The Corfu channel incident

Arthur Alexander Bennett

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THE CORFU CHANNEL INCIDENT

by

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PREFACE

The Corfu Channel incident involved Britain and Albania. The event occurred in October, 1946 when two British destroyers were hit by mines in the North Corfu Channel opposite the Albanian shore. This work, aside from a chapter on background, is a recording of the events that followed this incident.

The main limitations revolved around the lack of understanding the Albanian language. Because of this, the bulk of material was drawn from English sources. Lack of British and Albanian newspapers limited understanding of the feelings of the people. In this respect, the New York Times proved especially valuable. The documents of the Security Council proceedings as well as those of the International Court of Justice were complete. Two letters from the British Information Services were especially necessary for the events following the World Court judgment.
Position of ships when the Saumarez was hit. The Mauritius was in the lead followed by the Saumarez. After the explosion the Volage came up to give assistance and was struck at point 00.

--- Channel that was swept by British Naval forces from October 1944 through February, 1945 and had been declared free of mines.

Information was drawn from several maps presented in the Security Council Official Records, 2nd year, "Supplement #3," Exhibit #7.
ISLAND OF CORFU AND SURROUNDING AREA
CHAPTER I

ALBANIA AND THE CONFLICT OF POWERS

Of all nations in Europe, Albania in a sense can be said to express the greatest abhorrence for central authority. Nowhere is the family solidarity and clan rule more strictly adhered to than in the hilly terrain of the Albanian homeland.

The nation is still in the making, the tribal groupings being of more importance than national unity. The Albanians are mainly divided into two large groups of tribes: the Tosks, in the South, and the Ghegs in the North. Both call themselves "Shkupetars"—"Sons of the Eagle." There still exists clan wars and blood feuds. The "Law of Lek"—an eye for an eye and a tooth for a tooth—still operates as the chief agency of capital punishment and is executed according to strict rules. This law of the blood feud is not a matter of personal hatred but actually represents one of the oldest forms of jury trial in the world.1

A generation of relative independence, however, had clearly shown the Albanians that the main enemy of their country was none other than their "adopted cousins" the Italians. Since Albanian independence in 1913, the Italians had followed a policy of imperialism at the expense of Albania. They tried to obtain Albania as a mandate after the war and refused to leave Albanian soil until internal resistance and diplomatic pressure forced them to evacuate in July of 1920. In 1926, the Treaty of Tirana was signed.

1 Fredrick W. L. Kovacs, The Untamed Balkans, (New York, 1941), p. 47.
recognizing reciprocal political interests of Albania and Italy. A further agreement establishing Italian supervision of Albanian coinage was passed in 1930. This was followed by a Commercial Treaty in 1938 giving Italian companies special fishing rights in Albanian waters. The climax came in 1939 (April 7) when Italian troops invaded Albania and Mussolini proclaimed the territory a part of the Italian Kingdom.

It was evident that Mussolini looked upon Albania as a bridgehead to be enlarged at the expense of the neighboring states. This could be done readily by raising demands in the name of Albania, now under Italian control. When the Italian attack was launched on Greece in October 28, 1940, one of the pretenses used was to charge the Greeks with terrorist activities against Albania. However, in the war that followed, Italian troops unexpectedly were beaten back until Hitler came to the rescue in April 1941.\(^2\) The division that followed gave to Albania the Kosovo area\(^3\) and the Western fringe of Macedonia, former territories of Yugoslavia and Greece respectively.

In spite of these annexations which might have appealed to Albanian national feeling, Italian unpopularity continued

\(^2\) Yugoslavia fell to the Axis powers only three days earlier--April 14, 1941--all told, the Nazi onslaught had reduced both Yugoslavia and Greece to submission in a period of only 15 days.

\(^3\) Elevated plain Southwest of Moravia and North of Vardar coast and West of Pristine, which since the First World War had been part of the Kingdom of Yugoslavia.
to increase. Finally, this undercurrent expressed itself in the formation of four main resistance movements. The most famous of these were the National Liberation Movement (Lefizje Nacional Clarintare) or LNC and the National Front or Balli Kombetar. The LNC was mainly communist controlled and was led by Enver Hoxha, Mustafa Faju, and Mehmet Shuhu. It had the usual program of armed resistance to invaders and political and social democracy after victory. The Balli Kombetar in contrast was led by the more conservative faction of the Albanian populace, mainly Lef Nose, Anton Horropi, and their Commander, Mehdi Frasheki. Besides being less liberal, it was also more nationalistic. One of its main platforms was retention of the two provinces annexed to Albania in the recent war.

As news of the Albanian resistance trickled through to Allied territory, British Military Authorities in the middle East began to take an active interest. Yet, as to the manner of appealing to the Albanians, the British were placed in a somewhat awkward position. Yugoslavia and Greece, both Britain's Allies, had lost territory to Albania, and some of their leaders expressed hope of even annexing added Albanian territory. Any promises to the Albanians easily could arouse Yugoslav or Greek resentment.

Nevertheless the British command decided to establish contact with the Albanian resistance in order to exploit this discontent against the Axis powers. During the early part of
June, two British officers, Major Maclean and Captain Smiley, were parachuted into Northern Greece. From there, they made their way into Albanian territory. The British officers soon learned that the two National Resistance Forces were becoming more preoccupied with fighting each other than the Fascist army. The British Mission, instead of attempting to establish some basis for conciliation, prudently refused to recognize the differences and attempted to join all forces under the banner of a "common cause."

With the news of the fall of Il Duce, recruits literally began to pour into the guerilla forces. A large part of the country, including such lesser towns as Korchar, Elbasan, and Berat were liberated. In September, however, the German army decided to intervene. The Germans realized that they could little afford to leave the Adriatic coast open to Allied landing. Hence they ordered their forces in Macedonia to occupy the country. Then, as characterized German diplomatic affairs in the Balkans, the Third Reich accomplished almost a miracle. Unable to spare many troops, the Germans decided to neutralize the Albanian coast. Taking advantage of this internal dissension, the Germans appealed to the nationalistic ideas of the Balli Kombetar and convinced their leaders that only through German victory could Albania hope to hold the two annexed provinces of.

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4 On July 25, 1943, Victor Emanuel III dismissed Mussolini and appointed Marshal Badoglio to head a new government.
Kosovo and Western Macedonia. A Regency Council of three, made up of the leaders of the Balli Kombetar was formed under German auspices. The LNC with some justification thereafter began to accuse the Balli Kombetar of collaboration with the enemy.

In May 1944, the LNC forces reorganized themselves on a national basis, and changed their title to the National Liberation Army. Two committees were created—an Anti-Fascist Council of National Liberation and an Albanian Council, led by Enver Hoxha, designed to form a provisional government. Subcommittees, called National Liberation Committees, were established for the villages, districts, and regions liberated. In theory, they were elected by the populace but in practice the doctors and candidates were inevitably limited to supporters of "faithful LNC."

At this time the British Military Mission decided to place its support clearly behind the National Liberation Army. Remembering that previously the British had supported the Balli Kombetar, the LNC leaders rightly argued that the British were only interested in their personal gains instead of the problems of Albania.

By August, 1944, it became clear that the Germans would be forced to evacuate the whole Balkan peninsula. Contrary to British desires, but characteristic of Communist-led resistant movements, the LNC forces began to place more emphasis on insuring their control of the
country than harassing the enemy. Thus, when the Germans evacuated Albania, the LNC with the help of Tito's partisans gained control of the whole country. Immediately conferences were held between the LNC leaders and agents of Yugoslavia and Russia. The general introduction of Soviet ideas and philosophies then began. A domestic program to end the feudalism of Albania's clan system and socialization of all industry quickly followed.

The Western world, although skeptical because of her pro-Russian policies, continued to hope that Albania would be saved from the Russian orbit. On March 31, 1945, UNRRA operations were begun in Albania. No sooner was the program started than reports arrived accusing the Hoxha regime of using these supplies for political purposes. Accompanying this was the refusal of the Albanian Provisional Government to allow an Anglo-American Liaison Organization to supervise the distribution of relief supplies. In view of this, on April 24, Dr. Laurame MacDaniels, head of

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5 It has been estimated that prior to World War II, 4/5 of all the land was controlled by only 200 individuals.

6 The United Nations Relief and Rehabilitation Administration created at the Washington Conference in November, 1943, to "plan, coordinate, administer, or arrange" for the administration of measures for relief of victims of war in any area under the control of the United Nations.
UNNRA supplies to Albania, announced that aid was being temporarily disbanded.\(^7\)

The stoppage of relief aid seemed to have had a persuasive effect on President Hoxha's provisional government. Almost at once the unacceptable Anglo-American Military Organization was found acceptable. Thus, on August 2, 1945 an agreement to renew aid was signed at Tirana between Colonel General Hoxha and Colonel D. R.-Oakley-Hill, new chief of UNNRA's Albanian Mission. In May, Foreign Service Officers representing both the United States and Britain were allowed passage into Albania to study the question of Allied recognition. Throughout their travels both missions were received with greatest cordiality. In autumn of 1945, President Hoxha further expressed his good faith by announcing that free and independent elections would be held in December.

