

## The decision of the International Court of Justice for the Corfu Channel Incident in light of New Discoveries

Erlis Hereni

*Legal Advisor to the Minister of Infrastructure and Energy, Government of Albania*

### Abstract

The incident of Corfu Channel constitutes, without doubt, one of the most important events of the Albanian diplomatic history issue after World War II, an event that defined or, at least, did much during the following Albania's relations with Western countries, especially with Great Britain.

Regarding several attempts to resolve the incident of October 22, 1946, diplomatically, the British Government addressed a separate letter to the Secretary-General of the UN. In order to investigate this problem as soon as possible by the Council of Security, under chapter VII of the UN Charter, as the situation "jeopardizes international peace and security", British intention was to achieve the adoption of a Security Council resolution, through which Albania declared responsibility for the incident of October 22, "after mines close to the Albanian coast could not be decided without the knowledge of the Albanian authorities".

Regarding the second question posed by the compromise agreement between the parties, the Court unanimously (with parallel reasoning only British judge) stated that the operation of the British battleship mine clearance Corfu Channel, undertaken on 12-13 November 1946, violated the sovereignty of the People's Republic of Albania. The Court dismissed, in this case, the British claims that the operation undertaken for mine clearance could be justified by the right of intervention or self-help, etc. In this article we will analyse some topics related to the incident of Corfu Channel, as one of the most important events of the Albanian diplomatic history issue after World War II.

**Keywords:** *Corfu Channel Incident, UN Charter, Security Council, Albanian Government, British Government, International Law, Convention on the Law of the Sea, International Court of The Hague.*

### Introduction

The incident of Corfu Channel constitutes, without doubt, one of the most important events of the Albanian diplomatic history issue after World War II, an event that defined or, at least, did much during the following Albania's relations with Western countries, especially with Great Britain. Corfu Channel is an international strait that lies between the coast of Albania and the Greek island of Corfu. Its width varies from one to six nautical miles, so the boundary line that passes through its territorial waters separating the two countries.

In fact, when speaking about the incident Corfu Channel (MCI), keep in mind the incident leading, dated October 22, 1946, in which the explosion of the mine in northern Corfu Channel, killing several British sailors and officers, sank a ship and severely damaged another. But this incident has close links with two other incidents, that of May 15, 1946, which precedes him, and that of November 12-13, 1946, will

succeed him. In chronological order of events may appear briefly in this way.<sup>1</sup> On May 15, 1946, around 8 am, two British cruisers, "Suberb" and "Orion", were moving in the direction from north to south of the canal, within the territorial waters of Albania. Albanian coastal batteries opened fire after warning, and the two ships left.

Through an exchange of notes between the two countries, Britain claimed that according to the norms of international maritime law, its ships have the right of innocent passage in the Corfu Channel without being required to obtain permission or to give prior notice to the Government. Referring to the incident, the British side insisted that the Albanian Government apologize publicly and ensure that those responsible "will be punished rigorously". Moreover, the British Foreign Office also envisioned that further measures could be taken in the case of "disrespect" to the Government, which, among other things, anticipated:<sup>2</sup>

- a. Presentation of the issue in the Security Council, to prove that Albania does not deserve membership in the UN.
- b. Challenging Albanian demands to get war indemnity as a part of the Italian fleet because a country like Albania can not be entrusted gun modems, and
- c. British support for "Greek claims for Albanian part of the Corfu Channel".

In contrast, the Government stated that the passage of vessels in the channel area within its territorial waters, it was necessary to make prior notice first and then deal with the permission of the competent Albanian authorities. For this purpose, the General Command of the Armed Forces of Albania issued a special order that was made known to all States.<sup>3</sup>

To test the attitude of Albania, on September 21, 1946, the Royal Navy Mediterranean received orders from London to send any of its vessels in the Corfu Channel, as still discussing if it can be established diplomatic relations with Albania, so "government Her Majesty wanted to know whether the Albanian Government had learned how to behave." On this basis, on October 22, 1946, around noon, 4 British warships - two crusaders "Mauritius" and "Leander" and two destroyers "Somarez" and "Volazh" - sailed in northern Corfu Channel, within the territorial waters of Albania without permission and prior notification to the Albanian authorities.

