

I. C. J.'s Verdict Concerning the Corfu Channel Incident

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Abstract — this article is an in-depth exposé of the first international legal dispute handled in 1948 by the International Court of Justice, between Great Britain and Albania. The author attempts to supply the reader with ample insight about the circumstances in which the maritime conflict between Albania and Great Britain took place, the geographic location, the relevance of the historic and geostrategic contexts and the other parties involved in it. The inquiry provides comprehensive referential evidence from British and Albanian sources alike, so as to avoid a possible slide into subjective assessment. The body of the article is written to stay as truthful as possible to the sequence of events which ultimately concluded with ICJ's decision in favor of Great Britain. The author maintains that, for a variety of reasons listed at the end of the article – political, historic, post-conflict and otherwise – the verdict resulted unfair to the small country of Albania, and brought about substantial economic hardship as a result of a significant quantity of Albanian Government treasury gold confiscated by the British form the German at the end of the Second World War.

Index Terms — Corfu, dispute, Albania, Britain.

I. INTRODUCTION

Quite often it is argued among historians and experts of the field of international relations on the first event that marked the beginning of the Cold War. Several events may 'fit the bill.' However there are not many to agree that the first spark of conflict, which for the first time since the end of the 2nd World War aligned in an international judicial case the Communist Bloc versus the Capitalist West, was the 1946 Corfu Channel Incident. This was also the first case filed with the International Court of Justice. On May 15th 1946, less than 1 year from the end of the 2nd World War, two British warship cruisers – HMS Orion and HMS Superb – came under fire from Albanian fortifications as they were crossing the Corfu Channel following a previous inspection and the cleaning of the strait from German mines. No damage or casualties were inflicted. (Paul & Spirit, 2008) This offensive action of the Albanians angered the British considerably. They had just won the war and supposedly ruled the seas. They could not ignore this episode and wanted to be sure that Albanians understood that the strait between Corfu and Albania could and should be used freely by ships taking their lawful and peaceful journeys. The British demanded an immediate and public apology from the Albanian Government. The Albanians refused to apologize claiming that they had the right to strike since the British cruisers had trespassed the Albanian territorial waters without prior notification.

Revised Version Manuscript Received on July 15, 2015.

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“In an exchange of notes Great Britain took the position that warships could pass through the channel without Albania's advance (or consent), (Walbel, 2009) the Albanian authorities disregarded Great Britain's position claiming that the Corfu Channel was ruled by the laws of armed conflict since Greece had in place a state of war against Albania (which remained such up to the 1980s). Considering that Great Britain was an ally of Greece and Greece had the enemy status, Great Britain obviously could not be considered a neutral State by Albania. Both parties, however, did not see it reasonable to settle this issue through a mere exchange of diplomatic notes. They had other plans in mind... The British stated that they did not recognize any right on the part of territorial power of Albania, and could not therefore agree to give prior notification of passage through the channel. They warned that if British ships would be fired upon in the future, fire would be returned. (Maher, 2009). On October 22nd of the same year a squadron of 4 British warships (composed by destroyers Samuarez and Volage, and cruisers Mauritius and Leander) left the port of Corfu and proceeded north-ward, through the channel (which had previously swept for mines) in the North Corfu Strait. Samuarez and Volage diverted their route and approached considerably the bay of Saranda (the southern coastal city of Albania). Suddenly Samuarez struck a mine and incurred serious damage. Volage was right away instructed to give her assistance towing her out of the Albanian territorial waters, toward the Greek island. In the process Volage struck another mine and was also badly damaged, but managed to complete the towing of the damaged ship to Corfu. 44 sea- men died on the spot as the mines struck; 42 others were wounded. An Albanian vessel, while raising a white flag, approached the damaged warships for help, but help was refused by the British. (Milo & Meçollari, 2009). This incident infuriated tremendously the British authorities, and on January 13th, 1947 they deposited a dispute with the United Nations Security Council under Article 35 of the U.N. Charter. “The Great Britain Ambassador to the UN, Sir Alexander Cadogan, presented the UK case against Albania to the Security Council. According to Cadogan, the detailed direct evidence which he laid out showed that the mine field had been deliberately, recently and secretly laid contrary to Articles 2-5 of the Hague Convention No. 8 of 1907 which forbade the laying of un- notified minefields, and that, in any event, what had occurred was a crime against humanity. [...] On March 25th, 1947, after three months of elaborate investigation and extensive debate, the Soviet Union vetoed the proposed Security Council resolution condemning Albania.” (Maher, 2005) Even so, Australia's position in the S.C. at the time played an influential role in regard to the British-Albanian dispute, as Herbert V. Evatt – prominent lawyer and Foreign Minister of Australia – proposed that despite the Soviet veto a case of such concern, which amounted to a potential crime

