

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE L'OR MONÉTAIRE
PRIS A ROME EN 1943
(QUESTION PRÉLIMINAIRE)

(ITALIE c. FRANCE, ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD ET ÉTATS-UNIS D'AMÉRIQUE)

ARRÊT DU 15 JUIN 1954

1954

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE OF THE MONETARY GOLD
REMOVED FROM ROME IN 1943
(PRELIMINARY QUESTION)

(ITALY *v.* FRANCE, UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND UNITED STATES OF AMERICA)

JUDGMENT OF JUNE 15th, 1954

Le présent arrêt doit être cité comme suit :
« *Affaire de l'or monétaire pris à Rome en 1943*
(question préliminaire),
Arrêt du 15 juin 1954 : C. I. J. Recueil 1954, p. 19. »

This Judgment should be cited as follows :
“*Case of the monetary gold removed from Rome in 1943*
(Preliminary Question),
Judgment of June 15th, 1954 : I.C.J. Reports 1954, p. 19.”

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INTERNATIONAL COURT OF JUSTICE

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June 15th, 1954

CASE OF THE MONETARY GOLD
REMOVED FROM ROME IN 1943
(PRELIMINARY QUESTION)

(ITALY *v.* FRANCE, UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND AND
UNITED STATES OF AMERICA)

Part III of Agreement of Paris of 1946 on Reparation.—Washington Agreement of 1951 for arbitration.—Washington Statement accompanying Washington Agreement.—Italy's Application: claim to gold and claim of priority over claim of United Kingdom.—Preliminary Question filed by Applicant.—Effect on Application of Italy's objection to jurisdiction.—Raising of Objection does not imply non-conformity of Application with Washington Statement nor withdrawal or cancellation of Application.

Parties conferred jurisdiction on Court.—Jurisdiction not co-extensive with Court's task.—Vital issue: alleged international responsibility of Albania to Italy.—Necessity of Albania's consent.—Question of intervention.—Article 59 of Statute.—Jurisdiction conferred on Court does not authorize it to decide Italian claim to gold.—Dependence of question of priority upon question of Italian claim to gold.—Court cannot decide question of priority.

JUDGMENT

Present: Vice-President GUERRERO, Acting President; President Sir Arnold McNAIR; Judges BASDEVANT, HACKWORTH, WINIARSKI, ZORIĆIĆ, KLAESTAD, BADAWI, READ, HSU MO, LEVI CARNEIRO, ARMAND-UGON, KOJEVNIKOV; M. G. MORELLI, Judge ad hoc; Registrar LÓPEZ OLIVÁN.

In the case of the Monetary Gold removed from Rome in 1943,

between

the Italian Republic,

represented by :

M. Casto Caruso, Italian Ambassador to the Netherlands,
as Agent,

assisted by :

M. Tomaso Perassi, Professor of International Law of the Law
Faculty of the University of Rome,
as Counsel,

and

the French Republic,

represented by :

M. André Gros, Professor of the Faculties of Law, Legal Adviser
of the Ministry for Foreign Affairs,

as Agent,

assisted by :

M. Philippe Monod, Minister Plenipotentiary,
as Counsel and Acting Agent,

the United Kingdom of Great Britain and Northern Ireland,

represented by :

Sir Gerald Fitzmaurice, K.C.M.G., Legal Adviser of the Foreign
Office,

as Agent,

assisted by :

Mr. J. E. S. Fawcett, D.S.C., Member of the English Bar,
as Counsel,

the United States of America,

represented by :

The Honorable Herman Phleger, Legal Adviser of the Department
of State,

as Agent,

THE COURT,

composed as above,

delivers the following Judgment :

In a Statement signed by them at Washington on April 25th, 1951, the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, envisaging the eventuality that, in accordance with an arbitral opinion which they were seeking, a certain quantity of gold removed from Rome by the Germans in 1943 might be held to belong to Albania, agreed to deliver the gold which, in accordance with this opinion, would fall to Albania, not to Albania herself but to the United Kingdom, in partial satisfaction of the Judgment in the Corfu Channel case, delivered by this Court on December 15th, 1949.