Anglo-American circles were highly impressed by these events. Indeed the New York Times, in an article on October 17, commenting on future Anglo-American recognition of Albania, wrote: "American view of President Hoxha is that he is not what he has been accused of being, 'a stooge of Moscow.' Washington is thought to believe that he is more of a French Socialist than a Russian Communist."\(^8\)

\(^7\) The official records give a somewhat hypocritical reason. They state that aid was disbanded on the grounds that Hoxha's regime was not officially recognized. However aid was resumed at a later date even though the Albanian government was still not acknowledged.

\(^8\) New York Times, October 17, 1945.
On November 11, the long awaited Allied recognition of Hojcha's provisional government was announced. While the USSR announced full recognition, we (Great Britain and United States) placed two restrictions: first, a stipulation that all treaties enforced prior to April 7, 1939 should remain valid; and, second, that the future elections should be held on a free basis with a secret ballot, and without threats or incriminations to any candidate.

The elections which followed were conducted in true communistic fashion. The people were allowed to vote for any candidate but only the names of the nominees of the Democratic Front were placed on the ballot. The results were phenomenal. Ninety-two per cent of the qualified electors had voted and of these over ninety-three per cent had cast their ballots for the Democratic Front. The constitutional Assembly thus elected held its first meeting on January 2, 1946. One of its first acts was to dispose ex-King Zog¹⁰ and proclaim Albania a sovereign and free republic. The constitution adopted was a replica of the Russian Constitution of 1936.

The groundwork established,

¹⁰ Ahmed Bey Zogu who became King Zog in 1927 had seized power by overthrowing the Orthodox Bishop Fan Noli in 1924. However in the Good Friday, April 6th invasion of Albania by Italy (1939), King Zog and his Queen Geraldine had fled.
the new-national assembly cumulated its work on January 13, by electing Dr. Omah Nishami as President, and General Mehmet Shuhu as Minister for Foreign Affairs and National Defense. The basis of power, however, was given to Enver Hoxha by his appointment as Prime Minister.

The inauguration of the new government at once led to increased friction between Albania and her Western Allies. The war trials of the collaborators and nationalistic leaders was initiated in February. Immediately the Albanian government began accusing the Western nations (particularly Britain) of offering political asylum to many of the so-called traitors. Our refusal to expatriate these men caused the Hoxha regime to use these trials to accuse the Western powers of sinister intentions towards Albania.12

The relations were further strained by the Greek Nationalist demands to annex what they called Northern Epirus but what Albania recognized as Southern Albania. The British position on this question had not yet been officially stated. However, the past policy of armed aid in the establishment of the Greek government led the Albanians to assume that the British were supporting the Greeks. A further cause of friction arose over the question

11 The constitution was not ratified by the people until March 12, 1946.

12 For example, in June, 1946 one of the 37 accused Albanians "confessed" at his trial that the British Major Arnold had suggested the assassination of Hoxha. Hugh Seton-Watson, East European Revolution (London, 1940), p. 226.
of the Civil War in Greece. Albania, Bulgaria, and Yugoslavia were known to be favoring the Greek Guerillas. Thus, when Britain supported the Greeks in the Security Council hearings, the Russian bloc, led by Ukrainian Foreign Minister Manuilski accused the British of fostering this agitation.

Meanwhile the British Military Mission in Tirana was restricted in its travels by the Hoxha regime. Also, the British War Graves Commission, although it had not completed its work, was ordered to leave the country. Then, when Major Victor Smith, Chief Advisor to the designated Minister R. C. Rapp, was refused a visa, the British government retaliated by recalling Rapp and breaking off diplomatic ties with Albania.

Further friction was caused by the proposal of Russia and Yugoslavia that Albania be admitted to the Paris Peace Conference on the Italian Treaty. The western opposition was summarized by Secretary of State Byrnes who stated that this would be contrary to the Morocco Declaration.13 Finally the Czech compromise that Albania be admitted as a silent observer was approved.

Another source of discontent arose over the admittance of Albania into the United Nations. Once again Yugoslavia

13 Mr. Byrnes argued that admission of Albania would lead to a new category of "consultative members" which would only hamper the work of the conference. He further stated that the admission of Albania would establish a precedent and that the applications of Egypt, Mexico and Cuba would also have to be approved. New York Times, August 10, 1946.
and Russia advocated the acceptance of Albania. Both the United States and Britain however vetoed this proposal largely because of the arguments of the Greek Ambassador, Vissili Dendramis, who stated, "Albania does not qualify as a peace-loving nation."14

The climax of events came in May when two British cruisers were fired upon by Albanian coastal batteries. London immediately demanded an apology which the Albanians refused to give. Instead they answered by stating that the British ships were not flying British colors and had refused to be recognized when so asked by Albanian authorities. The British charged unfriendliness and retaliated by adopting a definite pro-Greek policy in regard to the Civil War. In fact, when a spokesman for the British Legation in Greece was asked to comment on the insurrection in September, he freely admitted that the Greeks were "still receiving arms and equipment from Britain" and further indicated his policy by hinting that, if the Greek Guerrillas became more insistent, "British troops might enter the fight as a last resort."15

The post-war period had opened with an attempt by both Britain and Russia to lure Albania into this respective orbits. However the tendency of British agents to favor the more conservative resistant groups had aroused


the suspicion of the LNC leaders. This accompanied with Hoxha's pro-Soviet tendencies definitely gave the advantage to Russia. Finally the overall dissension between the Soviet Union and the Western powers asserted itself in the question of recognition. We, the Western Allies, placed two restrictions on full acknowledgement whereas the Russians gave complete approval without any reservations.

Friction was further caused over the question of Northern Epirus. Then, when the Western Allies refused to allow Albania to take part in the Italian Peace Conference, this dissension between Russia and the West became a national question to the Albanians. When Albania began to support the Greek guerrillas and to hamper British diplomats, the British government answered by breaking off all diplomatic ties with Albania. Thereafter, when the two British cruisers were fired upon, events became so serious that the question arose only as to when British and Albanian relations would explode into another front in the East-West conflict. The latter incidents and the events which followed can be understood only within the broader context of the "Cold War." The defiant and hostile attitude of Albania toward a great power like Britain was based on certainty of support from the Soviet Union and pro-Communist governments in the Balkan states.
CHAPTER II

THE PRELIMINARY BOUT

The two British cruisers fired upon by Albanian Coastal Batteries were the Orion and Superb. This attack occurred on the 15th of May at approximately 2 p.m. The British cruisers had left the port of Trieste and were heading South to the port of Corfu by way of the Northern entrance of the channel when the incident happened. The Corfu channel is very irregular in its width. The middle is approximately 17 miles wide, whereas the northern and southern approachers have a width of 1.5 and 6 miles respectively. The eastern part of the channel is part of the Albanian coast. However, the western shore is bordered by the island of Corfu which is part of the Kingdom of Greece. The depth of the channel varies from 160-660 feet with the shallowest points being at the two entrances. Ocean currents flow into the channel by way of the Southern approach from the Ionian Islands and pass out through the Northern Strait between the Island of Corfu and Dento point of the Albanian shore.

The attack itself did not prove dangerous. Only ten rounds were fired at the cruisers and no hits were scored. Nevertheless the British government looked upon this act as entirely unwarranted and contrary to the conduct
of a friendly nation. On the 20th of May, the British government, acting through its consulate in Belgrade issued a formal protest to the Albanian government. In this dispatch, London asked for a clear assurance that Albanian coastal batteries would refrain from firing on any vessel in peaceful times. Then, after demanding an apology from the Albanian government, the note concluded by stating that any vessel had the right to cruise in open waters on any peaceful mission.\(^1\)

On May 29th, the Albanian reply was received in London and promptly declared unsatisfactory. The Albanian note was anything but an apology. It accused the British of being responsible on the grounds that the cruisers were not flying the British flag and had refused to be recognized when challenged by Albanian coastal authorities. Then and only then, the note continued, did the coastal batteries open fire, but with strict orders to fire wide of the two ships. A postscript was included contending that Albanian sovereignty existed out to a three mile zone irrespective of the width of the channel.\(^2\)

On June 28, General Hoxha sent another dispatch to the British government. As a means of explaining the incident, the Albanian letter blamed the Greeks for prompting the attack. General Hoxha charged that the Greeks

\(^1\) *New York Times*, May 23, 1946.

were often sending ships to shoot at the Albanian shore, and defended his country's actions on the grounds that the Albanian coastal authorities thought that the ships were Greek. As for presenting any new details, the Albanian note merely reiterated the essence of its report of May 29th. The note concluded with a statement of regret but expressed the hope that the incident would not strain Albanian-British relations.3

The following day, the British government announced that this note was entirely unsatisfactory. Yet, because the Balkan situation was already too delicately balanced, London decided to drop the issue and concentrate on more important developments. The Greek Civil War was becoming more precarious. Almost daily reports were issued from Athens accusing the Governments of Albania, Yugoslavia, and Bulgaria of supporting the Greek guerrillas. The situation was further complicated by the issue of Trieste. This area, claimed equally by both Yugoslavia and Italy had finally been designated as a free territory. Neither state, however, and particularly not Yugoslavia, accepted this compromise as final. Consequently, on the very day that London announced that the second Albanian reply was unsatisfactory the British Foreign Office issued a protest to Yugoslavia. In this note Britain accused Yugoslavia of hostile acts designed to annex Trieste.4 Therefore,

the unsatisfactory Albanian reply was allowed to remain and relations between the two countries continued as such until the Corfu channel incident of October 22, 1946.

