

## **The diplomatic and legal aspects of the Corfu Channel Incident**

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[Greetings]

### **I. Introduction**

I am particularly honoured and pleased, not only as a Corfiot but also as a lawyer, to have received an invitation from the association “Albert Cohen Corfu” to talk to you, today, about the diplomatic and legal aspects of the Corfu Channel Incident. When I happen to mention my Corfiot origin to my colleagues or students abroad, two things come to their mind: the appealing landscapes of Corfu island and the Corfu Channel Incident.

Natural beauty is certainly not the exclusive reason why Corfu has become a pole of attraction throughout the ages. Its geographical position, which provides parallel access to the Mediterranean and the Adriatic Seas, to the Balkan Peninsula and Western Europe, has made that island, over the centuries, an epicentre of antagonism among major commercial and military powers. Indicatively, Corfu proved to be the outer limit to the Ottoman Empire’s attempts to advance into Western Europe when the Venetian fleet pushed back the successive Ottoman sieges of the island. The Albert Cohen Corfu Association has already organised an interesting event about the historical siege of 1716. Previously, around 430 BC, the battle between the Corfiots and the Corinthians in Corfu, signalled, according to Thucydides, the first incident of the Peloponnesian War between the Athenians and the Spartans. In 1946, Corfu was destined to be the scene of one of the first incidents of another war, the Cold War; that incident formed the subject matter of one of the first cases discussed within the Security Council of the United Nations (UN) and of the first ever case adjudicated by the International Court of Justice in The Hague. That incident was the Corfu Channel Incident.

## **II. Preliminary observations on the historical background of the Corfu Channel Incident**

Major General Charles Vyvyan shared with us the facts of the Incident. Before proceeding, in turn, to the description of the diplomatic and legal aspects of the Incident as such, I shall first briefly present you with the historical background against which it was evolved.

The Second World War ended on 2 September 1945. During the war, the United Kingdom had provided financial and military aid to the Albanian forces that were resisting against the Axis powers; what exactly the United Kingdom had also done with respect to the Greek resistance forces. However, although the establishment of a communist regime was prevented in Greece after the end of the war, it was the communist partisans of Enver Hoxha that prevailed in Albania.

The Iron Curtain directly affected relations between the United Kingdom and Albania. The United Kingdom refused to recognise the victory of Hoxha's communist party in the Albanian elections of December 1945. The deterioration of links between the two countries forced the members of the British Army, who had fought on the Albanians' side during the war, to leave Albanian territory. The United Kingdom then suspended any development of diplomatic relations with Albania and, along with the United States, blocked its accession to the newly established UN.

The tension between the United Kingdom and Albania was also "extended" to Greek territory. Right after the end of Second World War, a civil war broke out in Greece. The British came to the aid of the Greek government in its efforts to suppress an armed overthrow by the communist resistance organisation E.A.M. (the National Liberation Front). By contrast, Hoxha's partisans took the side of the Greek communists. In addition, Greece and Albania were at war and in dispute regarding their land and sea borders, particularly concerning Greece's territorial claims over Northern Epirus. The United Kingdom at this time supported Greek claims.

I would finally like to add to this brief explanation of the background of the conflict between the United Kingdom and Albania, that both countries, for different reasons, were demonstrating something of an excess of pride at the time. The United Kingdom had just come out of the war as one of the victorious Great Powers. The crown jewel of the British Armed

Forces, the Royal Navy, was one of the most powerful naval powers on earth. Its Mediterranean Fleet was proudly flying the British flag on its ships, which sailed all the way from Gibraltar to Cyprus and, of course, in the Ionian Sea, whose islands had been under the British protection until 1864.

On the other hand, albeit under a communist government, the population residing in the geographical territory of the then Albanian State was enjoying its freedom after almost 2000 years of consecutive conquerors and totalitarian regimes that ruled the area for centuries. This population was now resting its hopes for a future free of foreign oppressors on the new state of Enver Hoxha.

It is in the light of those preliminary remarks that we shall assess not only the factual background put forward by Major General Charles Vyvyan but also the diplomatic and legal aspects of the Corfu Channel Incident, to the presentation of which I will swiftly proceed.

## **II. The diplomatic aspects of the Corfu Channel Incident**

I would like to remind you that the Corfu Channel Incident was comprised of three separate incidents: *first*, the shots fired by Albanian batteries at the two British warships on 15 May 1946 (**the gunfire incident**), *second*, the damage provoked to two British warships when they struck moored mines on 22 October 1946 (**the mine explosion incident**) and, *third*, the sweeping of 22 mines by the Royal Navy on 12 and 13 November 1946 (**the minesweeping incident**). All three events took place *within Albanian territorial waters*.