"unless within 90 days from the date of the communication of the arbitrator's opinion to Italy and Albania, either

(a) Albania makes an application to the International Court of Justice for the determination of the question whether it is proper that the gold, to which Albania has established a claim under Part III, should be delivered to the United Kingdom in partial satisfaction of the Corfu Channel judgment ; or

(b) Italy makes an application to the International Court of Justice for the determination of the question whether, by reason of any right which she claims to possess as a result of the Albanian law of 13th January 1945, or under the provisions of the Italian Peace Treaty, the gold should be delivered to Italy rather than to Albania and agrees to accept the jurisdiction of the Court to determine the question whether the claim of the United Kingdom or of Italy to receive the gold should have priority, if this issue should arise."

The three Governments at the same time stated that they would accept as defendants the jurisdiction of the Court, for the purpose of the determination of such Applications by Italy or by Albania or by both.

The opinion of the Arbitrator stating that the gold in question belonged in 1943 to Albania was given on February 20th, 1953. It was communicated the same day to the three Governments, as well as to the Italian Government and to the Albanian Government.

The Albanian Government has made no application to the Court as provided for in paragraph (a) of the Washington Statement.

On May 19th, 1953, that is to say, before the expiry of the time-limit prescribed by the Statement of the three Governments, the diplomatic representative of the Italian Republic in the Netherlands filed in the Registry of the Court a Declaration by which the Italian Government, invoking the Resolution of October 15th, 1946, of the Security Council of the United Nations, accepted the

jurisdiction of the Court in respect of the disputes referred to under paragraph (b) of the Statement of April 25th, 1951. The Italian Government expressly gave the undertakings required by the Security Council Resolution.

The same day, the diplomatic representative of the Italian Republic in the Netherlands, duly authorized by his Government, and in his capacity as Agent, filed in the Registry an Application instituting proceedings against the Governments of the French Republic, the United Kingdom and the United States of America in the matter of the disposal of the monetary gold removed from Rome. The Application contains the following Submissions :

"(1) that the Governments of the French Republic, Great Britain and Northern Ireland and the United States of America should deliver to Italy any share of the monetary gold that might be due to Albania under Part III of the Paris Act of January 14th, 1946, in partial satisfaction for the damage caused to Italy by the Albanian law of January 13th, 1945 ;

(2) that Italy's right to receive the said share of monetary gold must have priority over the claim of the United Kingdom to receive the gold in partial satisfaction of the Judgment in the Corfu Channel case."

The Application was transmitted by the Registry to the three defendant Governments on the same day on which it was filed, namely, May 19th, 1953, and to the Albanian Government on May 20th. It was also communicated to other States entitled to appear before the Court, in accordance with the provisions of its Statute and Rules.

By Order of July 1st, 1953, the time-limit for the filing of a Memorial by the Italian Government was fixed for November 2nd, 1953, and Counter-Memorials by the three respondent Governments were to be filed by March 2nd, 1954.

On October 30th, 1953, the Agent of the Italian Government filed in the Registry a document entitled "Preliminary Question". In this document, he drew the attention of the Court to the fact that Submission No. 1 of the Application invited the Court to pass upon the international responsibility of Albania to Italy, as a result, in the view of the latter State, of the Albanian law of January 13th, 1945. He pointed out that doubts might arise as to the jurisdiction of the Court to adjudicate upon such a question without the consent of Albania and therefore presented a submission, by which the Italian Government :

"requests the Court to adjudicate on the Preliminary Question of its jurisdiction to deal with the merits of the claim set forth under No. 1 of the Submissions of the Application submitted to the Court on May 19th, 1953".

By Order of November 3rd, 1953, the Court, without prejudging the question of the interpretation and application of Article 62 of the

Rules of Court, and deeming it appropriate to give the Italian Government an opportunity to define its position and to submit documents in support thereof, suspended the proceedings on the merits and fixed two time-limits : one for the presentation of a written statement by the Italian Government and the other for the presentation by the three respondent Governments of their observations and submissions. The latter time-limit was subsequently extended by Order of January 26th, 1954.