The ships were travelling in typical column formation. The convoy was made up of the Cruisers Maurituz and Leander and the Destroyers Saumarez and Volage. Maurituz was in the lead followed by the Saumarez. The Leander and Volage were approximately a mile behind. As the Saumarez was passing opposite Saranto harbor, the ship unexpectedly hit a submerged mine. Immediately the Volage came up to offer aide and it in turn struck another mine. Their location was reported as about 3/5 to 1 mile from Saranto. The other two ships, cruising north of Saranto, opposite Boroi point were not hit. Of the two, the Saumarez had received the severest blow. The bow had been blown off by the repercussion of the blast. The Volage in turn suffered only minor damages. A fire broke out on her deck but it was soon brought under control. Both ships were able to keep afloat, and the less seriously injured Volage took the Saumarez in two and headed for the Port of Corfu.

The news of the mining of the destroyers electrified the English populace. Immediately British newspapers and radio stations devoted top space to the incident. On the

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5 Saumarez was hit at 2:53 p.m. and the Volage at 4:16, when coming to the rescue of the Saumarez. Security Council Official Records, 2nd Year, 107th meeting, p. 294.

6 See map for location of ships when hit.
23rd of October it was announced in the House of Commons that at least one officer and thirty-seven enlisted men were dead or missing. All told, forty-three enlisted men and two officers were reported injured. John Dugdale, Financial Secretary of the Admiralty, elaborated this report by further stating that this incident could be anything but an accident. He referred to an Admiralty report which stated that periodic mine-sweeping operations had been held in the channel from October 1944 through February 1945, and had declared the area free of all mines. The debate that followed substantiated this argument by stating that for two years the channel had been open to shipping without incident.7

Meanwhile the Albanian government adopted a "wait and see" policy. The Tirana radio acknowledged a report of a mishap in the Corfu channel, but no further details were given. On the 23rd, however, they boldly broadcast an alleged violation of Albanian territory by British planes. In this communique the Albanians charged that three British war planes had flown over Albanian territory in the Muzzno-Randot area and especially around the harbor of Saranto.8

The days that followed brought no official word from either government. Yet, in view of the English

8 Ibid., October 24, 1946.
press and radio build-up, neutral observers rightly predicted that Britain would not allow the incident to go unanswered.

Initiative in the diplomatic field was unexpectedly inaugurated by the Albanian government. On the 30th of October, two official dispatches were sent to the Secretary General at the United Nations Headquarters in Lake Success, New York. They contained charges of an invasion of Albanian waters by British warships and border violations by "Greek Monarchists Fascists." The notes were sent by Colonel General Hoxha with a request that the United Nations General Assembly should intervene on the grounds that they constituted a threat to peaceful relations. The first letter charged that on October 22, four British warships had entered Albanian territorial waters "without authorization" of the government of Albania. The note continued by stating that on October 23, British planes flew over Albanian territory "with the objective of intimidating and provoking." Hoxha's second message reiterated charges of "Greek Monarchist Fascist" border violations expressing the fear that these actions constituted a serious threat to peace in the Balkans and in the world.


10 Ibid., p. 46.

11 Ibid., p. 46.
The Albanian charge that British war ships had violated her sovereignty was immediately answered by the British government. On the same evening London issued a communique explaining that the principle of a three-mile limit of territorial waters did not apply to the case of the Corfu channel. This statement contended that, since this channel is recognized as an international waterway and is only 1 1/2 miles wide, shipping and war ships may travel through it in innocent passage without violating national sovereignty. However the message made no mention of the accusation that British planes had flown over Albanian territory. To this charge the British Foreign Office continued to issue "no comment." In fact, on October 31, when Phillip J. Noel-Baker, British Secretary of State for Air, was asked to comment on this accusation, he merely answered by stating that both Albanian claims were "unsubstantiated." He quickly evaded any further questions by going into a long speech criticizing the ingratitude of Albania for British support during the war.

A new charge of an Albanian attack on British war ships was issued in London on November 2. The British Broadcasting Company announced that the 7,270 Ton cruiser, Leander had been damaged by a direct blow on its superstructure by Albanian coastal batteries. The statement did not

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mention either the place or date of the attack but only that the ship had put in for repairs at Trieste.\textsuperscript{14} Immediately reports began to circulate that the incident had taken place in the Corfu channel. On November 3, the whole incident was dismissed as a myth by Capt. R. J. Otway-Ruthern, commander of the vessel. His statement was verified by United Press correspondents in Trieste who boarded the ship and reported no damage.\textsuperscript{15}

Meanwhile, British diplomacy was finally taking the initiative. Permission was obtained from the Zone Mine Clearance Board of the Mediterranean as well as the Central Committee of Mine Clearance in the United States to allow the immediate sweeping of the minefield. Since the British fleet was the only one available, the Allied Naval Commander-in-Chief of the Mediterranean requested them to clear the channel.\textsuperscript{16} Immediately the British government informed the Albanian Consulate in Belgrade that British mine sweepers would begin clearing the area on November 12.\textsuperscript{17}

On November 11, the Albanian Embassy in Belgrade announced that Albania would look upon this act as a "pre-mediated violation" of Albanian sovereignty.\textsuperscript{18} The Tirana

\textsuperscript{14} \textit{Ibid.}, November 2, 1946.

\textsuperscript{15} \textit{Ibid.}, November 3, 1946.


\textsuperscript{17} \textit{New York Times}, November 13, 1946.

\textsuperscript{18} \textit{Ibid.}, November 13, 1946.
government agreed that possibly the Strait might contain mines, but proposed that first a joint commission should be established to inspect the area. Only then, the message concluded, would the Albanian government look favorably upon any proposal to clear the North Corfu channel.  

London looked upon this suggestion as only a pretense to stall for time. Consequently on November 12, British ships, ready for any incident began mine-sweeping operations in the Corfu channel. The maneuvers were completed on the 13th. The same day, Premier Hoxha issued another protest to the United Nations. He charged that British behavior was entirely "illegal." He claimed that the British had acted without "proper authority" and that the mine-sweeping operations were undertaken without the permission of the Albanian government, in a "brutal and unilateral" manner.  

Soviet-led states began to support the Albanian viewpoint. Indeed, Borba, the official Yugoslavian communist party organ, charged that the British actions were motivated only by a desire to prevent "free development of a democratic Albania." 

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20 Ibid., p. 50.
21 Ibid., p. 50.
22 Ibid., p. 50.
Meanwhile the Albanian government continued to "play up" the mine-sweeping incident. Tirana radio claimed that the British warships had fired on Albanian shore positions. However, the British government had not been caught napping. Forseeing this possibility, neutral observers had been requested to accompany the operation. Their subsequent reports freed the British of any "hostile acts." All emphasized the care taken by the British seamen in discharging the mines. Gunfire was not used from the warships to explode the mines. Instead the British sailors had used rifle fire from life boats with instructions to fire away from the Albanian shore. All told, twenty two mines were cleared and of these, two were taken to Malta to be examined by the Zone Mine Clearance Board of the Mediterranean. On the 22nd of November the Board, through its offices in Rome published a statement of its findings. Evidence pointed to the fact that the mines could not have lain in the water more than six months. This conclusion was based upon three main considerations: One, there was no appreciable rust nor marine growth on either of the mines; two, grease was still present on the mooring wires; and three, identification marks and paint were still clearly

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24 Ibid., November 20, 1946.
25 Ibid., November 20, 1946.
First official Russian comment on the situation was expressed by *Trud*, the Labor Union newspaper in Moscow, in an editorial dated November 26. In this commentary, *Trud* charged that the minesweeping operations of the British Navy were one more example of reactionary forces of the United States and Britain attempting to re-enter the Balkans through imperialism.