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against humanity, could not be ignored and ought to be submitted to the I.C.J. On April 9th, 1947, with 8 votes in favor, 0 against, and the Soviet Union and Poland abstaining, the S.C. issued its 22nd resolution, the content of which is quoted at length:

The Security Council, Having considered statements of representatives of the United Kingdom and of Albania concerning a dispute between the United Kingdom and Albania arising out of an incident on 22 October 1946 in the Strait of Corfu in which two British warships 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. (U.N.S.C., 1947). Great Britain submitted the case to the I.C.J. unilaterally, and Albania filed a preliminary objection regarding the jurisdiction of the I.C.J., claiming that The Hague Court had no authority in settling an international dispute, which involved a non-U.N. Member State without its consent (Albania was not a member of the U.N. at the time). "However, Albania's letter of protest emphasized that notwithstanding Great Britain's unilateral application, it was, as an exception prepared to appear in the Court to avoid in this manner creating a precedent for the future." (Walbel, 2009) Surprisingly for Albania, the I.C.J. regarded its letter of protest as a voluntary acceptance of the Court's jurisdiction, and dismissed Albania's preliminary objection. This decision of the Court on March 25th, 1948 ultimately opened the dispute's proceedings.

II. RESEARCH OBJECTIVE

The following sections of this research paper will be organized according to a sequential order of events, capitalizing on those eminent details and developments that impacted the outcome of the dispute in the I.C.J., and eventually the political developments and international relations of Albania with the outside world. The main question is structured in two portions: [1] what were the implications of international law in the 1948 British-Albanian dispute (?), and [2] what are the reasons of the Albanian argument for partial decision by the I.C.J.? The objective of this research paper is: first, to shed some light on this incident, many instances of which, mainly for political and national integrity motives, and have been kept in careful concealment by both British and Albanian governments; second, to decipher as clearly as possible the I.C.J. decision to make Albania accountable for this incident, in a time and circumstance when Albania did not have the logistics and technological capabilities to be (and would not want to be) the perpetrator; and third, to show the reasons why the majority of the Albanian scholars and researchers of the field defend the thesis that the I.C.J. verdict was to a good extent partial and favorable to the British.

III. THE INCIDENT: FACTS AND TESTIMONIALS

Background information

Seen from the British perspective, the 2nd World War had finished less than a year prior to the mid-May '46 incident. Great Britain got out of the war prevailing as one of the big

