INTERNATIONAL COURT OF JUSTICE

YEAR 1949.

1949.
April 9th.
General List
No. 1.

April 9th, 1949.

THE CORFU CHANNEL CASE

(MERITS)

International responsibility for explosion of mines in territorial waters.—Connivance with another State; evidence.—Minelaying by persons unknown.—Knowledge of minelaying by State party to proceedings: control of territory as ground for responsibility; its influence on the choice of means of proof; indirect evidence, concordant inferences of fact.—Breach of obligations resulting from knowledge of minelaying, grounds for responsibility.—Court's jurisdiction to assess amount of compensation; interpretation of Special Agreement; subsequent attitude of Parties.

Right of passage of warships in time of peace through straits connecting two parts of the high seas.—International custom.—Straits in which right of passage exists.—North Corfu Channel.—Innocent passage; purpose of passage and manner of its execution.—Production of documents at Court's request; refusal to produce; Article 49 of Statute of Court and Article 54 of Rules.—Minesweeping undertaken in territorial waters contrary to wish of territorial State; justification derived from theory of intervention and notion of self-help.—Violation of territorial sovereignty; international responsibility; satisfaction in form of a declaration by the Court of violation of right.

JUDGMENT

Present: *Acting President* GUERRERO; *President* BASDEVANT; *Judges* ALVAREZ, FABELA, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir Arnold MCNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO; M. EČER, *Judge* ad hoc.

In the Corfu Channel case,

between

the Government of the United Kingdom of Great Britain and Northern Ireland, represented by :

Sir Eric Beckett, K.C.M.G., K.C., Legal Adviser to the Foreign Office, as Agent and Counsel, assisted by

The Right Honourable Sir Hartley Shawcross, K.C., M.P., Attorney-General, replaced on November 15th, 1948, by

Sir Frank Soskice, K.C., M.P., Solicitor-General ;

Mr. C. H. M. Waldock, Professor of international law in the University of Oxford,

Mr. R. O. Wilberforce,

Mr. J. Mervyn Jones, and

Mr. M. E. Reed (of the Attorney-General's Office), members of the English Bar, as Counsel,

and

the Government of the People's Republic of Albania, represented by :

M. Kahreman Ylli, Envoy Extraordinary and Minister Plenipotentiary of Albania in Paris, as Agent, replaced on February 14th, 1949, by

M. Behar Shtylla, Envoy Extraordinary and Minister Plenipotentiary of Albania in Paris, assisted by

M. Pierre Cot, *Professeur agrégé* of the Faculties of Law of France, and

Maître Joe Nordmann, of the Paris Bar, as Counsel ; and

Maître Marc Jacquier, of the Paris Bar, and

Maître Paul Villard, of the Paris Bar, as Advocates.

THE COURT,

composed as above,

delivers the following judgment :

By a Judgment delivered on March 25th, 1948 (I.C.J. Reports 1947-1948, p. 15), in the Corfu Channel case, in proceedings instituted on May 22nd, 1947, by an application of the Government of the United Kingdom of Great Britain and Northern Ireland against the Government of the People's Republic of Albania, the Court gave its decision

on the Preliminary Objection filed on December 9th, 1947, by the latter Government. The Court rejected the Objection and decided that proceedings on the merits should continue, and fixed the time-limits for the filing of subsequent pleadings as follows: for the Counter-Memorial of Albania: June 15th, 1948; for the Reply of the United Kingdom: August 2nd, 1948; for the Rejoinder of Albania: September 20th, 1948.

Immediately after the delivery of the judgment, the Court was notified by the Agents of the Parties of a Special Agreement, which is as follows:

"The Government of the People's Republic of Albania, represented by their Agent Mr. Kahreman Ylli, Envoy Extraordinary and Minister Plenipotentiary of Albania at Paris;

and

the Government of the United Kingdom of Great Britain and Northern Ireland, represented by their Agent, Mr. W. E. Beckett, C.M.G., K.C., Legal Adviser to the Foreign Office;

Have accepted the present Special Agreement, which has been drawn up as a result of the Resolution of the Security Council of the 9th April, 1947, for the purpose of submitting to the International Court of Justice for decision the following questions:—

(1) Is Albania responsible under international law for the explosions which occurred on the 22nd October 1946 in Albanian waters and for the damage and loss of human life which resulted from them and is there any duty to pay compensation?

(2) Has the United Kingdom under international law violated the sovereignty of the Albanian People's Republic by reason of the acts of the Royal Navy in Albanian waters on the 22nd October and on the 12th and 13th November 1946 and is there any duty to give satisfaction?

The Parties agree that the present Special Agreement shall be notified to the International Court of Justice immediately after the delivery on the 25th March of its judgment on the question of jurisdiction.

The Parties request the Court, having regard to the present Special Agreement, to make such orders with regard to procedure, in conformity with the Statute and the Rules of the Court, as the Court may deem fit, after having consulted the Agents of the Parties.

In witness whereof the above-mentioned Agents, being duly authorized by their Governments to this effect, have signed the present Special Agreement.

Done this 25th day of March, 1948, at midday, at The Hague, in English and French, both texts being equally authentic, in a single copy which shall be deposited with the International Court of Justice."

On March 26th, 1948 (I.C.J. Reports 1947-1948, p. 53), the Court made an Order in which it placed on record that the Special

Agreement now formed the basis of further proceedings before the Court, and stated the questions submitted to it for decision. The Court noted that the United Kingdom Government on October 1st, 1947, that is within the time-limit fixed by the Court, had filed a Memorial with statements and submissions relating to the incident that occured on October 22nd 1946. It further noted that the Agents, having been consulted, declared that they agreed in requesting that the order and time-limits for the filing of the subsequent pleadings as fixed by the Judgment of March 25th, 1948, be maintained. The Court confirmed this order and these time-limits.

The Counter-Memorial, Reply and Rejoinder were filed within these limits. The case was thus ready for hearing on September 20th, 1948, and the commencement of the oral proceedings was then fixed for November 5th, 1948.

As the Court did not include upon the Bench a judge of Albanian nationality, the Albanian Government availed itself during the proceedings on the Preliminary Objection of the right provided by Article 31, paragraph 2, of the Statute, and chose M. Igor Daxner, Doctor of Law, President of a Chamber of the Supreme Court of Czechoslovakia, as Judge *ad hoc*. On October 28th, 1948, the Registrar was informed that Judge Daxner was prevented by reasons of health from sitting on the date fixed. The Court decided on November 2nd, 1948, to fix a time-limit expiring on November 7th, within which the Albanian Government might notify the name of the person whom it wished to choose as Judge *ad hoc* in place of Dr. Daxner, and to postpone the opening of the hearing until November 9th. Within the time fixed the Albanian Government designated M. Bohuslav Ečer, Doctor of Law and Professor in the Faculty of Law at Brno, and delegate of the Czechoslovak Government to the International Military Tribunal at Nuremberg.

Public sittings were held by the Court on the following dates: November, 1948, 9th to 12th, 15th to 19th, 22nd to 26th, 28th and 29th; December, 1948, 1st to 4th, 6th to 11th, 13th, 14th and 17th; January, 1949, 17th to 22nd. In the course of the sittings from November 9th to 19th, 1948, and from January 17th to 22nd, 1949, the Court heard arguments by Sir Hartley Shawcross, K.C., Counsel, Sir Eric Beckett, K.C., Agent and Counsel, and Sir Frank Soskice, K.C., Counsel, on behalf of the United Kingdom; and by M. Kahreman Ylli, Agent, and MM. J. Nordmann and Pierre Cot, Counsel, on behalf of Albania. In the course of the sittings from November 22nd to December 14th, 1948, the Court heard the evidence of the witnesses and experts called by each of the Parties in reply to questions put to them in examination and cross-examination on behalf of the Parties, and by the President on behalf of the Court or by a Member of the Court. The following persons gave evidence:

Called by the United Kingdom :

Commander E. R. D. Sworder, O.B.E., D.S.C., Royal Naval Volunteer Reserve, as witness and expert ;

Karel Kovacic, former Lieutenant-Commander in the Yugoslav Navy, as witness ;
Captain W. H. Selby, D.S.C., Royal Navy, as witness ;

Commander R. T. Paul, C.B.E., Royal Navy, as witness ;

Lieutenant-Commander P. K. Lankester, Royal Navy, as witness and expert ;
Commander R. Mestre, French Navy, as witness ;

Commander Q. P. Whitford, O.B.E., Royal Navy, as witness and expert ;

Called by Albania :

Captain Ali Shtino, Albanian Army, as witness ;
First Captain Aquile Polena, Albanian Army, as witness ;

Xhavit Muço, former Vice-President of the Executive Committee of Saranda, as witness ;
Captain B. I. Ormanov, Bulgarian Navy, as expert ;
Rear-Admiral Raymond Moullec, French Navy, as expert.