In the meantime Albanian relations with the United States were also reaching a breaking point. Our government had issued charges, as early as September, accusing the Albanian authorities of violating the treaties in effect on April 6, 1939. We continually accused the Hoxha government of forcefully holding naturalized American citizens of Albanian nationality. These demands were climaxd on November 8 when our State Department asked permission to send two warships into the port of Durazzo to evacuate the American Military Mission. The Albanian government had refused this request on the grounds that it was infringing on Albanian territorial waters. However, Tirana had expressed its willingness to allow one passenger and merchant ship to enter the harbor and evacuate our

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27 *Ibid.*, p. 99. The mines were found to be of German C.Y.Type. For picture taken during the operation, as well as charts of the area cleared, see "Supplement #6," Exhibits 5-7.


personnel. Our State Department did not look upon this as an act of a friendly nation. Indeed, some commentators speculated that American war ships had been refused passage into Durazzo harbor for fear they might discover the presence of ships responsible for mining the area.

On November 28, a second Albanian note was sent to the United Nations disputing the right of the British warships to clear the Corfu Channel. Tirana claimed that the Central Committee of Mine Clearance's consent was not official because it lacked the approval of the Albanian government.

London immediately answered this charge by stating that the mine operations were started only after first notifying the Albanian government. Regarding the question of permission, the British Foreign Office claimed that the authority rested only with the Central committee. Further findings of the decision of the Central Mine Clearance Board were publicized to substantiate the British position. The board was composed of four members. A delegate of the Soviet Union, United States, Britain and France. All four had expressed their approval of the British request to clear the channel. The Russian representative had even

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30 Ibid., November 14, 1946.

31 The United States Mission of nine members was withdrawn on November 16. They were evacuated by the destroyers Noa and Perry which stood outside the three mile limit of Durazzo Harbor.
pressed for the minesweeping operations on the grounds that the safety of shipping necessitated it "regardless of how the Tirana government might feel about its territorial waters." 32

In view of these facts, on December 10, Great Britain sent an ultimatum to Albania accusing her government of a "deliberately hostile act." The note also demanded an apology within fourteen days and stipulated that unless a satisfactory reply was received within this time the British government would "have no alternative" 33 but to bring the matter before the Security Council. The message was over two-thousand words long and was strongly worded throughout. Besides demanding this apology, it also insisted upon full reparation for the damaged ships and compensation to relatives of all the casualties. The message concluded with a further statement that an apology be made for the "unprovocative attack upon the Royal Navy" 34 for the incident of May 15.

On the 16th, the Albanian government immediately sent a note acknowledging receipt of the British ultimatum. The British demands, however, were tactfully omitted from the letter. In view of this, the British government


34 Ibid., p. 41. The whole ultimatum covers pages 35-41.
immediately announced that it did not consider this note as a reply.\textsuperscript{35} A second Albanian reply to the December 10 note was handed to Charles Peak, British Ambassador to Belgrade on December 20. In this letter, Tirana expressed its profound regrets for the accident but rejected all accusations contained in the note as contrary to the "peaceful aspirations and purposes so often expressed by the Albanian government."\textsuperscript{36} The text was further enlarged to explain Albanian innocence by hinting that the mines could have drifted from the Trieste-Pola area which was known to be still mine-infested.\textsuperscript{37} Another point was mentioned to substantiate British claims. The note mentioned that ships had passed through Corfu's waters for two years without being hit by mines. In conclusion, the message stated that the British were entirely to blame for the unpeaceful relations existing between the two nations. This point was supported by various arguments: British opposition to the entry of Albania into the United Nations; failure to establish direct diplomatic contact; November 12 minesweeping operations; October 23, flying of British planes over Albanian territory.\textsuperscript{38}

\textsuperscript{35} \textit{New York Times}, December 17, 1946.


\textsuperscript{37} Main ocean currents of this area seems to dispute this possibility.

\textsuperscript{38} \textit{Ibid.}, pp. 41-45.
The British Foreign Office immediately declared that this new Albanian note was unsatisfactory. However, London did not issue any successive appeal. The situation remained as such until January 1, 1947, when Premier Hoxha, in a New Years Broadcast, over a Tirana radio charged Britain with three violations of Albanian sovereignty. The first two were mainly a reiteration of the communique of October 30 that had been sent to Trygve Lie. The third in turn was merely a restatement that the British Mine operation action of November 12 and 13 had been illegal. Commenting on the British threat of submitting the Corfu incident to the Security Council, General Hoxha claimed that Albania had nothing to hide and would welcome any United Nations inquiry. The message concluded with a hope for a good year and closed with the statement, "We wish the people of Europe, and the British people in particular to know how their officials are acting towards Albania."  

On the 4th of January, the Greek government announced to London that the Corfu channel was mined again. Though the report was not taken seriously, it certainly illustrated how all sides were trying to confuse the issue. It was rumored on July 8, that Britain intended to present the case before the Security Council. On the latter day,


40 Ibid., January 2, 1947.

41 Ibid., January 4, 1947.
London announced that P. N. Synott and Commander E. R. D. Swoder were being sent to Lake Success to act as special advisors to the United Kingdom officials. Confirmation came on January 9, when the British government formally placed a complaint before the United Nations asking the Council to act on the case. Concurrently, Peak presented another note to the Albanian charge d'affaire that the Tirana reply of December 21, was entirely unsatisfactory. Therefore, in view of the failure of the Albanian government to present a counter-proposal, "His Majesty's government is taking steps to bring the matter before the Security Council."43

On the 12th of January, the text of the Albanian reply of December 21, and the findings of the Mines Clearance Commission were formally presented to the United Nations. January 20, the British proposal was finally placed before the Security Council. Immediately the USSR delegate, Gromyko, raised objections to the placing of the British complaint before the Security Council. After elaborating a long speech of "therefores and wherefores" of why it should not be presented, he concluded his arguments

42 Ibid., January 8, 1947.


44 New York Times, January 13, 1947. In reporting this incident they also stated that a British Admiralty Source had said that on October 24, a UNRRA ship had been fired upon by Albanian Coastal authorities opposite Saranto harbor.
by stating that Great Britain had not exhausted every means of reaching a settlement with Albania. The main gist of this argument was based upon the assumption that Great Britain, by rejecting the Albanian proposal to establish a joint commission to investigate clearing of the channel, was acting contrary to Article XXXIII of the United Nations Charter. This article states that all parties to a dispute should first attempt to settle their differences by means of negotiations before applying to the United Nations. Sir Alexander Cadogan, British delegate to the Security Council answered Gromyko's charge by stating that the Albanian proposal for a joint commission was not one to settle all their differences but to deal only with the clearing of the channel, which he argued, had already been approved by the Mine Clearance Board. Sir Alexander further replied by referring to Article XXXVI of the Charter which says in effect that the Security Council may act at any stage of a dispute and recommend appropriate procedures for adjustments.

The Council then voted on the British proposal. It passed by a 10-0 vote with the Russian delegate, Gromyko abstaining. It was further decided without a recorded vote that before considering the substance of the Albanian

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45 The United Kingdom presented the case to the Security Council under the provisions of Article 35.

46 See appendix.
question, Albania would be invited to participate without a vote. The Council then voted, 10-0, with Gromyko again abstaining, on the proposal of the President N. J. O. Makin, of Australia, that the date for the beginning of discussions should be determined by the president. This was to enable the Albanian delegate to attend. The official Albanian position in the Security Council decision was made known by cable on January 24, by Colonel General Enver Hoxha. "I have the honor to inform you," Hoxha stated, "that the Albanian government accepts the Security Council's decision. Mr. Hysni Kapo will be our representative, but because of very difficult communications, it would be impossible to place his date of arrival in New York, and we ask postponement of any discussions until then.".

The unprovoked attack of May 15th on the two British cruisers had been allowed by the British Foreign Office to subside without any formal apology. In contrast, British reaction to the mining of the two destroyers was anything but passive. This change of policy can be attributed to several reasons: British naval tradition, principle of the freedom of the seas, and above all the demands for

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47 Rights of a Non-member State in a dispute—see Appendix, Article 32.
49 Ibid., 2nd year, "Supplement #3." P. 131.
retribution for the lives lost. British policy was certainly fair. Suspicions were raised in the House of Commons as early as the 23rd of October, yet no formal protest was sent until after these accusations had been substantiated by findings of the Zone Mine Committee report. Gromyko did present a good argument when he claimed the British government had not exhausted all means of arbitration before sending the case to the United Nations. However, in view of Albanian attitude toward the May 15th incident, British policy was understandable. Both in the May 15th as well as the October 22 incident the Albanian government was certainly anything but conciliatory. Instead of attempting arbitration, the Albanian policy was primarily one of accusation and counter-charges. In advocating the establishment of a joint committee to investigate the clearing of the channel, the Albanian government did present a worthwhile proposal. Indeed if both nations would have desired conciliation this committee might have led to a fruitful agreement. Yet in advocating this commission on the very eve that the channel was to be cleared certainly does not express a policy of atonement. This accompanied with the fact that the proposed commission was to be limited to only the question of clearing the channel cannot be taken as a pretense to arbitrate. After all, the basic question was one of bodily and property damage and not a question of clearing the channel.
The support expressed by both Russia and her Satellites through their newspaper editorials clearly indicates unwavering support of the Albanian viewpoint. This, accompanied by the Russian opposition to the British proposal of presenting the case to the United Nations, can only lead to the assumption that the Security Council proceedings would be anything but melodious.
CHAPTER III
SECURITY COUNCIL INTERLUDE

