

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DE L'OR MONÉTAIRE
PRIS A ROME EN 1943

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

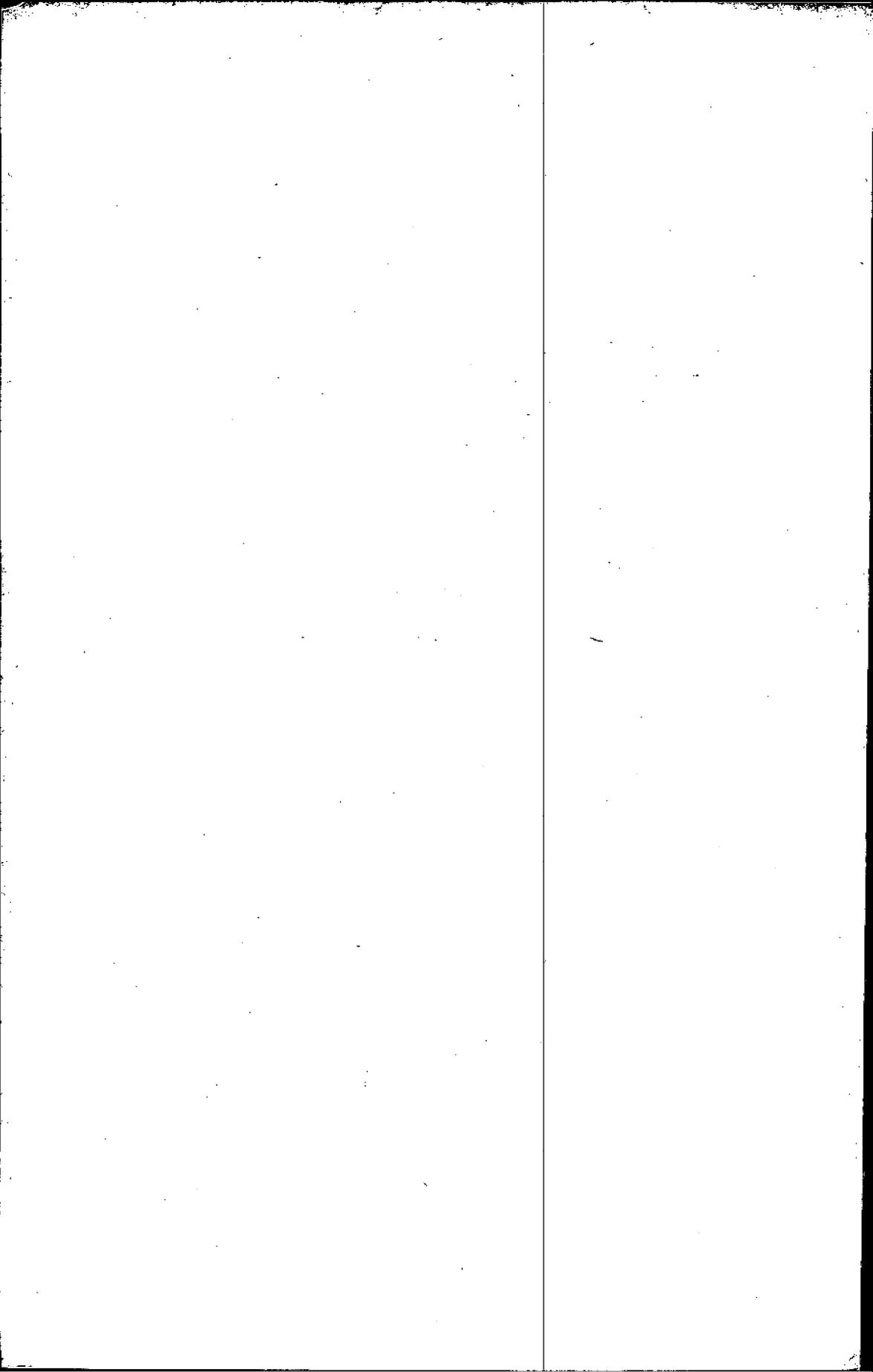
INTERNATIONAL COURT OF JUSTICE

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CASE OF THE MONETARY GOLD
REMOVED FROM ROME IN 1943

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





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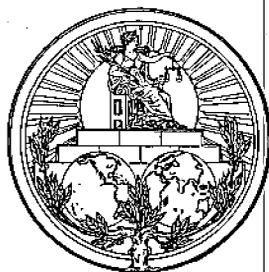
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ARRÊT DU 15 JUIN 1954 (QUESTION PRÉLIMINAIRE)



