DISSENTING OPINION BY Dr. IGOR DAXNER.

I am unable to concur in the present judgment on the Preliminary Objection submitted by the Government of the People's Republic of Albania in the Corfu Channel case.

Of the many different points in the judgment upon which I differ from the Court, I shall confine myself to referring to certain of the more important in the opinion which follows :

I. 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 in the present case the existence of a case of compulsory jurisdiction. The Court does not consider that it needs to express any opinion on this point, since, according to the Court, the letter of July 2nd, 1947, addressed by the Albanian Government to the Court, constitutes a voluntary acceptance of its jurisdiction.

In the opinion of the Court, the letter of July 2nd, 1947, in spite of the reservation made therein, the exact scope of which the Court considers later, removes all difficulties concerning the question of the admissibility of the Application and the question of the jurisdiction of the Court.

It was contended by the Government of the United Kingdom that the recommendation made by the Security Council under Chapter VI of the Charter, and more particularly under Article 36, paragraph 3, is *ipso facto* obligatory for the parties to whom it is addressed. The compulsory jurisdiction of the Court would thus be established in virtue of the recommendation of 9th April for the United Kingdom and Albania in the present case. Special stress was laid in this connexion by the representative of the United Kingdom on Article 25 of the Charter, the recommendation under Article 36 (3) of the Charter being construed in virtue of Article 24 (2) of the Charter as decisions of the Security Council of obligatory character.

In my opinion such a construction of Article 25 of the Charter and, in general, the obligatory character of a recommendation under Article 36 (3) of the Charter, is inadmissible.

The term "recommendation" as used by the Charter is by no means a new one. It appeared especially in the Covenant of the League of Nations. The voluntary and not obligatory character of a recommendation made by the Council of the League, even unanimously, was expressly defined in Advisory Opinion No. 12 of the Permanent Court (pp. 27-28). The recommendations put forward by the Assembly of the League were called in French

"les vœux" (see Albanian document, Annex No. 2). All commentators on the work of the League of Nations agree that there was no obligatory force (see Lauterpacht, M. Ray).

The term "to recommend" was described by a distinguished Frenchman as follows : "ce n'est pas proposer, c'est encore moins ordonner, ce n'est pas indiquer. C'est faire une recommandation dans le sens français du mot, mais un peu pressante...." (Doyen Larnaude, p. 37 de la publication : *La Société des Nations*, Paris, 1920.) The meaning thus attached to the word "recommendation" does not permit it to be regarded as an obligatory decision. Moreover, the Covenant distinguished between a "decision" (Article 5 of the Covenant) and a "recommendation" (see, for instance, Article 15), and the Charter of the United Nations also makes a distinction (see Articles 39, 40, "Security Council shall make recommendations or decide what measures....", Article 94, paragraph 2, of the Charter).

The Albanian documents (see especially Annexes 1, 4, 5, 6, 7) submitted to the Court some evidence of a general consensus of opinion prevailing as regards the voluntary character of recommendations made under Chapter VI of the Charter. More documentary evidence could easily be found. I would recall only that the official British commentary on the Charter (H.M. Stationery Office, Cmd. 6666, p. 8) makes no mention of any compulsory character attaching to Chapter VI of the Charter.

Some authoritative statements were made already during the San Francisco Conference concerning the voluntary character of recommendations (see Belgian amendment in this connexion as reproduced in Vol. XII, p. 66, of the official edition of the San Francisco Conference, and in the same sense also Vol. XI, p. 84). Some documentary evidence directly concerns the voluntary character of Article 36 (3) of the Charter (see *op. cit.*, Vol. XII, pp. 108-109, p. 137).

The *travaux préparatoires* of the San Francisco Conference establish also that Article 25 of the Charter must not be applied indifferently as meaning *ipso facto* "obligatory decisions". Referring to the Belgian amendment, it was emphasized at the Conference "that the Charter must be construed in its entirety" and that "there were special provisions which would override general provisions" (*op. cit.*, Vol. XI, p. 375). The British representatives contended that Article 25 would have no sense and efficiency if the recommendations made under Chapter VI of the Charter were not obligatory decisions. They overlooked that Chapter VII of the Charter is of the greatest importance in view of the functions of the Security Council, and that the specific powers granted the Security Council as laid down in Chapter VII include the power to take

decisions which are obligatory and must be carried out by members.

