

## CORFU CHANNEL CASE (MERITS)

### Judgment of 9 April 1949

The Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland-Albania) arose from incidents that occurred on October 22nd 1946, in the Corfu Strait: two British destroyers struck mines in Albanian waters and suffered damage, including serious loss of life. The United Kingdom first seized the Security Council of the United Nations which, by a Resolution of April 9th, 1947, recommended the two Governments to submit the dispute to the Court. The United Kingdom accordingly submitted an Application which, after an objection to its admissibility had been raised by Albania, was the subject of a Judgment, dated March 25th, 1948, in which the Court declared that it possessed jurisdiction. On the same day the two Parties concluded a Special Agreement asking the Court to give judgment on the following questions:

1. Is Albania responsible for the explosions, and is there a duty to pay compensation?
2. Has the United Kingdom violated international law by the acts of its Navy in Albanian waters, first on the day on which the explosions occurred and, secondly, on November 12th and 13th, 1946, when it undertook a sweep of the Strait?

In its Judgment the Court declared on the first question, by 11 votes against 5, that Albania was responsible.

In regard to the second question, it declared by 14 votes against 2 that the United Kingdom did not violate Albanian sovereignty on October 22nd; but it declared unanimously that it violated that sovereignty on November 12th/13th, and that this declaration, in itself, constituted appropriate satisfaction.

The facts are as follows. On October 22nd, 1946, two British cruisers and two destroyers, coming from the south, entered the North Corfu Strait. The channel they were following, which was in Albanian waters, was regarded as safe: it had been swept in 1944 and check-swept in 1945. One of the destroyers, the *Saumarez*, when off Saranda, struck a mine and was gravely damaged. The other destroyer, the *Volage*, was sent to her assistance and, while towing her, struck another mine and was also seriously damaged. Forty-five British officers and sailors lost their lives, and forty-two others were wounded.

An incident had already occurred in these waters on May 15th, 1946: an Albanian battery had fired in the direction of two British cruisers. The United Kingdom Government had protested, stating that innocent passage through straits is a right recognized by international law; the Albanian Government had replied that foreign warships and merchant vessels had no right to pass through Albanian territorial waters without prior authorization; and on August 2nd, 1946, the United

Kingdom Government had replied that if, in the future, fire was opened on a British warship passing through the channel, the fire would be returned. Finally, on September 21st, 1946, the Admiralty in London had cabled to the British Commander-in-Chief in the Mediterranean to the following effect: "Establishment of diplomatic relations with Albania is again under consideration by His Majesty's Government who wish to know whether the Albanian Government have learnt to behave themselves. Information is requested whether any ships under your command have passed through the North Corfu Strait since August and, if not, whether you intend them to do so shortly."

After the explosions on October 22nd, the United Kingdom Government sent a Note to Tirana announcing its intention to sweep the Corfu Channel shortly. The reply was that this consent would not be given unless the operation in question took place outside Albanian territorial waters and that any sweep undertaken in those waters would be a violation of Albania's sovereignty.

The sweep effected by the British Navy took place on November 12th/13th 1946, in Albanian territorial waters and within the limits of the channel previously swept. Twenty-two moored mines were cut; they were mines of the German GY type.

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The first question put by the Special Agreement is that of Albania's responsibility, under international law, for the explosions on October 22nd, 1946.

The Court finds, in the first place, that the explosions were caused by mines belonging to the minefield discovered on November 13th. It is not, indeed, contested that this minefield had been recently laid; it was in the channel, which had been previously swept and check-swept and could be regarded as safe, that the explosions had taken place. The nature of the damage shows that it was due to mines of the same type as those swept on November 13th; finally, the theory that the mines discovered on November 13th might have been laid after the explosions on October 22nd is too improbable to be accepted.

In these circumstances the question arises what is the legal basis of Albania's responsibility? The Court does not feel that it need pay serious attention to the suggestion that Albania herself laid the mines: that suggestion was only put forward *pro memoria*, without evidence in support, and could not be reconciled with the undisputed fact that, on the whole Albanian littoral, there are only a few launches and motor boats. But the United Kingdom also alleged the connivance of Albania: that the mine laying had been carried out by two Yugoslav warships by the request of Albania, or with her acquiescence. The Court finds that this collusion has not been proved. A charge of such exceptional gravity against a

State would require a degree of certainty that has not been reached here, and the origin of the mines laid in Albanian territorial waters remains a matter for conjecture.

The United Kingdom also argued that, whoever might be the authors of the mine laying, it could not have been effected without Albania's knowledge. True, the mere fact that mines were laid in Albanian waters neither involves *prima facie* responsibility nor does it shift the burden of proof. On the other hand, the exclusive control exercised by a State within its frontiers may make it impossible to furnish direct proof of facts which would involve its responsibility in case of a violation of international law. The State which is the victim must, in that case, be allowed a more liberal recourse to inferences of fact and circumstantial evidence; such indirect evidence must be regarded as of especial weight when based on a series of facts, linked together and leading logically to a single conclusion.

In the present case two series of facts, which corroborate one another, have to be considered.