In spite of Albanian acceptance, the question of the Corfu incident was not taken up immediately in the United Nations Security Council. Norman J. O. Makin, President of the Security Council, had tentatively set the 28th of January for the beginning of the discussions. However, when the council assembled on the proposed date, the Albanian representative had not yet arrived. Sir Alexander, United Kingdom delegate, thereupon proposed sending another cable to the Albanian government asking for the approximate date when Hysni Kapo would arrive. Immediately the Russian delegate opposed this overture. He based his objection on the ground that the Albanian representative could hardly have completed his preparation. Sir Alexander answered this criticism by pointing out to the Russian delegate that his government had indicated to the Albanian government its intent to bring the case before the United Nations as early as the 9th of December. Then, he continued, Britain officially had informed the government of Albania on the 9th of January that the case would be placed before the Security Council. Therefore, he argued, Tirana had had plenty of time to make preparations. In spite of these arguments, Gromyko raised the question,
"Why should we indulge in the unnecessary exchange of telegrams."¹ Oscar Lange, the Polish delegate, ended this debate by a recommendation to leave this problem up to the President's discretion. The Lange proposal was then approved, and the first meeting of the Security Council on the Corfu incident ended.

Similar meetings were tentatively set by the President during the remaining days of January as well as by the succeeding President, F. Van Langenhove of Belgium, for the first two weeks in February. Still no official word was received on the proposed date of the Albanian delegate's arrival. Reports circulating throughout Europe placed Kapo's whereabouts in Belgrade, Paris, and then back in Belgrade. Finally, Kapo clarified these rumors by sending a cable on the 11th of February from Paris stating that he would arrive in New York on the 12th. Yet the 12th came and went, and still Kapo had not arrived. On the 13th, however, the Albanian delegate finally arrived at LaGuardia Field but on a plane from Geneva and not Paris. When asked by reporters what was keeping him, he cheerfully answered, "Bad Transportation."²

In spite of this delay, the Security Council welcomed Kapo with evident relief, and discussions were officially

¹ Security Council Official Record, 2nd year, 96th meeting, p. 134.
opened on the 18th of February. Immediately Sir Alexander began presenting the British side of the case. The speech which followed was wrathful but quite elegant in its dialogue. It was truly an exhaustive presentation sprinkled with nautical details. Sir Alexander began by emphasizing that the case in no way should be considered from the point of view of the mining of only warships. For, he stated, the mines could have equally destroyed merchant ships of any nationality. After these opening remarks he followed with a full synopsis of all events that had happened since the incident on October 22 as well as a lengthy discussion on the May 13th issue. Submitting that the Council must find that the mines had been recently laid in violation of international law, Sir Alexander said that the next question was, "Who laid them?" Although he admitted he could not produce eyewitnesses to the minelaying, he pointed to an inescapable Albanian responsibility. He then invited the Council to consider the wider implications of this case. For, he said, it must be clear to all that international peace and security cannot be maintained "when criminal incidents such as this are allowed to continue." On the basis of this evidence he then submitted to the council four main

\[3 \text{Security Council Official Records, 2nd year, 107th meeting, p. 308.}\]
\[4 \text{Ibid., p. 306.}\]
conclusions for adoption:

1. That an unnotified minefield was laid in the Corfu straits by the Albanian government or with its connivance, resulting in serious injury to British ships and loss of life and injury to their crews.

2. That the United Kingdom and Albanian Governments should settle the dispute between them on the basis of the Council's findings and that in the event of a failure to settle, either party may apply to the Council for further consideration of the matter.

3. That the Council will retain the dispute on its agenda until both parties certify that it has been settled to their satisfaction.

4. That, since the laying of mines in peacetime without notification is unjustified and an offence against humanity and since it is the duty of governments to remove promptly mines laid in time of war, the Council should remind all states, whether members of the United Nations or not, that it is incumbent on them to sweep or permit to be swept all parts of their territorial waters where there is reason to suspect the presence of mines.⁵

The Albanian reply was presented by Hysni Kapo⁶ on the 19th of February. In contrast to Sir Alexander, Kapo gave a speech definitely lacking in eloquence. Before beginning his oration, Kapo asked sarcastically why the British request, which was submitted on January 16, 1947, had been immediately placed on the agenda of the United Nations Security Council whereas the Albanian request of


⁶ Hysni Kapo was assisted by Nesti Zapo, although all discussions throughout the Security Council proceedings were presented by Mr. Kapo.
October 29, 1946 had still not been taken into consideration. Continuing in this tone, Kapo reviewed the events of May 15 and October 22. His interpretation of events was entirely different from that of Sir Alexander. On the question of minefields he violently argued that Albania was innocent. He declared Albania "... had no reason for laying mines or allowing them to be laid." He then hinted that the mines could easily have drifted from the Trieste-Pola area.

The basis of Kapo's main argument revolved around two main questions—territorial waters and innocent passage. Kapo completely repudiated Sir Alexander's statement that the Corfu Channel could be classified only as an international waterway. Although peaceful ships could pass through the channel, he stated that the nearness of the Albanian shore clearly classified the strait as a national channel. Kapo then asked if one could consider as innocent passage the parading of warships in territorial waters. Such passing, he contended, could not be regarded as innocent passage. He then reiterated the Albanian charge of November 13 that British action in clearing the channel was entirely illegal. He contended that, since the channel was part of the Albanian waters, the government of Albania


8 This argument was first mentioned in the Albanian note of December 9, 1946. See Chapter 2, page 26.
should have been consulted first before any such action was taken. Continuing in this mood, Kapo accused the United Kingdom of misconstruing the facts to suit its own interests.9

In summing up his case, the Albanian delegate listed two main arguments: One, the British government did not advance any convincing evidence to prove the accusations that the Albanian government either laid the mines or had any knowledge of them; two, the British mine-sweeping operations on November 12 and 13, as well as the events of May 15 and October 22, proved that the whole responsibility could be blamed on the British government.10

The debate that followed produced no enlightening facts. Mostly it was a reiteration by both delegates to emphasize their strong points. However, Gromyko did heighten the session by adding several remarks. He charged that the British actions were "provocative"11 and in violation of Albanian sovereignty. He elaborated this point by hinting that British actions throughout the whole incident were prompted by a desire to support the anti-Albanian policy of Greece. Sir Alexander immediately answered that these charges were false and accused the

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11 Ibid., pp. 349.
Russian delegate of misconstruing the facts. A motion was then made to adjourn the meeting, and the session closed until February 20. Thus the discussions that should have followed with an attempt to evaluate the case ended only with accusations and counteraccusations.

The February 20 meeting was cancelled because of snow. Yet even this action caused disagreement among the delegates. Kapo, when asked to comment on the cancellation, charged that he had not been forewarned and had come from New York on the Long Island Railroad and could see no reason why the meeting was not held.

The next meeting was not called until the 24 of February. In a sense this hearing was a rehash of the earlier sessions. Sir Alexander would bring up some point for discussion. Immediately Kapo would give an answer and take the opportunity of bringing a charge against the United Kingdom. The United Kingdom would feel bound to contradict the insinuation and would invariably draw attention to some other aspect of the case. Then Gromyko in turn would feel bound to intervene and tell Sir Alexander that what he said was untrue, absurd, and above all,

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12 Ibid., pp. 347-349.


14 During the hearings of the Corfu Channel incident the Security Council was also scheduling discussions on Atomic Energy, Former Japanese Mandated Islands (Marshall Islands, Marianas and Carolinas of the Palau group, etc.) and Greek Civil War.
that Sir Alexander "was out of order."\(^\text{15}\)

In an attempt to end this stalemate, the Australian delegate, Hasluck, ultimately recommended that a subcommittee be formed to investigate the case. He contended that a smaller body would be able to reach a conclusion more easily than the whole Security Council. The terms of this proposal gave the committee complete freedom of action. The only instructions were that they should meet in New York City and should report their findings to the Security Council by March 3.\(^\text{16}\) He further suggested that the subcommittee should be empowered to request all information from both the United Kingdom and Albania. This proposal was seconded by the American delegate, Herschel V. Johnson. The Russian and Polish delegates, however, immediately opposed the motion. M. Michalowski, the Polish representative, charged that the committee would accomplish nothing. Gromyko continued this argument by stating that the British case was "absolutely unjustified" and therefore there was no need for any subcommittee.\(^\text{17}\)

During the successive days, "behind-the-scenes" political maneuvering must have taken place. On the 27th, the Russian and Polish delegates completely reversed their


\(^{16}\) This date was later changed to March 10 by an amendment of Chinese delegate, Mr. Quo Tai-chi.

opposition by remaining silent when the recommendation was placed to a vote. Thus, the Australian resolution was adopted 8-0 with Poland, Syria and Russia abstaining. Following this, Il-Khouri, the Syrian delegate nominated the states of Colombia, Poland, and Australia as members of the committee. Immediately Gromyko, the Soviet delegate supported the Syrian motion. Johnson, the American delegate, must not have known of these political maneuvers, for, when the Polish name was nominated, he objected on the grounds that the Polish delegate "... has expressed the opinion that the subcommittee couldn't possibly perform any useful function." When the vote was taken, however, the United States supported the proposal, and the recommendation was unanimously passed.