The character of recommendations made by the Security Council under Chapter VI of the Charter being purely voluntary, it is evident also that the recommendation, addressed under Article 36 (3) of the Charter by the Security Council to the Governments of the United Kingdom and Albania on 9th April, 1947, could not involve any obligation for both Governments to go before the Court and that no question whatsoever of the compulsory jurisdiction of the Court can be raised in the present case in virtue of Article 36 (3) or any other article of the Charter.

II. The foregoing point must be considered as of special importance in view of the question of the admissibility of the British Application of 13th May.

According to Article 40 (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 written application". There was no question whatsoever of a special agreement between the Governments of Albania and of the United Kingdom, not even if the term special agreement should be construed as a concluding fact or in some other non-formal way. The United Kingdom Government was therefore by no means in a position to notify the Court of an agreement reached with Albania to bring the case before the Court. Was then the United Kingdom Government justified in bringing the case before the Court by means of a "written application" ? Article 40 of the Statute does not itself say expressly which is the case for application. But it should not be difficult to understand that this is the procedure where there is compulsory jurisdiction. There cannot be any doubt that "the notification of the special agreement" which Article 40 (1) of the Statute has in view, covers the cases of voluntary, optional jurisdiction. In the terms of Article 36 (1) of the Statute, there are "all cases which the parties refer to the Court". The compulsory jurisdiction of the Court is another part of its jurisdiction. In the words of Article 36 (1) of the Statute, under this jurisdiction fall ".... all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force". The notification of the special agreement covering, according to Article 40 of the Statute, the cases of optional jurisdiction, the application, *requête*, appears necessarily to be the formal instrument to bring before the Court the matters of compulsory jurisdiction.

In my opinion, there was never any serious doubt on this point. The *travaux préparatoires* in connexion with Article 40 of the Statute point out that the words "as the case may be" (*selon le*

cas) were intended to cover the following two cases : 1) "la Cour est saisie unilatéralement par une des parties ; 2) il y a un accord spécial entre les parties" (cf. p. 368, *Procès-verbaux des Séances de la Troisième Commission, Première Assemblée, S. d. N.*). The documents submitted on behalf of the Albanian Government to the Court include under Annex 12 the opinions of some judges of the Permanent Court and of the Registrar which, in 1926, confirm that "the Court on the basis of Article 40 of the Statute, had always called *requête* the document instituting proceedings filed by a party which claimed that the Court had compulsory jurisdiction in regard to the subject of a dispute ; the corresponding word in English had been 'application' ". (Permanent Court, Series D., Add. 2, pp. 177 *et sqq.*) It was always so held by the Permanent Court, as e.g. the Revision of the Rules 1934-1936 *passim* confirms.

In spite of the documentary evidence in this sense, all this is, according to the judgment, only "a mere assertion which is not justified" either by Article 40 (1) or Article 36 (1) of the Statute. According to the judgment, Article 32 (2) of the Rules of Court, which contains the phrase "as far as possible", "clearly implies both by its actual terms and by the consideration which inspired its framing, that the institution of proceedings by application is not exclusively reserved for the domain of compulsory jurisdiction". In my opinion, Article 32 (2) of the Rules cannot be considered as supporting such a view. The *ratio legis* of this provision as concerns the words "as far as possible", was to make possible the institution of the *forum prorogatum ;* this was the reason why it was thought not desirable to insist on the application containing reference to the treaty clause upon which it was based. (See among the Albanian documents submitted to the Court Annex 14, especially pp. 69, 157, of the *Publications of the Permanent Court.* Series D., Third Addendum to No. 2.) The fact that the application should, as far as possible, specify the provision on which the applicant founds the jurisdiction of the Court, is not sufficient in itself to decide the question of the admissibility or inadmissibility of the application. Article 32 (2) prescribes all formal points which an application either must or should contain. It does not say that an application which does not specify the provision presumably founding the jurisdiction of the Court, is inadmissible ; on the other hand, it does not follow from Article 32 (2) of the Rules that the application which thus specifies the presumed jurisdiction of the Court, is *ipso facto* admissible. To decide the question, whether a case has been duly brought before the Court, Article 40 (1) of the Statute must be taken into consideration. Only if this Article did not specify that "cases are brought before the Court, *as the case may be*" (*selon le cas*), would it be possible to assert that an application can be presented to the Court even in a case of optional jurisdiction.