Documents, including maps, photographs and sketches, were filed by both Parties, and on one occasion by the Parties jointly, both as annexes to the pleadings, and after the close of the written proceedings. On one occasion during the sittings when a photostat of an extract from a document was submitted, the Court, on November 24th, 1948, made a decision in which it reminded both Parties of the provisions of Article 48 and Article 43, paragraph 1, of the Rules of Court ; held that the document in question could be received only if it were presented in an original and complete form ; ordered that all documents which the Parties intended to use should previously be filed in the Registry ; and reserved the right to inform the Parties later which of these documents should be presented in an original, and which in certified true copy, form.

Another decision as to the production of a series of new documents was given by the Court on December 10th, 1948. This decision noted that the Parties were agreed as to the production of certain of these documents and that certain others were withdrawn ; authorized the production of certain other documents ; lastly, in the case of one of these documents, the examination

of which had been subjected to certain conditions, the Court's decision placed on record the consent of the other Party to its production and, in view of that consent, permitted its production, having regard to the special circumstances ; but the Court expressly stated that this permission could not form a precedent for the future [1].

By an Order of December 17th, 1948, the Court, having regard to the fact that certain points had been contested between the Parties which made it necessary to obtain an expert opinion, defined these points, and entrusted the duty of giving the expert opinion to a Committee composed of Commodore J. Bull of the Royal Norwegian Navy, Commodore S. A. Forshell of the Royal Swedish Navy, and Lieutenant-Commander S. J. W. Elfferich of the Royal Netherlands Navy. These Experts elected Commodore Bull as their chairman, and filed their Report on January 8th, 1949, within the prescribed time-limit. By a decision read at a public sitting on January 17th, the Court requested the Experts to proceed to Sibenik in Yugoslavia and Saranda in Albania and to make on the land and in the waters adjacent to these places any investigations and experiments that they might consider useful with a view to verifying, completing, and, if necessary, modifying the answers given in their report of January 8th. The Experts' second report—in which Commodore Bull did not join, having been unable to make the journey for reasons of health—was filed on February 8th, 1949. On February 10th, three members of the Court put questions to the Experts, to which the Experts replied on February 12th.

At sittings held from January 17th to 22nd, 1949, the representatives of the Parties had an opportunity of commenting orally on the Experts' report of January 8th. They also filed written observations [2] concerning the further statements contained in the Report of February 8th and the replies of February 12th, as provided in the Court's decision of January 17th.

The Parties' submissions, as formulated by their Agents or Counsel at the end of the hearings on the 18th, 19th, 21st and 22nd January, 1949, are as follows :

Question (1) *of the Special Agreement.*

On behalf of the United Kingdom :

"The Government of the United Kingdom asks the Court in this case to adjudge and declare as follows :

[1] The list of documents in support produced by the Parties and accepted by the Court will be found in Annex 1 to this Judgment.

[2] See Annex 2 for the Experts' Report of January 8th, the Court's decision of January 17th, the Experts' second Report of February 8th, the questions put by three members of the Court, and the Experts' replies of February 12th.

(1) That, on October 22nd, 1946, damage was caused to His Majesty's ships *Saumarez* and *Volage*, which resulted in the death and injuries of 44, and personal injuries to 42, British officers and men by a minefield of anchored automatic mines in the international highway of the Corfu Strait in an area south-west of the Bay of Saranda ;

(2) That the aforesaid minefield was laid between May 15th and October 22nd, 1946, by or with the connivance or knowledge of the Albanian Government ;

(3) That (alternatively to 2) the Albanian Government knew that the said minefield was lying in a part of its territorial waters ;

(4) That the Albanian Government did not notify the existence of these mines as required by the Hague Convention VIII of 1907 in accordance with the general principles of international law and humanity ;

(5) That in addition, and as an aggravation of the conduct of Albania as set forth in Conclusions (3) and (4), the Albanian Government, or its agents, knowing that His Majesty's ships were going to make the passage through the North Corfu swept channel, and being in a position to observe their approach, and having omitted, as alleged in paragraph 4 of these conclusions, to notify the existence of the said mines, failed to warn His Majesty's ships of the danger of the said mines of which the Albanian Government or its agents were well aware ;

(6) That in addition, and as a further aggravation of the conduct of Albania as set forth in Conclusions (3), (4), and (5), the permission of the existence without notification of the minefield in the North Corfu Channel, being an international highway, was a violation of the right of innocent passage which exists in favour of foreign vessels (whether warships or merchant ships) through such an international highway ;

(7) That the passage of His Majesty's ships through the North Corfu Channel on October 22nd, 1946, was an exercise of the right of innocent passage, according to the law and practice of civilized nations ;

(8) That even if, for any reason, it is held that conclusion (7) is not established, nevertheless, the Albanian Government is not thereby relieved of its international responsibility for the damage caused to the ships by reason of the existence of an unnotified minefield of which it had knowledge ;

(9) That in the circumstances set forth in the Memorial as summarized in the preceding paragraphs of these Conclusions, the Albanian Government has committed a breach of its obligations under international law, and is internationally responsible to His Majesty's Government in the United Kingdom for the deaths, injuries and damage caused to His Majesty's ships and personnel, as set out more particularly in paragraph 18 of the Memorial and the Annexes thereto ;

(10) That the Albanian Government is under an obligation to the Government of the United Kingdom to make reparation in respect of the breach of its international obligations as aforesaid ;

(11) That His Majesty's Government in the United Kingdom has, as a result of the breach by the Albanian Government of its obligations under international law, sustained the following damage :

Damage to H.M.S. *Saumarez*	£750,000
Damage to H.M.S. *Volage*.	75,000
Compensation for the pensions and other expenses incurred by the Government of the United Kingdom in respect of the deaths and injuries of naval personnel. .	50,000
	£875,000"

On behalf of the Albanian Government :

[*Translation.*]

"(1) Under the terms of the Special Agreement of March 25th, 1948, the following question has been submitted to the International Court of Justice :

'Is Albania responsible under international law for the explosions which occurred on the 22nd October 1946 in Albanian waters and for the damage and loss of human life which resulted from them and is there any duty to pay compensation ?'

The Court would not have jurisdiction, in virtue of this Special Agreement, to decide, if the case arose, on the claim for the assessment of the compensation set out in the submissions of the United Kingdom Government.

(2) It has not been proved that the mines which caused the accidents of October 22nd, 1946, were laid by Albania.

(3) It has not been proved that these mines were laid by a third Power on behalf of Albania.

(4) It has not been proved that these mines were laid with the help or acquiescence of Albania.

(5) It has not been proved that Albania knew, before the incidents of October 22nd, 1946, that these mines were in her territorial waters.

(6) Consequently, Albania cannot be declared 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. Albania owes no compensation to the United Kingdom Government."

Question (2) *of the Special Agreement.*

On behalf of the Albanian Government :

[*Translation.*]

"(1) Under the terms of the Special Agreement concluded on March 25th, 1948, the International Court of Justice has before it the following question :

'Has the United Kingdom under international law violated the sovereignty of the Albanian People's Republic by reason of the acts of the Royal Navy in Albanian waters on the 22nd October and on the 12th and 13th November 1946, and is there any duty to give satisfaction?'

