

1

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU DÉTROIT
DE CORFOU

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INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

THE CORFU
CHANNEL CASE

VOLUME I.

Application.—British Memorial and annexes.



PREMIÈRE PARTIE

REQUÊTE INTRODUCTIVE D'INSTANCE
ET PIÈCES DE LA PROCÉDURE ÉCRITE

PART I.

APPLICATION INSTITUTING PROCEEDINGS
AND DOCUMENTS OF THE WRITTEN
PROCEEDINGS

SECTION A.—APPLICATION INSTITUTING
PROCEEDINGS.

I.—LETTER FROM HIS MAJESTY'S AMBASSADOR
AT THE HAGUE TO THE REGISTRAR, INTERNATIONAL
COURT OF JUSTICE, THE HAGUE.

The Hague, 22nd May 1947.

Sir,

I have the honour to transmit to you, for communication to the President and judges of the International Court of Justice, an Application to the Court submitted by His Majesty's Government in the United Kingdom. His Majesty's Government have appointed Mr. W. E. Beckett, C.M.G., K.C., the Legal Adviser to the Foreign Office, as their Agent, and I certify that the signature on the Application is the signature of Mr. Beckett. In accordance with Article 35 (5) of the Rules of Court, I have the honour to state that the address for service of the Agent of His Majesty's Government is this Embassy.

I have, etc.

(Signed) NEVILLE BLAND.

II.—LETTER FROM THE AGENT OF THE GOVERNMENT
OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND TO THE REGISTRAR,
INTERNATIONAL COURT OF JUSTICE, THE HAGUE.

13th May, 1947.

Sir,

In accordance with Article 40 (1) of the Statute and Article 32 (2) of the Rules of Court, I have the honour to address to you the present written Application of the Government of the United Kingdom of Great Britain and Northern Ireland against the Government of the People's Republic of Albania. The subject of the dispute and the succinct statement of the facts and grounds, on which the claim of the Government of the United Kingdom is based, are to be found in a note addressed on 9th December, 1946, to the Albanian Government through His Majesty's Ambassador at Belgrade, of which a copy is attached as Annex 1 to this Application.

2. The Government of the United Kingdom contend that the Court has jurisdiction under Article 36 (1) of its Statute as being

a matter which is one specially provided for in the Charter of the United Nations, on the grounds : (a) that the Security Council of the United Nations, at the conclusion of proceedings in which it dealt with the dispute under Article 36 of the Charter, by a Resolution, of which a copy forms Annex 2 to this Application, decided to recommend both the Government of the United Kingdom and the Albanian Government to refer the present dispute to the International Court of Justice ; (b) that the Albanian Government accepted the invitation of the Security Council under Article 32 of the Charter to participate in the discussion of the dispute and accepted the condition laid down by the Security Council, when conveying the invitation, that Albania accepts in the present case all the obligations which a Member of the United Nations would have to assume in a similar case. (A copy of the invitation of the Security Council and of the Albanian Government's reply thereto form Annex 3 to the present Application) ; (c) that Article 25 of the Charter provides that the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

3. The claim of the Government of the United Kingdom is (1) that the Albanian Government either caused to be laid, or had knowledge of the laying of, mines in its territorial waters in the Strait of Corfu without notifying the existence of these mines as required by Articles 3 and 4 of Hague Convention No. VIII of 1907, by the general principles of international law and by the ordinary dictates of humanity ; (2) that two destroyers of the Royal Navy were damaged by the mines so laid, resulting in the loss of lives of forty-four personnel of the Royal Navy and serious injury to the destroyers ; (3) that the loss and damage referred to in (2) was due to the failure of the Albanian Government to fulfil its international obligations and to act in accordance with the dictates of humanity ; (4) that the Court shall decide that the Albanian Government is internationally responsible for the said loss and injury and is under an obligation to make reparation or pay compensation to the Government of the United Kingdom therefor ; and (5) that the Court shall determine the reparation or compensation.

4. The undersigned has been appointed by the Government of the United Kingdom as its Agent for the purposes of these proceedings.

I am, etc.

(Signed) W. E. BECKETT,
Legal Adviser to the Foreign Office.

*Annex I.*NOTE ADDRESSED ON DECEMBER 9th, 1946,
TO THE ALBANIAN GOVERNMENT THROUGH
HIS MAJESTY'S AMBASSADOR AT BELGRADE.