These Pleadings having been duly deposited within the prescribed time-limits, the case, in so far as the Preliminary Question was concerned, became ready for hearing on March 31st, 1954. Public hearings were held from May 10th to May 14th, 1954. The Court was presided over by the Vice-President, in accordance with Article 13, paragraph 1, of the Rules, and included on the Bench M. Gaetano Morelli, Professor of International Law of the Faculty of Political Science of the University of Rome, appointed by the Italian Government to sit as Judge *ad hoc*. The Court heard the oral arguments and replies of M. Casto Caruso and M. Tomaso Perassi on behalf of the Italian Government, Applicant ; on behalf of the Respondents, MM. André Gros and Philippe Monod for the French Government, and Sir Gerald Fitzmaurice and Mr. J. E. S. Fawcett for the United Kingdom Government. Mr. Herman Phleger, Agent of the Government of the United States, had informed the Court that, since his Government did not expect to supplement its written Statement by an oral statement on the Preliminary Question, he would not be present at the oral proceedings ; however, he remained at the disposal of the Court.

As regards the Preliminary Question, the following Submissions were presented by the Parties :

On behalf of the Italian Government ;

in the Preliminary Question itself :

"For the foregoing reasons,

The Italian Government,

Having regard to the Order of July 1st, 1953, by the Vice-President of the International Court of Justice, Acting President in this case,

Having regard to Article 62 of the Rules of Court,

Requests the Court to adjudicate on the preliminary question of its jurisdiction to deal with the merits of the claim set forth under No. 1 of the Submissions of the Application submitted to the Court on May 19th, 1953 ;"

in the Statement on the Preliminary Question :

"For the foregoing reasons,

May it please the Court

To adjudge and declare :

That the Statement to accompany publication of the Agreement between the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America for the submission to an arbitrator of certain claims with respect to gold looted by the Germans from Rome in 1943 is not a sufficient basis upon which to found the jurisdiction of the Court to deal with the merits of the claim set forth under No. 1 of the Submissions of the Application submitted to the Court by the Government of the Italian Republic on May 19th, 1953;

That the Court is consequently without jurisdiction to adjudicate upon the merits of the said claim;"

as final Submissions at the hearing on May 13th, 1954:

"May it please the Court

To adjudge and declare :

That the Statement to accompany publication of the Agreement between the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America for the submission to an arbitrator of certain claims with respect to gold looted by the Germans from Rome in 1943 is not a sufficient basis upon which to found the jurisdiction of the Court to deal with the merits of the claim set forth under No. 1 of the Submissions of the Application submitted to the Court by the Government of the Italian Republic on May 19th, 1953;

That the Court is consequently without jurisdiction to adjudicate upon the merits of the said claim;

That the Court, whatever may be its decision on the question of jurisdiction referred to above, is without jurisdiction to adjudicate upon the claims contained in No. 1 and No. 2 of the Submissions of the Government of the United Kingdom dated March 26th, 1954."

On behalf of the United Kingdom Government ;

in the Observations and Submissions on the Preliminary Question :

"For the reasons given above, the United Kingdom Government, while reserving the right, if necessary, to present argument at a later stage on the merits of the question of competence, requests the Court to find and declare :

(1) that, in view of the Italian Government's Objection on the question of competence, its Application to the Court of May 19th, 1953, does not conform, or no longer conforms, to the conditions and intentions of the Tripartite Washington Statement of April 25th, 1951, and is accordingly invalid and void, so that there is no longer before the Court any 'application for the determination of' the question which, under the Tripartite Statement, Italy was entitled to put to the Court ;

Alternatively,

that the action of the Italian Government in objecting to the competence of the Court amounts to a withdrawal or cancellation of its Application of May 19th, 1953, and disqualifies Italy from proceeding any further under the Tripartite Washington Statement ;

(2) that, in consequence, the United Kingdom is entitled by the Tripartite Washington Statement to receive a transfer of the gold in the same manner as if Italy, as well as Albania, had not applied to the Court under the relevant provisions of the Statement ;"

as final Submissions at the hearing on May 14th, 1954 :

"(i) That, in view of Italy's objection on the ground of the alleged lack of competence of the Court, her Application to the Court of May 19th, 1953,

(a) does not conform to the conditions and intentions of the Tripartite Washington Statement of April 25th, 1951, or
alternatively

(b) has been in effect withdrawn or cancelled by Italy, and is therefore invalid and void ;

(2) that Italy is, in the circumstances, to be deemed not to have made any application to the Court within the meaning and for the purposes of the Tripartite Washington Statement.

