an indirect basis for the compulsory jurisdiction of the Court, a jurisdiction which can only ensue from explicit declarations made by States Parties to the Statute of the Court, in accordance with Article 36, 3, of the Statute.

3. The Albanian Government considers that, according to the terms of the Security Council's recommendation of 9th April, 1947, the Government of the United Kingdom, before bringing the case

before the International Court of Justice, should have reached an understanding with the Albanian Government regarding the conditions under which the two Parties, proceeding in conformity with the Council's recommendation, should submit their dispute to the Court.

The Albanian Government is therefore justified in its conclusion that the Government of the United Kingdom has not proceeded in conformity with the Council's recommendation, with the Statute of the Court or with the recognized principles of international law.

In these circumstances, the Albanian Government would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the Court by unilateral application, without first concluding a special agreement with the Albanian Government.

4. The Albanian Government, for its part, fully accepts the recommendation of the Security Council.

Profoundly convinced of the justice of its case, resolved to neglect no opportunity of giving evidence of its devotion to the principles of friendly collaboration between nations and of the pacific settlement of disputes, it is prepared, notwithstanding this irregularity in the action taken by the Government of the United Kingdom, to appear before the Court.

Nevertheless, the Albanian Government makes the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court in application of the Council's recommendations and more especially respecting the interpretation which that Government has sought to place on Article 25 of the Charter with reference to the binding character of the Security Council's recommendations. The Albanian Government wishes to emphasize that its acceptance of the Court's jurisdiction for this case cannot constitute a precedent for the future.

Accordingly, the Government of the People's Republic of Albania has the honour to inform you that it appoints as its Agent, in accordance with Article 35, paragraph 3, of the Rules of Court, M. Kahreman Ylli, Minister Plenipotentiary of Albania in Paris, whose address for service at the seat of the Court is the Legation of the Federal People's Republic of Yugoslavia at The Hague."

A copy of this letter, which had been handed to the Registry by the Agent for the Albanian Government, was transmitted, on July 24th, to the Agent for the Government of the United Kingdom.

On July 31st, 1947, the President of the Court, as the Court was not sitting, made an Order, in which, after ascertaining the views of the Parties with regard to questions of procedure, it was stated :

"Whereas on July 23rd, 1947, a note signed by the Deputy-Minister for Foreign Affairs was filed with the Registry on behalf of the Government of the People's Republic of Albania, in response to the Application of the Government of the United Kingdom ;

Whereas, in this note, the Albanian Government declares *inter alia* that the Government of the United Kingdom, in bringing the case before the Court by unilateral application, has not

proceeded in conformity with the recommendation of the Security Council of April 9th, 1947, or with the Statute of the Court or the recognized principles of international law, and that, accordingly, the Albanian Government would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the Court without first concluding a special agreement with the Albanian Government, but whereas the Albanian Government, fully accepting for its part the recommendation of the Security Council, is prepared, notwithstanding this irregularity and in evidence of its devotion to the principles of friendly collaboration between nations and of the pacific settlement of disputes, to appear before the Court ;

Whereas the note above mentioned gives notice of the appointment as Agent for the Albanian Government of M. Kahreman Ylli, Minister Plenipotentiary of Albania in Paris, and of his address for service at The Hague ;

Whereas, having regard to the Resolution of the Security Council of April 9th, 1947, the said note of the Albanian Government may be regarded as constituting the document mentioned in Article 36 of the Rules of Court ;”

In the Order, the time-limits were fixed as follows : the 1st October, 1947, for the presentation of the Memorial of the United Kingdom, and the 10th December, 1947, for the presentation of the Counter-Memorial of Albania.

The Memorial of the United Kingdom, presented within the time-limit fixed by the Order, contains statements and submissions with regard to the incidents which occurred on October 22nd, 1946, in the Corfu Channel. These statements and submissions develop the points indicated in the Application as constituting the claim of the United Kingdom.