(2) The coastal State is entitled, in exceptional circumstances, to regulate the passage of foreign warships through its territorial waters.
(3) This rule is applicable to the North Corfu Channel.
(4) In October and November, 1946, there existed, in this area, exceptional circumstances which gave the Albanian Government the right to require that foreign warships should obtain previous authorization before passing through its territorial waters.
(5) The passage of several British warships through Albanian territorial waters on October 22nd, 1946, without previous authorization, constituted a breach of international law.
(6) In any case that passage was not of an innocent character.
(7) The British naval authorities were not entitled to proceed, on November 12th and 13th, 1946, to sweep mines in Albanian territorial waters without the previous consent of the Albanian authorities.
(8) The Court should find that, on both these occasions, the Government of the United Kingdom of Great Britain and Northern Ireland committed a breach of the rules of international law and that the Albanian Government has a right to demand that it should give satisfaction therefor."

On behalf of the United Kingdom Government:

"I ask the Court to decide that on neither head of the counter-claim has Albania made out her case, and that there is no ground for the Court to award nominal damages of one farthing or one franc."

* * *

By the first part of the Special Agreement, the following question is submitted to the Court:

"(1) Is Albania responsible under international law for the explosions which occurred on the 22nd October 1946 in Albanian waters and for the damage and loss of human life which resulted from them and is there any duty to pay compensation?"

On October 22nd, 1946, a squadron of British warships, the cruisers *Mauritius* and *Leander* and the destroyers *Saumarez* and *Volage*, left the port of Corfu and proceeded northward through a channel previously swept for mines in the North Corfu Strait. The cruiser *Mauritius* was leading, followed by the destroyer *Saumarez;* at a certain distance thereafter came the cruiser *Leander* followed by the destroyer *Volage*. Outside the Bay of Saranda, *Saumarez* struck a mine and was heavily damaged. *Volage* was

ordered to give her assistance and to take her in tow. Whilst towing the damaged ship, *Volage* struck a mine and was much damaged. Nevertheless, she succeeded in towing the other ship back to Corfu.

Three weeks later, on November 13th, the North Corfu Channel was swept by British minesweepers and twenty-two moored mines were cut. Two mines were taken to Malta for expert examination. During the minesweeping 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 Court will consider first whether the two explosions that occurred on October 22nd, 1946, were caused by mines belonging to the minefield discovered on November 13th.

It was pointed out on behalf of the United Kingdom Government that this minefield had been recently laid. This was disputed in the Albanian pleadings but was no longer disputed during the hearing. One of the Albanian Counsel expressly recognized that the minefield had been recently laid, and the other Counsel subsequently made a similar declaration. It was further asserted on behalf of the Albanian Government that the minefield must have been laid after October 22nd ; this would make it impossible at the same time to maintain that the minefield was old. The documents produced by the United Kingdom Government and the statements made by the Court's Experts and based on these documents show that the minefield had been recently laid. This is now established.

The United Kingdom Government contended that the mines which struck the two ships on October 22nd were part of this minefield.

This was contested by the Albanian Government, which argued that these mines may have been floating mines, coming from old minefields in the vicinity, or magnetic ground mines, magnetic moored mines, or German GR mines. It was also contested by them that the explosions occurred in the previously swept channel at the place where the minefield was discovered. The Albanian Government also contended that the minefield was laid after October 22nd, between that date and the minesweeping operation on 12-13th November.

On the evidence produced, the Court finds that the following facts are established :

In October, 1944, the North Corfu Channel was swept by the British Navy and no mines were found in the channel thus swept, whereupon the existence of a safe route through the Channel was announced in November 1944. In January and February,

1945, the Channel was check-swept by the British Navy with negative results. That the British Admiralty must have considered the Channel to be a safe route for navigation is shown by the fact that on May 15th, 1946, it sent two British cruisers and on October 22nd a squadron through the Channel without any special measures of precaution against danger from moored mines. It was in this swept channel that the minefield was discovered on November 13th, 1946.

It is further proved by evidence produced by the United Kingdom Government that the mining of *Saumarez* and *Volage* occurred in Albanian territorial waters, just at the place in the swept channel where the minefield was found, as indicated on the chart forming Annex 9 to the United Kingdom Memorial. This is confirmed by the Court's Experts, who consider it to be free from any doubt that the two ships were mined in approximately the position indicated on this chart.

It is established by the evidence of witnesses that the minefield consisted of moored contact mines of the German GY type. It is further shown by the nature of the damage sustained by the two ships, and confirmed by witnesses and experts, that it could not have been caused by floating mines, magnetic ground mines, magnetic moored mines, or German GR mines. The experts of the Court have stated that the nature of the damage excludes the faintest possibility of its cause being a floating mine; nor could it have been caused by a ground mine. They also expressed the view that the damage must have been caused by the explosion of moored contact mines, each having a charge of approximately 600 lbs. of explosives, and that the two ships struck mines of the same type as those which were swept on November 13th, 1946.

The Albanian Government put forward a suggestion that the minefield discovered on November 13th may have been laid after October 22nd, so that the explosions that occurred on this latter date would not have been caused by mines from the field in question. But it brought no evidence in support of this supposition. As it has been established that the explosions could only have been due to moored mines having an explosive charge similar to that contained in GY mines, there would, if the Albanian contention were true, have been at least two mines of this nature in the channel outside the Bay of Saranda, in spite of the sweep in October 1944 and the check-sweeps in January and February 1945; and these mines would have been struck by the two vessels at points fairly close to one another on October 22nd, 1946. Such a supposition is too improbable to be accepted.

The Court consequently finds that the following facts are established. The two ships were mined in Albanian territorial waters in a previously swept and check-swept channel just at the place where a newly laid minefield consisting of moored contact German GY mines was discovered three weeks later. The damage sustained by the ships was inconsistent with damage which could have been caused by floating mines, magnetic ground mines, magnetic moored mines, or German GR mines, but its nature and extent were such as would be caused by mines of the type found in the minefield. In such circumstances the Court arrives at the conclusion that the explosions were due to mines belonging to that minefield.

* * *

Such are the facts upon which the Court must, in order to reply to the first question of the Special Agreement, give judgment as to Albania's responsibility for the explosions on October 22nd, 1946, and for the damage and loss of human life which resulted, and for the compensation, if any, due in respect of such damage and loss.

To begin with, the foundation for Albania's responsibility, as alleged by the United Kingdom, must be considered. On this subject, the main position of the United Kingdom is to be found in its submission No. 2 : that the minefield which caused the explosions was laid between May 15th, 1946, and October 22nd, 1946, by or with the connivance or knowledge of the Albanian Government.

The Court considered first the various grounds for responsibility alleged in this submission.

In fact, although the United Kingdom Government never abandoned its contention that Albania herself laid the mines, very little attempt was made by the Government to demonstrate this point. In the written Reply, the United Kingdom Government takes note of the Albanian Government's formal statement that it did not lay the mines, and was not in a position to do so, as Albania possessed no navy ; and that, on the whole Albanian littoral, the Albanian authorities only had a few launches and motor boats. In the light of these statements, the Albanian Government was called upon, in the Reply, to disclose the circumstances in which two Yugoslav war vessels, the *Mljet* and the *Meljine*, carrying contact mines of the GY type, sailed southward from the port of Sibenik on or about October 18th, and proceeded to the Corfu Channel The United Kingdom Government, having thus indicated the argument upon

which it was thenceforth to concentrate, stated that it proposed to show that the said warships, with the knowledge and connivance of the Albanian Government, laid mines in the Corfu Channel just before October 22nd, 1946. The facts were presented in the same light and in the same language in the oral reply by Counsel for the United Kingdom Government at the sittings on January 17th and 18th, 1949.

Although the suggestion that the minefield was laid by Albania was repeated in the United Kingdom statement in Court on January 18th, 1949, and in the final submissions read in Court on the same day, this suggestion was in fact hardly put forward at that time except *pro memoria*, and no evidence in support was furnished.