Alternatively

(3) that, if the Court holds, contrary to the contentions of the United Kingdom, that the Italian Application is still valid and subsisting, the Court has jurisdiction to determine on their merits the questions put to the Court in the Italian Application."

The French Government and the Government of the United States of America have not deposited formal Submissions.

* * *

The origin of the present case is to be found in Part III of the Agreement on Reparation from Germany, on the Establishment of an Inter-Allied Reparation Agency and on the Restitution of Monetary Gold, signed at Paris on January 14th, 1946. Part III, in its single Article, contains provisions relating to the restitution of monetary gold found in Germany or in third countries. In accordance with these provisions, all such monetary gold "shall be pooled for distribution as restitution" among the countries which can establish that a definite amount of monetary gold belonging to them "was looted by Germany or, at any time after 12th March, 1938, was wrongfully removed into German territory". The French Republic, the United Kingdom and the United States of America, as well as Albania and other States, are signatories of the Paris Agreement ; Italy adhered to the provisions of Part III of the Agreement by a Protocol signed at London on December 16th, 1947.

The implementation of the provisions of Part III of the Paris Agreement having been entrusted to the Governments of the French Republic, the United Kingdom and the United States of America,

these Governments appointed a Tripartite Commission to assist them in the distribution of the pool of monetary gold. One problem, however, that of the gold of the National Bank of Albania, removed from Rome in 1943 and claimed on the basis of Part III of the Paris Agreement by Albania, on the one hand, and by Italy on the other, involved "disputed questions of law and fact" which neither the Tripartite Commission nor the three Governments were in a position to resolve. In these circumstances, the three Governments signed on April 25th, 1951, the Washington Agreement, by which they decided to submit to an arbitrator for his opinion the question whether the gold belonged to Albania or to Italy or to neither.

On February 20th, 1953, in reply to the only question submitted to him, the Arbitrator gave his opinion that the gold in question belonged in 1943 to Albania, within the meaning of Part III of the Paris Agreement.

The three Governments signatories of the Washington Agreement of April 25th, 1951, had accompanied it by a Statement of the same date in which they declared that if the finding of the Arbitrator should be in favour of Albania, "the three Powers are confronted by another question", since Italy and the United Kingdom claimed the gold for different reasons not covered by Part III of the Paris Agreement. With regard to this question, the three Governments took a decision which is at the root of the present case. They agreed that, if the opinion of the Arbitrator should be that Albania had "established a claim under Part III of the Act" to the gold in question, "they will deliver the gold to the United Kingdom in partial satisfaction of the judgment in the Corfu Channel case unless within 90 days from the date of the communication of the Arbitrator's opinion to Italy and Albania" either of the following two conditions should be fulfilled: either Albania made an application to the Court for the determination of the question whether it was proper that the gold should be delivered to the United Kingdom; or Italy made an application to the Court for the determination of the questions whether by reason of any rights which she claimed to possess as a result of the Albanian law of January 13th, 1945, or under the provisions of the Italian Peace Treaty, the gold should be delivered to Italy rather than to Albania and whether the claim of the United Kingdom or of Italy to receive the gold should have priority, if this issue should arise. The three Governments accepted as respondents the jurisdiction of the Court for the purpose of the determination of such applications by Italy or by Albania or by both, and undertook to conform with any decisions of the Court.

Albania, which has not accepted the jurisdiction of the Court, refrained from making any application to it. Italy, in accordance with the Statement and within the prescribed time-limit, submitted an Application to the Court in which she formulated two claims with regard to the gold, but, instead of presenting a Memorial

on the merits within the time-limit fixed for that purpose by the Court, she raised an issue as to the Court's jurisdiction to deal with the first claim in her Application. The question of the jurisdiction of the Court was first raised in the form of a "preliminary question".

As a result of the Order of November 3rd, 1953, the Italian Government submitted a written Statement on the Preliminary Question in which it put forward a Submission which was repeated at the end of its oral reply as its first final Submission ; in this Submission the Court is asked to adjudge and declare that the Washington Statement "is not a sufficient basis upon which to found the jurisdiction of the Court to deal with the merits of the claim set forth under No. 1 of the Submissions of the Application" ; the ground on which Italy's Submission is based is that the proceedings contemplated by the Washington Statement and instituted by Italy in conformity with the Statement are in reality directed against Albania, which is not a party to the suit.