INTERNATIONAL COURT OF JUSTICE

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REMOVED FROM ROME IN 1943

(ITALY *v* FRANCE, UNITED KINGDOM
AND UNITED STATES OF AMERICA)

JUDGMENT OF JUNE 15th, 1954 (PRELIMINARY QUESTION)



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3. OBSERVATIONS AND SUBMISSIONS OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON THE PRELIMINARY QUESTION OF COMPETENCE

I.

1. These Observations and Submissions are made in accordance with the provisions of the Orders of the Court dated November 3rd, 1953, and January 26th, 1954.

2. By an Application dated May 19th, 1953, made in consequence of and under the Tripartite Washington Statement issued by the French, United States and United Kingdom Governments on April 25th, 1951, the Italian Government requested the Court to adjudge and declare :

“(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.”

3. This Application therefore contained no reservation on jurisdiction, nor any suggestion that the Court might lack the necessary competence to consider and determine the questions put to it. On October 30th, 1953, however, in lieu of the Memorial on the merits of the Italian claim which the Court in its Order of July 1st, 1953, had directed should be deposited before November 2nd, 1953, the Italian Government filed a Preliminary Objection in which it requested 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”.

4. Further, on December 12th, 1953, the Italian Government, in compliance with the Order of the Court of November 3rd, 1953, submitted in support of its Preliminary Objection a further Statement in which it requested 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."

II.

5. The contention that the Court lacks jurisdiction is urged by the Italian Government on a number of grounds, and, in the ordinary way, the Government of the United Kingdom would now proceed to give its views as to the merits of these arguments. However, the Italian plea of lack of jurisdiction places the United Kingdom Government, as a defendant in these proceedings, and as the defendant principally interested in the ultimate disposal of the monetary gold concerned, in a position of some difficulty as regards expressing its views at the present stage on the merits of the question of competence—for the following reasons.

6. It is obvious that when, by means of the Tripartite Washington Statement, the three defendant Governments provided for recourse to the Court by Italy—if Italy wished to avail herself of such recourse—they must have held the view that the Court would be competent to consider and pronounce upon Italy's claim. If therefore the United Kingdom Government were obliged now to argue on the merits of the Italian Preliminary Objection, it could only be in the sense that the Objection was not well founded.

7. However, the Italian Objection presents certain unusual features. Normally, any challenge to the jurisdiction of a tribunal comes from the defendant or respondent side in the case, since, in general, only that side can have an interest in seeking to contest the jurisdiction of the tribunal. The plaintiff or claimant side has, as a rule, no interest in denying the jurisdiction it has itself invoked. If, however, *per mirabile*, as in the present case, the plaintiff or claimant party does contest the jurisdiction it has invoked, it will equally follow that the defendant or respondent party can normally have no interest in resisting this objection (whatever its views may be as to the merits of the objection)—since, if the objection is successful, the proceedings will necessarily be brought to an end, *and the claim of the plaintiff or claimant party in those proceedings will not be admitted.*

8. Applying these principles to the facts of the present case, it follows that, if the Italian contention that the Court is not competent to go into the substance of the original Italian Application were to be upheld, the proceedings provided for by the Tripartite Washington Statement would be at an end, and no decision by the Court

in favour of the Italian claim to the gold would have been given. Since a finding in favour of either Italy's or Albania's claim to the gold (should those countries have respectively applied to the Court *in proper form*) appears to be the only alternative to the United Kingdom claim, the consequence, in the opinion of the United Kingdom Government—and on the basis of the Tripartite Washington Statement—would be that the gold would become immediately transferable to the United Kingdom.