In these circumstances, the Court need pay no further attention to this matter.

The Court now comes to the second alternative argument of the United Kingdom Government, namely, that the minefield was laid with the connivance of the Albanian Government. According to this argument, the minelaying operation was carried out by two Yugoslav warships at a date prior to October 22nd, but very near that date. This would imply collusion between the Albanian and the Yugoslav Governments, consisting either of a request by the Albanian Government to the Yugoslav Government for assistance, or of acquiescence by the Albanian authorities in the laying of the mines.

In proof of this collusion, the United Kingdom Government relied on the evidence of Lieutenant-Commander Kovacic, as shown in his affidavit of October 4th, 1948, and in his statements in Court at the public sittings on November 24th, 25th, 26th and 27th, 1948. The Court gave much attention to this evidence and to the documentary information supplied by the Parties. It supplemented and checked all this information by sending two experts appointed by it to Sibenik: Commodore S. A. Forshell and Lieutenant-Commander S. J. W. Elfferich.

Without deciding as to the personal sincerity of the witness Kovacic, or the truth of what he said, the Court finds that the facts stated by the witness from his personal knowledge are not sufficient to prove what the United Kingdom Government considered them to prove. His allegations that he saw mines being loaded upon two Yugoslav minesweepers at Sibenik and that these two vessels departed from Sibenik about October 18th and returned a few days after the occurrence of the explosions do not suffice to constitute decisive legal proof that the mines were laid by these two vessels in Albanian waters off Saranda. The statements attributed

by the witness Kovacic to third parties, of which the Court has received no personal and direct confirmation, can be regarded only as allegations falling short of conclusive evidence. A charge of such exceptional gravity against a State would require a degree of certainty that has not been reached here.

Apart from Kovacic's evidence, the United Kingdom Government endeavoured to prove collusion between Albania and Yugoslavia by certain presumptions of fact, or circumstantial evidence, such as the possession, at that time, by Yugoslavia, and by no other neighbouring State, of GY mines, and by the bond of close political and military alliance between Albania and Yugoslavia, resulting from the Treaty of friendship and mutual assistance signed by those two States on July 9th, 1946.

The Court considers that, even in so far as these facts are established, they lead to no firm conclusion. It has not been legally established that Yugoslavia possessed any GY mines, and the origin of the mines laid in Albanian territorial waters remains a matter for conjecture. It is clear that the existence of a treaty, such as that of July 9th, 1946, however close may be the bonds uniting its signatories, in no way leads to the conclusion that they participated in a criminal act.

On its side, the Yugoslav Government, although not a party to the proceedings, authorized the Albanian Government to produce certain Yugoslav documents, for the purpose of refuting the United Kingdom contention that the mines had been laid by two ships of the Yugoslav Navy. As the Court was anxious for full light to be thrown on the facts alleged, it did not refuse to receive these documents. But Yugoslavia's absence from the proceedings meant that these documents could only be admitted as evidence subject to reserves, and the Court finds it unnecessary to express an opinion upon their probative value.

The Court need not dwell on the assertion of one of the Counsel for the Albanian Government that the minefield might have been laid by the Greek Government. It is enough to say that this was a mere conjecture which, as Counsel himself admitted, was based on no proof.

In the light of the information now available to the Court, the authors of the minelaying remain unknown. In any case, the task of the Court, as defined by the Special Agreement, is to decide whether Albania is responsible, under international law, for the explosions which occurred on October 22nd, 1946, and to give judgment as to the compensation, if any.

Finally, the United Kingdom Government put forward the argument that, whoever the authors of the minelaying were, it could not have been done without the Albanian Government's knowledge.

It is clear that knowledge of the minelaying cannot be imputed to the Albanian Government by reason merely of the fact that a minefield discovered in Albanian territorial waters caused the explosions of which the British warships were the victims. It is true, as international practice shows, that a State on whose territory or in whose waters an act contrary to international law has occurred, may be called upon to give an explanation. It is also true that that State cannot evade such a request by limiting itself to a reply that it is ignorant of the circumstances of the act and of its authors. The State may, up to a certain point, be bound to supply particulars of the use made by it of the means of information and inquiry at its disposal. But it cannot be concluded from the mere fact of the control exercised by a State over its territory and waters that that State necessarily knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from other circumstances, neither involves *prima facie* responsibility nor shifts the burden of proof.

On the other hand, the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion.

The Court must examine therefore whether it has been established by means of indirect evidence that Albania has knowledge of minelaying in her territorial waters independently of any connivance on her part in this operation. The proof may be drawn from inferences of fact, provided that they leave *no room* for reasonable doubt. The elements of fact on which these inferences can be based may differ from those which are relevant to the question of connivance.

In the present case, two series of facts, which corroborate one another, have to be considered: the first relates to Albania's attitude before and after the disaster of October 22nd, 1946; the other concerns the feasibility of observing minelaying from the Albanian coast.

1. It is clearly established that the Albanian Government constantly kept a close watch over the waters of the North Corfu Channel, at any rate after May 1946. This vigilance is proved

by the declaration of the Albanian Delegate in the Security Council on February 19th, 1947 (*Official Records of the Security Council*, Second Year, No. 16, p. 328), and especially by the diplomatic notes of the Albanian Government concerning the passage of foreign ships through its territorial waters. This vigilance sometimes went so far as to involve the use of force: for example the gunfire in the direction of the British cruisers *Orion* and *Superb* on May 15th, 1946, and the shots fired at the U.N.R.R.A. tug and barges on October 29th, 1946, as established by the affidavit of Enrico Bargellini, which was not seriously contested.

The Albanian Government's notes are all evidence of its intention to keep a jealous watch on its territorial waters. The *note verbale* addressed to the United Kingdom on May 21st, 1946, reveals the existence of a "General Order", in execution of which the Coastal Commander gave the order to fire in the direction of the British cruisers. This same note formulates a demand that "permission" shall be given, by the Albanian authorities, for passage through territorial waters. The insistence on "formalities" and "permission" by Albania is repeated in the Albanian note of June 19th.

As the Parties agree that the minefield had been recently laid, it must be concluded that the operation was carried out during the period of close watch by the Albanian authorities in this sector. This conclusion renders the Albanian Government's assertion of ignorance *a priori* somewhat improbable.

The Court also noted the reply of Captain Ali Shtino to a question put by it; this reply shows that the witness, who had been called on to replace the Coastal Defence Commander for a period of thirteen to fifteen days, immediately before the events of October 22nd, had received the following order: "That the look-out posts must inform me of every movement [in the Corfu Channel], and that no action would be taken on our part."

The telegrams sent by the Albanian Government on November 13th and November 27th, 1946, to the Secretary-General of the United Nations, at a time when that Government was fully aware of the discovery of the minefield in Albanian territorial waters, are especially significant of the measures taken by the Albanian Government. In the first telegram, that Government raised the strongest protest against the movements and activity of British naval units in its territorial waters on November 12th and 13th, 1946, without even mentioning the existence of a minefield in these waters. In the second, it repeats its accusations against the United Kingdom, without in any way protesting against the laying of this minefield which, if effected without Albania's consent, constituted a very serious violation of her sovereignty.

Another indication of the Albanian Government's knowledge consists in the fact that that Government did not notify the

presence of mines in its waters, at the moment when it must have known this, at the latest after the sweep on November 13th, and further, whereas the Greek Government immediately appointed a Commission to inquire into the events of October 22nd, the Albanian Government took no decision of such a nature, nor did it proceed to the judicial investigation incumbent, in such a case, on the territorial sovereign.

This attitude does not seem reconcilable with the alleged ignorance of the Albanian authorities that the minefield had been laid in Albanian territorial waters. It could be explained if the Albanian Government, while knowing of the minelaying, desired the circumstances of the operation to remain secret.

2. As regards the possibility of observing minelaying from the Albanian coast, the Court regards the following facts, relating to the technical conditions of a secret minelaying and to the Albanian surveillance, as particularly important.

