

CORFU CHANNEL CASE (PRELIMINARY OBJECTION)

Judgment of 25 March 1948

This case was brought before the Court on May 22nd, 1947, by an Application filed by the Government of the United Kingdom of Great Britain and Northern Ireland instituting proceedings against the Government of the People's Republic of Albania; on December 9th, 1947, the Albanian Government requested the Court to declare the Application inadmissible.

In its judgment the Court rejected the Albanian objection and fixed the time-limits for the subsequent proceedings on the merits.

The judgment was rendered by fifteen votes to one; the dissenting judge appended to the judgment a statement of the reasons for which he was unable to concur in it. Seven of the Members of the Court, whilst concurring in the judgment of the Court, appended a statement of supplementary considerations.

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In its judgment, the Court recalls the conditions in which the case was referred to it and, in the first place, the incident which gave rise to the dispute.

On October 22nd, 1946, two British destroyers struck mines in Albanian territorial waters in the Corfu Channel. The explosions caused damage to the vessels and loss of life. Holding that the responsibility of the Albanian Government was involved, the Government of the United Kingdom, following upon diplomatic correspondence with Tirana, submitted the matter to the Security Council. That body invited Albania, which is not a Member of the United Nations, to participate in the discussions, on condition that she accepted all the obligations of a Member in a similar case. Albania accepted and, on April 9th, 1947, the Security Council adopted a resolution recommending the Governments concerned immediately to refer the dispute to the Court in accordance with the provisions of its Statute.

Thereupon the Government of the United Kingdom addressed an Application to the Court asking for a decision to the effect that the Albanian Government was internationally responsible for the consequences of the incidents referred to above and that it must make reparation or pay compensation. The Application adduced various provisions of the Charter, *inter alia*, Article 25 (which provides that Members agree to accept and carry out the decisions of the Security Council), on which it founded the jurisdiction of the Court.

On July 23rd, 1947, the Albanian Government deposited with the Registry of the Court a letter dated July 2nd in which it expressed the opinion that the Application of the United Kingdom was not in conformity with the Security Council's recommendation of April 9th, 1947, because the institution of proceedings by unilateral application was not justified by the Charter, by the Statute or by general international law. Nevertheless, it fully accepted the Security Council's recommendation profoundly convinced of the justice of its case and 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 was prepared, notwithstanding the irregularity in the action taken by the United Kingdom Government, to appear before the

Court. It made, however, most explicit reservations respecting the manner in which the case had been brought before the Court and more especially respecting the interpretation which the Application sought to place on Article 25 of the Charter with reference to the binding character of the Security Council's recommendations. It emphasized that its acceptance of the Court's jurisdiction for this case could not constitute a precedent for the future.

Following upon the deposit of the Albanian Government's letter, an Order was made fixing the time-limits for the presentation of a Memorial by the Government of the United Kingdom and of a Counter-Memorial by the Albanian Government. Within the time-limit fixed for the latter, the Albanian Government submitted a "preliminary objection to the Application on the ground of inadmissibility". The Court was requested, in the first place, to place on record that, in accepting the Security Council's recommendation of April 9th, 1947, the Albanian Government had only undertaken to submit the dispute to the Court in accordance with the provisions of the Statute and, in the second place, to give judgment that the Application of the United Kingdom was inadmissible, because it contravened the provisions of Articles 40 and 36 of the Statute.

Having thus indicated the circumstances in which it is called upon to adjudicate, the Court proceeds to consider the submissions of the Albanian preliminary objection. It places on record, as requested by the Albanian Government, that the obligation incumbent upon that Government as a result of its acceptance of the Security Council's recommendation could only be carried out in accordance with the provisions of the Statute. It points out, however, that Albania had subsequently contracted other obligations, the date and exact scope of which it establishes later on in the Judgment.

The Court next turns to the second submission. It appears to constitute an objection on the ground of the inadmissibility of the Application in that it refers to Article 40 of the Statute: accordingly it seems to relate to a procedural irregularity resulting from the fact that the main proceedings were instituted by Application instead of by special agreement. But it also cites Article 36 which relates exclusively to the Court's jurisdiction and the criticism, which in the body of the objection are directed against the Application, are concerned with an alleged lack of compulsory jurisdiction.

This argument, which leaves the intention of the Albanian Government somewhat obscure, may be explained by the connection which the Government of the United Kingdom, for its part, had made between the institution of proceedings by Application, and the existence, alleged by it, of a case of compulsory jurisdiction. However, that may be, the Court does not consider that it needs to express an opinion on this point, since it holds that the letter of July 2nd, 1947, addressed by the Albanian Government to the Court, constitutes a voluntary acceptance of its jurisdiction. This letter removes all difficulties concerning both the question of the admissibility of the Application and the question of the Court's jurisdiction.

When, in fact, the Albanian Government states in its letter that it is prepared, notwithstanding the "irregularity in the action taken by the Government of the United Kingdom, to appear before the Court", it is clear that it waived the right to adduce the objection that the Application was inadmissible.

And when it expressly refers to “its acceptance of the Court’s jurisdiction to this case”, these words constitute a voluntary and indisputable acceptance of the Court’s jurisdiction.

In this connection, the Court recalls that while the consent of the parties confers jurisdiction on the Court, such consent need not be expressed in any special form. In particular, as the Permanent Court of International Justice decided in 1928, the previous formal conclusion of a special agreement is unnecessary. In submitting the case by Application, the United Kingdom gave the Albanian Government an opportunity of accepting the jurisdiction of the Court; and this acceptance was given in the Albanian letter of July 2nd, 1947. Moreover, separate action of this kind was appropriate to the respective positions of the Parties in a case where there is, in fact, a claimant, the United Kingdom, and a defendant, Albania.

Accordingly, the Court cannot hold to be irregular the

institution of proceedings by Application which is not precluded by any provision.

It is true that in its letter of July 2nd, 1947, the Albanian Government made reservations respecting the manner in which the case had been brought before the Court and the interpretation which the United Kingdom sought to place on Article 25 of the Charter with reference to the binding character of the Security Council’s recommendations. But it rests with the Court to interpret the letter, this interpretation being binding upon the parties; and the Court holds that the reservations contained in the letter are intended only to maintain a principle and to prevent the establishment of a precedent for the future. It also adds that it is clear that no question of a precedent could arise unless the letter signified in the present case the acceptance of the Court’s jurisdiction on the merits.

For these reasons, the Court rejects the objection; and it fixes time-limits for the subsequent pleadings on the merits.