triumphal powers along with the United States and the Soviet Union. It was equipped with the second largest naval fleet, after that of the United States, and it proudly ruled and patrolled the seas in every corner of the globe. On the other hand, Albania, a small Southeast Balkans country, with a population of barely 1 million, was also aligned on the side of the victorious countries of the Communist Bloc, after fighting a destructive 5-year liberation war against the Italian and German occupiers. The partisan struggle of the Albanian Liberation Army was led by a 35-year old commander of Marxist-Leninist convictions, who would later rule Albania with an iron fist for over 4 decades. His name was Enver Hoxha. In 1941, Josip Broz Tito's communist Yugoslavs helped him tremendously in founding the Albanian Communist Party, which would thereafter lead till 1945 the country's liberation struggle. That is when the Albanian friendship with Tito's Yugoslavs was cemented. Right after the liberation Albania enjoyed excellent bilateral relations with Yugoslavia, and till 1948 was heavily influenced by Tito's foreign policy. Meanwhile, in the south of Albania, the Greeks (who were aligned with the Allies during the war) conducted a ruthless genocide and ethnic cleansing in the Albanian-populated region of Chameria in Northwestern Greece. In June 1944, while the liberation struggle against the Germans had reached its peak in Albania, the Greeks (who had freed their country from the Germans since May) organized paramilitary gangs to expatriate all the Muslim Albanians of the Chameria region. By March of 1945, a few months after Albania was liberated from the Germans, 3.200 Chams of Muslim faith (men, women and children) were barbarically murdered, and 25.000 others were forced to leave their homes and flee to Albania. The remaining Chams of Christian Orthodox faith were spared, but were forcefully Hellenized. (Hoxha, 1984; Vickers, 2007). All these events had staggeringly aggravated the Albanian diplomatic stand towards Greece at that period. The Hellenic country, since 1914, had territorial claims over southern Albania. (At the time Albanians had just established their own sovereign state, after 500 years of Ottoman domination.) The Greek pretenses consisted in the majority of the Albanian southern territory, which they began to call 'Northern Epirus.' Two and a half decades later, in 1940, the Greek government adopted the state of war towards Albania. The reason - according to the Greeks - consisted in the fact that when Fascist Italy occupied Albania in 1939, the Italian King Victor Emmanuel annexed the small Balkanic country as part of the Italian Empire, and in 1940 made use of it as a base for the Italian attack on Greece. (Hoxha, 1984) The Greek government considered Albania as a collaborating State of the Italian Fascists and ratified the 'state of war.' It did not lift the state of war with Albania until late in 1987, so during the years 1944-1946 - when the Corfu Channel incident happened - Albania and Greece were de jure in a state of war, and their bilateral relations were heavily embittered. Furthermore, Greece "renewed its territorial claim over Northern Epirus (unsuccessfully, as matters turned out) in the negotiations leading to the treaties that dealt with the consequences of the Second World War." (Zanga, 1987). In the months following the end of the war, the Albanian communist elite, which had indisputably seized political power in the country, strove hard to gain membership recognition by the U.N. However, Great

Britain and the United States, which strongly opposed the communist regime settlement, had an objective to temporize Albania's U.N. membership recognition for as long as they could, in an effort to overturn (or at least jeopardize the power of) the newly-formed communist government headed by Enver Hoxha. The communists understood that Allied Powers (particularly the British and the Americans) regarded them as 'a thorn in the flesh' and raised their alertness. (Meçollari, 2009) The Albanian Communist Party perceived every initiative taken by the British and the Americans in Albania as one of reactionary intentions. Several British-American civilian and humanitarian aid missions (including the United Nations Relief and Rehabilitation Administration [U.N.R.R.A.] mission) (Hoxha, 1984) were banned from exercising their duties in Albanian territory. Certain measures were so protectionist toward the involvement of western powers that amounted to paranoia.

The developments that took place after the incident

After the October 22nd incident, in which 44 British lives were lost, the British Admiralty informed immediately the highest ranks of its government. The information became available to the British diplomacy and politics within hours, but for several days the British general public was kept in the dark regarding the incident. The mass media covered this event vaguely admitting that British lives were lost, but the number of lost lives was not revealed until several months later. (Walbel, 2009) During the 12th and the 13th of November 1946, three weeks after the October incident, Great Britain unilaterally undertook a mine-sweeping operation of the Corfu Channel, by penetrating even inside the Albanian territorial waters. The commanders of the Albanian military units in Saranda had received strict orders by Enver Hoxha in person to observe closely, but not open fire or provoke armed conflict, unless the British forces would debark on land. (Hoxha, 1984) There was an atmosphere of extremely high tension among military forces as well as military and political leadership of Albania during those two days. Immediately after the operation, Albanian diplomacy protested energetically in the international forums claiming that the British had violated the national sovereignty of Albania. (Milo, 2010) During the mine-sweeping "twenty-two moored mines were cut. Two mines were taken to Malta for expert examination. During the mine-sweeping operation it was thought that the mines were of the German GR type, but it was subsequently established that they were of the German GY type." (The Corfu Channel Case [Merits], 1949) They had no rust and nor were they covered in moss. This led the British to believe that those mines were laid after the war, most probably between the 15th of May and the 22nd of October, and it was very likely that they were laid by Albanians. Once all the evidence was gathered by the British, they took the case to the Security Council, and as pointed out in the introduction, the Soviet veto denied the condemnation of Albania, and the U.N.S.C. 22nd resolution left the British with no choice but to transfer the case to the I.C.J.