At 2:53 pm, destroyer "Somarez" stepped on a mine underwater, at the explosion of which it was heavily damaged. At 4: 16, the destroyer "Volazh" encountered a mine and was damaged. In addition to material damage, the two explosions killed 1 officer and 43 sailors and wounded 3 officers and 39 other sailors. After this incident, unilaterally, without the consent of the International Committee for Mine Clearance and despite the protests of the Albanian Government, on 12-13 November 1946, 30 British warships, supported by aviation, performs a wide cleaning operation mines in Albanian territorial waters in the Corfu Channel.<sup>4</sup>

<sup>1</sup> Puto, A. (2008). "Public International Law", Tirana, pg. 23- 112.

<sup>2</sup> Zaganjori. Xh. (2012). "Jurisprudence and international practice", Adelprint, Tirana, pg. 95.

<sup>3</sup> Krisaf, K. (2011). "The Truth of the Corfu Channel Incident", Albanian Magazine, 27 October.

<sup>4</sup> Tare, A. (2009). "Incident of Corfu revised", Mapo magazine, 6 November.

## Elaboration

Regarding several attempts to resolve the incident of October 22, 1946, in a diplomatic manner, the British Government addressed a separate letter to the Secretary-General of the UN. In order to investigate this problem as soon as possible by the Council of Security, under chapter VII of the UN Charter, as the situation “jeopardizes international peace and security”, British intention was to achieve the adoption of a Security Council resolution, through which Albania would be declared responsible for the incident of October 22, “after mines close to the Albanian coast could not be decided without the knowledge of the Albanian authorities”. Such a resolution could not be adopted because of the Soviet veto. British proposal based on the Security Council on April 9, 1947, adopted a resolution, by which it recommended the parties “to immediately submit the dispute to the International Court of Justice, in accordance with the Statute of the Court”. Both parties accepted this resolution in principle. Albanian party officially confirmed by letter that the Government sent to the court on July 2 1947. On May 22, 1947, addressed to the British side unilaterally ICJ.<sup>5</sup>

International Court of Justice delivered three judgments of the Corfu Channel case. After the first decision concerning the issue of jurisdiction, the Court answered two main questions raised by the parties to the compromise agreement, which were:

1. *If Albania was responsible for the explosion of mines in the Corfu Channel and if the case for compensation?*
2. *If Britain had violated the sovereignty of the Albanian state when cleared mines in the Corfu Channel on 12-13 November 1946?*

The first issue that was taken was that of the Court of its jurisdiction to consider the British claims submitted through the unilateral application. As is known, according to article 36/1 of the Statute of the International Court of Justice, it has optional jurisdiction.[1] He stated that the Albanian side had not yet reached a compromise agreement and had committed no declaration recognizing the Court’s compulsory jurisdiction in the cases provided for in Article 36/2 of the Statute.

In the first ruling on March 25, 1948, with 15 votes in favor and one against, the Court dropped the allegations’ preliminary issue of jurisdiction and decided to continue consideration of the matter. She stressed that it might be presented to the individual state requirements not only in cases where mandatory predicted its jurisdiction under Article 36/2 of the Statute. According to the Court, by presenting the issue through an individual state requirement, the British Government allowed the Albanian Government to accept the Court’s jurisdiction. This acceptance was expressed already by letters submitted by the Government on July 2 1947.

This statement of the Court represents great importance for the possibility of implementing the so-called *forum prorogatum*. Even issues at the international level, which means recognition of the jurisdiction of the Court to resolve a dispute between the parties even without the formal agreement of compromise between them or a special statement, but also supported by a special act or document that, in certain circumstances, can be considered valid. The fact that Albania was not yet a member

<sup>5</sup> Krisafi, K. (2009). “*In Search of Art*”, UET Press Day 2000, Tirana.

of the UN, the circumstances of the case, was deemed important by the Court. In the next phase of the trial, the decision of April 19, 1949, the Court ruled on the merits by answering two key questions that were submitted by the parties in their agreement to the compromise.