### *A'. The initial negotiations between the United Kingdom and Albania*

The first incident of gunfire against the two British warships gave rise to a diplomatic correspondence between the British and Albanian governments. Initially, the United Kingdom requested Albania's public apology. Albania contented that this had been nothing than a misunderstanding: that its battery opened fire only because of the non-responsiveness of the British warships to its signals and that a ceasefire was ordered as soon as the warships' flags were noticed.

This correspondence would have probably been terminated at this point and the incident would have fallen into oblivion if Albania had not added that, in the future, the British warships would be able to pass through the Albanian territorial waters *only after prior authorisation*. The United Kingdom countered that there is a well-established practice of permitting, in time of peace, the unconditional passage of every foreign ship through the territorial waters of a state, when those waters form a route of international maritime traffic between two parts of the high seas. It is true that the Corfu Channel, a large part of which is wholly within the territorial waters of Greece and Albania, constitutes a passage between the international waters of the Adriatic and the Mediterranean Seas.

Being outraged with the condition of prior authorisation, the British government warned Albania that if its batteries in future opened fire on any British warship, the fire would be returned.

When the Royal Navy attempted once more to pass through the Albanian waters on 22 October 1946, it was not in position to return any fire since this time it was not harmed by the Albanian guns *but by mines* of a then unknown source.

*B'. The elevation of the conflict between the United Kingdom and Albania to the United Nations*

In the aftermath of this second incident, the United Kingdom announced to Albania that its Royal Navy would clear all mines laid within the Albanian waters, which it did on 12 and 13 November 1946 despite objections raised by the Albanian government.

Enver Hoxha then sent two telegrams to the UN Secretary-General, protesting about the illicit movements of the British warships in Albanian territorial waters. Two elements might take us by surprise in that respect: *first*, the total failure to refer, in those telegrams, to the damage caused to two British warships due to striking mines on 22 October and to the discovery of an entire minefield by the Royal Navy on 13 November; *second*, the fact that, even informally, the British-Albanian conflict was brought for the first time before the UN, and was thus turned from a bilateral into an international matter, by Albania, which was not then a UN member, and not by the United Kingdom, which was one.

The United Kingdom finally submitted a formal request to the UN Security Council on 10 January 1947. Albania agreed to participate in the discussions before the Security Council and accepted in advance the binding effects of any decision the Security Council would adopt in the future. The intense negotiations, which lasted about half a year, led to the Security Council's Resolution of 9 April 1947. This Resolution *recommended* that the two states should *jointly* refer their dispute before the then newly established International Court of Justice in The Hague.

#### **IV. The legal aspects of the Corfu Channel Incident**

##### *A'. The case of the Corfu Channel Incident before the International Court of Justice in The Hague*

The United Kingdom did not seek an agreement with the Albanian government but instead, *unilaterally* brought the case before the International Court. This reasonably gave rise to the procedural question whether Albania was bound by the British application, since it was neither a member of the UN nor had concluded any treaty by which it recognised the Court's jurisdiction.

However, Albania finally consented to appear before the Court alleging that its stance demonstrates its devotion to the peaceful settlement of inter-state disputes as well as its conviction about the justice of its case. We thus observe with interest that Albania pursued, or at least assented to, achieving vindication through the international institutions of the Western world. That was perhaps the only way for a weak country, in terms of military might, against a global superpower - even in the case of the Corfu Channel Incident, which was initiated, as we will see, due to the manifestly illegal acts and omissions of Albania.

Hence, the Court handed down its **first judgment** with which it concluded that both the United Kingdom and Albania would be bound by its subsequent judgments on the merits of the case.

On 15 December 1949, the Court rendered its **second and most important judgment**. In that judgment, the Court addressed, in essence, three questions raised by the two litigant states.

The **first question** was as follows: Is Albania responsible for the damage provoked to the two British warships due to mines which occurred on 22 October 1946 within Albanian territorial waters?

As regards this question, the Court ascertained at the outset that the British allegation, according to which the mines had been laid by Albania, should be excluded since Albania did not possess any navy at the time. In the absence of sufficient evidence, the Court also rejected the possibility of Albania's connivance. It concluded though that the minelaying operation was undoubtedly carried out *with the knowledge* of the Albanian authorities. The Court thus discarded the Albanian claim that the mines had been possibly anchored in secret by a third state, such as Greece.

Shortly before the end of the war, in 1944, the United Kingdom had swept for mines and cleared a sea corridor through the Corfu Channel. It was from this sea corridor that the British warships had passed intact on 15 May 1946 (the gunfire incident). Nevertheless, it was in the same sea corridor where the two British warships were later damaged by mines and where, subsequently, a minefield was discovered by the Royal Navy. Against those considerations, the Court found that the mines that had struck the two British warships belonged to that minefield, which had been laid recently and, specifically, from 15 May to 22 October 1946.