The 'XCU Files' and the question of 'Innocent Passage'

This time around the British were facing a legal case, with prosecutors, attorneys, testimonials and judges; this was not a mere accusation against a much weaker and smaller State,

shaped according to the British interests and decided by 10 votes at the U.N.S.C. Many questionmarks were raised, and – prior to the court proceedings, for about three months – a long heated debate took place in the British Government and the British Admiralty offices concerning the question of the disclosure of the XCU documents. The highest ranks of the British Government Administration, judicial system and military command were involved: the First Lord of the Admiralty – George Hall, the Attorney General – Hartley Shawcross, the British Prime Minister – Clement Attlee and the Lord Chancellor – William Jowitt. The legal adviser of the Foreign Office – Eric Beckett, The Secretary of State, the Minister of Defense (Carty, 2004) and several law officers were also comprised in the debate. The XCU documents (the XCU and the XCU1 documents to be exact; both provided through web links to the appendix to this article) were basically the written orders under which the Royal Navy Squadron's cruise was undertaken on October 22nd, 1946. These documents were of essential importance in determining whether the Squadron's October 22nd sailing was an innocent passage or a provocative one. The term 'innocent passage' concerns the sailing manner. So the sailing manner is regarded as such if the navy squadron moves at a relaxed speed in a line formation, with the intention of traveling from point A to point B, "with guns trained fore and aft," a minimal load on guns, and the minimum necessary number of sailors in fire positions. However, as evidence shows in the XCU documents (check web links provided in the appendix), there was no intention of innocent passage by the Royal Navy Squadron on October 22nd. The XCU documents were never disclosed to the I.C.J., because the British knew that their disclosure would heavily compromise Great Britain's success in this dispute. The documents were kept secret for a long period of time by the British Admiralty, and only recently were released into the Admiralty's archives. The October 22nd British maneuver was indeed an operation – called by the Admiralty "Exercise Corfu" (short title XCU) (Kinahan, 1946) – undertaken with the deliberate intent to test Albania's attitude, and to exercise a 'punitive response' (Milo & Meçollari, 2009) on the Albanian coastal batteries in case they had not learned their lesson. After the May 15th initial incident, when the Royal Navy Squadron had been fired upon from the Albanian shores, the Albanian Government had been informed through diplomatic notes on Great Britain's uncontested right to use the North Channel for the passage of H.M. (Her Majesty's) Ships without neither prior notification being given to the Albanian authorities, nor the need to receive their permission. All the operational details were elaborated and expressed in written form in the XCU documents. Every eventuality was predicted, including the reactive measures of the squadron in case artillery would be fired again from the Albanian shores. Four ships (two cruisers and two destroyers) and two aircrafts were to participate in the operation; the aircrafts would remain out of sight of Albanian territory and territorial waters until ordered to intervene (in case an armed conflict would erupt). This was not a casual passage from point A to point B with in-line sailing formation and minimally-loaded guns. Expressed in the own words of Legal Adviser Beckett in a letter written to Attorney General Shawcross, the British "[...] were fully prepared for a regular

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short bombardment of the Albanian batteries and positions if fire was opened. The targets had been selected, air spotting cover arranged etc.” (Carty, 2004) This was a clear provocative action seeking armed conflict within the territorial waters of a sovereign State. The British were also prepared to tape and have video records of every eventuality, and the October 22nd Incident tapes have in fact been issued. After counting all the pros and cons of a potential disclosure of the XCU documents, the British decision leaned more towards a concealment of the facts. In spite of everything, British Admiralty orders concerning the route of the damaged ships were not much relevant to the actual incident. The initial position of Attorney General Shawcross was that “it would be better to dis- close the documents, [...] as the implications arising from a refusal so to do might be even more sinister than those which would be justified by the documents themselves.” But the Defense Committee of the Cabinet (consisting of the Prime Minister – Clement Attlee, the Defense Minister – Albert Alexander, Foreign Secretary – Eric Beckett, and the First Lord of the Admiralty – George Hall) which was entitled to the final decision-making concluded that a disclosure of the XCU documents could potentially rob the naval passage of its innocent character.22 The British were determined to win the dispute against Albania at any cost. A loss of the dispute could bring serious political implications to the British Government, so it was of crucial importance to interpret the naval passage as one or an innocent nature, even at the expense of altering the truth. Prior to accepting the lead of Great Britain’s prosecution team in The Hague, Shawcross had very limited knowledge about the Admiralty orders, the XCU documents and their content. As a final decision for concealment was taken, Shawcross commented that, had he known of the documents earlier he would have hesitated to become involved in the proceedings. He “would certainly not become a party to the suppression of evidence in this way were not such serious international issues at stake.” (Carty, 2004) Nonetheless Shawcross accepted the lead of the prosecution team, after expressing (through a letter) his bitterness to the Prime Minister. Part of the text of that letter is quoted below:

It is a fundamental principle of the practice of the Courts of our country and of the conduct of our legal profession that parties to litigation are not entitled to use merely those documents which they think will assist their case and to suppress others which are inimical to it. I must make it clear that neither the Solicitor General, nor myself, nor, I am sure, any of the other members of the Bar who are assisting us in this matter, would for a moment contemplate being parties to the course of conduct now forced upon us by the Admiralty’s failure to procure and produce these documents earlier had our country’s international position not been so gravely involved. As it is, we retain great misgiving about the propriety of what is being done, which we can only justify on the principle ‘*my country, right or wrong, my country.*’ We all feel that we must insist that circumstances such as these are not allowed to recur. (ADM 1/22504, Hartley Shawcross to Prime Minister, November 3rd, 1948)

The Albanian blame for the October 22nd incident

There is no question that the Albanian Government was in full knowledge of the newly-laid minefield in the vicinity of the

coasts of Saranda. The question is how much were the Albanians involved in this matter, and whether this was a plan was intended and executed by the Albanian Government (through the logistics and technical help of a more powerful country) or it was imposed on Albania by e third power (possibly one of the Socialist Bloc countries) with the intention of igniting a conflict. The Albanian historian, politician and international relations scholar Paskal Milo has done an excellent investigative job to verify this. In his book “The Hidden Truths of The Corfu Channel Incident” he reveals that:

The minefield was laid by two Yugoslav minesweeping ships during a mid-September night of 1946 (sometime between September 16th and the 17th to be more precise), in collaboration with the Albanian Government, following a preliminary agreement between the heads of both countries’ governments, Enver Hoxha and Josip Broz Tito, which was in turn preceded by an actual technical-operational agreement between the headquarters of the Albanian and Yugoslav armies. (Milo & Meçollari, 2009). The hard evidence supporting Milo’s claim (which is included in his book) is retrieved from the governmental archives of diplomatic notes’ facsimiles of Albania, Yugoslavia and the Soviet Union, which – during the later years – were finally made available to the media and historians. Once again, these fresh facts reveal that the Albanian Government was fully aware of, and even assisted to, the mine-laying operation carried out by the Yugoslavs in mid-September, 1946, on the Strait of Corfu.

IV. THE 1948 ICJ CASE

The proceedings started on November 9, 1949. The British prosecutors spoke at the beginning, charging Albania – on the basis of the 1907 Hague Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines (Hague Convention VIII, 1907) – of laying a fresh minefield in the Corfu Strait, located in the vicinity of Saranda Bay, and carried out between May 15th and October 22nd. Their argument consisted in the reasoning that the Channel had been previously swept of minefields from the Royal Navy Fleet and that, when British ships had sailed that route during the May 15th incident, the route was free of mines. Furthermore, when the British minesweepers took their unilateral minesweeping operation on November 12th-13th, 22 German GY-type contact mines were pulled out. A detailed inspection of two of those mines (carried out in Malta) revealed that they were newly-laid mines, free of rust and moss, which were laid no longer than a few months prior to the incident. The British position initially was that, during that 6-month interval, the mines had been laid by the Yugoslavs, with the request of the Albanian authorities. The British team relied heavily on the testimonials of two Yugoslav witnesses, Karel Kovacic (former Lieutenant-Commander in the Yugoslav Navy) and Zhivan Pavlov (former sailor in the Yugoslav Trade Fleet). Kovacic’s testimonial consisted in the presumption that he had witnessed (in the afternoon of October 18th, 1946, from the terrace of his house in Sibenik) the loading with GY-mines of two Yugoslav minesweepers, which were moored at the quay in Panikovac Cove, a small inlet at Sibenik. According to Kovacic, the two ships had sailed from Sibenik during the night, and had returned about October 26th, four days after [...] the second Corfu Channel incident. (Pearson, 2006)