Within the time-limit fixed for the presentation of the Counter-Memorial, the Agent for the Albanian Government, by a document dated December 1st and filed in the Registry on December 9th, submitted a Preliminary Objection to the Application on the ground of inadmissibility, based upon the following statements :

“I. The facts :

(1) The Security Council, in a Resolution adopted on April 9th last, recommended that the United Kingdom and Albanian Governments should immediately refer the dispute between them arising out of an incident on October 22nd, 1946, in the Strait of Corfu, to the International Court of Justice, in accordance with the provisions of the Statute of the Court ;

(2) contrary to this recommendation, the United Kingdom Government, alone and without any agreement with the Albanian Government, approached the Court on May 13th last. By proceeding thus unilaterally, the Government of the United Kingdom brought an Application before the Court ;

(3) on July 2nd last, the Albanian Government made to the Court most explicit reservations respecting the manner in which

the Government of the United Kingdom had brought the case before the Court, but, subject to these reservations, stated that it was prepared to appear before the Court ;

(4) on the other hand, the Albanian Government, in its letter of July 2nd last addressed to the Court, fully accepted the Security Council's recommendation of April 9th last, as far as it was concerned, and observed that, to bring their case before the Court, the two Governments should have reached an understanding in conformity with the Security Council's recommendation and in accordance with the provisions of the Court's Statute.

II. The Law :

(1) According to Article 36, paragraph 1, of the Court's Statute, its jurisdiction 'comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force'. According to Article 40, paragraph 1, of the Statute, 'cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application....'.

(2) The Albanian Government not being bound by any treaty or convention in force to submit its dispute with the United Kingdom Government to the Court, it follows that, in accordance with the provisions of the Statute of the Court, only both parties to this dispute can validly do so.

If this is so, the case must be brought before the Court by the notification of the special agreement, and not by an application.

(3) In its Application of May 13th last, the United Kingdom Government invokes no treaty or convention nor does it claim that the parties are submitting their dispute to the Court in accordance with the provisions of the Statute.

The United Kingdom Government maintains that this is a 'matter, which is one specially provided for in the Charter of the United Nations, on the grounds: (a) that the Security Council of the United Nations, at the conclusion of proceedings in which it dealt with the dispute under Article 36 of the Charter, by a Resolution, of which a copy forms Annex 2 to this Application, decided to recommend both the Government of the United Kingdom and the Albanian Government to refer the present dispute to the International Court of Justice; (b) that the Albanian Government accepted the invitation of the Security Council under Article 32 of the Charter to participate in the discussion of the dispute and accepted the condition laid down by the Security Council, when conveying the invitation, that Albania accepts in the present case all the obligations which a Member of the United Nations would have to assume in a similar case. (A copy of the invitation of the Security Council and of the Albanian Government's reply thereto form Annex 3 to the present Application); (c) that Article 25 of the Charter provides that the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.' (See letter from the Agent of the Government of the United Kingdom of Great Britain and Northern Ireland, dated May 13th, 1947.)

As regards these reasons given by the United Kingdom Government, the Albanian Government has the honour to make the following observations :

Ad (a) The Security Council, in its Resolution of April 9th last, only recommended 'the United Kingdom and Albanian Governments' to refer their dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Such a recommendation certainly cannot *ipso facto* constitute a matter specially provided for in the Charter of the United Nations to which the Court's jurisdiction extends. Nothing in the Charter of the United Nations provides for such a case ;

ad (b) In complying with the invitation given by the Secretary-General *ad interim* of the United Nations on January 20th last, the Albanian Government only accepted 'in the present case all the obligations which a Member of the United Nations would have to assume in a similar case', within the meaning of Article 32 of the Charter.

As it was a recommendation, the obligations cannot *ipso facto* constitute a matter specially provided for in the Charter of the United Nations with a view to the Court's compulsory jurisdiction.