[*Original text: English.*]

Following is the text of the note of the incidents in the Corfu Channel of 15th May and 22nd October, delivered to the Albanian Legation in Belgrade on 9th December:—

His Majesty's Government in the United Kingdom have been reviewing the recent incidents in the Corfu Channel ending with the serious incident of 22nd October, in which two of His Majesty's vessels were heavily damaged by mines with a grievous loss of life.

2. The Albanian Government will be aware that during the war of 1939-1945 some hundreds of thousands of mines were laid in the waters of the Mediterranean and North-West Europe. They will recall that in 1944 and 1945 the following areas of Albanian territorial waters were swept or searched by British minesweepers:—

Valona Bay: December 1944.

Durazzo Approaches: December 1944, March 1945.

North Corfu Channel: October 1944.

No objection to this action was raised by Albania or any other Power.

3. Only about 20,000 of the mines laid in the waters of the Mediterranean and North-West Europe had been swept by the end of hostilities. In order to carry out the formidable task of removing the remainder in a co-ordinated manner, an international organisation was set up in November 1945 by agreement between the Governments of the U.S.S.R., United States, United Kingdom and France. The objects of the organisation were:—

(1) To use the available minesweeping forces to the best advantage for—

- (a) the clearance of fishing grounds;
- (b) the widening of all channels;
- (c) the establishment of clear water for vessels repairing important telegraph cable routes;
- (d) the clearance of areas containing mines dangerous to surface shipping;
- (e) the clearance of deep anti-submarine mines.

(2) To promulgate information about mines and mine clearance to the shipping of the world.

4. The International Central Mine Clearance Board was composed of representatives of the four Powers mentioned above. On the recommendations of the Central Board, other Powers were invited to become members of Zone Boards. Thus, the Mediterranean Zone Board consists of representatives of France, Greece, U.S.S.R., United Kingdom, United States and Yugoslavia. Certain other Governments were invited to send observers, but Albania was not so invited because she possessed no minesweeping forces.

5. As the Albanian Government are aware, the second of the two objects mentioned in paragraph 2 above was fulfilled by the issue of M.E.D.R.I. charts and pamphlets by the International Routing and Reporting Authority. The areas of Albanian territorial waters swept by the British minesweepers were included in these publications. Albania, together with all other Mediterranean countries, whether represented on the Mediterranean Zone Board or not, received thirty copies of these documents and a like number of all subsequent monthly issues.

6. It was thus publicly notified that the international waterway of the North Corfu Channel was once again open to navigation and it and other swept channels, wholly or partly in Albanian territorial waters, were used by British and other ships in possession of these documents. In fact, until May of the present year, shipping of all kinds regularly used the Channel without hindrance from either Greece or Albania, the territorial Powers concerned, in accordance with the normal rule of international law, which recognises that in peace and war there is both for warships and merchant vessels a right of innocent passage through straits forming highways of international maritime traffic.

7. On 15th May, however, His Majesty's cruisers *Orion* and *Superb* while passing southward through the swept channel in pursuance of their normal occupations were fired on by Albanian batteries fortunately without damage.

8. His Majesty's Government at once protested strongly to the Albanian Government against this deliberate and outrageous breach of international law and maritime custom. They requested an immediate and public apology and an assurance that the persons responsible would be punished. The Albanian reply, dated 21st May, was completely unsatisfactory. It alleged that the Commander of the coastal batteries had signalled the ships to move further off shore, that they were not flying their flags and that they hoisted their flags when fire was opened. All of these allegations proved on investigation to be without foundation. The Albanian reply assumed that foreign warships have no right to pass through an international strait part of which is

included in territorial waters, and added that the ships would not have been fired upon if they had been recognised as British ships.

9. His Majesty's Government renewed their protest on 31st May, pointing out that the Albanian reply ignored the right of innocent passage, recognised by International Law, to which attention had been drawn in paragraph 6 above. Even if the Albanian Government mistakenly supposed that they had the right to prevent such passage, the procedure adopted for asserting it was contrary to the practice accepted by all civilised nations in cases where there are reasons for requiring vessels belonging to another Power to halt. In this instance no warning was given and fire was opened with twelve live rounds not fired across the bows of His Majesty's Ships but aimed at the ships themselves and falling astern of them. His Majesty's Government repeated their request for the punishment of the officer concerned, for an apology from the Albanian Government, and for an assurance that there would be no further interference in the right of passage through the Corfu Channel.

10. In their reply, dated the 21st June, the Albanian Government said that they had no intention of interfering with navigation on the open sea or in the Corfu Straits, provided shipping did not enter Albanian waters without permission or show aggressive intent. They reasserted the allegations made in the previous Albanian note and stated that it was not the intention to attack or damage British ships.

