

CASE OF THE MONETARY GOLD REMOVED FROM ROME IN 1943

Judgment of 15 June 1954

The Monetary Gold Case was brought before the Court by an Application of the Italian Republic against the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

The Court had been requested to determine certain legal questions upon which depended the delivery to Italy or to the United Kingdom of a quantity of monetary gold removed by the Germans from Rome in 1943, recovered in Germany and found to belong to Albania. The United Kingdom pointed out that the Court had found that Albania was under an obligation to pay compensation to the United Kingdom for the damage caused by the explosions in the Corfu Channel in 1946 and that the damages due to the United Kingdom had never been paid. For its part, Italy contended, in the first place, that she had a claim against Albania arising out of the measures of confiscation allegedly taken by the Albanian Government in 1945, and, in the second place, that her claim should have priority over that of the United Kingdom.

The Italian Government, relying on the Statement signed at Washington on April 25th, 1951 by the Governments of France, the United Kingdom and the United States, referred these two questions to the Court. But after filing her Application, Italy felt some doubt as to the jurisdiction of the Court and requested the Court to adjudicate on the question of jurisdiction as a preliminary issue.

It is upon the question of jurisdiction that the Court adjudicated in its Judgment. The Court found first, unanimously, that in the absence of the consent of Albania, it was not authorized to adjudicate upon Italy's claim against Albania; and, secondly, by thirteen votes to one, that the priority issue could only arise if the first question had been decided in favour of Italy.

Judge Levi Carneiro appended to the Judgment of the Court a statement of his dissenting opinion (on the second question); two other Members of the Court (President, Sir Arnold McNair, and Judge Read), while voting in favour of the decision, appended to the Judgment a declaration and individual opinion respectively.

The Judgment began by reciting the facts. The origin of the present case was to be found in Part III of the Agreement on Reparation from Germany (Paris, January 14th, 1946), which provided that the monetary gold found in Germany should be pooled for distribution among the countries entitled to receive a share of it. France, the United Kingdom and the United States were signatories of the Agreement, as well as Albania and other States; Italy adhered subsequently to Part III. The implementation of the provisions of Part III having been entrusted to the Governments of France, the United Kingdom and the United States, these three Governments appointed a Tripartite Commission to assist them in this matter. In respect of a quantity of gold removed from Rome in 1943, which belonged to the National Bank of Albania, the Tripartite Commission, confronted by competing claims of Albania and Italy, was unable to give a decision. The three Governments then agreed to submit the question to an arbitrator (Washington Agreement of April 25th, 1951). At the same time, they declared (Washington Statement of the same date) that if the finding of the arbitrator should be in favour of Albania, they would be confronted by another problem, since the gold was claimed by Italy and by the United Kingdom for reasons not covered by Part III of the Paris Agreement; and they decided that the gold would be delivered to the United Kingdom in partial satisfaction of the Judgment of the court of December 15th, 1949, in the Corfu Channel case unless within a certain time-limit from the date of the arbitrator's Opinion, either Albania applied to the Court requesting it to adjudicate on her rights, or Italy made an Application to the Court for the determination of the questions, first, 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 her rather than to Albania, and second, whether the Italian claim should or should not have priority over the claim of the United Kingdom, if this issue should arise.

Thus, within the prescribed time-limit, Italy made an Application to the Court which was communicated in the

Continued on next page

customary manner to States entitled to appear before the Court and also transmitted to the Albanian Government.

Time-limits for the filing of the pleadings were then fixed by the Court. However, instead of presenting its Memorial on the merits, the Italian Government questioned the jurisdiction of the Court to adjudicate upon the first question relating to the validity of the Italian claim against Albania. The Parties having been requested to submit their views on the problem thus raised, the Italian Government contended that the Court did not have a sufficient basis for adjudication on the ground that the proceedings contemplated by the Washington Statement were in reality directed against Albania and that Albania was not a Party to the suit. As regards the United Kingdom, it saw in the challenge to the Court's jurisdiction made by Italy a ground for questioning the validity of the Application which, in the submission of the United Kingdom, should be regarded as not conforming to the Washington Statement or as invalid and void, or as withdrawn. The two other respondent Governments, France and the United States, did not deposit formal Submissions.

After thus reciting the facts, the Court dealt with the views of both sides, beginning with the Submissions of the United Kingdom which have just been summarized. Indeed, it was unusual that an applicant State should challenge the jurisdiction of the Court, but regard must be had for the circumstances of the case: it was the Washington Statement, emanating from the three Governments, that formulated the offer of jurisdiction accepted by Italy and pre-determined the subject-matter of the suit; and it was after taking the initial step that Italy felt some doubt and filed a Preliminary Objection on the basis of Article 62 of the Rules of Court. This Article did not preclude the raising of a preliminary objection by an applicant in such circumstances. By this Objection, Italy's acceptance of jurisdiction of the Court has not become less complete or less positive than was contemplated in the Washington Statement. To request the Court to settle the problem of jurisdiction was not tantamount to asking the Court not to determine the questions set out in the Application under any circumstances. The Application was a real one; and it remained real unless it was withdrawn; but it had not been withdrawn. Finally, the Application, if not invalid when it was filed, could not have become invalid by reason of the presentation of the objection to the jurisdiction.

Having thus found that it had been validly seized by the Application and that that Application still subsisted, the Court proceeded to consideration of the Italian Objection to the jurisdiction in order to decide whether or not it could adjudicate upon the merits of the questions submitted to it by the Application. The Court noted that, in respect of the relations between the three Governments and Italy, the Application was in conformity with the offer made in the Washington Statement, both as regards the subject-matter of the suit and the Parties to it; the Court therefore had jurisdiction to deal with the questions submitted in the Application. But was this

jurisdiction co-extensive with the task entrusted to the Court?

In this connection the Court noted that it was not merely called upon to say whether the gold should be delivered to Italy or to the United Kingdom: it was requested to determine first certain legal questions upon which the solution of the problem depended. The first submission in the Application centred around a claim by Italy against Albania, a claim to indemnification for an alleged wrong. Italy believed that she possessed a right against Albania for the redress of an international wrong which, according to Italy, Albania had committed against her. In order, therefore, to determine whether Italy was entitled to receive the gold, it was necessary to determine whether Albania had committed any international wrong against Italy, and whether she was 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 was necessary to determine whether the Albanian law of January 13th, 1945 was contrary to international law. In the determination of these questions, which related to the lawful or unlawful character of certain actions of Albania *vis-à-vis* Italy, only two States, Italy and Albania, were directly interested.

To go into the merits of such questions would be to decide a dispute between Italy and Albania — which the Court could not do without the consent of Albania. If the Court did so, it 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 contended that Albania might have intervened, since Article 62 of the Statute gives 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 do so; that the Statute did not prevent proceedings from continuing, even when a third State which would be entitled to intervene refrained from doing so; and that consequently the fact that Albania had abstained from doing so should not make it impossible for the Court to give judgment. But in the present case, Albania's legal interests would not only be affected by a decision; they would constitute the very subject-matter of the decision. Therefore, the Statute could not be regarded, even by implication, as authorizing that proceedings could be continued in the absence of Albania.

The Court found that, although Italy and the three respondent States had conferred jurisdiction upon the Court, it could not exercise this jurisdiction to adjudicate on the first claim submitted by Italy. As for the second claim, which relates to the priority between the claims of Italy and the United Kingdom, it would only arise when it had been decided that, as between Italy and Albania, the gold should go to Italy. This claim was consequently dependent upon the first claim in the Application. The Court accordingly found that inasmuch as it could not adjudicate on the first Italian claim, it should refrain from examining the second.