To answer these questions, it should receive advance information, among other things, also about what state had ordered or placed mines in the Corfu Channel. For this purpose, based on the evidence and the accumulated expertise Court concluded that the authors of the operation for placing mines in the Corfu Channel remain unknown. On this basis, it bases its decision excluding guilty to planting land mines in the area.<sup>6</sup> Specifically, regarding the first question, with 11 votes in favor and 5 against, it concluded that Albania was responsible for the explosion of mines in the Corfu Channel on October 22, 1946 and, consequently, also for damages and loss of life. According to it, based on the expertise used for this purpose, laying mines in the canal was made recently, so not much time before the incident on 22 October (mine were grease) and that, according to the factual circumstances, it was impossible that Albanian authorities were not aware of the placement of these mines.

The Court further emphasized that the knowledge presumed by the Albanian Government itself contains its obligation to notify “for the benefit of navigation in general, the existence of mines in Albanian territorial waters”, warning “British warships that approached for an imminent danger these mines posed to them”.

Since the Government did not respect this obligation, the Republic of Albania declared that it was responsible under international law. On the issue of compensation and the amount that should be paid or not in this case, the Court said that it retained the right to express with its subsequent decision.<sup>7</sup>

According to the court, “it is generally known and in accordance with customary international law in peacetime, that states have the right to send their ships of war through international straits used for international navigation between two parts of the high seas, without having to seek prior authorization for this purpose to the coastal state, provided that the transition be peaceful. Except when expressly provided in an international convention, the coastlines states, in peacetime, have no right to stop such a transition through these straits”.

The Court noted that the Corfu Channel is such a strait used for international navigation and the voyage of the British ships on October 22, 1946, was peaceful. Therefore, with 14 votes in favor and 2 against, it concluded that on October 22, 1946, Great Britain had not violated the sovereignty of the state.<sup>8</sup> Regarding the second question posed by the compromise agreement between the parties, the Court unanimously (with parallel reasoning only by the British judge) stated that the operation of the British battleships to clear of mines the Corfu Channel, undertaken on 12-13 November 1946, violated the sovereignty of the People’s Republic of Albania. The court dismissed in this case the British claims that the operation undertaken for mine clearance could be

<sup>6</sup> Zimmermann, A., Oellers-Frahm, K., Tomuschat, Ch. & Tams, Ch. J. (1980). “*The Statute of the International Court of Justice: A Commentary*”, Oxford University Press, pg. 132.

<sup>7</sup> Brownlie, I. (1963). “*International Law and the Use of Force by States*”, pg. 133.

<sup>8</sup> Lalaj A. (2014). “*Burning Secrets of the Corfu Channel Incident*”, September, at [https://www.wilsoncenter.org/sites/default/files/cwihp\\_wp\\_70\\_burning\\_secrets\\_of\\_the\\_corfu\\_channel\\_incident](https://www.wilsoncenter.org/sites/default/files/cwihp_wp_70_burning_secrets_of_the_corfu_channel_incident)

justified by the right of intervention or self-help etc.

The third decision of the International Court of Justice, delivered on December 15, 1949, was about possible compensation paid to the issue of incident of October 22, 1946. In fact, regarding the decision, the court noted that the compromise of agreement between the two parties had given it the right to assess the amount of compensation.<sup>9</sup> This assessment was based on the request submitted by the British and the report submitted by the experts for this purpose. With 12 votes in favor and 2 against, the Court decided that the amount of compensation that Albania had to pay UK about the incident of October 22, 1946, was 843,947 pounds. Albania took part in this stage of the process and, moreover, stated that it would pay certain amount as compensation.

### Conclusions

The ICJ decision on Corfu Channel Incident is the first decision rendered by this court after its creation, as one of the principal organs of the UN, as the main instrument for the peaceful settlement of international disputes. However, the review of this issue in the Security Council and then by the ICJ, clearly highlighted the beginning already of the so-called Cold War and the division of states primarily in two camps or large blocks in the East and the West. However, today it can be concluded that generally, its provided decision more than 50 years ago was right. Standards imposed by the legal regime on international maritime straits and territorial waters, the right of innocent passage of commercial and war vessels in these straits and waters, etc., are confirmed by the jurisprudence following and, what is more important, also approved by international acts mainly within the UN, among which a special place occupies the Convention on the Law of the Sea 1982.