As a result of rights and obligations assumed by them in the Charter, Members of the United Nations are never bound to appear before the Court without any other procedure, namely, without having duly and expressly accepted the Court's jurisdiction in conformity with the provisions of its Statute ;

ad (c) The Security Council's Resolution of April 9th last contains a recommendation which, in conformity with the Charter of the United Nations, has no binding force for the Governments of Albania and the United Kingdom without their consent and acceptance. Moreover, according to the very terms of the Resolution, the two Governments must proceed in conformity with the provisions of the Statute of the Court in order that they may submit their dispute to it.

The said Resolution of the Security Council cannot, in conformity with the Charter of the United Nations and with the provisions of the Statute of the Court, be considered to be a decision of the Security Council, such as would on the one hand oblige both parties, *ipso facto* and without any other step, to appear before the International Court of Justice, and such as would, on the other hand, authorize them to approach the International Court of Justice without regard to the provisions of the Statute of the Court.

To sum up the foregoing observations, the Albanian Government asserts that neither the said Resolution of April 9th last, nor the said declaration of the Albanian Government of 20th January last, nor yet Article 25 of the Charter, can, whether taken separately or conjointly, be relied on as imposing the Court's compulsory jurisdiction on the Albanian Government in the present case.

III. Conclusions :

.....

May it please the Court to proceed in conformity with Article 62 of the Rules of Court,

to place on record that, in accepting the Security Council's recommendation, the Albanian Government is only obliged to submit the above-mentioned dispute to the Court in accordance with the provisions of the Statute of the Court,

and to give judgment that the Application of May 13th last addressed to the Court by the Government of the United Kingdom against the Government of the People's Republic of Albania, is inadmissible, the United Kingdom Government having submitted the said Application contrary to the provisions of Article 40, paragraph 1, and of Article 36, paragraph 1, of the Statute of the Court."

The Albanian Preliminary Objection was transmitted, on December 9th, to the Agent for the United Kingdom and was communicated on December 11th to the Members of the United Nations, pursuant to the provisions of Article 63 of the Statute.

By an Order, made on December 10th, 1947, the President of the Court, as the Court was not sitting, fixed January 20th, 1948, as the time-limit for the presentation by the Government of the United Kingdom of a written statement of its observations and submissions in regard to the Preliminary Objection.

This statement, dated January 19th, 1948, and received in the Registry on the same date, contains, in addition to a number of arguments, the following statements and submissions :

"9.

- (a) It [the Government of the United Kingdom] has fully complied with the recommendation of the Security Council immediately to refer the dispute to the Court. It did so in its Application of 13th May, 1947, which fully and clearly indicated the subject of the dispute, and the parties, in accordance with Article 40 (1) of the Statute of the Court and Article 32 (2) of the Rules of Court.
- (b) The Government of Albania, after delivery of the United Kingdom Application, stated in its letter of 2nd July, 1947, that it fully accepted the recommendation of the Security Council, and that it was prepared to appear before the Court and to accept its jurisdiction in this case.
- (c) This Albanian letter, coupled with the Resolution of the Security Council of 9th April, 1947, was accepted by the President of the Court as a document which satisfied the conditions laid down by the Security Council for the appearance before the Court of a State not party to the Statute. (See Resolution of the Security Council of 15th October, 1946, under which a State not party to the Statute may make a 'particular declaration' accepting the jurisdiction of the Court in respect of a particular dispute only.)
- (d) In these circumstances the jurisdiction of the Court to make the Order of 31st July, 1947, and to proceed with the trial of this dispute is fully established. Under Article 36 (1) of the Statute, the jurisdiction of the Court comprises all cases

which the parties refer to it, and there is no dispute which States entitled to appear before the Court cannot refer to it.... The parties have clearly referred the present dispute by the above-mentioned documents (namely, the United Kingdom Application of 13th May, 1947, and the Albanian letter of 2nd July, 1947), which, whether or not they constitute a 'special agreement', at least constitute a 'reference'. A special agreement is not necessary....