However, when the Court acknowledged that there was no conclusive evidence submitted by the British regarding this claim, the British prosecution team put together another charge, according to which Albania was in knowledge of a mine-laying operation between May 15th and October 22nd, because it was impossible for the mine-laying to be taking place without the agreement (or at least the consent) of the Albanian authorities. In order to come up with a sound conclusion, the Court sent a team of experts to coasts of south Albania. Essentially, the task of these experts was to come up with an opinion on whether the Albanian coastguards would be able to spot from the distance of their positions a mine-laying operation taking place at night, in normal weather conditions. After taking all the necessary time to complete their task, and even performing a night visibility test (on January 28th, 1949), the finalized experts' report to the Court stated:

The Experts consider 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 look-outs were equipped with binoculars as has been stated, under normal weather conditions for this area, the mine-laying operations [...] must have been noticed by these coastguards. (The Corfu Channel Case [Merits], 1949). Obviously, the Court gave significant weight to the opinion of the experts, and considered this report as a locality examination that gave every guarantee of correct and unbiased information. The Albanian defense attorneys' turn to speak was set on January 20th-22nd, 1949. (The attorneys that represented Albania were the French Pierre Cot and Joe Nordmann.) In short, the conclusive points of the Albanian defense team were:

- There is no concrete proof that the mines which caused the October 22nd incident were laid by Albania
- There is no concrete proof that these mines were laid by a third party, on Albania's account
- There is no concrete proof that these mines were laid with the help, or consent, of Albania
- There is no concrete proof that, prior to the October 22nd incident, the Albanian authorities were in knowledge of these mines being laid in Albania's territorial waters

Consequently, according to international law, Albania cannot be held responsible for the October 22nd explosions that happened in her territorial waters, and for the harm and loss of lives that occurred as a result. (Milo, 2010). Moreover, Albania's defense team 'fired back' to the British charges by asserting its view of October 22nd maneuver carried out by the British. On account of the Albanian Government the attorneys argued that the sovereignty of Albania was violated because the passage of the British warships on October 22nd, was neither an innocent passage, nor an ordinary one, but a political mission. The ships were sailing in diamond combat formation with soldiers on board; the position of the guns was not consistent with innocent passage; the vessels passed with crews at action stations; the number of the ships and their armament surpassed what was necessary in order to attain their object and showed an intention to intimidate and not merely to pass; the ships had received orders to observe and report upon the coastal defenses and this order was carried out. (The Corfu Channel Case [Merits], 1949). In addition,

Pierre Cot – the lead attorney of the Albanian defense team – presented to the court proof showing the provocative intentions of Great Britain. It was a telegram of the British Admiral Kinahan sent on October 21st, 1946, to the British Mediterranean Naval Command, through which it was revealed that the British warship sail would be undertaken to also test Albania's attitude. (Meçollari, 2009) The validity of this document was admitted by the Great Britain Agent. Moreover, the document stated: "The most was made of the opportunities to study Albanian defenses at close range. These included with reference to XCU [...]" (Carty, 2004) Based on the undisputable authenticity of this telegram, the Albanian defense team asked for further evidence regarding military orders for the British Warship Squadron sail on October 22nd, 1946. These orders were the XCU documents. Albania's request was considered by the court as reasonable and relevant to the case. So based on Article 49 of its Statute and Article 62 of its Rules, the Court requested that these documents be produced. As mentioned above, the British refused to produce these documents pleading naval secrecy. At the Albanians surprise, the Court agreed with this consideration of the British and the content of the XCU documents remained concealed.

The Verdict

In April 1949 the Court established that, since the exchange of diplomatic notes – following the May 15th incident – did not lead to any clarification, the British Government wanted to ascertain by other means whether the Albanian Government would maintain its illegal attitude and again impose its view by firing at passing ships. The legality of this measure taken by the British Government cannot be disputed, provided that it was carried out in a manner consistent with the requirements of international law. The 'mission' was designed to affirm a right which had been unjustly denied. The British Government was not bound to abstain from exercising its right of passage, which the Albanian Government had illegally denied. In view of the firing from the Albanian battery on May 15th, this measure of precaution was not regarded as unreasonable by the Court. Four warships – two cruisers and two destroyers – passed in a manner that can be deemed as provocative, at a time of excessive political tension in this region. The intention must have been, not only to test Albania's attitude, but at the same time to demonstrate such force that Albanians would abstain from firing again on passing ships. However, considering all the circumstances of the case, as described above, the Court was unable to characterize the measures taken by the United Kingdom authorities as a violation of Albania's sovereignty. In view of a disputable violation of the Albanian territorial waters on October 22nd by the British, the Court gave judgment that Great Britain did not violate the sovereignty of Albania by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946. In view of the responsibility of the Albanian Government for the damage that occurred to the British destroyers, the loss of human lives and the physical harm suffered by the wounded, the Court determined that the Albanian authorities were in fault for "not notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and for failing to warn the