9. It is not clear whether the Italian Government envisages the above-mentioned result as the consequence of succeeding in its Objection as to competence ; or, if not, what other consequence the Italian Government does envisage. For the present, however, the United Kingdom Government feels obliged, in the light of the foregoing considerations, to postpone making its observations on the merits of the Italian Preliminary Objection (subject always to those given in paragraph 6 above), while reserving the right, if necessary, to develop its views on that question more fully at a later stage of the written or oral proceedings on the preliminary issue of competence.

10. In the meantime, the United Kingdom Government wishes to draw attention to certain other aspects and consequences of the Italian Objection on competence which, in its view, raise issues that call for a decision even before the question of the merits of the Italian Objection is determined, and which may indeed render a determination of that question unnecessary. Before doing this, however, the United Kingdom Government desires to emphasize that none of the observations which have so far been made, nor any contained in the paragraphs to follow, are motivated by any desire on its part to deviate from the obligations contained in the Tripartite Washington Statement. But that Statement was inspired by, and based on, the view that, if, in the proceedings before the Arbitrator, the gold was found to be Albanian monetary gold, then this gold should be transferred to the United Kingdom in part satisfaction of its already accrued and acquired right against Albania, in consequence of the damages awarded to it by the Court in the *Corfu Channel* case. This transfer was, according to the Tripartite Washington Statement, to take place automatically, *unless* either Albania could satisfy the Court that it should not take place, or Italy could satisfy the Court both that she had a good claim against Albania, and that this claim ought to have priority over that of the United Kingdom. The intention, and the sole intention, of the Tripartite Washington Statement, therefore, was to afford Italy and Albania an opportunity of arguing these matters *on the merits* if they wished. If not, the gold would go to the United Kingdom.

11. These being the objects and the only objects of the Tripartite Washington Statement, the United Kingdom Government considers that a new situation has now been brought about. One of the

Governments having a right to apply to the Court under the Statement made an Application on the merits within the specified period of 90 days, with the effect of automatically preventing the transfer of the gold of the United Kingdom which would otherwise have occurred. The applicant Government, however, has subsequently contested the jurisdiction which it has itself invoked, and has asked the Court to hold itself incompetent to determine the Application which has been made, but without giving any indication of what the precise object of this contention is, or what effect acquiescence in it by the Court is intended to have on the status and future disposal of the gold. In such circumstances, and given that nothing obliged the Italian Government to raise this Objection, the United Kingdom Government considers itself justified in taking the view that the Tripartite Washington Statement is not being used for the purposes for which it was meant, namely, to secure a decision *on the merits* of any Italian (or Albanian) claim, and that it is being employed to delay rather than promote a final determination of the question of the right to the gold. In consequence, the United Kingdom Government believes that the original Italian Application to the Court should now be regarded as being invalidated and without effect. This point is developed below.

III.

12. The United Kingdom Government submits that the Italian Objection to the competence of the Court must be regarded as amounting to a nullification or cancellation—or to a withdrawal—of the original Application ; and that it consequently creates a situation similar to that which would have existed if Italy, as well as Albania, had never applied to the Court at all under the Tripartite Washington Statement. This is so because the contention that the Court lacks competence to go into and determine the original Italian claim on the merits is in effect a request to the Court *not* to consider or determine that claim—since the whole object of the Objection is that the Court should not, after all, pronounce upon the original Italian Application. Such a contention *put forward by the same party that made the original Application on the merits* is obviously quite incompatible with that Application—since, if it succeeds, the original Application cannot succeed, because it cannot be heard. The Italian Objection to the jurisdiction therefore amounts to a plea that the original Application be not heard, and is consequently equivalent to a withdrawal or cancellation of that Application.

