

2.—OBSERVATIONS AND SUBMISSIONS
OF THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND

*Pursuant to the Order of the President of 10th December, 1947,
and Article 62, paragraph 3, of the Rules of Court.*

THE Government of the United Kingdom submits the following observations upon the letter of the Albanian Government dated 9th December, 1947, addressed to the Registrar of the Court and raising a preliminary objection to the jurisdiction of the Court to proceed with the trial of this dispute.

2. The Government of the United Kingdom recalls that the decision of the Security Council of 9th April, 1947, was to "recommend that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court in accordance with the provisions of the Statute of the Court". Apart from the question of the applicability of Article 25 of the Charter (as to which see para. 12 below), the action which was taken by the Government of the United Kingdom upon this decision was based first upon the expressed wish of the Security Council that immediate action should be taken, and secondly, upon the fact that the Resolution in question made no mention of the conclusion of a special agreement but merely recommended both Governments to refer the dispute to the Court. The Government of the United Kingdom was unreservedly willing so to refer the dispute and it assumed that the attitude of the Government of Albania would be the same.

3. The Government of the United Kingdom accordingly referred the dispute to the Court on 13th May, 1947, by its Application under Articles 36 (1) and 40 (1) of the Statute of the Court.

4. The Government of Albania defined its attitude by its letter of 2nd July, 1947, addressed to the Court. In that letter—a copy of which is annexed (Annex)—the Government of Albania began by taking exception to the manner in which the Government of the United Kingdom had referred the matter to the Court and contended that it should first have concluded a special agreement with the Government of Albania. It went on to state that "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".

The words "would be within its rights in holding" are only appropriate to describe the attitude of a party, which considers that it might take a certain objection but nevertheless is not going to do so. The letter continued that the Albanian Government "for its part fully accepts the recommendation of the Security Council" and that "notwithstanding this irregularity in the action taken by the Government of the United Kingdom" the Government of Albania was "prepared to appear before the Court". This sentence, following on the previous one, indicates even more clearly an intention to waive the possible objection that had been referred to before and to proceed notwithstanding this irregularity, if irregularity it were. The Albanian Government stated the most explicit reservations regarding the interpretation placed by the Government of the United Kingdom on Article 25 of the Charter and wished "to emphasize that its acceptance of the Court's jurisdiction for this case cannot constitute a precedent for the future". The mention of a reservation with regard to the manner in which the United Kingdom had brought the case before the Court and to the interpretation placed by the United Kingdom on Article 25 of the Charter, followed by the sentence that the Albanian Government "wishes to emphasize that its acceptance of the Court's jurisdiction for this case cannot constitute a precedent for the future", amply confirms the conclusion already inevitably drawn from the two previous passages that the Albanian Government waived any possible objection to the jurisdiction. The letter then concludes with the appointment of an Agent. It is, moreover, clear from this letter that the Albanian Government took the view that the issues in dispute were clearly defined by the Resolution of the Security Council and by the Application of the Government of the United Kingdom, and accepted the jurisdiction of the Court to pronounce upon the issues so defined, without prejudice to its views as to the binding character of the Security Council's Resolution and of the meaning of Article 25 of the Charter.

5. For these reasons the Government of the United Kingdom placed upon this letter the interpretation which, it is submitted, is the only interpretation that it can reasonably bear, namely, that the Government of Albania was prepared, notwithstanding an alleged procedural irregularity, to accept the jurisdiction of the Court in this case, and that further pleadings would be directed to the merits of the dispute. The Government of the United Kingdom refers in this connexion to paragraph 2 of its Memorial.

6. It appears that the same interpretation was placed upon the letter of the Albanian Government by the President of the Court who, in his Order of the 31st July, 1947, after referring to Articles 36 and 40 of the Statute of the Court, to the Application dated the 13th May, 1947, of the Government of the United Kingdom, to the letter of the Government of Albania dated the 2nd July,

1947, and to the nomination of Agents by the two Governments, and after stating that the views of the Parties had been ascertained with regard to questions of procedure, concluded by ordering the delivery of Memorials, by the Government of the United Kingdom by the 1st October, 1947, and by the Government of Albania by the 10th December, 1947.