The Bay of Saranda and the channel used by shipping through the Strait are, from their geographical configuration, easily watched ; the entrance of the bay is dominated by heights offering excellent observation points, both over the bay and over the Strait ; whilst the channel throughout is close to the Albanian coast. The laying of a minefield in these waters could hardly fail to have been observed by the Albanian coastal defences.

On this subject, it must first be said that the minelaying operation itself must have required a certain time. The method adopted required, according to the Experts of the Court, the methodical and well thought-out laying of two rows of mines that had clearly a combined offensive and defensive purpose : offensive, to prevent the passage, through the Channel, of vessels drawing ten feet of water or more ; defensive, to prevent vessels of the same draught from entering the Bay of Saranda. The report of the Experts reckons the time that the minelayers would have been in the waters, between Cape Kiephali and St. George's Monastery, at between two and two and a half hours. This is sufficient time to attract the attention of the observation posts, placed, as the Albanian Government stated, at Cape Kiephali and St. George's Monastery.

The facilities for observation from the coast are confirmed by the two following circumstances : the distance of the nearest mine from the coast was only 500 metres ; the minelayers must have passed at not more than about 500 metres from the coast between Denta Point and St. George's Monastery.

Being anxious to obtain any technical information that might guide it in its search for the truth, the Court submitted the following question to the Experts appointed by it :

"On the assumption that the mines discovered on November 13th, 1946, were laid at some date within the few preceding months, whoever may have laid them, you are requested to examine the information available regarding (*a*) the number and the nature of the mines, (*b*) the means for laying them, and (*c*) the time required to do so, having regard to the different states of the sea, the conditions of the locality, and the different weather conditions, and to ascertain whether it is possible in that way to draw any conclusions, and. if so, what conclusions, in regard to :

(1) the means employed for laying the minefield discovered on November 13th, 1946, and

(2) the possibility of mooring those mines with those means without the Albanian authorities being aware of it, having regard to the extent of the measures of vigilance existing in the Saranda region."

As the first Report submitted by the Experts did not seem entirely conclusive, the Court, by a decision of January 17th, 1949, asked the Experts to go to Saranda and to verify, complete and, if necessary, modify their answers. In this way, observations were made and various experiments carried out on the spot, in the presence of the experts of the Parties and of Albanian officials, with a view to estimating the possibility of the minelaying having been observed by the Albanian look-out posts. On this subject reference must be made to a test of visibility by night, carried out on the evening of January 28th, 1949, at St. George's Monastery. A motor ship, 27 metres long, and with no bridge, wheel-house, or funnel, and very low on the water, was used. The ship was completely blacked out, and on a moonless night, i.e., under the most favourable conditions for avoiding discovery, it was clearly seen and heard from St. George's Monastery. The noise of the motor was heard at a distance of 1,800 metres, and the ship itself was sighted at 670 metres and remained visible up to about 1,900 metres.

The Experts' Report on this visit stated that :

"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 minelaying operations shown in Annex 9 to the United Kingdom Memorial must have been noticed by these coastguards."

The Court cannot fail to give great weight to the opinion of the Experts who examined the locality in a manner giving every guarantee of correct and impartial information. Apart from the existence of a look-out post at Cape Denta, which has not been proved, the Court, basing itself on the declarations of the Albanian Government that look-out posts were stationed at Cape Kiephali and St. George's Monastery, refers to the following conclusions

in the Experts' Report : (1) that in the case of minelaying from the North towards the South, the minelayers would have been seen from Cape Kiephali ; (2) in the case of minelaying from the South, the minelayers would have been seen from Cape Kiephali and St. George's Monastery.

From all the facts and observations mentioned above, the Court draws the conclusion that the laying of the minefield which caused the explosions on October 22nd, 1946, could not have been accomplished without the knowledge of the Albanian Government.

The obligations resulting for Albania from this knowledge are not disputed between the Parties. Counsel for the Albanian Government expressly recognized that [*translation*] "if Albania had been informed of the operation before the incidents of October 22nd, and in time to warn the British vessels and shipping in general of the existence of mines in the Corfu Channel, her responsibility would be involved....".

The obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based, not on the Hague Convention of 1907, No. VIII, which is applicable in time of war, but 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.

In fact, Albania neither notified the existence of the minefield, nor warned the British warships of the danger they were approaching.

But Albania's obligation to notify shipping of the existence of mines in her waters depends on her having obtained knowledge of that fact in sufficient time before October 22nd ; and the duty of the Albanian coastal authorities to warn the British ships depends on the time that elapsed between the moment that these ships were reported and the moment of the first explosion.

On this subject, the Court makes the following observations. As has already been stated, the Parties agree that the mines were recently laid. It must be concluded that the minelaying, whatever may have been its exact date, was done at a time when there was a close Albanian surveillance over the Strait. If it be supposed that it took place at the last possible moment, i.e., in the night of October 21st-22nd, the only conclusion to be drawn would

be that a general notification to the shipping of all States before the time of the explosions would have been difficult, perhaps even impossible. But this would certainly not have prevented the Albanian authorities from taking, as they should have done, all necessary steps immediately to warn ships near the danger zone, more especially those that were approaching that zone. When on October 22nd about 13.00 hours the British warships were reported by the look-out post at St. George's Monastery to the Commander of the Coastal Defences as approaching Cape Long, it was perfectly possible for the Albanian authorities to use the interval of almost two hours that elapsed before the explosion affecting *Saumarez* (14.53 hours or 14.55 hours) to warn the vessels of the danger into which they were running.

In fact, nothing was attempted by the Albanian authorities to prevent the disaster. These grave omissions involve the international responsibility of Albania.

The Court therefore reaches the conclusion 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.

* * *

In the final submissions contained in its oral reply, the United Kingdom Government asked the Court to give judgment that, as a result of the breach by the Albanian Government of its obligations under international law, it had sustained damages amounting to £875,000.

In the last oral statement submitted in its name, the Albanian Government, for the first time, asserted that the Court would not have jurisdiction, in virtue of the Special Agreement, to assess the amount of compensation. No reason was given in support of this new assertion, and the United Kingdom Agent did not ask leave to reply. The question of the Court's jurisdiction was not argued between the Parties.

In the first question of the Special Agreement the Court is asked :

(i) Is Albania under international law responsible for the explosions and for the damage and loss of human life which resulted from them, and

(ii) is there any duty to pay compensation ?

This text gives rise to certain doubts. If point (i) is answered in the affirmative, it follows from the establishment of respons-

ibility that compensation is due, and it would be superfluous to add point (ii) unless the Parties had something else in mind than a mere declaration by the Court that compensation is due. It would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring in a special agreement should be devoid of purport or effect. In this connexion, the Court refers to the views expressed by the Permanent Court of International Justice with regard to similar questions of interpretation. In Advisory Opinion No. 13 of July 23rd, 1926, that Court said (Series B., No. 13, p. 19) : "But, so far as concerns the specific question of competence now pending, it may suffice to observe that the Court, in determining the nature and scope of a measure, must look to its practical effect rather than to the predominant motive that may be conjectured to have inspired it." In its Order of August 19th, 1929, in the Free Zones case, the Court said (Series A., No. 22, p. 13) : "in case of doubt, the clauses of a special agreement by which a dispute is referred to the Court must, if it does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects"

The Court thinks it necessary to refer to the different stages of the procedure. In its Resolution of April 9th, 1947, the Security Council recommended that the two Governments should immediately refer "the dispute" to the Court. This Resolution had without doubt for its aim the final adjustment of the whole dispute. In pursuance of the Resolution, the Government of the United Kingdom filed an Application in which the Court was asked, *inter alia*, to "determine the reparation or compensation", and in its Memorial that Government stated the various sums claimed. The Albanian Government thereupon submitted a Preliminary Objection, which was rejected by the Court by its Judgment of March 25th, 1948. Immediately after this judgment was delivered, the Agents of the Parties notified the Court of the conclusion of a Special Agreement. Commenting upon this step taken by the Parties, the Agent of the Albanian Government said that in the circumstances of the present case a special agreement on which "the whole procedure" should be based was essential. He further said [*translation*] : "As I have stated on several occasions, it has always been the intention of the Albanian Government to respect the decision taken by the Security Council on April 9th, 1947, in virtue of which the present Special Agreement is submitted to the International Court of Justice."

