

THE CORFU CHANNEL INCIDENT IN THE INTERNATIONAL COURT OF JUSTICE

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Abstract

The incident which occurred on 22nd October 1946 in the Corfu Channel where two UK warships encountered a mined zone that killed 46 people remains still an International Law debated case. Albania and the UK failed for decades to resolve this dispute. Interventions from the United Nations and the International Court of Justice couldn't give a definitive solution. The first act that damaged the relations between the countries was the UK warships being shot by Albanian batteries near Saranda Bay and the second which set fire to them was the incident of Corfu Channel. Many diplomatic notes were exchanged after the incident but without any results. The dispute was then brought to the United Nations (Albania back at the time wasn't a member state) for solution. The UN meetings didn't produce a reconciliation between the parties. What followed was the case being sent to the International Court of Justice by the UK. Even the court's decision didn't bring a final solution to the dispute with countries finally declaring peace after 50 years of "war" in 1998.

Keywords: Corfu Channel, The United Nations, The International Court of Justice, dispute.

1. Introduction

Despite the victory of World War II was eminent, two of the winning side countries ended up facing themselves in the International Court of Justice. Albania and the United Kingdom were the first as well to put into movement the ICJ. To have a better understanding of their relations during the time we need to step back in the year the Second World War ended. The United Kingdom responded negatively to the international request of Hoxha's government to be recognised (Milo, 2003, p. 30). They were allies during the war but the relations between Albania and the UK could be considered hostile. We have also to take under consideration the fact that the United Kingdom and Soviet Union agreed to divide their influence in South-Eastern Balkan countries: Greece (90%-UK 10% Soviet Union) Romania (10%UK 90% Soviet Union) (Milo, 2003, p. 26). Albania was left outside of this agreement, seen probably as irrelevantly strategically positioned. This explains the climate of political relations during the time and shows the little importance the UK gave to Albania at that period.

Albania and the United Kingdom were facing difficulties in settling diplomatic relations between them but right when the delegates of both governments were about to sign the exchange of diplomatic troops, the UK officials were notified to stop and quit. What happened? On 15th May 1946 two of the United Kingdom's warships, H.M.S Orion and H.M.S Super approached near Saranda Bay on their way to Channel Corfu and encountered fire by the coastal guard of Albania (Chung, 1959, p. 20). The UK's officials sent a note of protest to Albania's new government, but its leader Hoxha wasn't keen to apologise. He justified everything was done to protect Albanian water territories. Disappointed from this response the UK informed the Royal Admiral of the Mediterranean that they would respond to fire if a similar situation happened again. On 22nd October 1946, they sent two destroyer ships to the Channel of Corfu to test Albanian government's attitude. This proved to be

disastrous. Two of the British warships, H.M.S Saumarez and H.M.S Volage struck a mined zone one kilometre away from the Albanian shore which caused the death of 44 sailors (Chung, 1959, p. 20). Both ships were heavily damaged. Three weeks later, on 10th November 1946 the UK notified Albania that they would carry a mine sweeping operation in the Channel of Corfu. (Chung, 1959, p. 23). More than 10 British warships showed up in the Albanian water territories on 12th November 1946. The Albanian government protested to this unilateral decision. The zone had been cleared for the last time during 1945 and it was unclear how the German mines could still be there. The United Kingdom was determined to bring the dispute to United Nations.

2. British appeal to the security council

First, the matter was placed on the provisional agenda of the Security Council of the United Nations as “the complaint of the United Kingdom against People’s Republic of Albania” (Chung, 1959, p. 30). Interesting was the fact that one of countries wasn’t yet part of the UN, Albania for being precise. It was not called upon the UN establishment in San Francisco in 1945. Anyhow, Article 32 of the Charter was clear: “Any State which is not a Member of the United Nations, if it is party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute” (Chung, 1959, p. 31).

When the UK first presented the case to the United Nations, they encountered a negative reaction from the USSR representative Gromiko (Milo, 2003, p. 143). He reasoned that the incident did not threat overall peace and security and that an agreement between the parties to clear the mine zone hadn’t been taken into consideration. The Russian official abstained but with all other countries voting pro, the case was put in day agenda. After some months of discussions, finally the project-resolute of the UK with the amendments of the USA was ready. Yet again USSR was contrary and vetoed the resolute. The only choice left to the UK was to work for another resolute and propose the dispute to be judged by the International Court of Justice. So, she did.

3. Arguments in the International Court of Justice

On 25th March 1948 Albania and the United Kingdom signed the Special Agreement and sent it to the Court. The two main questions raised to the Court by the parties were: 1) Is Albania responsible under International Law for the explosions which occurred on the 22nd of October 1946 in Albanian waters and for the loss of human life and is there any obligation to pay compensation?

(2) Has the United Kingdom under international law violated the sovereignty of the Albanian People's Republic with the acts of the Royal Navy in Albanian waters on the 22nd of October and on the 12th and 13th November 1946?