During that period, Albania was zealously keeping a watch over its territorial waters, mainly on account of the state of war with Greece. This special vigilance on the part of the Albanian forces was also proved by the gunfire incident against the two British warships on 15 May. The Court also appointed experts, who investigated in person the Bay of Saranda and confirmed that it would have been impossible that a foreign power laid a whole minefield without being noticed by the adjacent Albanian coastguards.

The Court also assessed the contradictory attitude of the Albanian government: while it had firmly denounced the "*penetration*" of the British ships into its territorial waters, it never brought up the violation of its sovereignty caused by the laying of an entire minefield within its territory by a purportedly unknown third power.

Consequently, the Court found that Albania had full knowledge of the existence of the minefield within its territorial waters.

The Court concluded that *elementary considerations of humanity* obliged Albania to promptly notify the international community, let alone the British warships, about the danger that was lurking in its waters.

After finding Albania internationally responsible for the damage to the two British warships, the Court proceeded to the **second question**, which was as follows: Did the United Kingdom violate Albania's sovereignty by reason of the British warships' mere passage through the Albanian territorial waters on 22 October 1946 (namely, the date of the mine explosion incident)?

I need to clarify, first, that irrespective of the answer to that question, the international responsibility of Albania concerning the explosion of the two British warships would be unaltered. Albania's obligation to make known the existence of mines in its territorial waters is distinct from the existence or not of a ship's right to pass through them.

The Court affirmed the existence, in time of peace, of an international custom of *innocent passage* through international straits (as we mentioned earlier) not only of commercial but also of war ships, without the need of any prior authorisation. Neither the "*special circumstances*" invoked by Albania due to the state of war with Greece nor the fact that the Straits of Corfu constitute only an alternative passage for transit between the Adriatic and the Mediterranean Seas, could justify such a prior authorisation.

The Court also deduced that the passage of the British warships through the Corfu Channel was indeed *innocent*. This conclusion is not affected by the intentional character of the passage nor by the military readiness of the British warships. The Court, after recalling the illegal behaviour of the Albanian army on 15 May (the gunfire incident), held that the United Kingdom was certainly entitled on 22 October not only to verify Albania's compliance with international rules but also to protect their application in case of new gunfire.

Although the Court ruled in favour of the United Kingdom as regards the two first questions, it did not do likewise when it addressed the **third question**, which was as follows: Did the

United Kingdom violate Albania's sovereignty by reason of the minesweeping carried out by the Royal Navy on 12 and 13 November 1946 within Albanian territorial waters?

The Court observed that in this case the United Kingdom did not merely attempt innocent passage through Albanian waters but mobilised within them a significant number of its ships, despite Albania's objections, with the aim of performing a wide-ranging minesweeping operation.

As noted by the Court, the acceptance of such a practice would mean the unchecked violation of the borders of weaker states under the pretext of *discovering* and securing evidence of *possible* infringements of international law. As a result, such a practice would lead to the distortion of the principles of independence and sovereignty, which represent the foundations of the international relations.

The Court thus condemned the United Kingdom with respect to this issue. It did not, though, provide for any compensation in favour of Albania since it had not suffered any material damage.

In its **third and last judgment**, the Court awarded the United Kingdom compensation of approximately 845,000 pounds – a significant sum at the time – for the damage caused to the two British warships as well as for the costs to be covered by the British government in respect of the deaths and injuries of the naval personnel.

Albania refused to pay that sum. In retaliation, the United Kingdom withheld a quantity of gold which had been looted by Nazi Germany during the war and was now in the Bank of England's possession in the name of a Tripartite Commission composed of the United Kingdom, the United States and France. Part of this gold belonged to Albania and would thus have been handed over to it by the Commission. A solution was finally found after the collapse of the Soviet Union, in 1996, that is *50 years after the explosion of the mines*. Albania paid compensation – at a significantly lower level than that awarded by the Court – compensation to the United Kingdom, which in turn delivered the retained gold to Albania.

Of particular interest are then unknown documents which saw the light of day much later. These lead to the conclusion that the mines had not been laid with the mere knowledge of



Albania *but with its connivance*. More specifically, Albania seems to have requested Yugoslavia lay the mines in Albanian waters immediately after the first gunfire incident against the British warships. In addition, these documents reveal the *purely military nature* of the British warships' passage on 22 October. The British warships had received detailed instructions about how to react in case of hostile actions by the Albanian coastal artillery, about the positions of the Albanian batteries that had been detected after the first incident of gunfire as well as about the immediate air assistance in case of conflict.