7. The following two extracts from the recitals of the Order may be specially referred to : The eighth recital ends : "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". The President was all the more justified in interpreting the Albanian Government's letter as giving Albania's consent to the submission of this dispute without further formalities to the Court because, as the Permanent Court has already said in a passage of Judgment No. 12 which is quoted in paragraph 10 (b) below, "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, for instance, as the previous conclusion of a special agreement".

The tenth recital of the President's Order reads : "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." The conditions, laid down by the Security Council under Article 35 of the Court's Statute, under which the Court shall be open to a State which is not a party to the Statute, are that the State shall have deposited with the Registrar a declaration, under which it accepts the jurisdiction of the Court in accordance with the Charter of the United Nations and with the terms, and subject to the conditions, of the Statute and Rules of Court, and undertakes to comply in good faith with a decision of the Court, and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter. Article 36 of the Rules of Court provides for the deposit of this declaration. The President interpreted this letter from the Albanian Government, taken in conjunction with the Resolution of the Security Council, as a document satisfying the conditions of Article 36 of the Rules of Court.

8. The question arising on the Albanian preliminary objection is whether the Court has jurisdiction. The manner, in which the Court approaches questions of jurisdiction, is stated in the following observations delivered on 6th July, 1927, in the *Case concerning the Factory at Chorzów (Jurisdiction)*, Judgment No. 8, Series A., No. 9, page 32 :—

"It has been argued repeatedly in the course of the present proceedings that in case of doubt the Court should decline juris-

diction. It is true that the Court's jurisdiction is always a limited one, existing only in so far as States have accepted it; secondly¹, the Court will, in the event of an objection—or when it has automatically to consider the question—only affirm its jurisdiction provided that the force of the arguments militating in favour of it is preponderant. The fact that weighty arguments can be advanced to support the contention that it has no jurisdiction cannot of itself create a doubt calculated to upset its jurisdiction. When considering whether it has jurisdiction or not, the Court's aim is always to ascertain whether an intention on the part of the parties exists to confer jurisdiction upon it. The question as to the existence of a doubt nullifying its jurisdiction need not be considered when, as in the present case, this intention can be demonstrated in a manner convincing to the Court."

9. The Government of the United Kingdom accordingly submits that :—

- (a) It 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. (See Judgment No. 13 referred to in paragraph 10 (c) below—the exception there mentioned is not relevant.) The parties have clearly referred the

¹ In the Court's judgment, the word is : *consequently*. [Note by the Registrar.]

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 (see passage in Judgment No. 12 referred to in paragraph 10 (b) below).

- (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. (See on this point Judgment No. 4 referred to in paragraph 10 (e) below.)
- (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. (See Judgments Nos. 13 and 5 referred to in paragraphs 10 (c) and 10 (d) below.)
- (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. (See Judgment No. 2 referred to in paragraph 10 (f) below.)
- (h) Having once consented to the jurisdiction, the Albanian Government cannot afterwards withdraw its consent. (See in this connexion Judgment No. 12 referred to in paragraph 10 (a) below.)
- (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.

10. With reference to the submissions contained in the preceding paragraph, the Government of the United Kingdom invites the attention of the Court to the following cases decided by the Permanent Court of International Justice :—

(a) In Judgment No. 12, dated 26th April, 1928, and entitled *Rights of Minorities in Upper Silesia (Minorities Schools)*, Series A., No. 15, the Court dealt with a dispute which arose between the Governments of Germany and Poland regarding the interpretation of certain provisions in the German-Polish Convention relating to Upper Silesia of 15th May, 1922. An objection to the jurisdiction was raised by the Polish Government in their written Rejoinder ; that is to say, the Polish Government sought to retract an acceptance of the jurisdiction which it had by its conduct previously given at an earlier stage of the case. The Court had occasion to consider Article 38 of the Rules of Court, which (dealing with preliminary objections) was substantially the same as Article 62 of the Rules of the present Court, and observed as follows :—