13. The explanation given by the Italian Government of these inconsistent attitudes is that Italy was compelled by the terms of the Tripartite Washington Statement to make an application to the Court on the merits within the specified period of 90 days, on pain of seeing the gold transferred to the United Kingdom. This, how-

ever, amounts to saying that the Italian Government applied to the Court, claiming the gold for itself, merely in order to prevent an immediate transfer to the United Kingdom, and is now contesting the jurisdiction in order to prevent the Court from giving a decision on the validity of the Italian claim, and on the question of which of the two countries the gold should be adjudged to. This appears to the United Kingdom Government to be contrary to the true spirit and intention (even, as will be shown presently, the letter) of the Tripartite Washington Statement, since it seems to be directed, not to securing a final decision on the question of the destination of the gold, but to producing a situation of stalemate, in which the disposal of the gold would remain indefinitely suspended or in abeyance.

14. The United Kingdom contention that the Italian Government's Objection to the Court's jurisdiction amounts to a nullification or withdrawal of the original Italian Application, and, in effect, disqualifies Italy from proceeding any further under the Tripartite Washington Statement, can be put in another way. It was clearly implicit in the Statement that, if either Italy or Albania availed themselves of the right to apply to the Court, this would involve an acceptance by them of the Court's jurisdiction for the purposes of the Application, and for the determination of the issues put to the Court—since, if the jurisdiction was not accepted, the Application could not be regarded as having any reality. Voluntary application to a tribunal—the invoking of its jurisdiction—necessarily involves an acceptance of that jurisdiction; for such an application on the merits of a claim, if coupled with, or followed by, a denial of the competence of the tribunal to go into and pronounce upon those same merits, would involve an inconsistency so fundamental as to nullify the application, and render it meaningless and void.

15. The original Italian Application of May 19th, 1953, contained no suggestion that the Court was not competent to go into the principal issue on which the Application was based, and it therefore appeared to amount to an unequivocal acceptance of the Court's jurisdiction. Had the question of competence been raised at that stage, it would have been apparent that the whole Application lacked reality and stultified itself; and the United Kingdom Government would then have been in a position to represent at once (and would certainly have done so) that the Application could not be regarded as a valid Application under or for the purposes of the Tripartite Washington Statement. It would have been manifest that the requirement of an Application to the Court within the specified period of 90 days had not been complied with—certainly not in essence, and scarcely even in form, since what the Statement specified was

“... 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 the gold should be delivered to Italy rather than to Albania...."

It would obviously not be making an Application to the Court "for the determination of" this question if, simultaneously, the competence of the Court to determine it were challenged and contested.

16. The United Kingdom Government submits that no essential difference in this situation is produced by the fact that the challenge to, and contestation of, the jurisdiction is made subsequent to the original Application. The resulting effect is precisely the same. There cannot any longer be a subsisting Application to the Court for the determination of a given question, when the party supposedly applying is simultaneously maintaining that the Court is incompetent to determine this very question, and ought indeed *proprio motu* to decline to do so. For these reasons, the United Kingdom Government contends that there is in fact no longer before the Court any valid or subsisting Application within the meaning, and according to the clear intention, of the Tripartite Washington Statement—*i.e.*, "for the determination of" the substantive questions therein specified as being the questions which Italy is entitled to put to the Court. The considerations which moved the Italian Government not to mention the question of competence when making its original Application can be understood. But, in the opinion of the United Kingdom Government, they do not alter the foregoing conclusion.

17. The above argument finds further support in the actual language of the Tripartite Washington Statement, where it is made an express condition of the validity of any Italian Application to the Court that Italy

"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."

Since the priority issue could arise only if the Court first went into the question of Italy's claim against Albania, and decided that in favour of Italy, acceptance by the Italian Government of the competence of the Court to determine that initial question would equally appear, by implication, to have been an essential condition of the validity of Italy's Application to the Court under the Tripartite Washington Statement—and, since this competence is apparently not accepted by Italy, this condition is not fulfilled, and the Application is consequently not valid, or has become invalidated.

18. Accordingly, 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.

(Signed) G. G. FITZMAURICE,
Agent of the Government of the
United Kingdom of Great Britain
and Northern Ireland.

March 26th, 1954.