If those elements had been considered by the Court, while its reasoning might have slightly differed, its conclusions, in my opinion, would have been unchanged. Even if Albania had been condemned for connivance, it would have been called on to pay the United Kingdom the very same amount it was called on to pay anyway, namely full compensation for the entirety of the damage sustained by the United Kingdom. On the other hand, the Court made clear in its judgment that the United Kingdom had every right, after the first incident of gunfire, to take any precautionary measures to safely carry out a new passage through the Corfu Channel.

#### *B'. The influence of the Corfu Channel Incident on the evolution of International Law*

In any case, the answers given by the Court to the three questions I elaborated on earlier over time impacted the evolution of international law.

*First*, the finding that Albania bore responsibility for the explosion of mines in its territorial waters served as a basis for the incurring of liability of states when they knowingly allow their territory to be used for acts with damaging effects on neighbouring or other states. The most representative example of such cases is the ecological disasters.

*Second*, the custom of innocent passage through the territorial waters of a state, when those form an international highway, was codified, for the first time, by the Geneva Convention in 1958. Thus, the right of both commercial ships and warships to unimpeded access to the high seas, in time of peace, has been formally recognised. We can perhaps contemplate what significance such a right has nowadays, for instance, for the aircraft carriers and the other warships of the United States.

*Third*, the condemnation of the United Kingdom for executing a minesweeping operation in Albanian waters is a milestone in the distinction between, on the one hand, the illegal unilateral intervention of one state in the internal affairs of another and, on the other hand, the *two categories* of legitimate use of force against another state: *first*, the self-defence, to which a state can resort in the event of a present or imminent attack against it and, *second*, operations undertaken by one or more states, in pursuance of a decision by the UN Security Council, in cases of flagrant violations of the UN Charter.

## V. Epilogue

Before closing my speech, I will try to draw two general conclusions.

*One conclusion of diplomatic nature:* If a similar incident had occurred prior to the Second World War, the reaction of a Great Power, such as the United Kingdom, would have probably been an immediate and grandiose military offensive against the weaker forces of Albania. However, a new world had come into existence with the creation of the United Nations. In that new world, the United Kingdom not only strived for its vindication through the international institutions - which actually materialised 50 years after the Incident - but also accepted its partial condemnation.

*And one conclusion of legal nature:* In spite of the historical judgment of the International Court of Justice in The Hague, both Albania and the United Kingdom continued to resort to controversial practices similar to the ones for which they had been condemned. Albania, up until today, permits the passage of warships through its territorial waters *on the condition of prior authorisation*. On the other side, the United Kingdom executed a military operation in Iraq in 2003 without fulfilling the hitherto established conditions of self-defence or of an authorized operation following a Security Council decision, but rather, again, with the aim of *exploring and securing evidence of possible* violations of international law.

With these thoughts, I warmly thank you for your patience and I hope that, from today, when thinking of Corfu, you will also call to mind the Corfu Channel Incident.

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### Φωτογραφικό υλικό / Photographs



*Κατά τη διάρκεια της πρώτης ακροαματικής διαδικασίας ενώπιον του Διεθνούς Δικαστηρίου της Χάγης το 1947 επί της υπόθεσης του Επεισοδίου των Στενών της Κέρκυρας στη Μεγάλη Αίθουσα Συνεδριάσεων του Δικαστηρίου στο Παλάτι της Ειρήνης. / During the first hearing before the International Court of Justice in The Hague in 1947 about the case on the Corfu Channel Incident in the Great Hall of Justice in the Peace Palace.*



*Πανοραμική όψη του Διεθνούς Δικαστηρίου της Χάγης κατά τη διάρκεια μιας ακροαματικής διαδικασίας στο 1948. /  
A panoramic view of the International Court of Justice in The Hague during one of its hearings in 1948.*



*Η βρετανική νομική αποστολή κατά τη διάρκεια μιας ακροαματικής διαδικασίας ενώπιον του Διεθνούς Δικαστηρίου της Χάγης το 1948. /  
The British legal delegation during an oral hearing before the International Court of Justice in The Hague in 1948.*



*ΑΡΙΣΤΕΡΑ/LEFT: Ο Attorney General, Sir Hartley Shawcross, κατά την εκπροσώπηση του Ηνωμένου Βασιλείου, ως leading counsel, ενώπιον του Διεθνούς Δικαστηρίου της Χάγης το 1948. / Attorney General, Sir Hartley Shawcross, while representing the United Kingdom, as its leading counsel before the International Court of Justice in The Hague in 1948.*

ΔΕΞΙΑ/RIGHT:

*O Pierre Cot,*

*Γάλλος πολιτικός και δικηγόρος,*

*ήταν leading counsel της Αλβανίας ενώπιον του Διεθνούς Δικαστηρίου της Χάγης / Pierre Cot, a French politician and lawyer, was the leading counsel of Albania before the International Court of Justice in The Hague.*