- (e) Article 40 of the Statute merely defines the formal basis for action by the Court in a case where jurisdiction is established by Article 36 (1). There is nothing in the Statute or the Rules of Court which prevents the proceedings being formally instituted by application, even though the jurisdiction of the Court is established by a 'reference' by the parties or by a 'special agreement'. Accordingly the Government of the United Kingdom, in bringing this matter before the Court by application, has, it is submitted, proceeded correctly....
- (f) Further, there has been, in fact, an agreement between the parties constituted by the acceptance of the jurisdiction on the part of the Government of the United Kingdom in compliance with the Resolution of the Security Council of 9th April, 1947 (as evidenced by its Application of 13th May, 1947), followed by an acceptance of the jurisdiction on the part of the Government of Albania in its letter of 2nd July, 1947, to refer (without prejudice to the Albanian Government's view as to the interpretation of Article 25 of the Charter) to the Court the issues defined in the Application. This agreement possesses all the essentials of a 'special agreement' and conforms fully with Article 40 of the Statute....
- (g) Even if (which is not admitted) there was any formal irregularity in the mode of the commencement of the present proceedings, this irregularity has been cured, because the Albanian Government by its letter of 2nd July, 1947, has waived any possible objection and has consented to the jurisdiction of the Court. An irregularity in the manner in which a case is introduced may be cured by subsequent events....
- (h) Having once consented to the jurisdiction, the Albanian Government cannot afterwards withdraw its consent....
- (i) The President's Order of 31st July, 1947, clearly proceeded upon the basis that the Albanian Government had definitely accepted the jurisdiction, as was, in fact, the case. It is not competent for the Albanian Government to reopen the question of jurisdiction.

12. In view of the circumstances above referred to, which constitute, in the submission of the Government of the United Kingdom, a clear acceptance by Albania of the jurisdiction of the Court, the Government of the United Kingdom has not, in these Observations, set forth arguments on the applicability of Article 25 of the Charter. However, the Government of the United Kingdom must reserve the right, if necessary, to invoke the jurisdiction of the Court on the grounds set forth in its original Application."

In conclusion, the Government of the United Kingdom

“submits to the Court :—

- (a) that the preliminary objection submitted by the Government of Albania should be dismissed,
- (b) that the Government of Albania should be directed to comply with the terms of the President’s Order of 31st July, 1947, and to deliver a Counter-Memorial on the merits of the dispute without further delay.”

As the Court did not have upon the Bench a judge of Albanian nationality, the Albanian Government availed itself of the right provided by Article 31, paragraph 2, of the Statute, and designated Dr. Igor Daxner, President of a Chamber of the Supreme Court of Czechoslovakia, as judge *ad hoc*.

In the course of public sittings, held on February 26th, 27th and 28th, and on March 1st, 2nd and 5th, 1948, the Court heard oral arguments on behalf of the respective parties : M. Kahreman Ylli, Agent, and Professor Vochoč, Counsel, for Albania ; and Mr. W. E. Beckett, Agent, and Sir Hartley Shawcross, Counsel, for the United Kingdom. On being questioned by the President before the close of the hearing, the Agent for the Albanian Government declared that the submissions presented in the Albanian Preliminary Objection of December 9th, 1947, were final submissions ; a similar declaration was made on behalf of the Agent for the Government of the United Kingdom with regard to the submissions in the Observations of the United Kingdom of January 19th, 1948.

Documents in support were filed as annexes to the Application and Memorial of the United Kingdom Government, to the Preliminary Objection of the Albanian Government and to the Observations of the United Kingdom Government in regard to this Preliminary Objection, as well as in view of the oral proceedings¹.

The above being the state of the proceedings, the Court must now adjudicate upon the Preliminary Objection raised on behalf of the Government of the People’s Republic of Albania.

