SEPARATE OPINION BY JUDGES BASDEVANT, ALVAREZ, WINIARSKI, ZORIČIĆ, DE VISSCHER, BADAWI PASHA AND KRYLOV.

[*Translation.*]

Whilst concurring in the judgment of the Court, we feel obliged to state that we should have wished the Court to have passed upon the merits of the claim of the Government of the United Kingdom to treat the present case as one falling within the compulsory jurisdiction of the Court. Since the Application was based upon this claim and since the claim, if well-founded, would, in itself, have justified recourse to this method of instituting proceedings without there having been any need to consider the effect of the letter of July 2nd, 1947, it appears to us that, logically, the question of compulsory jurisdiction falls to be dealt with first of all.

This question has been discussed at length both in the pleadings and during the oral proceedings. It arose because we were faced here with a procedure which, regarded as a whole, is the outcome of an innovation in the Charter of the United Nations. Under the régime of the Charter, the rule holds good that the jurisdiction of the International Court of Justice, as of the Permanent Court of International Justice before it, depends on the consent of the States parties to a dispute. But Article 36 of the Charter has made it possible for the Security Council to recommend the parties to refer their dispute to the International Court of Justice in accordance with the provisions of the Court's Statute. The Security Council, for the first time, availed itself of this power on April 9th, 1947. The contentious procedure, recourse to which the Security Council thus recommended, involves, in order that the Court may be seized of the case, certain action by the parties or, possibly, by one of them. Faced with this new solution, the Governments concerned had different views as to the effect of the recommendation and, consequently, as to the method to be adopted in bringing the case before the Court.

The Government of the United Kingdom held, on various grounds deduced by it from the provisions of the Charter and Statute, that this was a new case where the compulsory jurisdiction of the Court existed. Accordingly, it instituted proceedings by Application and cited in its Application the provisions of the Charter and Statute on which it founded the Court's jurisdiction.

The arguments presented on behalf of the United Kingdom to establish that this was a new case of compulsory jurisdiction—which arguments the Agent and Counsel for the Albanian Government sought to refute—have not convinced us. In particular,

having regard (1) to the normal meaning of the word recommendation, a meaning which this word has retained in diplomatic language, as is borne out by the practice of the Pan-American Conferences, of the League of Nations, of the International Labour Organization, etc., (2) to the general structure of the Charter and of the Statute which founds the jurisdiction of the Court on the consent of States, and (3) to the terms used in Article 36, paragraph 3, of the Charter and to its object which is to remind the Security Council that legal disputes should normally be decided by judicial methods, it appears impossible to us to accept an interpretation according to which this article, without explicitly saying so, has introduced more or less surreptitiously, a new case of compulsory jurisdiction.

On this point, the view maintained on behalf of the Albanian Government appears to us well-founded, but when that Government claims to argue therefrom that in this case the institution of proceedings by application was irregular, then we are unable, for the reasons given in the judgment, to accept this argument.

(*Signed*) BASDEVANT.
(,,) ALVAREZ.
(,,) B. WINIARSKI.
(,,) Dr. ZORIČIĆ.
(,,) CH. DE VISSCHER.
(,,) A. BADAWI.
(,,) S. KRYLOV.