In the other hand, it can not be left unmentioned that the documents discovered in recent years clearly prove that the court concluded that the mining of the Corfu Channel "could not have been decided without the knowledge of the Government". And in this context, despite absurd objections by the Government, it is now documented that the mines in the Corfu Channel were set by the Yugoslav state, on a request that Enver Hoxha had made to Tito during his visit to Belgrade in September 25, 1946. In this regard, however, the emphasize of a detail is needed, the fact that the main witness of the process, the Yugoslav Lt. Karel Kovacic's testimony, had been fabricated and falsified to hide that the mines were set by Yugoslav ships "Miljet" and "Meljinje", just two days before the incident of October 22, 1946. Numerous archival documents clearly prove that the Yugoslav ships, in cooperation with the Albanian command of the Sazan island, had mined the Corfu Channel on September 22, 1946, i.e., a month before the incident. On the other hand, through these documents it is evidenced also the good defense to the Government, particularly by lawyers French Pierre Kot and Joe Nordman, and the disappointment for a boycott of Albania of the third of the Corfu Channel, the assessment of the amount that would be paid as compensation to the British party, thus damaging the interests of the Albanian state itself. Similarly, an absurd attitude was evidenced by the failure to enforce the ICJ decision

<sup>9</sup> Kittrich, J. (2008). "The Right of Individual Self-Defense in Public International Law", pg. 177.

by Albania. Rightly noted that the jurisdiction of this court, as a rule, is optional, but without doubt, its decision is binding and, as such, should normally be respected by the parties at trial. Regarding this problem is worth noting, also, the possibility of reopening the debate on the issue of the Corfu Channel Incident at the ICJ. That is because some of the remains of the ship "Volazh", damaged in the incident of October 22, 1946, were found close to the Albanian coast. These remains were dug up from the seabed in 2010 by an American ship that did research on archaeological objects. Having reiterated this case, based on the above arguments, the decision of the ICJ, in general, can be considered fair. However, keep in mind that the formal and legal terms, pursuant to Article 61 of the Statute of the ICJ, state that the review of a decision can be made only if a new fact and very important is discovered on the issue and that is not recognized by the party He claims, prior to the sentencing court. Moreover, according to paragraphs 4 and 5 of this Article, even in these cases, the request for review must be filed no later than six months after the discovery of the fact new, but in any case not later than 10 years after giving the decision of the court. About the possibility of reconsidering the decision of the ICJ should refer the underwater archaeological expedition of US-Albanian team in Albanian territorial waters. Albanian-American project in September 2009 introduced international archeologists with the most important findings related to the issue of the Corfu Channel Incident, opening up a very interesting debate between historians and specialists of World War II.

The team of archaeologists, aided by the devices of the ultramodern vessel "Hercules", owned by an important financier of Wall Street and one of the greatest supporters of underwater archeology American, George Robb, identified an unusual anomaly on the seabed of the Gulf of Saranda and the robotic arm in the ship made it possible to identify a set of objects, which are thought to be part of the "HMS Volage", the British destroyer severely injured in the incident.

Discovering potential remains of British ship "HMS Volage" in fact originated in research in 2007, when at a distance of about 21 kilometers from the border with Greece and to the Bay of Saranda, 125 anomalies were discovered in the Ionian bed by sophisticated equipment of the vessel "Hercules". Sonar equipment "multi-beam" scanned every centimeter of water waterfront area known as the Albanian territorial area and 67 anomalies were controlled by the robot, which showed the most numerous geological anomalies. However, over 15 anomalies were found to be "modern ship remains" and as such no further verified by the ship "Hercules".