* * *

At the present stage of the case the Court must adjudicate upon the validity of this Submission presented by Italy ; certain special features of the proceedings, however, make necessary a preliminary examination of the questions raised by the Submissions of the United Kingdom.

Of the three respondent Governments, the Governments of the French Republic and of the United States of America, without going beyond certain general observations with regard to the solution of the questions now before the Court, expressed a desire that the Court should decide the merits of the case which had been referred to it.

As regards the United Kingdom Government, it saw in the challenge to the Court's jurisdiction made by Italy a ground for questioning the validity of the Application. Its main Submissions seek a declaration by the Court that

"(1) in view of Italy's objection on the ground of the alleged lack of competence of the Court, her Application to the Court of May 19th, 1953,

(a) does not conform to the conditions and intentions of the Tripartite Washington Statement of April 25th, 1951, or
alternatively

(b) has been in effect withdrawn or cancelled by Italy, and is therefore invalid and void;

(2) Italy is, in the circumstances, to be deemed not to have made any application to the Court within the meaning and for the purposes of the Tripartite Washington Statement."

With these Submissions of the United Kingdom there should be contrasted the last Italian Submission formulated by Counsel for the Italian Government at the hearing on May 13th, 1954 :

"That the Court, whatever may be its decision on the question of jurisdiction referred to above, is without jurisdiction to adjudicate upon the claims contained in No. 1 and No. 2 of the Submissions of the Government of the United Kingdom, dated March 26th, 1954."

In its Observations and Submissions on the Preliminary Question, the United Kingdom Government asked the Court to find that, in view of the Preliminary Objection raised by the Italian Government, the Application did not conform or no longer conformed to the conditions and intentions of the Washington Statement; that there was no longer any Application before the Court and that Italy must be considered as not having made an Application, in accordance with the conditions laid down by the Statement. The second Submission was explicit:

"(2) That, in consequence, the United Kingdom is entitled by the Tripartite Washington Statement to receive a transfer of the gold in the same manner as if Italy, as well as Albania, had not applied to the Court under the relevant provisions of the Statement."

This Submission threw light upon the intention of the previous Submission; but it was not reproduced in the final Submissions, and the Court is consequently not called upon to deal with it.

There remain, however, the United Kingdom's final Submissions (1) and (2), of which the wording has been modified in relation to the Submissions of the United Kingdom as stated in its written Observations, though the sense and scope remain unchanged; it is therefore reasonable to assume that the third Italian final Submission applies to the altered Submissions of the United Kingdom.

The Italian Government contends that the Court has no jurisdiction to adjudicate upon these Submissions of the United Kingdom. The Court cannot consider itself as lacking jurisdiction to adjudicate upon the validity, withdrawal or cancellation of an application which has been submitted to it: to adjudicate upon such questions with a view to deciding upon the effect to be given to the Application falls within the purview of its judicial task.

It is indeed unusual that a State which has submitted a claim by the filing of an Application should subsequently challenge the jurisdiction of the Court to which of its own accord it has applied. In the present case it is Italy which, after having seised the Court, has raised an issue as to the Court's jurisdiction. This is, however, to be understood in the light of the circumstances of the case. The three Governments which signed the Washington Statement made a collective offer in respect of the present proceedings, and Italy accepted that offer. It was in that Statement that the subject-matter of the suit was pre-determined and it was in the same Statement that the three Governments accepted as defendants

the jurisdiction of the Court. In these circumstances, Italy, after having taken the initial step, felt some doubt as to whether the subject-matter of the dispute was such that the Court could deal with it. She finally raised the issue in the form of a genuine Preliminary Objection.

Article 62 of the Rules is couched in terms which do not limit to the Respondent the right to present preliminary objections. This Article does not preclude the raising of a Preliminary Objection by an Applicant in circumstances such as those in which the present case has arisen. The Preliminary Objection of Italy is therefore not contrary to the Rules or to the Statute.