Since cases of compulsory jurisdiction are brought before the Court, according to Article 40 of the Statute, by means of an application, the point is made that the British application of 13th May, 1947, was *prima facie* irregular.

III. The only way which was open to the Government of the United Kingdom was to submit the dispute to the Court in agreement with Albania, unless the Albanian Government gave its consent to the application *a posteriori*. I will mention this point later on, in connexion with the letter of 2nd July.

It is to be presumed that the Resolution of the Security Council of April 9th must be in harmony with the above-mentioned requirements of Article 40 of the Statute, since a recommendation of the Security Council under Article 36 (3) of the Charter cannot deviate from the terms of the Statute of the Court.

Now the Resolution of April 9th recommends the Governments of the United Kingdom and Albania to submit their dispute to the Court "in accordance with the provisions of the Statute of the Court". It is easily understood that the recommendation could not propose to the said Governments any procedure other than the only valid procedure, i.e. "in accordance with the Statute". The recommendation of April 9th necessarily again confronts both Governments with Article 40 of the Statute and points to the "notification of the special agreement" as being the only way in which the dispute can be brought before the Court, there being no provision of compulsory jurisdiction upon which either the United Kingdom or Albania could rely.

As proceedings could not be instituted before the Court by unilateral application, the acceptance of the recommendation by the Albanian Government in the letter of July 2nd could not, and did not, by itself in any way affect the position regarding the admissibility of the British Application of May 13th.

It should also be evident that the acceptance of the recommendation by the Albanian Government on July 2nd did not by itself implement the recommendation. The Governments of Albania and the United Kingdom having both accepted the recommendation of April 9th, are from now on bound to submit the dispute to the Court "according to the provisions of the Statute". A *pactum de contrahendo* is established between them from now on to bring the dispute before the Court by appropriate means ; but the dispute is not yet brought before the Court by these reciprocal promises. A dictum of Lord Phillimore of 1920, which concerns Articles 13 and 14 of the Covenant, is to be found : ".... a clear distinction should be drawn between the duty one has to submit a case to the Court and the means by which this submission should be carried out : Article 13 establishes the obligation of submitting disputes. Article 14 states—here he

based his argument on the English text—that the consent of both parties is necessary before the case can be dealt with." The dictum of Lord Phillimore can be applied exactly to the present case. The recommendation of April 9th establishes the obligation of the United Kingdom and Albania to submit their dispute to the Court "according to the provisions of the Statute of the Court", i.e. according to its Article 40, the consent of both parties being necessary before the case can be dealt with by the Court.

In this connexion, the term "by the parties" which occurs in Article 36 (3) of the Charter, should also be mentioned. It was the Norwegian amendment which brought these words into Article 36 (3), and the documentary evidence of the San Francisco Conference shows that it was done "in order to make it perfectly clear that the Security Council had no right or duty to refer justiciable disputes to the Court." (*Op cit.*, Vol. XII, p. 137.)

The point was made, on behalf of the Albanian Government, that the term "the parties" does not imply the right of one party to summon another to appear before the Court, but "that the consent of both parties is necessary before a case can be taken before the Court" (see Lord Phillimore in Annex 2 of the Albanian document). The phrase in Article 36 (3) of the Charter "according to the Statute" on the one hand, and the phrase "by the parties", on the other hand, are in perfect harmony and mutually complementary.

The consent of the parties to the dispute which is necessary in order correctly to implement the recommendation and to bring the case before the Court in conformity with Article 40 of the Statute, may be reached and expressed in a different way. As the Permanent Court stated in Judgment No. 12 : "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." (P. 23, *l. c.*) On the other hand, there cannot be any doubt that the consent of the parties to the dispute must be obtained and expressed with necessary precision.