Neither the Albanian nor the United Kingdom Agent suggested in any way that the Special Agreement had limited the competence of the Court in this matter to a decision merely upon the principle of compensation or that the United Kingdom Government had abandoned an important part of its original claim. The main

object both Parties had in mind when they concluded the Special Agreement was to establish a complete equality between them by replacing the original procedure based on a unilateral Application by a procedure based on a Special Agreement. There is no suggestion that this change as to procedure was intended to involve any change with regard to the merits of the British claim as originally presented in the Application and Memorial. Accordingly, the Court, after consulting the Parties, in its Order of March 26th, 1948, maintained the United Kingdom's Memorial, filed previously, "with statements and submissions". These submissions included the claim for a fixed sum of compensation.

The subsequent attitude of the Parties shows that it was not their intention, by entering into the Special Agreement, to preclude the Court from fixing the amount of the compensation. In its Reply (paragraph 71) the United Kingdom Government maintained the submissions contained in paragraph 96 of its Memorial, including the claim for a fixed amount of reparation. This claim was expressly repeated in the final United Kingdom submissions. In paragraph 52 of its Counter-Memorial, the Albanian Government stated that it had no knowledge of the loss of human life and damage to ships, but it did not contest the Court's competence to decide this question. In the Rejoinder, paragraph 96, that Government declared that, owing to its claim for the dismissal of the case, it was unnecessary for it to examine the United Kingdom's claim for reparation. [*Translation.*] "It reserves the right if need be, to discuss this point which should obviously form the subject of an expert opinion." Having regard to what is said above as to the previous attitude of that Government, this statement must be considered as an implied acceptance of the Court's jurisdiction to decide this question.

It may be asked why the Parties, when drafting the Special Agreement, did not expressly ask the Court to assess the amount of the damage, but used the words : "and is there any duty to pay compensation ?" It seems probable that the explanation is to be found in the similarity between this clause and the corresponding clause in the second part of the Special Agreement : "and is there any duty to give satisfaction ?"

The Albanian Government has not disputed the competence of the Court to decide what kind of *satisfaction* is due under this part of the Agreement. The case was argued on behalf of both Parties on the basis that this question should be decided by the Court. In the written pleadings, the Albanian Government contended that it was entitled to apologies. During the oral proceedings,

Counsel for Albania discussed the question whether a pecuniary satisfaction was due. As no damage was caused, he did not claim any sum of money. He concluded [*translation*] : "What we desire is the declaration of the Court from a legal point of view...."

If, however, the Court is competent to decide what kind of *satisfaction* is due to Albania under the second part of the Special Agreement, it is difficult to see why it should lack competence to decide the amount of *compensation* which is due to the United Kingdom under the first part. The clauses used in the Special Agreement are parallel. It cannot be supposed that the Parties, while drafting these clauses in the same form, intended to give them opposite meanings—the one as giving the Court jurisdiction, the other as denying such jurisdiction.

As has been said above, the Security Council, in its Resolution of April 9th, 1947, undoubtedly intended that the whole dispute should be decided by the Court. If, however, the Court should limit itself to saying that there is a duty to pay compensation without deciding what amount of compensation is due, the dispute would not be finally decided. An important part of it would remain unsettled. As both Parties have repeatedly declared that they accept the Resolution of the Security Council, such a result would not conform with their declarations. It would not give full effect to the Resolution, but would leave open the possibility of a further dispute.

For the foregoing reasons, the Court has arrived at the conclusion that it has jurisdiction to assess the amount of the compensation. This cannot, however, be done in the present Judgment. The Albanian Government has not yet stated which items, if any, of the various sums claimed it contests, and the United Kingdom Government has not submitted its evidence with regard to them.

The Court therefore considers that further proceedings on this subject are necessary ; the order and time-limits of these proceedings will be fixed by the Order of this date.

* * *

In the second part of the Special Agreement, the following question is submitted to the Court :

> "(2) Has the United Kingdom under international law violated the sovereignty of the Albanian People's Republic by reason of the acts of the Royal Navy in Albanian waters on the 22nd October and on the 12th and 13th November 1946 and is there any duty to give satisfaction ?"

The Court will first consider whether the sovereignty of Albania was violated by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946.

On May 15th, 1946, the British cruisers *Orion* and *Superb*, while passing southward through the North Corfu Channel, were fired at by an Albanian battery in the vicinity of Saranda. It appears from the report of the commanding naval officer dated May 29th, 1946, that the firing started when the ships had already passed the battery and were moving away from it ; that from 12 to 20 rounds were fired ; that the firing lasted 12 minutes and ceased only when the ships were out of range ; but that the ships were not hit although there were a number of "shorts" and of "overs". An Albanian note of May 21st states that the Coastal Commander ordered a few shots to be fired in the direction of the ships "in accordance with a General Order founded on international law".

The United Kingdom Government at once protested to the Albanian Government, stating that innocent passage through straits is a right recognized by international law. There ensued a diplomatic correspondence in which the Albanian Government asserted that foreign warships and merchant vessels had no right to pass through Albanian territorial waters without prior notification to, and the permission of, the Albanian authorities. This view was put into effect by a communication of the Albanian Chief of Staff, dated May 17th, 1946, which purported to subject the passage of foreign warships and merchant vessels in Albanian territorial waters to previous notification to and authorization by the Albanian Government. The diplomatic correspondence continued, and culminated in a United Kingdom note of August 2nd, 1946, in which the United Kingdom Government maintained its view with regard to the right of innocent passage through straits forming routes for international maritime traffic between two parts of the high seas. The note ended with the warning that if Albanian coastal batteries in the future opened fire on any British warship passing through the Corfu Channel, the fire would be returned.

The contents of this note were, on August 1st, communicated by the British Admiralty to the Commander-in-Chief, Mediterranean, with the instruction that he should refrain from using the Channel until the note had been presented to the Albanian Government. On August 10th, he received from the Admiralty the following telegram : "The Albanians have now received the note. North Corfu Strait may now be used by ships of your fleet, but only when essential and with armament in fore and aft position. If coastal guns fire at ships passing through the Strait, ships should fire back." On September 21st, the following telegram

was sent by the Admiralty to the Commander-in-Chief, Mediterranean: "Establishment of diplomatic relations with Albania is again under consideration by His Majesty's Government who wish to know whether the Albanian Government have learnt to behave themselves. Information is requested whether any ships under your command have passed through the North Corfu Strait since August and, if not, whether you intend them to do so shortly." The Commander-in-Chief answered the next day that his ships had not done so yet, but that it was his intention that *Mauritius* and *Leander* and two destroyers should do so when they departed from Corfu on October 22nd.

It was in such circumstances that these two cruisers together with the destroyers *Saumarez* and *Volage* were sent through the North Corfu Strait on that date.

The Court will now consider the Albanian contention that the United Kingdom Government violated Albanian sovereignty by sending the warships through this Strait without the previous authorization of the Albanian Government.

It is, in the opinion of the Court, generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal State, provided that the passage is *innocent*. Unless otherwise prescribed in an international convention, there is no right for a coastal State to prohibit such passage through straits in time of peace.

The Albanian Government does not dispute that the North Corfu Channel is a strait in the geographical sense; but it denies that this Channel belongs to the class of international highways through which a right of passage exists, on the grounds that it is only of secondary importance and not even a necessary route between two parts of the high seas, and that it is used almost exclusively for local traffic to and from the ports of Corfu and Saranda.