The United Kingdom contends that in consequence of Italy's objection to the jurisdiction of the Court, her Application does not conform to the conditions and intentions of the Washington Statement. In support of this contention, the Agent of the United Kingdom Government advanced certain arguments: First, the unequivocal acceptance of the Court's jurisdiction by Italy is one of the conditions in the Washington Statement; in view of her preliminary objection, her acceptance of jurisdiction could not be considered as unequivocal. Second, another condition in the Washington Statement is that Italy could only make an application for the determination of certain questions; but Italy is now suggesting that the Court should not determine those questions. Third, under the Washington Statement, Italy's Application should be a real one; it is not real because of her objection to jurisdiction.

The Court finds that Italy's acceptance of jurisdiction is one thing, while her raising of a legal issue on jurisdiction is quite another. It cannot be inferred from the making of the Preliminary Objection that Italy's acceptance of jurisdiction has become less complete or less positive than was contemplated in the Washington Statement. She continues to hold herself out as being subject to the Court's jurisdiction in these proceedings after the raising of the Preliminary Objection as much as she did before taking that step. The same considerations apply to her request for the determination of the questions submitted in her Application. She has requested the Court to settle the problem of jurisdiction before determining those questions. This does not mean that she is asking the Court not to determine those questions under any circumstances. As to the real character of Italy's Application, the Court has only to observe that her Application, once properly deposited, must be considered as real and as remaining real unless it is formally withdrawn.

Consequently, the Court cannot accept the contention of the United Kingdom regarding non-conformity of the Application with the conditions and intentions of the Washington Statement.

Nor can the Court accept the contention in final Submission No. 1 (b) of the United Kingdom that the Application has been in effect withdrawn or cancelled by Italy. Article 69 of the Rules deals with the case where, in the course of proceedings instituted by an Application, the Applicant informs the Court in writing that it is not going on with the proceedings; in this event the provisions of Article 69 apply. The raising of the Preliminary Question by Italy cannot be regarded as equivalent to a discontinuance.

As to the Submission that the Italian Application should be held to be "invalid and void", it is enough to state that the Application, if not invalid at the time when it was filed, cannot subsequently have become invalid by reason of the preliminary question which Italy raised with regard to the Court's jurisdiction in this case.

The Court accordingly finds that it has been validly seised of the Application and that this Application, contrary to the submissions of the United Kingdom Government, still subsists. Therefore, the Court must now proceed to consideration of the Preliminary Objection of Italy in order to decide whether it can adjudicate upon the merits of the claims set forth in the Application.

* * *

The Preliminary Objection raised by Italy assumes precise form in the main Submission by which the Court is asked

"To adjudge and declare :

That the Statement to accompany publication of the Agreement between the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America for the submission to an arbitrator of certain claims with respect to gold looted by the Germans from Rome in 1943 is not a sufficient basis upon which to found the jurisdiction of the Court to deal with the merits of the claim set forth under No. 1 of the Submissions of the Application submitted to the Court by the Government of the Italian Republic on May 19th, 1953;

That the Court is consequently without jurisdiction to adjudicate upon the merits of the said claim."

On the other hand, the United Kingdom Government, in its alternative Submission, asks the Court to adjudge and declare

"that, if the Court holds, contrary to the contentions of the United Kingdom, that the Italian Application is still valid and subsisting, the Court has jurisdiction to determine on their merits the questions put to the Court in the Italian Application".

The Italian Government, in making its Application, stated that it was relying on the provisions of paragraph (*b*) of the Washington Statement. The subject-matter of the suit is the same as that defined in the Statement. The Parties against whom the suit was brought, namely France, the United Kingdom and the United States of America, are those who have declared that they accept the jurisdiction of the Court for the purpose of the determination of Italy's Application. The three States have not named any other Party in the Statement "for the determination of the question" relating to Italy's claim to the delivery of the gold. The Court notes therefore that in respect of the relations between these three States and Italy the Application is in conformity with the offer made in the Washington Statement.

The Governments of France, the United Kingdom and the United States of America, and the Government of Italy, by their separate and successive acts—the adoption of the Washington Statement, in the one case, and in the other case, the deposit on May 19th, 1953, of the Declaration of acceptance of the jurisdiction of the Court and the filing of the Application—have referred a case to the Court within the meaning of Article 36 (1) of its Statute. They have thus conferred jurisdiction on the Court to deal with the questions submitted in the Application of the Italian Government.

