

## INDIVIDUAL OPINION BY JUDGE READ

In this case, while I am in agreement with the operative provisions of the Judgment and, in general, with the reasoning by which they are justified, I am unable to concur in one finding which has been made by the Court. This is a finding that in the relation between the respondent States and Italy, the Application is in conformity with the offer to submit to the jurisdiction of the Court contained in the Washington Statement.

While there can be no doubt that the Court is competent to deal with this question, I do not think that it should be decided at this stage.

To begin with, it is unnecessary to make this finding in order to justify the operative judgment of the Court.

There is, however, a much more compelling reason for not deciding the point at this stage. It is not dealt with in the final submissions of the Parties and none of the Parties has requested a finding on this point. Further, it has not been fully argued during the written or oral proceedings. I am bound by the principle of international law which was adopted by this Court—in the *Ambatielos* case (jurisdiction), I.C.J. Reports 1952, p. 45—and stated as follows :

“The point raised here has not yet been fully argued by the Parties, and cannot, therefore, be decided at this stage.”

Accordingly, I am of the opinion that this point should not be decided at this stage. Nevertheless, as it has been dealt with, and as I do not agree with the conclusion which has been reached on this point, it is necessary for me to state my reasons.

The Washington Statement prescribes the subject-matter of the dispute and the scope of the proposed application by Italy. The Application complies with the offer in this regard. This aspect of the problem has been fully argued and, indeed, it has given rise to no dispute. But the Statement does not prescribe the Parties to the procedure which it made available to Italy. It contained the following provision :

“The Governments of the French Republic, the United Kingdom and the United States declare that they will 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.”

It is clear that this provision does not require or even suggest that the three Governments were intended to be the sole respondents.

An examination of the entire Statement shows that there is nothing therein contained to preclude Italy from naming in the Application all of the Parties necessary to enable the Court to dispose of the questions which are set forth in clause (b).

On the other hand, the Statement prescribes, in precise language, the nature of the application that Italy must make in order to comply with its terms. The offer of the three Governments to accept as defendants the jurisdiction of the Court was not general : it was solely "for the purpose of the determination of such applications by Italy or by Albania or by both". The words "such applications" refer to clause (b) of the Statement, which uses the following words :

“(b) Italy makes an application to the International Court of Justice for the determination of the question”

and then proceeds to state the subject-matter and scope of the question. These words are clear and unambiguous. They require Italy to make an application *for the determination of the question*. They have an ordinary and natural meaning : an application of such a nature that the question can be determined. They cannot, in their ordinary and natural meaning, be construed as authorizing or requiring Italy to make an application of such a nature that it is legally impossible for the Court to decide the question.

There was no legal difficulty preventing Italy from making an application in which the Court would be able to determine the question.

Accordingly, I am compelled to reach the conclusion that Italy, in making an application in which Albania was not named as a party, failed to make an application for the determination of the questions and consequently failed to comply with the terms of the offer set forth in the Washington Statement. At the same time, as Albania was a necessary and indispensable party to the proceedings, the Application did not comply with the provisions of Article 40 (1) of the Statute and Article 32 (2) of the Rules. Accordingly, there was a fundamental defect in the Application by which these proceedings were commenced.

(Signed) John E. READ.