It may be asked whether the test is to be found in the volume of traffic passing through the Strait or in its greater or lesser importance for international navigation. But in the opinion of the Court the decisive criterion is rather its geographical situation as connecting two parts of the high seas and the fact of its being used for international navigation. Nor can it be decisive that this Strait is not a necessary route between two parts of the high seas, but only an alternative passage between the Ægean and the Adriatic Seas. It has nevertheless been a useful route for international maritime traffic. In this respect, the Agent of the United Kingdom Government gave the Court the following information relating to the

period from April 1st, 1936, to December 31st, 1937 : "The following is the total number of ships putting in at the Port of Corfu after passing through or just before passing through the Channel. During the period of one year nine months, the total number of ships was 2,884. The flags of the ships are Greek, Italian, Roumanian, Yugoslav, French, Albanian and British. Clearly, very small vessels are included, as the entries for Albanian vessels are high, and of course one vessel may make several journeys, but 2,884 ships for a period of one year nine months is quite a large figure. These figures relate to vessels visited by the Customs at Corfu and so do not include the large number of vessels which went through the Strait without calling at Corfu at all." There were also regular sailings through the Strait by Greek vessels three times weekly, by a British ship fortnightly, and by two Yugoslav vessels weekly and by two others fortnightly. The Court is further informed that the British Navy has regularly used this Channel for eighty years or more, and that it has also been used by the navies of other States.

One fact of particular importance is that the North Corfu Channel constitutes a frontier between Albania and Greece, that a part of it is wholly within the territorial waters of these States, and that the Strait is of special importance to Greece by reason of the traffic to and from the port of Corfu.

Having regard to these various considerations, the Court has arrived at the conclusion that the North Corfu Channel should be considered as belonging to the class of international highways through which passage cannot be prohibited by a coastal State in time of peace.

On the other hand, it is a fact that the two coastal States did not maintain normal relations, that Greece had made territorial claims precisely with regard to a part of Albanian territory bordering on the Channel, that Greece had declared that she considered herself technically in a state of war with Albania, and that Albania, invoking the danger of Greek incursions, had considered it necessary to take certain measures of vigilance in this region. The Court is of opinion that Albania, in view of these exceptional circumstances, would have been justified in issuing regulations in respect of the passage of warships through the Strait, but not in prohibiting such passage or in subjecting it to the requirement of special authorization.

For these reasons the Court is unable to accept the Albanian contention that the Government of the United Kingdom has violated Albanian sovereignty by sending the warships through

the Strait without having obtained the previous authorization of the Albanian Government.

In these circumstances, it is unnecessary to consider the more general question, much debated by the Parties, whether States under international law have a right to send warships in time of peace through territorial waters not included in a strait.

The Albanian Government has further contended that the sovereignty of Albania was violated because the passage of the British warships on October 22nd, 1946, was not an *innocent passage*. The reasons advanced in support of this contention may be summed up as follows: The passage was not an ordinary passage, but a political mission; the ships were manoeuvring and 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 defences and this order was carried out.

It is shown by the Admiralty telegram of September 21st, cited above, and admitted by the United Kingdom Agent, that the object of sending the warships through the Strait was not only to carry out a passage for purposes of navigation, but also to test Albania's attitude. As mentioned above, the Albanian Government, on May 15th, 1946, tried to impose by means of gunfire its view with regard to the passage. As the exchange of diplomatic notes did not lead to any clarification, the Government of the United Kingdom 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 Government of the United Kingdom 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 Government of the United Kingdom was not bound to abstain from exercising its right of passage, which the Albanian Government had illegally denied.

It remains, therefore, to consider whether the *manner* in which the passage was carried out was consistent with the principle of innocent passage and to examine the various contentions of the Albanian Government in so far as they appear to be relevant.

When the Albanian coastguards at St. George's Monastery reported that the British warships were sailing in combat formation and were manoeuvring, they must have been under a misapprehension. It is shown by the evidence that the ships were not proceeding in combat formation, but in line, one after the other,

and that they were not manoeuvring until after the first explosion. Their movements thereafter were due to the explosions and were made necessary in order to save human life and the mined ships. It is shown by the evidence of witnesses that the contention that soldiers were on board must be due to a misunderstanding probably arising from the fact that the two cruisers carried their usual detachment of marines.

It is known from the above-mentioned order issued by the British Admiralty on August 10th, 1946, that ships, when using the North Corfu Strait, must pass with armament in fore and aft position. That this order was carried out during the passage on October 22nd is stated by the Commander-in-Chief, Mediterranean, in a telegram of October 26th to the Admiralty. The guns were, he reported, "trained fore and aft, which is their normal position at sea in peace time, and were not loaded". It is confirmed by the commanders of *Saumarez* and *Volage* that the guns were in this position before the explosions. The navigating officer on board *Mauritius* explained that all guns on that cruiser were in their normal stowage position. The main guns were in the line of the ship, and the anti-aircraft guns were pointing outwards and up into the air, which is the normal position of these guns on a cruiser both in harbour and at sea. In the light of this evidence, the Court cannot accept the Albanian contention that the position of the guns was inconsistent with the rules of innocent passage.

In the above-mentioned telegram of October 26th, the Commander-in-Chief reported that the passage "was made with ships at action stations in order that they might be able to retaliate quickly if fired upon again". In view of the firing from the Albanian battery on May 15th, this measure of precaution cannot, in itself, be regarded as unreasonable. But four warships—two cruisers and two destroyers—passed in this manner, with crews at action stations, ready to retaliate quickly if fired upon. They passed one after another through this narrow channel, close to the Albanian coast, at a time of 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 she would abstain from firing again on passing ships. Having regard, however, to all the circumstances of the case, as described above, the Court is unable to characterize these measures taken by the United Kingdom authorities as a violation of Albania's sovereignty.

The Admiralty Chart, Annex 21 to the Memorial, shows that coastal defences in the Saranda region had been observed and reported. In a report of the commander of *Volage*, dated Octo-

ber 23rd, 1946—a report relating to the passage on the 22nd—it is stated : "The most was made of the opportunities to study Albanian defences at close range. These included, with reference to XCU...."—and he then gives a description of some coastal defences.

In accordance with Article 49 of the Statute of the Court and Article 54 of its Rules, the Court requested the United Kingdom Agent to produce the documents referred to as XCU for the use of the Court. Those documents were not produced, the Agent pleading naval secrecy ; and the United Kingdom witnesses declined to answer questions relating to them. It is not therefore possible to know the real content of these naval orders. The Court cannot, however, draw from this refusal to produce the orders any conclusions differing from those to which the actual events gave rise. The United Kingdom Agent stated that the instructions in these orders related solely to the contingency of shots being fired from the coast—which did not happen. If it is true, as the commander of *Volage* said in evidence, that the orders contained information concerning certain positions from which the British warships might have been fired at, it cannot be deduced therefrom that the vessels had received orders to reconnoitre Albanian coastal defences. Lastly, as the Court has to judge of the innocent nature of the passage, it cannot remain indifferent to the fact that, though two warships struck mines, there was no reaction, either on their part or on that of the cruisers that accompanied them.

With regard to the observations of coastal defences made after the explosions, these were justified by the fact that two ships had just been blown up and that, in this critical situation, their commanders might fear that they would be fired on from the coast, as on May 15th.

Having thus examined the various contentions of the Albanian Government in so far as they appear to be relevant, the Court has arrived at the conclusion that the United Kingdom did not violate the sovereignty of Albania by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946.

* * *

In addition to the passage of the United Kingdom warships on October 22nd, 1946, the second question in the Special Agreement relates to the acts of the Royal Navy in Albanian waters on November 12th and 13th, 1946. This is the minesweeping operation called "Operation Retail" by the Parties during the proceedings. This name will be used in the present Judgment.