The Court must, however, examine whether this jurisdiction is co-extensive with the task entrusted to it. The Agent of the United Kingdom Government stated during the oral proceedings that :

"Albania's consent is not, in our view, necessary to the determination of the questions affecting Italy under head (*b*) of the Washington Statement, because the only issue raised under that head—a decision on which by the Court would be binding on the Parties to it—is the question of whether Albania's share should go to the United Kingdom or to Italy; and both those countries, as well as the two remaining Washington Governments, have given their consent and are before the Court."

This seems to be an over-simplification of the problem with which the Court is confronted. The Court is not merely called upon to say whether the gold should be delivered to Italy or to the United Kingdom: It is requested to determine first certain legal questions upon the solution of which depends the delivery of the gold.

By the first claim in the Application the Court is requested to decide that the three respondent States "should deliver to Italy any share of the monetary gold that might be due to Albania under Part III of the Paris Act of January 14th, 1946, in partial satisfaction for the damage caused to Italy by the Albanian law of January 13th, 1945". The Washington Statement specified in advance one of the

purposes of Italy's Application, namely, the "determination of the question whether, by reason of any right which she claims to possess as a result of the Albanian law of 13th January, 1945, or under the provisions of the Italian Peace Treaty, the gold should be delivered to Italy rather than to Albania". The Court will not deal with the Italian Peace Treaty since its provisions have not been invoked during the present proceedings.

The first Submission in the Application centres around a claim by Italy against Albania, a claim to indemnification for an alleged wrong. Italy believes that she possesses a right against Albania for the redress of an international wrong which, according to Italy, Albania has committed against her. In order, therefore, to determine whether Italy is entitled to receive the gold, it is necessary to determine whether Albania has committed any international wrong against Italy, and whether she is under an obligation to pay compensation to her; and, if so, to determine also the amount of compensation. In order to decide such questions, it is necessary to determine whether the Albanian law of January 13th, 1945, was contrary to international law. In the determination of these questions—questions which relate to the lawful or unlawful character of certain actions of Albania vis-à-vis Italy—only two States, Italy and Albania, are directly interested. To go into the merits of such questions would be to decide a dispute between Italy and Albania.

The Court cannot decide such a dispute without the consent of Albania. But it is not contended by any Party that Albania has given her consent in this case either expressly or by implication. To adjudicate upon the international responsibility of Albania without her consent would run counter to a well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent.

It has been suggested that Albania might have intervened. The provisions of Article 62 of the Statute give to a third State, which considers that it "has an interest of a legal nature which may be affected by the decision in the case", the right to request permission to intervene. It has been contended that the inclusion of the provisions for intervention indicate that the Statute contemplates that proceedings may continue, notwithstanding that a third State may have an interest of a legal nature which might enable it to intervene. It is argued that the fact that a third State, in this case Albania, may not choose to intervene should not make it impossible for the Court to give judgment on rights as between the Parties.

Albania has not submitted a request to the Court to be permitted to intervene. In the present case, Albania's legal interests would not only be affected by a decision, but would form the very subject-matter of the decision. In such a case, the Statute cannot be regarded, by implication, as authorizing proceedings to be continued in the absence of Albania.

It is also contended that any decision of the Court on the questions submitted by Italy in her Application will be binding only upon Italy and the three respondent States, and not upon Albania. It is true that, under Article 59 of the Statute, the decision of the Court in a given case only binds the parties to it and in respect of that particular case. This rule, however, rests on the assumption that the Court is at least able to render a binding decision. Where, as in the present case, the vital issue to be settled concerns the international responsibility of a third State, the Court cannot, without the consent of that third State, give a decision on that issue binding upon any State, either the third State, or any of the parties before it.

The Court accordingly finds that, although Italy and the three respondent States have conferred jurisdiction upon the Court, it cannot exercise this jurisdiction to adjudicate on the first claim submitted by Italy.

* * *

The Court will now consider whether it can adjudicate upon the second claim in the Italian Application. This claim, which is also based on the Washington Statement, is that "Italy's right to receive the said share of monetary gold must have priority over the claim of the United Kingdom to receive the gold in partial satisfaction of the Judgment in the Corfu Channel case".