Memorials and Counter Memorials between the two countries in front of the Court followed next. (Milo, 2003, p. 205). The United Kingdom claimed in the Court that in any of the separate occasions they didn’t infringe International Law rights and that they crossed by mistake the Albanian water territories just once. They concluded that they didn’t have to ask forgiveness to the Albanian Government and didn’t have to pay any fine to them. Albania’s Counter Memorial in the Court which strongly concerned the UK was the obligation they had to present to Albania and the International Court of Justice the documents and reports of their mission in the Channel of Corfu from 20th October 1946 to 23rd October 1946. Another strong point would be the testimony of a Yugoslav officer named Kovacic, who insisted in the Court that Yugoslavia sent two ships with Y type mines to the Channel of Corfu on 18th October 1946. This fact concerned a lot of Yugoslavia’s government who although had

broken their relationship with Albania offered them their help. They came out with a declaration calling Kovacic a spy of fascism and servant of the UK government (Milo, 2003, p. 209). Because Yugoslavia and Russia's relations had split up during the period, the United Kingdom tried not to involve Yugoslavia in the case. Plan of operations XCU and XCU1 contained detailed information about the mission of 22nd October 1946. Many debates were held between high-ranking officials of the government. The final response for the Albanian Counter Memorial in the Court from the Great Britain's general prosecutor was: "The documents contain operational source information and provide our tactical and technique about our armament, so I am guided not to open them for security reasons" (Milo, 2003, p. 212).

The Court opened officially the public session on 9th November 1948. The United Kingdom's general prosecutor Shawcross held the opening speech. His main thesis was that the waters where the British warships had sailed were international and that during any moment, they hadn't violated Albanian sovereignty. He also raised the question that why Albanian authorities didn't warn British ships regarding the mined zone therefore causing the devastating deaths of 44 British sailors. They strangely avoided blaming Yugoslavia for placing the mines despite having information regarding that. Anyhow, having Kovacic's testimony as a strong point, Shawcross called Yugoslavia's government declaration as pure propaganda (Corfu Channel, Merits, 1949, p. 3). Beckett, the other advocate, also maintained the position that the UK hadn't violated sovereignty of Albania. He pointed out that the passage of the warships was totally peaceful and that they were ordered to open fire just in case they would be under attack from Albanian batteries. He tried to justify one more time because the documents XXU and XCU1 couldn't be opened to public.

On 15th November 1948, it was the turn of Albania's advocates to appear in the courtroom. Kahraman Ylli took the opening speech claiming that the Albanian government came to the court voluntarily, and even though they were a small country compared to the Imperial Britain, they knew they had equal rights in the Court (Corfu Channel, Merits, 1949, p. 104). After Ylli, it was the turn of the French lawyers Nordman and Cote to defend Albania. Nordman accused the United Kingdom they had political intentions over Albania (Corfu Channel, Merits, 1949, p. 110). Cote also put in discussion the testimony of United Kingdom's main witness, Kovacic. He asked the Court to consider it null and made them a strange proposal. He asked from the British officials to choose an Albanian expert who could analyse the secret reports XCU and XCU1. Cote claimed that if they refused his proposal, it would be clear that they had something to hide (Corfu Channel, Merits, 1949, p. 205). Cote also wanted from the UK to provide reports on their mine sweeping operation held in 12-13 November 1946. His remark was: "It's not a matter to prove whether Britain nation is big or not, it's the case to learn if they acted conform international law rights in the Channel of Corfu (Corfu Channel, Merits, 1949, p. 223).

Hearing of eyewitnesses present during the incidents and experts was what followed next. British officers, sailors, the commanders of "Saumarez" and "Volage" warships, the captain of the port of Saranda, chief commander of Albania's coastal guard were called to testify in the Court. The culminant phase throughout the Court's work was when French lawyer Cote started interrogating UK's most important testimony, Kovacic. The British tried to counterbalance by bringing in the Court another witness who repeated Kovacic's same claims. Albanian witnesses were interrogated by the United Kingdom's lawyers who were particularly interested to evidence the Albanian order to shoot against the British warships in the first incident of May (Corfu Channel, Merits, 1949, p. 749). The Court's president Guerrero, once again asked from the parties to bring: Albania, the reports of 10th May 1946, the UK, the reports XCU and XCU1. A group of experts was nominated to go and expertise in person in Saranda. Their duty was to find what happened on the days of the incidents. The

British weren't pleased by the neutral conclusions even though the expert's statement that it would have been impossible for the Albanian coastal guard not to see the mine's placement was in their favour (Gardiner, 1966, p. 229).

The concluding remarks from Albania's advocate Cote in the Court were: "It wasn't proved that the mines which caused the incident of October were placed by Albania. It wasn't proved that Albania knew about the existence of the mines. For instance, Albania is not guilty and shouldn't pay any compensation to United Kingdom's government" (Corfu Channel, Merits, 1949, p. 1179). He also pointed out that the Court was not competent to decide the amount of compensation that had to be paid. He invited the Court to adopt the conclusion that the UK violated Albanian territory with their mine sweeping operation in November 1946.