IV. It is from this point of view that, in my opinion, the Albanian letter of July 2nd, 1947, should be read.

First, I must point out that it is necessary to make a clear difference between two notions :

1. Ability to appear before the Court ;
2. Competence of the Court.

Ability to appear before the Court depends on the fulfilment of two conditions: (*a*) only States (Article 34 (1) of the Statute) and not other juridical nor physical persons may appear before

the Court ; (*b*) such States must be parties to the Statute, i.e., must accept the jurisdiction of the Court.

According to Article 35 (1) of the Statute, "the Court shall be open" to these States.

Other States which—because they are not parties to the Statute—have not accepted the jurisdiction of the Court, are not admitted to appear before the Court. In order to render it possible for States which are not parties to the Statute also to be admitted to appear before the Court, Article 35 (2) of the Statute lays down that any such State will acquire the ability to do so on condition (in conformity with the Resolution of the Security Council of October 15th, 1946) that it accepts the jurisdiction of the Court. Such a declaration should be made at the moment of the notification of its Agent (Article 36 of the Rules).

Accordingly, for every State which is not a party to the Statute, the acceptance of the jurisdiction of the Court is a preliminary condition to be able to appear before the Court. Such a State acquires by this declaration all rights and is subject to all obligations, which, in the case of parties to the Statute derive from the Statute and Rules because they are parties to the Statute. As, in conformity with Article 62 of the Rules, parties to the Statute have the right to present any preliminary objection, this right also belongs to States not parties to the Statute as soon as they have accepted the jurisdiction of the Court. Were it not so, then the fundamental principle of the full equality of the parties would be violated.

In my opinion, the word "jurisdiction" has two fundamental meanings in international law. This word is used :

(1) to recognize the Court as an organ instituted for the purpose *jus dicere* and in order to acquire the ability to appear before it ;

(2) to determine the competence of the Court, i.e., to invest the Court with the right to solve concrete cases.

In the first meaning, the word jurisdiction has been used in the Protocol of Signature of December 16th, 1920. By this Protocol, the States accepted "the jurisdiction of the Court", but nobody has ever been of the opinion that this should be construed as acceptance of the compulsory jurisdiction of the Court for a concrete case. With the same meaning, the word jurisdiction has been used in the Resolution of the Council of the League of Nations of May 17th, 1922, as well as in the Resolution of the Security Council of October 15th, 1946. According to these resolutions, the acceptance of the jurisdiction of the Court is a *preliminary* condition to be able to appear before the Court. By this act (declaration), the competence of the Court is not of course yet established. The condition for the establish-

ment of the competence of the Court is a special agreement (*compromis*) or the acceptance of the compulsory jurisdiction in treaties or conventions (Article 36 (1) and 36 (2) of the Statute). Accordingly, a State not a party to the Statute which recognizes the jurisdiction of the Court by this fact acquires the juridical position of all other States parties to the Statute. In particular, such a State has the right to present a preliminary objection on the ground of "the inadmissibility of the application", because the recognition of the jurisdiction, in order to acquire ability to appear before the Court, does not involve *ipso facto* recognition of the Court's competence.

It is true that, according to my opinion, it may happen that a State which makes a declaration in conformity with the Resolution of the Security Council of October 15th, 1946, is either directly cited by an application (*requête*) or itself directly cites another State which recognizes the jurisdiction of the Court, in spite of the fact that this had not yet been established. But it is evident that in such a case, the cited party can successfully present a preliminary objection to the competence of the Court. On the other hand, such a State cited by means of an application which is not valid can either expressly confer validity on the application by accepting the competence or simply argue the merits of the case without raising any objection. In both cases (the acceptance *expressis verbis* or tacit) the competence will be established and the written application will be made valid.

But this validity does not derive from the recognition of the jurisdiction (which for a State not a party to the Statute is a preliminary condition to appear before the Court), but on the contrary, the competence is established by the fact that a State has expressly made valid the written application, or has commenced the argument of the case on the merits *without raising any objection.*

The letter of July 2nd appears, in the light of these considerations, as a recognition of the jurisdiction of the Court for the purpose of enabling Albania to appear before it (*se présenter devant la Cour*).

As the Albanian Government at the same time have made "the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court", it is evident that by these reservations this Government have retained the right to oppose the "admissibility" of the written application within the time fixed by Article 62 of the Rules of Court.