It might seem that the second claim, unlike the first, only concerns Italy and the United Kingdom, both of whom have already accepted the jurisdiction of the Court. According to the Washington Statement, however, the question of priority between the claim of Italy and that of the United Kingdom will only arise when it has been decided that, as between Italy and Albania, the gold should go to Italy. For the words "if this issue [the issue of priority] should arise" used in the Statement could only mean that the issue of priority would call for a decision only if the Court had already decided that Italy had a valid claim to the gold in question against Albania, thus creating, in the minds of the three Governments, a competitive claim with the claim of the United Kingdom.

The dependence of the second claim upon the first is confirmed by the Italian Submission itself. When the Italian Government speaks of "Italy's right to receive the said share of monetary gold", it is not referring to any hypothetical right : it must be referring to a right which it believes it possesses and which, by the first Submission in its Application, it requests the Court to uphold.

This dependence is further borne out by the statements made by the Parties in the course of the written and oral proceedings. In the document deposited on October 30th, 1953, in which the Italian Government raised the Preliminary Question, it is stated that the

second question submitted in its Application will only arise in the event that the Court has decided on the merits of the first question, as requested by the Italian Government. The United Kingdom Government, in its Observations and Submissions on the Preliminary Question, also said that the priority issue could only arise if the Court went into the question of Italy's claim against Albania, and decided that in favour of Italy. At the hearings, Counsel for the Italian Government and the Agent of the United Kingdom Government both spoke in a similar vein.

Counsel for the Italian Government added, however, that "if the Court considers that the question of priority between the respective rights of the United Kingdom and Italy can be examined in a hypothetical form, independently of the examination of the first Italian claim, the Italian Government, for its part, would have no objection". Apart from the fact that this statement, which is conditional in form, can hardly be construed as a formal request for consideration by the Court of the second claim on a hypothetical basis, it would, in any event, constitute a new proposition which is not based on the Washington Statement and to which the respondent States have not expressed agreement. It is evident that the Court could not act upon such a proposition.

The Court accordingly finds that inasmuch as it cannot adjudicate on the first Italian claim, it must refrain from examining the question of priority between the claim of Italy and that of the United Kingdom.

* * *

For these reasons,

THE COURT,

unanimously,

finds that the jurisdiction conferred upon it by the common agreement of France, the United Kingdom, the United States of America and Italy does not, in the absence of the consent of Albania, authorize it to adjudicate upon the first Submission in the Application of the Italian Government;

by thirteen votes to one,

finds that it cannot adjudicate upon the second Submission in the Application of the Italian Government.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this fifteenth day of June, one thousand nine hundred and fifty-four, in five copies, one of which will be placed in the archives of the Court and the others will be transmitted to the Government of the Italian Republic, the Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America, respectively.

(*Signed*) J. G. GUERRERO,
Vice-President.

(*Signed*) J. LÓPEZ OLIVÁN,
Registrar.

Sir Arnold McNAIR, President, after voting for the Judgment, made the following declaration :

I concur in the finding of the Court that it is unable to adjudicate upon the two questions submitted to it by the Application of the Italian Government, but the reasons which have led me to this conclusion are different from those stated in the Judgment of the Court. In my opinion, there is a fundamental defect in the Application and in the constitution of these proceedings. The Court is asked to adjudicate upon an Italian claim against Albania arising out of an Albanian law of January 13th, 1945. Albania is therefore an essential respondent. But these proceedings are not brought against Albania, nor does the Application name Albania as a respondent, although there is nothing in the Washington Statement which could preclude the Italian Government from making Albania a respondent. I cannot see how State A, desiring the Court to adjudicate upon its claim against State B, can validly seise the Court of that claim unless it makes State B a respondent to the proceedings—however many other States may be respondents.

Judge READ, availing himself of the right conferred on him by Article 57 of the Statute, appends to the Judgment a statement of his individual opinion.

Judge LEVI CARNEIRO, availing himself of the right conferred on him by Article 57 of the Statute, appends to the Judgment a statement of his dissenting opinion.

(Initialled) J. G. G.

(Initialled) J. L. O.