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approaching British warships of the imminent danger to which the minefield exposed them.” (The Corfu Channel Case [Merits], 1949) Such obligations are not based on The Hague Convention of 1907, No. VIII, as the British claimed. Rather, they are based on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of the freedom of maritime communication; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States. Albania neither notified the existence of the minefield, nor warned the British warships of the danger they were approaching. In regard to everything mentioned above, the Court concluded that Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life which resulted from them, and that there is a duty upon Albania to pay compensation to the United Kingdom. The amount of compensation that Albania was bound to pay to Great Britain was almost identical to the figure that the British prosecution team requested at the beginning of the case: £843,947. In view of the legality of “Operation Retail,” the minesweeping operation carried out unilaterally by the British on November 12th-13th inside the Albanian territorial waters, the Court did not accept Great Britain's line of defense, and it regarded the operation as a violation of the international law. The Court, however, did recognize the Albanian Government's complete failure to carry out its duties after the explosions, and the slacking nature of its diplomatic notes, which to a certain extent, justified the action of the British Government. It is necessary to point out that the Court never dug into the ‘mystery’ of who laid the mines, if Albania was unable to do so because of her lack of logistics and technical capabilities and knowhow. The Court rejected the claims of the British party that the mines were laid by the Yugoslavs with the knowledge of the Albanian Government, declaring that there was insufficient evidence to reach to such conclusion.

How fair was it, and what were the consequences for Albania?

Many questions have been raised about the fairness of this case's verdict. It is essential to note the particularity of this controversial case; it was the very first dispute assumed by the I.C.J. (an organ of the U.N., which in turn was established only one year prior to the incident). Great Britain was one of the U.N. ‘pillar’ states; one of the five veto bearers in the U.N. Security Council. WWII was over since no longer than a year, and Great Britain was one of the triumphal Powers. Considering these facts alone, it is easy to assume that Great Britain was in a much favorable position compared to virtually unknown Albania. Nevertheless, several unanswered questions remained since the Court's final verdict was communicated. A careful interpretation of this whole controversial case lead to some strong points, which the Court (unwillingly or not) failed to consider:

- Is the Corfu Channel, in the legal sense, an international strait?
- Was the international law – in terms of innocent passage – respected by the Royal Navy Squadron on October 22nd, 1946?

- Did Albania enjoy the right to deny casual passage to foreign ships which would trespass on her territorial waters, including in the Corfu Strait?
- What status did the British Military have in regard to Albania in 1946?
- Was the charge against Albania ever asserted by conclusive evidence?
- What responsibility did the State that laid the minefield bear?

All these inquiries did not receive proper answer by the verdict of the I.C.J., and on these grounds alone the verdict is considered partial by several historians and law scholars in Albania. Albania never paid its obligation to Great Britain during the Communist rule; it was finally paid by the democratic government in the beginning of the 90s. Enver Hoxha always regarded the I.C.J. decision as unjust, one-sided and oppressive to the equal rights of the smaller nations such as Albania. This disobedience to the international law caused grave consequences for the economy and international relations of Albania. In response to Albania's refusal to pay her dues the British Government froze considerable Albanian assets in the banks of Great Britain – the Albanian Government treasury gold, which was taken by the Germans during World War II, and later collected by the British after the war. Albania suffered major political consequences as well. The incident aggravated the country's international relations with Great Britain, as well as all the Western powers. As a result, Albania was not accepted in the U.N. and went through a number of other obstacles with regard to her international recognition in the global arena. The West imposed on Albania an economic embargo as well, even though this was (to a good extent) absorbed by the economic help of the Soviet Union, the other countries of the Communist Bloc, and China.