“The object of this article was to lay down when an objection to the jurisdiction may validly be filed, but only in cases where the objection is submitted as a preliminary question, that is to say, when the Respondent asks for a decision upon the objection before any subsequent proceedings on the merits. It is exclusively in this event that the article lays down what the procedure should be and that this procedure should be different from that on the merits. But it does not follow from this that an objection to the jurisdiction which is not filed as a preliminary objection in the sense indicated above, can be taken at any stage of the proceedings. The Court’s jurisdiction depends on the will of the Parties. The Court is always competent once the latter have accepted its jurisdiction, since there is no dispute which States entitled to appear before the Court cannot refer to it.” (See pp. 20-22.)

The Court thus held that a government having by its conduct at an earlier stage of the proceedings accepted the jurisdiction could not withdraw that acceptance.

(b) The Permanent Court in the same case stated :—

“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. Thus, in Judgment No. 5 [see (a) below] the Court has accepted as sufficient for the purpose of establishing its jurisdiction a mere declaration made by the Respondent in the course of the proceedings agreeing that the Court should decide a point which, in the Court’s opinion, would not otherwise have come within its jurisdiction. And there seems to be no doubt that the consent of a State to the submission of

a dispute to the Court may not only result from an express declaration, but may also be inferred from acts conclusively establishing it." (See pp. 23-24.)

Later in its judgment the Court said :—

"... there is no rule laying down that consent must take the form of an express declaration rather than that of acts conclusively establishing it. If, in a special case, the Respondent has, by an express declaration, indicated his desire to obtain a decision on the merits and his intention to abstain from raising the question of jurisdiction, it seems clear that he cannot, later on in the proceedings, go back upon that declaration." (See p. 25.)

(c) In Judgment No. 13, given on 13th December, 1928, in the *Chorzów Factory case (Merits)*, the Court reaffirmed the position adopted in Judgment No. 12 (see (a) above). In this case the parties were Germany and Poland. The latter in its Rejoinder based certain arguments on Article 256 of the Treaty of Versailles. The German Government in its reply, whilst observing that it might be doubtful whether the Court had jurisdiction to interpret the provisions in question, nevertheless declared that it was "animated by a wish to see the Chorzów case settled", and that it "abstained from undertaking a detailed examination of the questions of lack of jurisdiction or prematurity"; and so, in effect, waived any objections to the jurisdiction. The Court said :—

"As the Court has said in Judgment No. 12, concerning certain rights of minorities in Upper Silesia, Article 36 of the Statute establishes the principle that the Court's jurisdiction depends on the will of the Parties; the Court therefore is always competent once the latter have accepted its jurisdiction, since there is no dispute which States entitled to appear before the Court cannot refer to it, save in exceptional cases where a dispute may be within the exclusive jurisdiction of some other body." (Series A., No. 17, p. 37.)

(d) Again, in its Judgment No. 5, given on 26th March, 1925, in the *Mavrommatis Jerusalem Concessions case* (referred to by the Court in Judgment No. 12—see (b) above), the Court considered that it had jurisdiction, in conformity with Article 36 (1) of its Statute, as the result of the written proceedings in the case. This was a dispute between the Governments of Greece and the United Kingdom. The proceedings were begun by the Greek Government by application based on Articles 11 and 26 of the Mandate for Palestine. The Greek Government alleged that the Government of Palestine, and consequently also the Government of the United Kingdom, in its capacity as Mandatory Power for Palestine, had wrongfully refused to recognize to their full extent the rights acquired by M. Mavrommatis, a Greek subject, under contracts and agreements concluded by him with the Ottoman authorities in regard to concessions for certain public works to be constructed

in Palestine. The Government of the United Kingdom filed a preliminary objection as to the competence of the Court to entertain the proceedings in question. The Court in Judgment No. 2 (see (f) below) dismissed this objection, and therefore decided that it had jurisdiction to deal with the case generally. In Judgment No. 5 (merits), the Court explained the grounds on which it had jurisdiction to decide a point, which would still not have been within its jurisdiction as established under its Judgment No. 2. This point was which articles of Protocol XII (being a supplementary instrument to the Treaty of Lausanne, 1923) were applicable to the concessions granted to M. Mavrommatis. Under its Judgment No. 2, which was based on Article 26 of the Mandate, the Court had jurisdiction to interpret the Mandate but not to interpret Protocol XII. In this connexion the Court made the following observations :—