The first relates to the Albanian Government's attitude before and after the catastrophe. The laying of the mines took place in a period in which it had shown its intention to keep a jealous watch on its territorial waters and in which it was requiring prior authorization before they were entered, this vigilance sometimes going so far as to involve the use of force: all of which render the assertion of ignorance *a priori* improbable. Moreover, when the Albanian Government had become fully aware of the existence of a minefield, it protested strongly against the activity of the British Fleet, but not against the laying of the mines, though this act, if effected without her consent, would have been a very serious violation of her sovereignty; she did not notify shipping of the existence of the minefield, as would be required by international law; and she did not undertake any of the measures of judicial investigation which would seem to be incumbent on her in such a case. Such an attitude could only be explained if the Albanian Government, while knowing of the mine laying, desired the circumstances in which it was effected to remain secret.

The second series of facts relates to the possibility of observing the mine laying from the Albanian coast. Geographically, the channel is easily watched: it is dominated by heights offering excellent observation points, and it runs close to the coast (the nearest mine was 500 m. from the shore). The methodical and well-thought-out laying of the mines compelled the minelayers to remain from two to two-and-a-half hours in the waters between Cape Kiephali and the St. George's Monastery. In regard to that point, the naval experts appointed by the Court reported, after enquiry and investigation on the spot, that they considered it to be indisputable that, if a normal look-out was kept at Cape Kiephali, Denta Point, and St. George's Monastery, and if the lookouts were equipped with binoculars, under normal weather conditions for this area, the mine-laying operations must have been noticed by these coastguards. The existence of a look-out post at Denta

Point was not established; but the Court, basing itself on the declarations of the Albanian Government that lock-out posts were stationed at other points, refers to the following conclusions in the experts' report: that in the case of mine laying 1) from the North towards the South, the minelayers would have been seen from Cape Kiephali; if from South towards the North, they would have been seen from Cape Kiephali and St. George's Monastery.

From all the facts and observations mentioned above, the Court draws the conclusion that the laying of the minefield could not have been accomplished without the knowledge of Albania. As regards the obligations resulting for her from this knowledge, they are not disputed. It was her duty to notify shipping and especially to warn the ships proceeding through the Strait on October 22nd of the danger to which they were exposed. In fact, nothing was attempted by Albania to prevent the disaster, and these grave omissions involve her international responsibility.

The Special Agreement asks the Court to say whether, on this ground, there is "any duty" for Albania "to pay compensation" to the United Kingdom. This text gave rise to certain doubts: could the Court not only decide on the principle of compensation but also assess the amount? The Court answered in the affirmative and, by a special Order, it has fixed time-limits to enable the Parties to submit their views to it on this subject.

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The Court then goes on to the second question in the Special Agreement: Did the United Kingdom violate Albanian sovereignty on October 22nd, 1946, or on November 12th/13th, 1946?

The Albanian claim to make the passage of ships conditional on a prior authorization conflicts with the generally admitted principle that States, in time of peace, have a right to send their warships through straits used for international navigation between two parts of the high seas, provided that the passage is innocent. The Corfu Strait belongs geographically to this category, even though it is only of secondary importance (in the sense that it is not a necessary route between two parts of the high seas) and irrespective of the volume of traffic passing through it. A fact of particular importance is that it constitutes a frontier between Albania and Greece, and that a part of the strait is wholly within the territorial waters of those States. It is a fact that the two States did not maintain normal relations, Greece having made territorial claims precisely with regard to a part of the coast bordering the strait. However, the Court is of opinion that Albania would have been justified in view of these exceptional circumstances, in issuing regulations in respect of the passage, but not in prohibiting such passage or in subjecting it to the requirement of special authorization.

Albania has denied that the passage on October 22 was innocent. She alleges that it was a political mission and that the methods employed - the number of ships, their formation, armament, manoeuvres, etc. - showed an intention to intimidate. The Court examined the different Albanian contentions so far as they appeared relevant. Its conclusion is that the passage was innocent both in its principle, since it was designed to affirm a right which had been unjustly denied, and in its methods of execution, which were not unreasonable in view of the firing from the Albanian battery on May 15th.

As regards the operation on November 12th/13th, it was executed contrary to the clearly expressed wish of the Albanian Government; it did not have the consent of the international mine clearance organizations; it could not be justified as the exercise of the right of innocent passage. The United Kingdom has stated that its object was to secure the mines as quickly as possible for fear lest they should be taken away by the authors of the mine laying or by the Albanian authorities: this was presented either as a new and special application of the theory of intervention, by means of which the intervening State was acting to facilitate the task of the international tribunal, or as a method of self-protection or *self-help*. The Court cannot accept these lines of defence. It can only regard the alleged right of intervention as the manifestation of a policy of force which cannot find a place in international law. As regards the notion of *self-help*, the Court is also unable to accept it: between independent States the respect for territorial sovereignty is an essential foundation for international relations. Certainly, the Court recognises the Albanian Government's complete failure to carry out its duties after the explosions and the dilatory nature of its diplomatic Notes as extenuating circumstances for the action of the United Kingdom. But, to ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy constituted a violation of Albanian sovereignty. This declaration is in accordance with the request made by Albania through her counsel and is in itself appropriate satisfaction.

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To the Judgment of the Court there are attached one declaration and the dissenting opinions of fudges Alvarez, Winiarski, Zoricic, Badawi Pasha, Krylov and Azevedo, and also that of Dr. Ecer, Judge *ad hoc*.