V. CONCLUSIVE REMARKS

On October 22nd, 1946, the British came to Saranda Bay prepared to carry out a short naval warfare. The mission was designed to ‘teach Albania a lesson’ for not respecting the casual passage norms of international law earlier that year. The incident was provoked by the British, but the British did not expect to pay such a high price as a consequence of their display of supremacy. It was a time of high regional tension between Albania and Greece, the diplomatic relations between these two States were at an all-time low, and even a state of war was in place. The Albanian Communist Government was just established, still very fragile, and very much overthrowing prone by the reactionary outside forces. Enver Hoxha feared very much a confrontation with Greece in the Albanian southern border, and did everything in his power to not allow a Greek raid erupt in Saranda. Moreover, the mines were laid by the Yugoslavs with Albania's consent not to withhold a possible Greek-British naval operation from the sea. The British were far from welcomed also, since they were considered allies with the Greeks, had naval bases in Greece and Corfu, and were part of Western Powers Bloc. The I.C.J. failed to recognize the gravity of the situation in the Albanian southern border, and charged Albania for a mine-laying operation, which should have been (to a certain extent) justified given the high tension in the region and the state of war. It should also be considered that the Albanian authorities

and the Albanian delegation in The Hague were ill-prepared for this case. They had very poor knowledge of international law and regulations, and were too powerless to match the virtuosity of the British Prosecution Team. Another major shortcoming of the Court was the decision to not hold Great Britain responsible for refusing to produce the XCU documents. Were those documents made available for the Court to review, the outcome of this case would have probably been totally different. In closure, it is pertinent to paraphrase the last statement of Albania's lead attorney, Pierre Cot, in his speech prior to the Court's verdict: "In front of this sacred institution, not only the small and the weak, but the mighty and the powerful too, must learn to behave themselves."

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VI. APPENDIX

The links below provide web access to the XCU and XCU1 documents - the written orders for the 1946 Royal Navy Squadron's cruise:

XCU

<https://drive.google.com/open?id=0ByL3yLypYaeOWTZXZ0puc0hEU1E>

XCU1

<https://drive.google.com/open?id=0ByL3yLypYaeOOHZVV1J1Z110Unc>

REFERENCES

- [1] 1907 Hague Conference. (1907, October 18). Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines. The Hague, The Netherlands.
- [2] U.N.S.C. Resolution 22 (The United Nations Security Council April 9, 1947).
- [3] The Corfu Channel Case (Merits), 1 (The International Court of Justice 1947–1949).
- [4] Cartey, A. (2004). The Corfu Channel Case – And The Missing Admiralty Orders. The Law and Practice of International Courts and Tribunals.
- [5] Hoxha, E. (1984). The Anglo-American Threat to Albania (English Translation). Tirana: "8 Nëntori" Publishing House.
- [6] Kinahan, H. R. (1946, October 5). The Use of North Channel, Corfu. Memorandum, N°. 0321/13. Famagusta.
- [7] Maher, L. (2005). Half Light Between War and Peace: Herbert Vere Evatt, The Rule of International Law and The Corfu Channel Case. *Journal of Legal History*, 47, 47.
- [8] Meçollari, A. (2009). The Corfu Channel Incident: Biased Justice. Vloza: Triptik. Milo, P. (2010). The Hidden Truths: Corfu Channel Incident. Tirana: Botimet "Toena".
- [9] Milo, P., & Meçollari, A. (2009). Incidenti i Kanalit te Korfuzit (on "Shqip" - a "Top Channel" flagship broadcasting show in Albania). (R. Xhunga, Interviewer)
- [10] Paul, J., & Spirit, M. (2008). Corfu Channel Incidents - 1946. Retrieved September 18, 2011, from Britain's Small Wars: <http://britains-smallwars.com/Cold-war/corfu.html>
- [11] Pearson, O. (2006). Albania as Dictatorship and Democracy. NYC: The Centre for Albanian Studies.
- [12] The International Court of Justice. (n.d.). Article 49 of the Rome Statute & Article 62 of I.C.J. Rules. The Hague, The Netherlands: Retrieved from: <<http://www.icj-cij.org/documents/index.php?p1=4>>.
- [13] Vickers, M. (2007, January). The Cham Issue - Where to Now. Conflict Studies Research Centre, Shrivenham, United Kingdom.
- [14] Walbel, M. (2009). Corfu Channel Case. In R. Wolfrum, Max Planck Encyclopedia of Public International Law. Oxford University Press.
- [15] Zanga, L. (1987, September 3). Lifting Of the Greek-Albanian State of War. RADIO FREE EUROPE Research. Tirana, Albania.

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