The Albanian Government had pointed out 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 Court by unilateral application". This sentence is to be found at the end of the third paragraph of the above-mentioned letter. The first

three paragraphs briefly indicate the meaning of the Resolution of the Security Council of April 9th and the means by which the dispute should have been brought before the Court in conformity with this Resolution. In the opinion of the Albanian Government a special agreement was clearly necessary for this purpose.

As a consequence of the reasons given in the first three paragraphs, the Albanian Government declares that it "would be within its rights....", etc. The explanation of these words is very clear and simple : the Albanian Government would have been able to proceed, as if the written application had not been made, i.e., this Government would have been able completely to ignore it and not to appear before the Court. By this sentence the Albanian Government evidently desired to point out its potential right not to take into consideration the British application which it considered null and void. The conditional mood was rightly used in that sentence to express this attitude on the part of the Albanian Government, because the conditional is the only grammatical form which expresses a possibility. Such a possibility really existed on July 2nd for the Albanian Government, but that Government did not use its right completely to ignore a null and void application.

Let us examine why Albania, in spite of its right to ignore the application, agreed to appear before the Court. As a small country of scarcely a million inhabitants, Albania could not, by its refusal, adopt a position which might have been easily adopted by a great Power, such as England for instance, in a similar case. Moreover, in the eyes of the world, Albania has hitherto been considered (wrongly of course) as one of the countries of the Balkans, so often described as the "powder-keg" of Europe. Its refusal to appear before the Court would have contributed to confirm this unfounded reputation as a backward country which refused to recognize the institutions of the civilized world by an act which might have been interpreted as involving contempt of Court. In such circumstances, therefore, Albania chose not to invoke its right, as a great Power might easily have done without incurring the criticism of the world, and agreed to appear before the Court.

Therefore it decided to appear before the Court in spite of this irregularity ; but it reserved to itself the right to present the preliminary objection against the irregularity of the United Kingdom's Application. The Albanian Government has exercised this right so reserved within the time fixed by Article 62 of the Rules.

In order to avail itself of its reservations, i.e., in order to be able to present the preliminary objection to the Court, Albania

had first to appear before the Court, that is to say it had to accept the jurisdiction of the Court. As pointed out above, it is evident that a State not a party to the Statute cannot appear before the Court without having previously made such a declaration. In the present case, taking into consideration the whole contents of the letter of July 2nd and especially the explicit reservations of the Albanian Government, the recognition of the jurisdiction of the Court is for the purpose of enabling it "to appear before the Court".

The recognition of the jurisdiction of the Court consequently confers ability to be a party in the present case and thereby enables effect to be given to the declaration : "is prepared .... to appear before the Court".

As the Albanian Government would have had the right to ignore the United Kingdom Application, but decided to appear before the Court, in spite of the irregularity of this Application, and to attack this irregularity before the Court, it considered it necessary to point out that its recognition of the jurisdiction of the Court "cannot constitute a precedent for the future". This in effect means that the Albanian Government reserved the right not to reply, to ignore completely any identical or similar written applications, which in future might be directed against her.

I do not find any other meaning in the letter of July 2nd than that which I have tried to define, being anxious to avoid any interpretation which would conflict with the facts.

V. Since the judgment places such importance on the interpretation of the letter and the reservations contained therein, I shall now examine these reservations in greater detail.

According to the judgment, it is the letter of the Albanian Government of July 2nd, 1947, which removes all difficulties, both regarding the question of the admissibility of the Application and the question of the Court's jurisdiction.

The judgment gives on page 28 its explanation why this is the case "in spite of the reservations stated" in the letter of July 2nd. The judgment examines here "the scope of the reservations". In its view, "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". And the judgment holds the following opinion concerning this reservation : "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 conclusion is : "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."

In my view, the judgment passes over this important question of the reservation in a more than summary and very incomplete way.

The reservation is expressed in a special sentence and in the present tense of the indicative mood: "the Albanian Government makes .... reservations". The sentence immediately follows the declaration also expressed in the present tense of the indicative mood that the Albanian Government "is prepared, notwithstanding this irregularity in the action by the Government of the United Kingdom, to appear before the Court". The reservation is immediately connected to this preceding sentence by the word "Nevertheless". A sentence starting with "Nevertheless" is surely not one standing by itself but presupposes a preceding one.

