

INTERNATIONAL COURT OF JUSTICE

YEAR 1949

December 15th, 1949

1949
December 15th
General List
No. 1THE CORFU
CHANNEL CASE(ASSESSMENT OF THE AMOUNT OF COMPENSATION
DUE FROM THE PEOPLE'S REPUBLIC OF ALBANIA
TO THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND)

Assessment of amount of compensation due on account of acts involving the international responsibility of a State.—Objection to the Court's jurisdiction; res judicata.—Procedure in default.—Application and interpretation of Article 53 of the Statute.—Technical nature of the questions involved.—Warships.—Enquiry by experts.—Measure of compensation.—Documentary evidence.

JUDGMENT

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

In the Corfu Channel case (assessment of the amount of compensation),

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

and

the Government of the People's Republic of Albania, not represented,

THE COURT,

composed as above,

delivers the following judgment :

By a Judgment delivered on April 9th, 1949, in the Corfu Channel case (merits), the Court declared the People's Republic of Albania 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 to the United Kingdom of Great Britain and Northern Ireland (I.C.J. Reports 1949, p. 4).

In that judgment the Court decided that it had jurisdiction to assess the amount of compensation but stated that it could not do so in the same judgment, as the Albanian Government had not yet stated which items, if any, of the various sums claimed it contested, and as the United Kingdom Government had not submitted its evidence with regard thereto. The Court therefore stated that further proceedings on this subject were necessary and that the order and time-limits of these proceedings would be fixed by an order of the same date.

In this order, the Court, after noting that the Government of the United Kingdom had stated, in its Memorial of October 1st, 1947, the various amounts claimed by way of compensation, and after reserving the right of the Parties to avail themselves of the provisions of Article 68 of the Rules of Court, fixed, in accordance with Article 48 of the Statute, the following time-limits : June 25th, 1949, for the observations of the Albanian Government ; July 25th,

1949, for the reply of the United Kingdom Government, and August 25th, 1949, for the reply of the Albanian Government. Finally, the Court directed that further procedure, including the appointment of experts in case of agreement being reached by the Parties both as to the subject of the experts' opinion and as to the names of the experts, should be regulated by order of the President of the Court in this case.

On June 24th, 1949, the President of the Court made an order in which it was stated that by telegram, dated at Tirana, June 23rd, 1949, the Deputy-Minister for Foreign Affairs of Albania had asked for the extension of the time-limit for the presentation of the Albanian observations to July 1st, 1949, and that there was no reason for refusing that request. The President accordingly decided to extend the time-limits fixed by the Order of the Court of April 9th as follows: July 1st, 1949, for the observations of the Albanian Government; August 1st for the reply of the Government of the United Kingdom; September 1st for the reply of the Albanian Government.

In a letter dated June 29th, 1949, the Agent for the Albanian Government informed the Court that, in the opinion of his Government: "in accordance with the Special Agreement signed between the Agents of the People's Republic of Albania and of Great Britain, on March 25th, 1948, and presented to the Court on the same day, the Court had solely to consider the question whether Albania was, or was not, obliged to pay compensation for the damage caused to the British warships in the incident of October 22nd, 1946, and the Special Agreement did not provide that the Court should have the right to fix the amount of the compensation and, consequently, to ask Albania for information on that subject".

The United Kingdom Government filed its observations within the time fixed and invoked Article 53 of the Statute. The Albanian Government filed no reply or other document. The case became ready for hearing after September 1st, 1949, and the date of the commencement of the hearing was fixed for November 17th.

In a telegram dated November 15th, the Deputy-Minister for Foreign Affairs of Albania reasserted the opinion expressed in the Albanian Agent's letter of June 29th, and stated that the Albanian Government did not consider it necessary to be represented at the hearing.

At the public hearing on November 17th, the Court heard statements by Sir Eric Beckett, K.C., Agent, and Sir Frank Soskice, K.C., Counsel for the United Kingdom. The latter asked the Court to give judgment that the amount of compensation due was the

amount stated in the final submissions contained in the written Observations of the United Kingdom dated July 28th, 1949, namely :

in respect of H.M.S. <i>Saumarez</i>	£ 700,087
in respect of H.M.S. <i>Volage</i>	£ 93,812
in respect of deaths and injuries of naval personnel	£ 50,048
Total	<u>£ 843,947</u>

The Albanian Government was absent and made no submissions.

At the same sitting, after the Agent for the United Kingdom Government had been heard, the President announced that the Court had decided, in pursuance of paragraph 2 of Article 53 of the Statute, to examine the figures and estimates submitted by the United Kingdom Government, and, in conformity with Article 50 of the Statute, to entrust this investigation to experts as it involved questions of a technical nature.

In an Order dated November 19th, 1949, the Court appointed as experts Rear-Admiral J. B. Berck, of the Royal Netherlands Navy, and Mr. G. de Rooy, Director of Naval Construction, Royal Netherlands Navy, with instructions to “examine the figures and estimates stated in the last submissions filed by the Government of the United Kingdom regarding the amount of its claim for the loss of the *Saumarez* and the damage caused to the *Volage*”. The Court fixed December 2nd as the time-limit for the filing of the experts’ Report. This document was filed within the time fixed, and duly communicated to the Parties. A time-limit expiring on December 10th was given them for the submission of observations.