However, in 2009 the idea that any of 15 "modern waste" may have been related to the events of October 22, 1946, recalled the decision to review the waste once again. The vessel "Hercules" issued her robot on targets identified in 2007, and just after an hour of intense observation in the controll room, the idea that finally the bow of the "HMS Volage" was found, excited all the participants. The thought that "Herkules" finally found the exact coordinates of the location of "HMS Volage" also brought unexpectedly another difficulty. Convinced that HMS Volage had already been found, in respect of those who lost their lives in this incident, it was decided that nothing would be touched. This decision would make it impossible to identify 100% the exact location of "HMS Volage". According to all international conventions it is

called military cemetery area and should be treated with the greatest respect. For this reason, the identification of the possible ship remained to be determined only by photos taken by the cameras of "Hercules" and the historical materials published on this matter.

However, for three months the photos taken by the robot of "Herkules", some experts were sent to the British and the Italian Navy for independent confirmation of their origins. Although metal parts found leave no doubt that they are of a military ship of XX century, specialists consulted confirmed that in fact the objects found under the sediments of Bistrica are objects used by the sailors cafeteria of British navy during World War II. Their style and form, and finding them still in a pile leave no doubt on this conclusion. In the bow of "HMS Volage", which was hit by mines were located kitchens, warehouses and ship facilities.

In addition, ammunition found near the other parts is typical of ammunition used by the British navy; caliber 303 set in combs and used rifles Lee-Enfield, which were widely used by British sailors, but also machine guns located on the ship. The presence of other military equipment, but also the remains of some military shoes or boots, confirmed the fact that at the prow of "Volage" personal equipment of sailors and stores were placed.

For the Albanian-American underwater archeology team there is no doubt that the discovery no more than 1200 meters from the Albanian coast of Saranda is none other than the bow of the British Royal Navy, "HMS Volage", the ship, which together with "HMS Somarez" hit mines an October afternoon in rough seas in the Albanian waters. The famous Corfu Incident, which opened a raging diplomatic battle at the Security Council at the United Nations, lined up in opposing camps countries of the Soviet and Western bloc, also led to the demolition of diplomatic relations between the UK and Albania. Not only that, but after the verdict of the International Court of The Hague that Albania is guilty, Britain seized the gold of the Albanian Bank, as the best way to force Albania to pay compensation fixed by this Court. For more than 50 years, in all the books of world history, the Corfu Channel incident has been described as an unprecedented act of a country seeking to forcibly retain territorial regions, which are international navigation areas and even worse, to place mines against ships passing peacefully in these areas. That is why Albania is guilty.

Although the verdict given by the International Court sentenced and penalized Albania by a majority vote for over 50 years as the main responsible in this incident, the discovery of the underwater archaeological expedition Albanian-American raises some important questions:

1. Were the British Navy ships on the declared course?
2. What were the Royal Navy ships doing 1200 meters from the Albanian coast?
3. Was the squadron of the English Navy conducting a peaceful passage?
4. Was this squadron ordered to shoot Albanian batteries and disembark on the shores of Saranda?
5. Who put the mines?

The history would want to know the answers to these questions, although the Tribunal judges have already given their verdict 65 years ago.

## References

- Brownlie, I. (1963). *"International Law and the Use of Force by States"* Oxford at The Clarendon Press.
- Fisler Damrosch, L. (1987). *"The International Court of Justice at a crossroads"*, American Society of International Law.
- Kittrich, J. (2008). *"The Right of Individual Self-Defense in Public International Law"*.
- Krisaf, K. (2011). *"The Truth of the Corfu Channel Incident"*, Albanian Magazine, 27 October.
- Krisafi, K. (2009). *"In Search of Art"*, UET Press Day 2000, Tirana.
- Puto, A. (2008). *"Public International Law"*, Tirana.
- Tare, A. (2009). *"Incident of Corfu revised"*, Mapo magazine, 6 November.
- Zaganjori. Xh. (2012). *"Jurisprudence and international practice"*, Adelprint, Tirana.
- Zimmermann, A., Oellers-Frahm, K., Tomuschat, Ch. & Tams, Ch. J. (1980). *"The Statute of the International Court of Justice: A Commentary"*, Oxford University Press  
[https://www.wilsoncenter.org/sites/default/files/cwihp\\_wp\\_70\\_burning\\_secrets\\_of\\_the\\_corfu\\_channel\\_incident](https://www.wilsoncenter.org/sites/default/files/cwihp_wp_70_burning_secrets_of_the_corfu_channel_incident)