The Chairman of the committee was Eduardo Zuleta Angel of Colombia. The other two members were Paul Hasluck and Julius Katz-Suchy of Australia and Poland respectively. The meetings began in closed session on the 2nd of March in the Empire State Building. The subcommittee proceeded on the principle that it was neither a committee of investigation nor a fact-finding board but rather a commission to

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18 The members of the Security Council at this time were: Australia, Belgium, Brazil, China, Colombia, France, Poland, Syria, USSR, United Kingdom, United States. Britain did not vote because it stipulates in Article 27, paragraph 3, on Voting Procedure that a party in a Regional dispute shall not vote. See Appendix.

consolidate the facts. All told, the committee held ten meetings. Five of these sessions were occupied with questioning the representatives of the United Kingdom and Albania.

The permanent representative of Greece to the United Nations, Vassili Dendramas, was also called in for questioning. The Greek delegate was drawn into the dispute because Kapo, in the course of his testimony, had hinted that the mines might have been laid by Greece to strain Albanian-British relations. Kapo had raised the question, "Who could gain by this incident, except Greece?" The Albanian delegate previously had not mentioned this point in presenting his case before the Security Council. Yet in an attempt to evaluate all the facts, Vassili Dendramas was called upon to testify before the subcommittee. He denied the charge most emphatically.

The rest of the meetings were devoted primarily to writing up a report to submit to the Security Council. In this task, the subcommittee found itself completely deadlocked. Julius Katz-Suchy, Polish representative, seemed to find no evidence to support the British charges, whereas the Colombian and Australian representatives could find nothing against the British case. Unable to reach a decision by the deadline, March 10, the subcommittee


21 See Chapter 1, page 10, and Chapter II, pages 15 & 18 for previous examples of Albanian accusations towards Greece.
requested an extension from the Security Council. The Council granted this request by postponing the hearings until March 20. During this time, however, the subcommittee still failed to reach an unanimous agreement. As a compromise the three delegates decided to hand in two reports, one supported by Australia and Colombia and the second by Poland.

The two reports were submitted to the Council on March 20. They were based on a series of questions and answers. For the most part, they repeated evidence presented at previous Security Council meetings. The subcommittee interpreted the case as involving three technical and legal questions upon which the Security Council would have to act:

1. Were British destroyers damaged on the night of October 22?
2. Were the ships damaged in a minefield that had been marked as such?
3. Was Albania responsible or did she know of the minefield?

Of the three questions, the subcommittee could only agree on the first. On the other two, however, there was a difference of opinion. The majority report contended that Albania was responsible for the minefield incident. It admitted that proof was not conclusive to substantiate the British charge that Albania had laid the mines. Yet in view of the evidence the report concluded that Albania must have known that the minefield was present. The minority report in turn stated that the only thing known
was that two mines had exploded and that two destroyers were damaged. The rest, it reported, "was merely conjecture." In the discussions that followed, Julius Katz-Suchy elaborated this point by saying, "There is only a British statement in this respect and as the United Kingdom is part of this dispute the statement cannot be accepted as evidence." He then suggested that maybe "the mines were adrift" or had been overlooked in previous sweeping operations. To this, Sir Alexander sarcastically answered, "A most miraculous coincidence." He acknowledged the British charges against Albanian had not been proven 100% but that the "chain of events" demonstrated conclusively that Albania had either laid the mines herself or knew they were present. The Polish delegate answered Sir Alexander by suggesting that the Council should take no action except to ask Albania and the United Kingdom to reopen negotiations. He based this recommendation upon Article Thirty-three, paragraph Two of the Charter which calls upon parties of a dispute to get together and negotiate a friendly settlement.

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23 Ibid., p. 558.

24 Ibid., p. 559.

25 Ibid., p. 560.

26 Ibid., p. 565.

27 See Appendix.
Sir Alexander immediately answered this proposal by stating that the British government had attempted to settle the question before bringing it to the Council, but that Albanian actions pointed to "no chance whatever of negotiating an agreement." He then asked the council to stop "passing the buck" and proposed four resolutions for their approval.

1. Finds that an unnotified minefield was laid in the Corfu Channel by the Albanian government or with its connivance resulting in serious injury to His Majesty's ships and loss of life and injury to their crews;

2. Recommends that the United Kingdom and the Albanian government should settle the dispute on basis of the Council's findings in paragraph 1 above, and that in the event of failure to settle, either party may apply to the Council for further consideration of the matter;

3. Resolves to retain this dispute on its agenda until both parties certify that it has been settled to their satisfaction;

4. Reminds all states, whether members of the United Nations or not, that it is incumbent on them to sweep or permit to be swept all parts of their territorial waters where there is reason to suspect the presence of mines.

After reading of the resolutions, El-Khour, the Syrian delegate made a motion that no vote should be taken until the delegates had time to examine the subcommittee reports.

On March 21, discussions were held on the four British proposals. During the course of the hearings, the

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28 Security Council Official Record, 2nd Year, 120th meeting, p. 568.

29 Ibid., p. 567.
American delegate, Johnson, proposed two amendments to the British resolutions. Although these amendments exemplified an American pro-British viewpoint, it concurrently typified a desire for compromise. First of all, Johnson suggested that a preamble be added to point number one in place of resolution number four, stating, "Considers that the laying of mines in peacetime without notification is unjustified and an offense against humanity." Secondly he proposed that in Resolution I, the words "by the Albanian government or with its connivance" should be changed to "with the knowledge of the Albanian government."

In the discussions that followed, Gromyko expressed the Russian viewpoint by saying that there was no foundation whatever for the British proposals and contended that they had not been brought for the sake of maintainence of good international relations. Kapo continued this argument by contending that these proposals only showed Britain's "unfriendly attitude to new Albanian democracy." Gromyko also referred to a Lloyds Report which published figures to the effect that since the end of the war up to the 29th of February, 1947, 226 vessels of various nationalities

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30 Ibid., 2nd year, 121st meeting, p. 589.
31 Ibid., p. 589.
32 Ibid., p. 577.
33 Lloyds of London, Insurance Underwriters, is recognized as the largest insurer of maritime shipping.
had been sunk in European waters as a result of mines. Thus, he continued, how could the British blame Albania without substantial proof. Sir Alexander sarcastically inquired if mathematicians could prove how two mines could drift from some other area precisely to the place where two destroyers were damaged. Finally as a means of terminating this hearing, Sir Alexander made a motion for adjournment which was immediately accepted by the Council.

Discussions were continued on the 25th of March. Before the proposal was put to a vote, the French delegate, Parodi, suggested several amendments. They were immediately approved by both the American and British delegate and put to vote. The amended resolutions were not as sharp as those proposed by Sir Alexander. Both retained Articles II and III of the British proposals. Yet by modifying Resolution I to read that "the minefield could not have been laid without the knowledge of the Albanian authorities" instead of "... by their connivance," the passage was certainly weakened. This, accompanied with the discarding of the fourth British proposal in favor of the more liberal preamble of Johnson, made the resolutions milder. The amended resolution read as follows:

1. Consider that the laying of mines in peace time without notification is unjustified and an offense against humanity;
2. Finds that an unnotified minefield was laid

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\[34\] Security Council Official Records, 2nd year, 121st meeting, pp. 572-591.
in the immediate vicinity of the Albanian coast resulting in serious injury to two of His Majesty's ships with loss of life and injury to their crew. That this minefield could not have been laid without the knowledge of Albanian authorities;

3. Recommends that the United Kingdom and Albanian governments should settle the dispute on the Council's findings in paragraph II above. That in the event of failure to settle, either party may apply to the council for further consideration of the matter;

4. Resolved to retain the dispute on its agenda until both parties certify that it has been settled to their satisfaction.  

The vote was taken by a show of hands with the following results: Australia, Belgium, Brazil, Chili, Colombia, France, and United States for the resolutions; Poland and Russia against it; and Syria abstaining. The President then stated: "The resolution has failed to obtain the affirmative vote of one of the five permanent members and therefore is not adopted."  