After the explosions of October 22nd, the United Kingdom Government sent a note to the Albanian Government, in which it announced its intention to sweep the Corfu Channel shortly. The Albanian reply, which was received in London on October 31st, stated that the Albanian Government would not give its consent to this unless the operation in question took place outside Albanian territorial waters. Meanwhile, at the United Kingdom Government's request, the International Central Mine Clearance Board decided, in a resolution of November 1st, 1946, that there should be a further sweep of the Channel, subject to Albania's consent. The United Kingdom Government having informed the Albanian Government, in a communication of November 10th, that the proposed sweep would take place on November 12th, the Albanian Government replied on the 11th, protesting against this "unilateral decision of His Majesty's Government". It said it did not consider it inconvenient that the British fleet should undertake the sweeping of the channel of navigation, but added that, before sweeping was carried out, it considered it indispensable to decide what area of the sea should be deemed to constitute this channel, and proposed the establishment of a Mixed Commission for the purpose. It ended by saying that any sweeping undertaken without the consent of the Albanian Government outside the channel thus constituted, i.e., inside Albanian territorial waters where foreign warships have no reason to sail, could only be considered as a deliberate violation of Albanian territory and sovereignty.

After this exchange of notes, "Operation Retail" took place on November 12th and 13th. Commander Mestre, of the French Navy, was asked to attend as observer, and was present at the sweep on November 13th. The operation was carried out under the protection of an important covering force composed of an aircraft carrier, cruisers and other war vessels. This covering force remained throughout the operation at a certain distance to the west of the Channel, except for the frigate *St. Bride's Bay*, which was stationed in the Channel south-east of Cape Kiephali. The sweep began in the morning of November 13th, at about 9 o'clock, and ended in the afternoon near nightfall. The area swept was in Albanian territorial waters, and within the limits of the channel previously swept.

The United Kingdom Government does not dispute that "Operation Retail" was carried out against the clearly expressed wish of the Albanian Government. It recognizes that the operation had not the consent of the international mine clearance organizations, that it could not be justified as the exercise of a right of innocent passage, and lastly that, in principle, international law does not allow a State to assemble a large number of warships in the

territorial waters of another State and to carry out minesweeping in those waters. The United Kingdom Government states that the operation was one of extreme urgency, and that it considered itself entitled to carry it out without anybody's consent.

The United Kingdom Government put forward two reasons in justification. First, the Agreement of November 22nd, 1945, signed by the Governments of the United Kingdom, France, the Soviet Union and the United States of America, authorizing regional mine clearance organizations, such as the Mediterranean Zone Board, to divide the sectors in their respective zones amongst the States concerned for sweeping. Relying on the circumstance that the Corfu Channel was in the sector allotted to Greece by the Mediterranean Zone Board on November 5th, i.e., before the signing of the above-mentioned Agreement, the United Kingdom Government put forward a permission given by the Hellenic Government to resweep the navigable channel.

The Court does not consider this argument convincing.

It must be noted that, as the United Kingdom Government admits, the need for resweeping the Channel was not under consideration in November 1945; for previous sweeps in 1944 and 1945 were considered as having effected complete safety. As a consequence, the allocation of the sector in question to Greece, and, therefore, the permission of the Hellenic Government which is relied on, were both of them merely nominal. It is also to be remarked that Albania was not consulted regarding the allocation to Greece of the sector in question, despite the fact that the Channel passed through Albanian territorial waters.

But, in fact, the explosions of October 22nd, 1946, in a channel declared safe for navigation, and one which the United Kingdom Government, more than any other government, had reason to consider safe, raised quite a different problem from that of a routine sweep carried out under the orders of the mineclearance organizations. These explosions were suspicious; they raised a question of responsibility.

Accordingly, this was the ground on which the United Kingdom Government chose to establish its main line of defence. According to that Government, the *corpora delicti* must be secured as quickly as possible, for fear they should be taken away, without leaving traces, by the authors of the minelaying or by the Albanian authorities. This justification took two distinct forms in the United Kingdom Government's arguments. It was presented first as a new and special application of the theory of intervention, by means of which the State intervening would secure possession of evidence in the territory of another State, in order to submit it to an international tribunal and thus facilitate its task.

The Court cannot accept such a line of defence. The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here ; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.

The United Kingdom Agent, in his speech in reply, has further classified "Operation Retail" among methods of self-protection or self-help. The Court cannot accept this defence either. Between independent States, respect for territorial sovereignty is an essential foundation of international relations. The Court recognizes that the Albanian Government's complete failure to carry out its duties after the explosions, and the dilatory nature of its diplomatic notes, are extenuating circumstances for the action of the United Kingdom Government. But to ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy co stituted a violation of Albanian sovereignty.

This declaration is in accordance with the request made by Albania through her Counsel, and is in itself appropriate satisfaction.

The method of carrying out "Operation Retail" has also been criticized by the Albanian Government, the main ground of complaint being that the United Kingdom, on that occasion, made use of an unnecessarily large display of force, out of proportion to the requirements of the sweep. The Court thinks that this criticism is not justified. It does not consider that the action of the British Navy was a demonstration of force for the purpose of exercising political pressure on Albania. The responsible naval commander, who kept his ships at a distance from the coast, cannot be reproached for having employed an important covering force in a region where twice within a few months his ships had been the object of serious outrages.

FOR THESE REASONS,

THE COURT,

on the first question put by the Special Agreement of March 25th, 1948,

by eleven votes to five,

Gives judgment that the People's Republic of 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 that resulted therefrom ; and

by ten votes to six,

Reserves for further consideration the assessment of the amount of compensation and regulates the procedure on this subject by an Order dated this day ;

on the second question put by the Special Agreement of March 25th, 1948,

by fourteen votes to two,

Gives judgment that the United Kingdom did not violate the sovereignty of the People's Republic of Albania by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946 ; and

unanimously,

Gives judgment that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People's Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this ninth day of April, one thousand nine hundred and forty-nine, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the United Kingdom of Great Britain and Northern Ireland and of the People's Republic of Albania respectively.

(*Signed*) J. G. GUERRERO,

Acting President.

(*Signed*) E. HAMBRO,

Registrar.

Judge BASDEVANT, President of the Court, whilst accepting the whole of the operative part of the Judgment, feels bound to state that he cannot accept the reasons given by the Court in support of its jurisdiction to assess the amount of compensation, other reasons being in his opinion more decisive.

Judge ZORIČIĆ declares that he is unable to agree either with the operative clause or with the reasons for the Judgment in the part relating to Albania's responsibility ; the arguments submitted, and the facts established are not such as to convince him that the Albanian Government was, or ought to have been, aware, before November 13th, 1946, of the existence of the minefield discovered on that date. On the one hand, the attitude adopted by a government when confronted by certain facts varies according to the circumstances, to its mentality, to the means at its disposal and to its experience in the conduct of public affairs. But it has not been contested that, in 1946, Albania had a new Government possessing no experience in international practice. It is therefore difficult to draw any inferences whatever from its attitude. Again, the conclusion of the Experts that the operation of laying the mines must have been seen is subject to an express reservation : it would be necessary to assume the realization of several conditions, in particular the maintenance of normal look-out posts at Cape

Kiephali, Denta Point and San Giorgio Monastery, and the existence of normal weather conditions at the date. But the Court knows neither the date on which the mines were laid nor the weather conditions prevailing on that date. Furthermore, no proof has been furnished of the presence of a look-out post on Denta Point, though that, according to the Experts, would have been the only post which would necessarily have observed the minelaying. On the other hand, the remaining posts would merely have been able to observe the passage of the ships, and there is no evidence to show that they ought to have concluded that the ships were going to lay mines. According to the Experts, these posts could neither have seen nor heard the minelaying, because the San Giorgio Monastery was 2,000 m. from the nearest mine and Cape Kiephali was several kilometres away from it. As a result, the Court is confronted with suspicions, conjectures and presumptions, the foundations for which, in Judge Zoričić's view, are too uncertain to justify him in imputing to a State the responsibility for a grave delinquency in international law.

Judge ALVAREZ, whilst concurring in the Judgment of the Court, has availed himself of the right conferred on him by Article 57 of the Statute and appended to the Judgment a statement of his individual opinion.

Judges WINIARSKI, BADAWI PASHA, KRYLOV and AZEVEDO, and Judge *ad hoc* EČER, declaring that they are unable to concur in the Judgment of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the Judgment statements of their dissenting opinions.

(*Initialled*) J. G. G.

(*Initialled*) E. H.