* * *

In the written submissions, which it confirmed orally at the hearing on March 5th, 1948, the Albanian Government requests the Court

“to place on record that the Albanian Government, in accepting the Security Council’s recommendation, is only obliged to submit the above-mentioned dispute to the Court in accordance with the provisions of the Statute of the Court”,

and

“to give judgment that the Application of May 13th last, addressed to the Court by the Government of the United Kingdom against the

¹ See list in Annex.

Government of the People's Republic of Albania, is inadmissible, the Government of the United Kingdom having submitted the said Application contrary to the provisions of Article 40, paragraph 1, and Article 36, paragraph 1, of the Statute of the Court".

The first submission relates to the Resolution of April 9th, 1947, in which the Security Council recommended "that the United Kingdom and Albanian Governments should immediately refer this dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court". The Albanian Government accepted this recommendation and on the basis of its acceptance recognizes its obligation to refer the dispute to the Court in accordance with the provisions of the Statute. It is true that this obligation could only be fulfilled in accordance with the provisions of the Statute. In recognizing this fact in accordance with the request of the Albanian Government, the Court points out that that Government subsequently contracted other engagements, the date and exact scope of which will be established later.

The second submission of the Albanian Government, which is disputed by the Government of the United Kingdom, appears to constitute an objection on the ground of the inadmissibility of the Application. The intention of the Albanian Government, however, seems to be somewhat lacking in precision in this respect. When it refers, in its submissions, to Article 40, paragraph 1, of the Statute of the Court, the Albanian Government appears merely to have in mind a procedural irregularity resulting from the fact that the main proceedings were instituted by means of an application instead of by a special agreement concluded beforehand. The Albanian Government, however, also refers to Article 36, paragraph 1, of the Statute, a provision which relates exclusively to the jurisdiction of the Court; and the criticisms which are directed against the Application of the United Kingdom in the text of the Preliminary Objection, relate to an alleged lack of compulsory jurisdiction as well as to the formal admissibility of the Application.

This argument may be explained by the connexion which the United Kingdom Government, for its part, had made between the institution of proceedings by application and the existence, alleged by it in this case, of compulsory jurisdiction.

In support of its Application, the Government of the United Kingdom invoked certain provisions of the Charter of the United Nations and of the Statute of the Court to establish the existence of a case of compulsory jurisdiction. The Court does not consider that it needs to express an opinion on this point, since, as will be pointed out, the letter of July 2nd, 1947, addressed by the Albanian Government to the Court, constitutes a voluntary acceptance of its jurisdiction.

The letter of July 2nd, 1947, in spite of the reservation stated therein, the exact scope of which will be considered later, removes

all difficulties concerning the question of the admissibility of the Application and the question of the jurisdiction of the Court.

With respect to the first point, the Albanian Government, while declaring on the one hand that it "would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the International Court by unilateral application, without first concluding a special agreement with the Albanian Government", states, on the other hand, that "it is prepared, notwithstanding this irregularity in the action taken by the Government of the United Kingdom, to appear before the Court". This language used by the Albanian Government cannot be understood otherwise than as a waiver of the right subsequently to raise an objection directed against the admissibility of the Application founded on the alleged procedural irregularity of that instrument.

The letter of July 2nd, 1947, is no less decisive as regards the question of the Court's jurisdiction. Not only does the Albanian Government, which had already assumed certain obligations towards the Security Council by its telegram of January 24th, 1947, declare in that letter that it "fully accepts the recommendation of the Security Council" to the effect that the dispute should be referred to the Court in accordance with the provisions of the Court's Statute, but, after stating that it is "profoundly convinced of the justice of its case", it accepts in precise terms "the jurisdiction of the Court for this case". The letter of July 2nd, therefore, in the opinion of the Court, constitutes a voluntary and indisputable acceptance of the Court's jurisdiction.

While the consent of the parties confers jurisdiction on the Court, neither the Statute nor the Rules require that this consent should be expressed in any particular form.