Immediately following this vote, Sir Alexander stated that he would take a chance on the Polish proposal and that his government would attempt to negotiate directly with Albania. Lange, however, answered that he was withdrawing his resolution because it would no longer "serve any useful purpose." Whereupon the President, Oswaldo

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36 Ibid., p. 609.
37 See page 44, Chapter III.
38 Security Council Official Record, 2nd year, 121st meeting, p. 609.
Araha, the Brazilian delegate moved that the meeting adjourn until further notice.

The *New York Times*, in reporting this event, included an interview with the Syrian delegate explaining why he had not voted on the four proposals: El-Khouri stated that the whole case revolved around one point—when the mines were laid. If they were laid during the war, Albania was not responsible; if they were laid after, he went on, the Albanian government was obliged to see that they were cleared. But unfortunately, "These facts are wanting, and a doubt existed in my opinion of this case." 39

No further discussions were held on the Corfu incident until April 3. During this interval the feeling grew among the Council members that the case should be sent to the World Court. This sentiment had been expressed by some of the delegates even before discussions began in the Security Council. Warren Austin, the Chief American Delegate, in conference with Secretary of State Marshall, on January 26, had expressed the opinion that the case could best be settled in the International Court of Justice. 40 Also, Eduardo Zuleta Angel, Colombian member of the Council, in an interview on February 21, hinted that he would make a proposal to refer the case to the International Court of Justice. 41 Probably this proposal would

40 Ibid., January 27, 1947.
41 Ibid., February, 22, 1947.
have been introduced at the February 24 meeting of the Security Council if the British delegation had not been definitely against it. Indeed, when Sir Alexander was asked to comment on this proposed motion, he declared that the case was below the jurisdiction of the World Court for, he stated, "The World Court is not a police court."

Thus the Australian delegate's proposal to establish a subcommittee might have been influenced by a desire to offset the possibility of the Colombian delegate bringing this proposal before the Council. However, on April 3, when discussions were reopened, Sir Alexander, the United Kingdom Delegate, proposed the following motion: "Recommended that the United Kingdom and Albania should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the statute of the Court."

The resolution was immediately supported by the delegates of Brazil, Syria, Belgium, and the United States. Indeed, Johnson, when commenting on the proposal said, "The United States Delegation wholeheartedly supports the resolution." The Polish delegate made a motion to postpone voting on the resolution on the grounds that the


44 Ibid., p. 686.
subcommittee report of March 20 should be restudied. This motion was immediately contested by the Belgium delegate. He contended that the Polish opposition was irrelevant to the motion before the council. Thus, when the Polish proposal was brought to a vote, only the States of Brazil, Poland, Syria, USSR, and the United States voted in favor of the motion whereas Australia, Belgium, and Colombia voted in the negative, while China, France, and the United Kingdom abstained. After the President announced that the motion had not carried, the Russian delegate, Gromyko, made a motion to adjourn the discussions until April 9, on the grounds that he wished to restudy the British resolutions. This motion was immediately endorsed by all the delegates, and the meeting was adjourned.45

On April 9, Kapo opened the discussions by expressing his disapproval of the British resolution. He argued, "My country has done nothing to justify the British accusations."46 He urged the council to reject the motion, charging that the resolution did not merit being taken into consideration. For, he said, Albania was not responsible in any way, and the Council itself "has no proof."47 Sir Alexander answered Kapo by saying the Albanian delegates

discussions were "... not relevant to this case but irrelevant to our previous discussions." Colonel W. R. Hodgson then asked permission to explain his opinion. He declared that, if the case had been one hundred per cent proven, it would never have reached the Council in the first place. Commenting further he expressed the opinion that the delegates had to act on the evidence that was presented and could not rely on mere "hearsay" of the Albanian delegate. He then concluded his oration by commenting on the Russian veto of March 25. He charged that there had been "a pronounced tendency on the part of some members to prejudice the case." This he claimed "... prevented a just and impartial decision from being reached and so stultified the will of the Security Council." To this Gromyko answered that the Australian delegate was suffering from an illness which he might characterize as "Vetophobia," akin to the English word hydrophobia. He then added, "I hope sincerely, and I am quite sure that time will cure the Australian representative of this illness." Thereafter the motion was finally brought to a vote. The vote was taken by a show of hands with

48 Ibid., p. 727.
49 Ibid., p. 721.
50 Ibid., p. 722.
51 Ibid., p. 725.
52 Ibid., p. 725.
the following results: Australia, Belgium, Brazil, Chili, Colombia, France, Syria, and the United States for the resolution; Poland and Russia abstained. Quo Tai-chi, President of the Council, then announced that the proposal was carried. He then made a motion for adjournment, and it was immediately approved by the delegates.53

Thus, the hearings on the Corfu Channel incident in the Security Council of the United Nations finally came to an end. The Security Council's action on the Corfu Channel incident was anything but a success. The discussions had started in a logical manner—both Albania and Great Britain were allowed to present their side of the case. The succeeding meetings, however, were characterized more by a desire to misconstrue the facts than to reach a logical conclusion.

The Australian proposal to establish a subcommittee and its successive acceptance clearly exemplifies the inability of the Security Council to reach a decision. The subcommittee in turn did nothing but reflect the divisions in the Security Council.

The pro-Albanian viewpoint of both Poland and Russia throughout the proceedings was self-evident. If any doubt existed, it was certainly removed when the Russian delegate, Gromyko, vetoed the four amended resolutions.

53 Ibid., pp. 720-727.
The Western Powers definitely sided in with Britain. Both the American and French amendments exemplified the desire of the Western bloc to conciliate and compromise.

As a whole, the Albanian arguments were less consistent than the British. Kapo, in presenting the case before the subcommittee had professed Albanian innocence by raising a charge against Greece. Yet in the initial proceedings, when the Albanian side was presented before the Security Council, no mention was made of this fact.

In all fairness to the Security Council the proceedings were successful in a negative sense. The Council offered a possibility of solution by placing the emphasis on the legal aspects with a minimum amount of attention to the political questions involved. This, accompanied by the time the case was held up before the Security Council, enabled both sides to look upon the question from a more logical viewpoint.
CHAPTER IV

JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE

Following the decision of the Security Council, the United Kingdom addressed an application to the International Court of Justice. This letter was post marked May 22, 1947, and was sent to the Registrar of the World Court, Edvard Hambro, at The Hague, Netherlands. In the application the British government made the following claims:

1. That the Albanian government either caused to be laid, or had knowledge of the laying of mines in its territorial waters in the Strait of Corfu without notifying the existence of these mines as required by articles III and IV of Hague Convention #8, of 1907;¹

2. That two destroyers of the Royal Navy were damaged by the mines so laid resulting in the loss of lives of 44 personnel of the Royal Navy and serious injury to the Destroyers;

3. That the loss and damage referred to in #2 was due to the failure of the Albanian government to fulfill its international obligations and to act in accordance with the dictates of humanity;

4. That the Court shall decide that the Albanian government is internationally responsible for the said loss and injury and is under an obligation to make reparations or pay compensation to the government of the United Kingdom therefore; and

¹For Articles III and IV of the Hague Convention, see Appendix.
5. That the Court shall determine the reparation or compensation.  

In its appeal, the United Kingdom contended that the Court had jurisdiction under Article XXXVI, Paragraph I, of its statute; "... as being a matter specifically provided for in the Charter of the United Nations." This contention was based on the following points:

1. That the Security Council of the United Nations, on April 9, 1946, had recommended that both the Governments of the United Kingdom and Albania should refer the dispute to the International Court of Justice.

2. That the Tirana government, by accepting the Security Council's invitation to participate in the discussions automatically assumed all the obligations which a member of the United Nations would assume in a similar case.

3. That the Charter (Article XXV) laid on members the obligation of accepting and carrying out the decisions of the Security Council.  

On May 23, it was officially announced in London that the British government would be represented by A. E. Becket, Legal Advisor to the Foreign Office, and Sir Hartley Shawcross. The same day, Hambro sent both a letter and a telegram to the Albanian government informing them of Britain's application to the World Court. Then, fulfilling

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3 Ibid., I, p. 9

4 Ibid., I, pp. 8-9. For Article XXV, see Appendix.

requirements of Article XL, Paragraph III, he sent a similar message to the Security General of the United Nations, Trygve Lie.

The official Albanian recognition of the British application was submitted to The Hague on July 23. In this letter, Tirana also requested the Registrar to bring an additional statement to the knowledge of the Court. It charged that the British government, in instituting these proceedings "... has not complied with the recommendations adopted by the Security Council." For, it stated, the British government should have first conferred with the Albanian government and reached an agreement before submitting the dispute to the World Court. Nevertheless, the letter concluded, the Albanian government fully accepted the recommendation of the Security Council, "... notwithstanding its irregularity in the action taken by the government of the United Kingdom to appear before the Court."9

The President of the Court was Jose Gustavo Guerrero, of El Salvador. Since the Court was not in session, he issued an order on July 31, 1947, to the governments of

6 See Appendix.

7 The letter was dated July 2, but was not deposited with the Registrar until July 23, 1947.

8 Corfu Channel Case, II, p. 25.

Britain and Albania. By this order he scheduled the dates for the presentation of their briefs. The Memorial of the United Kingdom and the Counter-Memorial of Albania were to be submitted to the Court by October 1, and December 10, respectively.