“It is not by reason of the jurisdiction conferred on the Court under Article 26 of the Mandate, but in consequence of an agreement between the Parties resulting from the written proceedings, that the Court has jurisdiction (Article 36, first paragraph, of the Statute) to decide whether M. Mavrommatis' Jerusalem Concessions fall to be dealt with under Articles 4 and 5, or Article 6 of the Protocol.” (Series A., No. 5, p. 27.)

(e) In Judgment No. 4, given by the Court's Chamber of Summary Procedure on 26th March, 1925, in the matter of the *Interpretation of paragraph 4 of the Annex following Article 179 of the Treaty of Neuilly*, the Court construed as an “agreement” between the Parties the fact that the Agent of the Bulgarian Government submitted observations regarding the request of Greece without disputing the jurisdiction of the Court to give the interpretation requested. The Court said :—

“WHEREAS the Agent of the Bulgarian Government, in his letter of December 30th, 1924, submitted observations regarding the Greek Government's request for an interpretation, without disputing the Court's jurisdiction to give such interpretation; and as therefore the Court has jurisdiction to do so as the result of this agreement between the Parties, so that there is no need for the Court to consider in the present case whether, in the absence of a definite dispute between the Parties regarding the interpretation of the judgment of September 12th, 1924, the requisite jurisdiction could be based exclusively on the unilateral request made by the Greek Government.” (Series A., No. 4, pp. 5, 6.)

(f) Judgment No. 2 given by the Court on 30th August, 1924, in the *Mavrommatis Palestine Concessions case (Jurisdiction)* is also of particular interest, as showing that an application which was irregular at the time at which it was submitted to the Court—a situation which the Albanian Government, contrary to the view of the Government of the United Kingdom, alleges to have

existed at the beginning of the present proceedings—can be regularized by subsequent events. That subsequent event, in the present case, is the express acceptance by the Albanian Government, in its letter of 2nd July, 1947, of the jurisdiction of the Court. In Judgment No. 2 the subsequent event was the entry into force of an international instrument, necessary to justify the application. The Court there dealt with a preliminary objection to the jurisdiction raised by the Government of the United Kingdom (see *(d)* above). Article 11 of the Mandate for Palestine provided as follows: "The Administration of Palestine shall take all necessary measures to safeguard the interests of the community in connexion with the development of the country, and, subject to any international obligations accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein." Article 26 of the Mandate provided as follows: "The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of Justice¹ provided for by Article 14 of the Covenant of the League of Nations." By Article 9 of Protocol No. XII of the Treaty of Lausanne, it was provided that in any territories detached from Turkey under the Treaty of Peace, the State which acquired the territory was fully subrogated as regards rights and obligations of Turkey towards nationals of other contracting Powers. The Greek Government maintained that Protocol No. XII created an international obligation within the meaning of Article 11 of the Mandate. The Court upheld this contention; but the Government of the United Kingdom relied on the fact that the Protocol was not in force at the time when the final negotiations between Greece and Great Britain, in regard to Mavrommatis, took place, nor at the time when Greece filed its application. On this point the Court made the following observations:—

"In the same connexion it must also be considered whether the validity of the institution of proceedings can be disputed on the ground that the application was filed before Protocol XII had become applicable. This is not the case. Even assuming that before that time the Court had no jurisdiction because the international obligation referred to in Article 11 was not yet effective, it would always have been possible for the applicant to re-submit his application in the same terms after the coming into force of the Treaty of Lausanne, and in that case, the argument in question could not have been advanced. Even if

¹ In the Court's judgment: Permanent Court of *International* Justice. [*Note by the Registrar.*]

the grounds on which the institution of proceedings was based were defective for the reason stated, this would not be an adequate reason for the dismissal of the applicant's suit. The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law. Even, therefore, if the application were premature because the Treaty of Lausanne had not yet been ratified, this circumstance would now be covered by the subsequent deposit of the necessary ratifications." (Series A., No. 2, p. 34.)