The Albanian contention that the Application cannot be entertained because it has been filed contrary to the provisions of Article 40, paragraph 1, and of Article 36, paragraph 1, of the Court's Statute, is essentially founded on the assumption that the institution of proceedings by application is only possible where compulsory jurisdiction exists and that, where it does not, proceedings can only be instituted by special agreement.

This is a mere assertion which is not justified by either of the texts cited. Article 32, paragraph 2, of the Rules does not require the Applicant, as an absolute necessity, but only "as far as possible", to specify in the application the provision on which he founds the jurisdiction of the Court. It clearly implies, both by its actual terms and by the reasons underlying it, that the institution of proceedings by application is not exclusively reserved for the domain of compulsory jurisdiction.

In submitting the case by means of an Application, the Government of the United Kingdom gave the Albanian Government the

opportunity of accepting the jurisdiction of the Court. This acceptance was given in the Albanian Government's letter of July 2nd, 1947.

Besides, separate action of this kind was in keeping with the respective positions of the parties in proceedings where there is in fact a claimant, the United Kingdom, and a defendant, Albania.

Furthermore, there is nothing to prevent the acceptance of jurisdiction, as in the present case, from being effected by two separate and successive acts, instead of jointly and beforehand by a special agreement. As the Permanent Court of International Justice has said in its Judgment No. 12, of April 26th, 1928, page 23: "The acceptance by a State of the Court's jurisdiction in a particular case is not, under the Statute, subordinated to the observance of certain forms, such as, for instance, the previous conclusion of a special agreement."

The Security Council's recommendation has been relied upon to support opposite conclusions. But, in the first place, though this recommendation clearly indicates that the bringing of the case before the Court requires action on the part of the parties, it does not specify that this action must be taken jointly, and, in the second place, the method of submitting the case to the Court is regulated by the texts governing the working of the Court as was pointed out by the Security Council in its recommendation.

The Court cannot therefore hold to be irregular a proceeding which is not precluded by any provision in these texts.

The scope of the reservation formulated in the letter of July 2nd, 1947, has still to be considered. The reservation is as follows: "Nevertheless, the Albanian Government makes the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court in application of the Security Council's recommendation and more especially respecting the interpretation which that Government has sought to place on Article 25 of the Charter with reference to the binding character of the Security Council's recommendations. The Albanian Government wishes to emphasize that its acceptance of the Court's jurisdiction for this case cannot constitute a precedent for the future."

This reservation is the only limit set by the Albanian Government either to its acceptance of the Court's jurisdiction, or to its abandonment of any objection to the admissibility of the proceedings. It is for the Court to decide, with binding force as between the parties, what is the interpretation of the letter of July 2nd, 1947. It is clear that the reservation contained in the letter is intended only to maintain a principle and to prevent the establishment of a precedent as regards the future. The Albanian Government makes its reservations—both as to the manner in which the United Kingdom Government has instituted

the proceedings, and as to the interpretation which that Government claimed to give to Article 25 of the Charter with a view to establishing the Court's compulsory jurisdiction—not for the purposes of the present proceedings, but in order to retain complete freedom of decision in the future. It is clear that no question of a precedent could arise unless the letter signified in the present case the acceptance of the Court's jurisdiction on the merits.

The reservation in the letter of July 2nd, 1947, therefore does not enable Albania to raise a preliminary objection based on an irregularity of procedure, or to dispute thereafter the Court's jurisdiction on the merits.

FOR THESE REASONS,

while placing on record the declaration contained in the first submission of the Albanian Government, but subject to the explicit reservation of the obligations assumed by that Government in its letter of July 2nd, 1947,

THE COURT,

by fifteen votes against one,

(1) rejects the Preliminary Objection submitted by the Albanian Government on December 9th, 1947 ;

(2) decides that proceedings on the merits shall continue and fixes the time-limits for the filing of subsequent pleadings as follows :

- (a) for the Counter-Memorial of the Albanian Government, Tuesday, June 15th, 1948 ;
- (b) for the Reply of the United Kingdom Government, Monday, August 2nd, 1948 ;
- (c) for the Rejoinder of the Albanian Government, Monday, September 20th, 1948.