11. On 2nd August, His Majesty's Government informed the Albanian Government that they had taken note of this reply, that they could recognise no right on the part of a territorial Power to demand the fulfilment of conditions before entry was permitted into a recognised international channel, that they could not agree to give prior notification of passage through the Channel, and that if in future British ships were fired on in the Channel, fire would be returned.

12. On 22nd October, while a detachment of His Majesty's Ships was proceeding through the North Corfu Channel, which, as stated in paragraph 2 above, had been swept in October 1944, two destroyers, H.M.S. *Saumarez* and H.M.S. *Volage*, struck mines which had been laid in the fairway. The explosions caused serious damage to the two ships and a heavy loss of life. On this occasion the Albanian batteries did not open fire, but a vessel of the Albanian Navy appeared flying the Albanian ensign and also a white flag.

13. On 27th October, His Majesty's Government informed the Albanian Government that in view of the serious accidents to His Majesty's Ships the Channel would shortly be swept. On 30th October the Albanian Government protested to the Secretary-General of the United Nations Organisation against what they termed "the violation of territorial waters" and "provocative incursions" by British warships. It was also alleged without any justification in fact that British aircraft had flown over Albanian territory. Meanwhile, His Majesty's Government in reply to their intimation that minesweeping would shortly take place, received a note from the Albanian Government on 1st November, protesting against the entry of British warships into Albanian territorial waters on 22nd October, and stating that there was no objection to minesweeping provided territorial waters were not entered either inside or outside the Strait. Since the part of the Channel concerned lies wholly in territorial waters this statement could only be construed as meaning that the Albanian Government refused to agree that the Channel should be rendered safe for navigation. The note also stated that the Albanian Government could take no responsibility for the consequences if the minesweeping took place, and would regard it as a violation of their sovereignty.

14. The Albanian Government were thus attempting to obstruct the clearance of this serious menace to international navigation. His Majesty's Government, therefore, replied on 10th November, that the sweeping of the Corfu Channel would take place on 12th. They informed the Albanian Government that the sweeping of the Channel had been unanimously recommended by the Central Mine Clearance Board on 1st November; they defined the exact area to be swept; they declared that none of His Majesty's Ships would be stationed in Albanian territorial waters; and they stated that the operation would be carried out in the same way as the original sweeping in 1944 and 1945 to which the Albanian Government had raised no objection.

15. On receipt of this reply and on the eve of the sweeping operation, the Albanian Government addressed a further note to His Majesty's Government, stating that while the Albanian Government did not in principle object to the Royal Navy undertaking the sweeping of the Channel, they proposed a mixed commission should be set up to determine the area involved. The swept Channel had, in fact, existed for two years, and all the information published about it was in possession of the Albanian Government. Thus it can only be inferred that their motive in putting forward this last-minute proposal was to delay the

operation of sweeping the mines which, as subsequent investigations leave no doubt, the Albanian Government well knew to have been laid in the fairway.

16. The Albanian Government simultaneously addressed a second complaint to the Secretary-General of the United Nations, protesting in strong terms against the action of His Majesty's Government in presenting them with a *fait accompli*. They denied knowledge of the existence of the Central Mine Clearance Board, in spite of the fact that a request that Albania should be represented on it had already been put forward by the Yugoslav Government, doubtless with the knowledge of the Albanian Government. Finally, they again declared that the extent of the Channel could only be determined by a mixed commission set up by the United Nations and including Albania.

17. On 12th and 13th November the sweeping operation was carried out. Twenty-two mines were cut, two of which were taken to Malta for expert examination. This has shown that the mines were of German manufacture, that they were free from marine growth and that they still had grease on their mooring cables. These facts leave no doubt whatever that the mines were laid only a very short time before the date on which His Majesty's Ships *Saumarez* and *Volage* suffered damage and casualties. The condition of the mines has been verified by an independent observer who was present during the sweeping operation. Fragments recovered from H.M.S. *Volage* also confirm the origin of the mines which exploded on 22nd October, and bear out the conclusions reached above.

18. Ever since the attack on H.M.S. *Orion* and *Superb*, the Albanian authorities have maintained a close watch on all ships making use of the North Corfu Channel. Thus in June of this year merchant ships passing through the Channel were fired on, and during the passage of His Majesty's Ships on 22nd October, the coastal batteries were seen to be manned. It is certain that no minefield could have been laid in the Channel within a few hundred yards of the Albanian batteries without the connivance or at least the knowledge of the Albanian authorities.