Neither in the sentence containing the reservation or in the preceding one, is there any allusion whatsoever to a future case. Also there is not the slightest indication that the reservation which the Albanian Government makes, should not have its effect in the present case. The reader passes from the preceding phrase to the reservation without observing any difference in time in these two phrases. The Albanian Government is ready to go before the Court, "Nevertheless" at the same time it expresses some reservation.

Such a grammatical and logical meaning of these sentences of the letter of July 2nd appears so natural that, in fact, the judgment cannot quote anything from them in support of its assertion that the reservation was meant only to apply to a new case in the future. It is only in the following phrase starting with the words "The Albanian Government wishes to emphasize...." that the judgment believes it finds the grounds for its interpretation.

Now it happens that this, in the view of the judgment, "very important phrase beginning with the words 'The Albanian Government wishes to emphasize'.... " does not mention the reservation expressed in the preceding phrase, in any way. The whole phrase refers only to the "acceptance of the Court's jurisdiction in the present case" and says that it should not be considered in the future as a precedent. Manifestly the acceptance of the jurisdiction of the Court for the present case and a reservation expressed and concerning two special points of the case, are two different things. The phrase refers only to the acceptance of the jurisdiction of the Court for the present case and does not refer to the reservation.

The question may also be raised whether there would have been any point in making the reservations which were formulated merely in view of a new case in the future. The reservations are made in respect of the Application of the United Kingdom of May 1947 concerning a concrete and unique case and in respect of definite special grounds put forward to support it, and the

reservations cannot apply to any other case. In any other new case, new reservations must necessarily be made, which must be formulated afresh as the new case may require.

In this connexion, it must also be taken into consideration that the whole phrase beginning with the words "The Albanian Government wishes to emphasize...." does not contain any definite provision of law at all and is to be appreciated rather as a political and diplomatic declaration.

The acceptance of the jurisdiction of the Court in one particular case, evidently cannot serve as a legal, binding precedent for any future case. Also the phrase follows the preceding phrase only as a sort of addendum.

The conclusion is: if the reservation expressed in the letter of July 2nd is to have any meaning, it must not be considered in the light of another phrase referring to a new case in the future, but rather in its proper place and context and with due regard to its purpose in the present case.

The final phrase of paragraph 3 of the letter of July 2nd beginning with the words "In these circumstances, the Albanian Government would be within its rights...." does not weaken in any way the reservation under discussion and expressed later in paragraph 4 of the letter.

It is agreed that the United Kingdom Application of May 13th could be made valid by means of consent to it given by the Albanian Government, even *a posteriori*. The judgment expresses the opinion that the letter of July 2nd declared such an intention of the Albanian Government. The judgment quotes, on this point, the phrase of the letter "The Albanian Government would be within its rights" and the phrase "it is prepared, notwithstanding this irregularity...." and comes to the conclusion: "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."

It is evident that such a conclusion is made possible only by a complete disregard of the reservation expressed in the letter of July 2nd. As soon as the reservation is recognized as operative in the present case, the Application cannot be considered as validated. The reservation is made in order to limit the acceptance of the jurisdiction of the Court by the Albanian Government and it excludes a *forum prorogatum* on the basis of an irregular application, which was not subsequently made valid.

To the foregoing observations, I wish to add only the following: In view of my reading of the letter of July 2nd, I was not obliged to make use of the rules of interpretation *in dubio stricto sensu*,

etc., the rules which should undoubtedly be applied, if necessary, in the present case. On the other hand, it would be well for the majority of the Court to read and interpret the letter of July 2nd *stricto sensu*. But it is sufficiently manifest that these rules of interpretation were not applied.

Conclusion:

As, according to my opinion, the British written Application was irregular *ab initio*, and as the Albanian Government has not either *expressis verbis* or tacitly done anything to make the application valid, I consider that the Court *for the time being* is not competent to judge the merits and that the preliminary objection should have been upheld.

(*Signed*) Dr. DAXNER.