The present judgment has been drafted in French and English, the French text being authoritative.

Done at the Peace Palace, The Hague, this twenty-fifth day of March, one thousand nine hundred and forty-eight, in three copies, one of which shall be placed in the archives of the Court and the others delivered to the Governments of the People's Republic of Albania and of the United Kingdom of Great Britain and Northern Ireland respectively.

(Signed) J. G. GUERRERO,
President.

(Signed) EDVARD HAMBRO,
Registrar.

Judges BASDEVANT, ALVAREZ, WINIARSKI, ZORIČIĆ, DE VISSCHER, BADAWI PASHA, KRYLOV, whilst concurring in the judgment of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the judgment a statement of their separate opinion.

M. DAXNER, Judge *ad hoc*, declaring that he is unable to concur in the judgment of the Court, has availed himself of the right conferred on him by Article 57 of the Statute and appended to the judgment a statement of his separate opinion.

(Initialled) J. G. G.

(Initialled) E. H.

ANNEX.

LIST OF DOCUMENTS SUBMITTED TO THE COURT.

I.—ANNEXES DEPOSITED BY THE GOVERNMENT
OF THE UNITED KINGDOM.A.—*In the course of the written proceedings :*

1. Admiralty Chart No. 206 showing the Corfu Strait.
2. Section of German Mine Information Chart.
(This is a chart which was captured by the Allies showing the North Corfu Channel and the position of mines laid by the Axis there, and the original chart has been filed with the Registry.)
3. International Agreement between the Governments of the United Kingdom, France, U.S.S.R. and the United States, setting up the Mine Clearance Boards and dated 22nd November, 1945.
4. Affidavit by despatch clerk at the Admiralty proving despatch of Medri Charts to Albania.
5. Section of Medri Index Chart showing North Corfu swept channel and the international highway established therein together with Medri pamphlets for use with the Index Chart.
(A single copy of the entire Chart and of the complete pamphlets numbered 5, 9 and 12 have been filed with Registry.)
6. Diplomatic correspondence between the Government of the United Kingdom and Albania regarding the right of navigation in the Strait of Corfu.
7. Admiralty tracings showing the North Corfu swept channel and the position and tracks of H.M. ships *Orion*, *Superb*, *Leander*, *Saumarez* and *Mauritius*, passing through the North Corfu Channel on 15th May, 1946, and on 22nd October, 1946.
8. Photographs of H.M.S. *Saumarez* (below water line) and *Volage* (bows blown off) taken shortly after the explosion on 22nd October, 1946.
9. Admiralty tracing showing position of H.M.'s ships at the time of the explosion.
10. Report on damage to H.M.S. *Saumarez*.
11. Report on damage to H.M.S. *Volage*.
12. List of sailors killed with statement of pensions, etc., payable to dependants.
13. List of sailors injured with statement of expenses, pensions, etc.
14. Statement of cost of repairs to the *Volage* and cost of replacement of the *Saumarez*.
15. Minutes of Mine Clearance Boards.
16. Reports of Capitaine Mestre.
(There were two reports, both in French. The reason why there were two reports was because Capitaine Mestre wished to make

- certain corrections in his second report of certain statements which he had made in his first report.)
17. Reports on Operation "Retail".
(The minesweeping operation of 13th November, 1946.)
 18. Chart showing position in which mines were found on 13th November, 1946.
 19. Photographs of the mines.
 20. Report on mines examined at Admiralty Mining Establishment, Leigh Park House, Hants.
 21. Chart showing the defences of Saranda.
 22. Affidavit of Skipper Bargellini regarding the incident of U.N.R.R.A. barges on 29th October, 1946.
 23. Documents and records of the Security Council, etc., relative to the dispute.
 24. Letter from the Deputy-Minister for Foreign Affairs of the People's Republic of Albania to the Registrar of the Court, dated July 2nd, 1947 [attached as annex to the Observations and Submissions of the Government of the United Kingdom of January 19th, 1948].