19. His Majesty's Government must accordingly conclude that the Albanian Government either laid the minefield in question or knew that it had been laid. The Albanian Government has thus committed a flagrant breach of International Law. Under Articles 3 and 4 of the 8th Hague Convention of 1907 any Government laying mines in war-time, and *a fortiori* in peace, is bound to notify the danger zones to the Governments of all countries. (This obligation in fact applies even if the zones in

question are not normally used by shipping.) Not only have the Albanian Government never made any public notification of this minefield but they have also made no comment on the continued issue of the relevant Medri charts and pamphlets. They thus endorsed a clear statement by the recognised international authority concerned to the shipping of the world that the Channel was safe for navigation. As a result two of His Majesty's Ships have been seriously damaged and forty-four innocent lives have been lost. Moreover this conduct on the part of the Albanian Government menaced with destruction shipping of any kind using a Channel which is a normal and recognised route for international navigation.

20. His Majesty's Government demand that an apology be made to them in respect of the unprovoked attacks upon the Royal Navy, which took place on 15th May and 22nd October, and that they receive assurance that there shall be no repetition of this unlawful action. They further demand that reparation be paid for the damage suffered by His Majesty's Ships on 22nd October and that full compensation be paid to the relatives of the forty-four officers and seamen of the Royal Navy who lost their lives in consequence of action on the part of the Albanian Government which was an undoubted breach of International Law, constituted a menace to international shipping, to the safety of which the most callous indifference was shown, and must, in view of their knowledge that His Majesty's Ships habitually used the Channel and claimed the right to do so under International Law be regarded as a deliberately hostile act against His Majesty's Government.

21. As this matter is of such importance from the point of view of safety of life at sea and of the issues involved, His Majesty's Government must ask for an immediate reply. If no satisfactory reply is received within fourteen days of the delivery of this note His Majesty's Government will have no alternative but to bring the matter before the Security Council of the United Nations as a serious threat to, and a breach of, international peace and security, showing criminal disregard of the safety of innocent seamen of any nationality lawfully using an international highway.

*Annex 2.*RESOLUTION OF THE SECURITY COUNCIL OF THE
UNITED NATIONS ADOPTED ON APRIL 9th, 1947.

The following is text of Resolution passed by the Security Council on 9th April:—

“The Security Council having considered statements of representatives of the United Kingdom and Albania concerning a dispute between the United Kingdom and Albania arising out of an incident on 22nd October, 1946, in the Strait of Corfu in which two British ships were damaged by mines with resulting loss of life and injury to their crews recommends that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court.”

*Annex 3.*CABLE FROM THE ACTING SECRETARY-GENERAL
TO THE PRESIDENT OF THE COUNCIL OF MINISTERS
OF THE PEOPLE'S REPUBLIC OF ALBANIA
DATED 20th JANUARY, 1947, AND REPLY
DATED 24th JANUARY, 1947.

[*Original text in French.*]

20th January, 1947.

Colonel-General Enver Hoxha,
President of the Council of Ministers
of the People's Republic of Albania,
Tirana, Albania.

(M 5453.)

With reference to my cable of 15th January, I have the honour to inform you that the letter from the United Kingdom representative to the Security Council concerning the incidents in the Corfu Channel was placed on the agenda of the Security Council meeting which took place to-day. In accordance with Article 32 of the Charter, the Security Council decided to invite the Albanian Government to participate, without a vote, in the proceedings with regard to this dispute, on condition that Albania accepts, in the present case, all the obligations which a Member of the United Nations would have to assume in a similar case.

I should be obliged if you would kindly inform me as soon as possible whether the Albanian Government accepts this invitation, and if so, if you would advise me of the name of the delegate which it appoints to represent it and the date on which he will arrive in New York. The Security Council wishes to be in a position to study this matter as soon as possible. Please acknowledge receipt of this cable.

(Signed) DAVID OWEN,
Acting Secretary-General.

(S/258.)

24th January, 1947.

Trygve Lie,

Acknowledging receipt of your cable M 5453 dated 20th January by which you inform me that the Security Council has placed on its agenda the United Kingdom complaint against Albania with regard to the Corfu Channel incidents, I have the honour to inform you that Albanian Government accepts the Security Council's decision. Its representative to the Security Council for that question will be Mr. Hysni Kapo. He and his suite will leave soon, but because of very difficult communications impossible to fix date of his arrival in New York. Please postpone proceedings until his arrival.

(Signed) Colonel-General ENVER HOXHA,
President of the Council and Minister
of Foreign Affairs for Albania.