11. The foregoing survey of the practice of the Court in paragraph 10 above may appear to be almost otiose seeing that the effect of the Albanian letter (see paras. 2 to 7 above) is so clear. The survey, however, shows that, in assuming jurisdiction, the Court has been invariably guided by the intention of the parties as distinguished from requiring that intention to be expressed in any particular form; that, when justifiable, it has construed the conduct of the parties as an implied acceptance of its jurisdiction; that the Court has declined to hold the acceptance of jurisdiction to be dependent upon compliance with certain forms; that an acceptance of the jurisdiction once given by conduct cannot be revoked; and that any initial irregularity in the commencement of the proceedings can be cured by subsequent conduct of the parties. In the present case there is a clear and express acceptance of the jurisdiction of the Court on the part of the Respondent Government. However, should there exist any doubt on the question it ought, in the view of the Government of the United Kingdom, to be fully dispelled by the preceding review of the practice of the Court.

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.

13. The Government of the United Kingdom feels obliged to draw the attention of the Court to the circumstances in which the preliminary objection was filed, which, in its submission, amounts to an abuse of the process of the Court for the following reasons:—

In its preliminary objection the Albanian Government, while reaffirming its full acceptance of the recommendation of the Security Council, now, in effect, contends that in the existing circumstances the jurisdiction of the Court has not been established, because a special agreement should have been concluded, and, in consequence, that the Order of the 31st July, 1947, ought not to have been made.

The Government of the United Kingdom must first comment that if this is, in fact, the position and a special agreement is necessary to found the Court's jurisdiction, this fact was apparent on the 22nd May, 1947, the date on which the Application of the Government of the United Kingdom reached the Government of Albania, or, if not then, at least on the 31st July, 1947, the date of the above Order. Nevertheless, the Government of Albania *first* wrote a letter of 2nd July which conveyed to the President of the Court that it waived any question of a special agreement, and, *secondly*, acquiesced in an Order by the President fixing, after consultation with the parties, the respective dates for the delivery of Memorial and Counter-Memorial, and allowed the Government of the United Kingdom, in compliance with the Order, to deliver a Memorial on the merits, and, *finally*, only on the last day fixed for the delivery of its Counter-Memorial, communicated a preliminary objection containing no ground which had not been already referred to in its letter of the 2nd July, 1947, and apparently waived by that letter. This preliminary objection, apparently, withdraws its acceptance of the jurisdiction of the Court contained in such letter. Such conduct is, in the submission of the Government of the United Kingdom, an abuse of the process of the Court.

14. The Government of the United Kingdom therefore 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.

Dated this 19th day
of January, 1948.

(Signed) W. E. BECKETT,
Agent for the Government of the
United Kingdom.

ANNEX

LETTER FROM THE DEPUTY-MINISTER FOR FOREIGN
AFFAIRS OF THE PEOPLE'S REPUBLIC OF ALBANIA
TO THE REGISTRAR OF THE COURT*(Translation.)*

N.L.I.385/31.

Sir,

Tirana, 2nd July, 1947.

I have the honour to confirm the receipt of the Application addressed by the Government of the United Kingdom to the International Court of Justice against the Government of the People's Republic of Albania regarding the incidents in the Strait of Corfu, of which Application you were good enough to inform me by your telegram of 22nd May last.

Having regard to the contents of the Application, the Government of the People's Republic of Albania desires to present to you the following statement and would request you to be good enough to bring it 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 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.

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.

(Signed) HYSNI KAPO,
Deputy-Minister for Foreign
Affairs of Albania.