B.—*During the oral proceedings :*

- I. Several extracts from the Records of the Security Council (Second Year) and of the Security Council Committee on the Admission of New Members (16th, 17th and 18th Meetings, 1947).

II.—ANNEXES DEPOSITED BY THE ALBANIAN GOVERNMENT.

A.—*During the written proceedings :*

- I. Resolution of the Security Council of the United Nations adopted on April 9th, 1947.
2. Cable from the Acting Secretary-General to the President of the Council of Ministers of the People's Republic of Albania dated 20th January, 1947, and reply dated 24th January, 1947.

B.—*During the oral proceedings :*

- I. Extracts from the publication : *Documents of the United Nations Conference on International Organization*, San Francisco, 1945, photo-lithoprinted from original documents, Vol. XI, XII, XIII and XIV.
2. Extracts from the publication : *Permanent Court of International Justice. Advisory Committee of Jurists. Procès-verbaux of the proceedings of the Committee, June 16th—July 24th, 1920*, with annexes. The Hague, 1920.
3. Extract from the publication : *League of Nations. Report to the Second Assembly of the League on the Work of the Council and on the Measures taken to execute the decisions of the First Assembly*. A. 9. 1921, Geneva, 18th August, 1921.
4. Extract from the publication : *Report to the President of the results of the San Francisco Conference by the Chairman of the United Nations Delegation, the Secretary of State, June 26, 1945*. Department of State Publication 2349, Conference Series 71.

5. Extract from the publication: *Department of External Affairs, Conference Series 1945, No. 2, Report on the United Nations Conference on International Organization held at San Francisco, 25th April—26th June, 1945*, Ottawa.
6. Extracts from the publication: *Hearing before the Committee on Foreign Relations, United States Senate, Seventy-ninth Congress First Session, on the Charter of the United Nations for the maintenance of international peace and security, submitted by the President of the United States on July 2, 1945 (Unrevised), July 10, 1945*. Printed for the use of the Committee on Foreign Relations. (United States Government Printing Office, Washington: 1945.)
7. Extract from the article *The Jurisdiction of the Security Council over Disputes* (American Journal of International Law, Volume 40, No. 3, July, 1946), by Clyde Eagleton, Professor of New York University, Expert of the Delegation of United States of America to the San Francisco Conference.
8. Extracts from the publication: *Documents of the United Nations Conference on International Organization*, San Francisco, 1945. Photo-lithoprinted from original documents, published in cooperation with the Library of Congress by United Nations Information Organizations, 1945, London—New York, Vol. XI.
9. Extract from the Publication: Republic of Chile, Ministry for External Affairs: Chile and the San Francisco Conference, Santiago, MCMXLV.
10. Extract from the publication: *The Records of the First Assembly, Meetings of the Committees*, Geneva, 1920. Minutes of the Meetings of the Third Committee (Permanent Court of International Justice). Fifth Meeting, 8 December 1920.
11. Extract from the publication: *League of Nations, The Records of the First Assembly: Meeting of Committee I*, Geneva, 1920.
12. Extract from the publication: *Permanent Court of International Justice, Series D, Acts and Documents concerning the Organization, of the Court*.
 Addendum to No. 2.
 Revision of the Rules of Court.
13. Extract from the publication: *The British Yearbook of International Law, 1930*, Oxford.
Decisions of the Permanent Court of International Justice on Points of Law and Procedure of General Application, by W. E. Beckett, M.A., Formerly Fellow of All Souls College, Oxford. (Legal Adviser to the Foreign Office.)
14. Extract from the publication: *Permanent Court of International Justice. Series D. Acts and Documents concerning the Organization of the Court. Third Addendum to No. 2: Elaboration of the Rules of Court of March 11th, 1936*. Leyden, 1936.