4. The Court's verdict

On 9th November 1949, the Court came out with the verdict based on the questions that were raised by both parties in their Special Agreement of 25th March 1948. President of ICJ Guerrero read the following: "Albania is liable under International Law Rights for the explosions and for human life loss" (Corfu Channel, Merits, Judgement, 1949, p. 23). The Court voted 11 against 5, reasoning that it was Albania's responsibility to rule over its coastal shore and that it would have been impossible for them not to notice the mines placement with all the alert they had during that period in the Channel of Corfu. The Court also concluded that there was no prove that could affirm that it was Albania that placed the mines (Corfu Channel, Merits, Judgement, 1949, p. 23). By 10 votes to 6, they reasoned that they were competent to decide the amount of compensation Albania had to pay to the UK (Corfu Channel, Merits, Judgement, 1949, p. 26).

Regarding the second question raised in the Special Agreement: "Had the United Kingdom violated according to International Law rights and Albania's sovereignty with the missions of 22nd October 1946 and 12th November 1946", the Court ruled out: 14 votes against 2, that the United Kingdom hadn't violated Albania's sovereignty during their October's passage and unanimously voted that sovereignty had been violated in November (Corfu Channel, Merits, Judgement, 1949, p. 32). The judges reasoned that: "The pretended right of intervention with a mine sweeping operation couldn't be seen any different than way of showing political force and that during past that had caused abuses which would happen no more in International Law Rights". (Corfu Channel, Merits, Judgement, 1949, p. 35). It was decided by the Court that Albania could make in another session its claims about the compensation amount requested by the UK. Its advocates mentioned the article of the United Nations statute which made decisions binding only for countries which were members or accepted an invitation of being part but that was rejected by the Court because Albania had agreed in a note to be part of the judgement (Quincy, 1949, p. 491).

Even though advised by its lawyers to continue the "battle" in the Court, Albania decided not to take part in the future sessions and tried to settle the compensation dispute privately with the British government. On 15th November 1949 President of the Court Guerrero, read the decision that fined Albanian government by 843.947 pounds (Corfu Channel, Compensation, Judgement, 1949, p. 248). With this verdict, it was finally concluded the juridical dispute between the countries that lasted 3 years. After a series of meetings in Paris representatives of the parties failed to reach an agreement regarding the payment details. Great Britain foreseeing that Albania was unwilling to pay cancelled the decision of returning the gold that was seized from Albania by the Nazi and which was in custody in Britain (Krisafi, 2008, p. 114).

5. Facts that the states kept hidden to the Court

Indications that Albania asked for help to mine the Channel of Corfu rose when the regime changed into democracy. Many documents kept concealed during Communism came finally into light. A strong proof that Albania could have mined the zone with the help of Yugoslav, is a telegram sent from Albanian Minister of Interior during time Koci Xoxe to the Yugoslav minister. He wrote the following: “Gen.Rankovic, regarding the 4 British warships we give this information: they were travelling from Corfu to Saranda. They struck in the mined zone from us. The distance was 2000 metres from our coast” (Milo, 2003, p. 94).

Another important communist figure during the time, Mehmet Shehu declared to the Chinese envoy in 1970: “Our territorial waters were mined by us. In 1946 I went to Beograd. During the time, I was Chief Commander of the army, so I proposed the zone to be mined. The mines were placed by the Yugoslav sailors. After Enver Hoxha gave me the approval I agreed to Tito’s proposal. Just me, comrade Enver, Tito, their Chief Commander of the Army and the Yugoslav sailors were aware about the mines.” (Milo, 2003, p. 94). Anyhow, dictator Enver Hoxha kept the same position throughout all his life. He wrote in his book published in 1982 the following: “Possibly the mines had been laid by the Germans during the war, but the probability cannot be excluded that they had been put there by the British themselves to create a conflict.” (Hoxha, 1982, p. 419).

In the other side, the UK was so protective towards its secret reports that even when in 1963 major secret classified documents were opened to public, the Channel of Corfu ones remained in strict custody. Non-liquidation of money compensation set by the court could have been the reason. They remained closed for the public until late 1990s. When they were opened, new facts emerged from XCU and XCU1 reports: The order given by the United Kingdom’s general was clear: If they would have been put under fire again invasion of Albania was the next move.

6. Conclusion

40 years from the incident weren’t enough for the states to resolve the dispute. In 1991, Albania changed the regime from Communism to Democracy. Finally, their diplomatic relations with the United Kingdom were restored and “the apple of discord” was solved once and for all. A memorandum was signed between the parties in 1992 concluding that Albania had to pay 2 million dollars to Britain and in return would get the quantity of 1.574 kg gold that had been kept seized for 40 years. In 1998, after half a century, we can say that this dark chapter of story was closed. Too many facts were hidden by the parties to the Court and to each other. If sincerity and cooperation between them would have prevailed from the beginning maybe the souls of the unlucky British sailors would have rested in peace earlier. Anyway, as the old expression says, better late than ever!

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