As some members of the Court had asked for certain explanations in regard to the Report, the experts, summoned to a meeting of the Court, replied on December 3rd to questions put to them. These replies were immediately communicated to the Parties.

The United Kingdom Government, by telegram dated December 6th, 1949, and confirmed by a letter of the same date, stated that it noted that the experts had come to the conclusion that the claim submitted by that Government might be taken as a fair and accurate estimate of the damage sustained and did not therefore wish to make any observations on the particular calculations of the experts.

On the expiry of the time-limit granted to the Parties for the submission of their written observations, a letter signed by

the Albanian Chargé d'Affaires in Paris, and dated December 10th, 1949, was handed to the Registrar of the Court. This letter asked for a change in the procedure instituted by the Court for the submission of observations and, failing that, for a prolongation of the appointed time-limit until December 23rd. The Court points out that it has given ample opportunity to the Albanian Government to defend its case; that, instead of availing itself of this opportunity, that Government has twice disputed the Court's jurisdiction in the present part of the proceedings, that it did not file submissions and declined to appear at the public hearing on November 17th. In those circumstances the Court cannot grant the request of the Albanian Government.

* * *

As has been said above, the Albanian Government disputed the jurisdiction of the Court with regard to the assessment of damages. The Court may confine itself to stating that this jurisdiction was established by its Judgment of April 9th, 1949; that, in accordance with the Statute (Article 60), which, for the settlement of the present dispute, is binding upon the Albanian Government, that Judgment is final and without appeal, and that therefore the matter is *res judicata*.

The position adopted by the Albanian Government brings into operation Article 53 of the Statute, which applies to procedure in default of appearance. This Article entitles the United Kingdom Government to call upon the Court to decide in favour of its claim, and, on the other hand, obliges the Court to satisfy itself that the claim is well founded in fact and law. While Article 53 thus obliges the Court to consider the submissions of the Party which appears, it does not compel the Court to examine their accuracy in all their details; for this might in certain unopposed cases prove impossible in practice. It is sufficient for the Court to convince itself by such methods as it considers suitable that the submissions are well founded.

It was in view of these considerations and on account of the technical nature of the questions involved in the assessment of compensation in the present case that the Court ordered the expert enquiry mentioned above.

The claim of the United Kingdom Government is under three separate heads which will be considered in succession.

1. *Loss of the destroyer "Saumarez"*

In the final submissions contained in its written Observations of July 28th, 1949, and maintained in its oral statement of November 17th, 1949, the United Kingdom Government estimates

the damage sustained by the total loss of the destroyer *Saumarez* at £ 700,087; this sum represents the replacement value of the ship at the time of its loss in 1946 (after deducting the value of usable parts—equipment, scrap), and the value of stores that must be considered as lost.

The experts, for their part, estimated the whole of this damage at a somewhat higher figure, £ 716,780.

The Court considers the true measure of compensation in the present case to be the replacement cost of the *Saumarez* at the time of its loss. The Court is of the opinion that the amount of compensation claimed by the United Kingdom Government has been justified. It cannot award more than the amount claimed in the submissions of the United Kingdom Government.

2. *Damage to the destroyer "Volage"*

In the final submissions as stated in its written Observations of July 28th, 1949, and maintained in its statement in Court, the United Kingdom Government, under the head of damage caused to this vessel, claimed a sum of £ 93,812. The slightly lower figure of the experts, £ 90,800, may, as their Report points out, be explained by the necessarily approximate nature of the valuation, especially as regards stores and equipment.

The Court considers that the figures submitted by the United Kingdom Government are reasonable and that its claim is well founded. In this matter it takes note of the following conclusion in the experts' Report: "During their enquiry and calculations, and as a result of their experience and of the information placed before them, the experts have become convinced that the claim of £ 793,899 submitted by the United Kingdom Government may be taken as a fair and accurate estimate of the damage sustained."

3. *Claims in respect of deaths and injuries of naval personnel*

In the final submissions as stated in its written Observations of July 28th, 1949, and maintained in its statement in Court, the United Kingdom Government claimed under this head a sum of £ 50,048, representing the cost of pensions and other grants made by it to victims or their dependants, and for costs of administration, medical treatment, etc.

This expenditure has been proved to the satisfaction of the Court by the documents produced by the United Kingdom Government as Annexes 12 and 13 to its Memorial, and by the supplementary information and corrections made thereto in Appendices I, II and III of that Government's Observations of July 28th, 1949.

Finally, the Court points out that the United Kingdom Government, in paragraph 6 of its written Observations of July 28th, 1949, mentioned certain damage, for which it expressly stated that it did not ask for compensation. The Court need therefore express no view on this subject.

FOR THESE REASONS,

THE COURT,

by twelve votes to two,

Gives judgment in favour of the claim of the Government of the United Kingdom, and

Fixes the amount of compensation due from the People's Republic of Albania to the United Kingdom at £ 843,947.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this fifteenth day of December, 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 Governments 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 KRYLOV declares that he is unable to agree either with the operative clause or with the reasons for the Judgment.

Judge EČER, judge *ad hoc*, declaring that he is unable to concur 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 dissenting opinion.

(Initialled) J. G. G.

(Initialled) E. H.