The British Memorial was submitted to the Court on October 1. It was a detailed and comprehensive study. Not only did it contain a complete list of casualties and damages done to the ships but a full synopsis of the Security Council's proceedings. Reports were also included of the mine-sweeping operations of November 12 and 13, as well as photographs illustrating recovery and identification of the mines. In conclusion the British delegate asked the Court to adjudge and declare the following points:

1. That on October 22, 1946, damage was caused to His Majesty's ships Saumarez and Volage which resulted in death and injuries to 44 men and personal injuries to 42;

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

3. That the Albanian government knew that the said minefield was lying in a part of its territorial waters which was being used as an international highway for maritime traffic;

4. That the Albanian Government did not notify the existence of these mines as required by the Hague Convention No. 8 of 1907, in accordance with the general principles of international law and humanity;

5. That the Albanian government 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. Existence of the minefield in the North Corfu Channel without notification was a violation of the right of innocent passage.

7. That the passage of His Majesty's ships through the North Corfu channel on the 22nd of October, 1914, was an exercise of the right of innocent passage.

8. That even if for any reason it is held that conclusion #7 is not established, the Albanian government is not thereby relieved of its international responsibility for the damage caused to the ships.

9. The Albanian government has committed a breech of its obligations under international law and is internationally responsible to His Majesty's government for the deaths, injuries and damage caused to his Majesty's ships.

10. That the Albanian government is under an obligation to make reparation in respect of the breech of its international obligations.

11. That his Majesty's government sustained the following damages:

Damage of H.M.S. Saumarez £750,000
(Total Loss)

Damage of H.M.S. Volage 75,000

Compensation for deaths and injuries of Naval personnel 50,000

TOTAL 875,000

On the day appointed, Tirana did not submit a counter-Memorial. Instead the Albanian government sent a Preliminary Objection to the British application. In brief, the Albanian objection stated:

1. To place on record that, in accepting the Security Council's recommendation of 9 April, the Albanian Government had only undertaken to

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The Corfu Channel Case, I, pp. 19-403.
submit the dispute to the Court in accordance with the provisions of its statute; and

2. To give judgment that the United Kingdom application was "inadmissible," because it contravened the provisions of Articles XL and XXXVI of the Court's Statute.\textsuperscript{11}

As a result, on December 10, the President sent a second order to the British Government. He requested them to submit a written reply to the Albanian objection by January 20, 1948.

British circles were anything but pleased. Yet, desiring to conform with the Court's will, the British reply was presented to Hambro on January 19. It charged the Albanian government with "an abuse of the process of the Court."\textsuperscript{12} In conclusion, it called upon the Albanian government to comply with the terms of the President's order of July 31 without "further delay."\textsuperscript{13}

The International Court of Justice was called into session on February 24, 1948. The members of the Court were Laejandro Alvarez, Chile; Jose Philadelpho de Barros Azevedo, Brazil; Jules Basdevant, France; Jose Gustavo Guerrero, El Salvador; Sir Arnold Duncan McNair, United Kingdom; Isidro Fabela Alfaro, Mexico; Green H. Hackworth, U. S. A.; Helge Klaestad, Norway; Sergei Borisovich Krylov, U.S.S.R.; Charles de Visscher, Belgium; Abdel Hamid Badawi Pasha, Egypt; Hus Mo, China; John E. Read, Canada; Bogdan

\textsuperscript{11} Ibid., II, pp. 9-13. For Articles 36 \& 40 see Appendix.

\textsuperscript{12} Ibid., II, p. 23.

\textsuperscript{13} Ibid., II, pp. 14-25.
Winiarski, Poland; Milovon Zoricić, Yugoslavia. As the Court did not have upon its bench a Judge of Albanian nationality, the Albanian government, in accordance with Article XXXVI, Paragraph 2, appointed Dr. Igor Daxner who was President of the Supreme Court of Czechoslovakia.

Public hearings were held on February 26, 27, and 28 and on March 1, 2 and 5, 1948. The Albanian government was represented by N. Kshremani Yilli, Albanian Minister to Paris, and M. V. Vochoc and M. I. Lapenna, Professors of International Law. Britain was represented by Professors H. Lauterpacht, H. Waldock, and R. O. Wilberforce, Sir Hartley Shawcross, J. W. Jones, and M. E. Reed. The Albanian representatives charged that unless a state had previously accepted compulsory jurisdiction, it went to the Court of its own free will. Consequently, Britain's unilateral application was contrary to the charter of the World Court. Sir Shawcross answered that the Preliminary Objection was a "flagrant violation of the Resolutions of the Security Council." He held that the Security Council recommendation was binding upon both parties. Therefore, the case fell within the compulsory jurisdiction of the Court. On March 5, the President declared the hearings closed.

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14 See Appendix for Article XXXI, Paragraph 2.

15 The Corfu Channel Case, III, p. 63.

16 Ibid., III, pp. 8-159.
The judgment came on March 25, 1948. By a vote of 15-1 the Court rejected the Albanian Preliminary Objection. The dissenting vote was cast by Igor Daxner. The Court held that the reservations contained in the Albanian government's letter of July 2, 1947, were intended only to maintain a principle and in no way substantiated the Preliminary Objection. Time limits were also fixed for the subsequent pleadings according to the following schedule:

Counter-Memorial of the Albanian Government .... 15 June, 1948
Reply of the United Kingdom .... 2 August, 1948
Rejoinder of Albania .... 20 September, 1948

The dissenting opinion of Daxner was also included in the judgment. He stated that the British application "was irregular" and "that the Preliminary Objection should have been upheld." Judges Basdevant, Alvarez, Winiarski, Zoricic, DeVisscher, Badawi Pasha and Krylov, while agreeing with the Court's judgment, appended the statement by including individual opinions. The latter seven judges stated that they wished the Court had passed upon the United Kingdom's claim of "compulsory jurisdiction of the Court." All contended that jurisdiction depended upon the consent of both parties, irrespective of the Security Council's recommendation.

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18 Ibid., p. 45.
Immediately after the reading of this judgment, Yilli submitted to the Court an agreement which had been reached between the governments of Albania and Britain. Beckett in turn confirmed this, and the Special Agreement was presented to the Court. This agreement was a compromise between both nations. By it Albania and Britain agreed to submit to the Court the following questions:

1. Is Albania responsible under international law for the explosions which occurred on the 22nd of October 1918 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 of October and on the 12th and 13th of November, 1918, and is there any duty to give satisfaction.

Following this declaration the President declared the hearing closed.

As a result of this agreement the Court issued a special order on March 26. The order stated that the special agreement would now form the basis of further proceedings.

The Counter-Memorial of the Albanian Government was submitted to the Registrar on June 15, 1918. In answer to #1, the brief presented six conclusions:

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19 The Corfu Channel Case, II, p. 29.

20 International Court of Justice, "Reports of Judgments, etc." 1947-48, pp. 53-55.
1. That the Albanian government has never laid mines or minefields in its waters.

2. That the Albanian government possesses no knowledge of the alleged mines.

3. That the British Claims in connection with the mines in the North Corfu Channel, especially as to the time of their presence in the waters, their number, types, location and removal, has established no proof against the Albanian government.

4. That the Albanian government is not responsible to the British government for the explosions, damages and losses of life which occurred in the Corfu Channel on October 22, 1946.

5. That the conclusions of the British government ought to be rejected as being contrary to law and contrary to fact.

6. That in view of the odious character of the British accusation, the United Kingdom ought to present to the Albanian government an apology "in good and due form." 21

The Second question was summarized in two main arguments:

1. That the British maneuvers in the North Corfu Channel on October 22, 1946, were a violation of the sovereign rights of the Albanian states and was especially not "innocent passage."

2. That the British Navy on the 12th and 13th of November violated Albanian sovereignty "by the aide of force" 22 and by so doing acted contrary to Article V of the Hague Convention #8 of 1907. 23

The British answer was submitted to the Court on July 30, 1948. Contrary to the Counter-Memorial it asked

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22 Ibid., II, p. 143.

23 Ibid., II, pp. 106-146. For Article V of the Hague Convention, see Appendix.
the Court to judge and declare the following points:

1. Relating to the October 22, 1946 Incident:
   a) That the passage of the squadron through the Corfu Channel was an exercise of right of innocent passage and involved no violation of Albanian sovereignty.
   b) That with the exception of the two destroyers injured by mines no vessel of this squadron entered Albanian interior waters.
   c) That nothing done by any vessel of this squadron constituted a violation of any Albanian right.
   d) That the (swept) Corfu Channel is an international highway which is subject to international law of the Hague Convention of 1907.
   e) The Albanian notice of May, 1946, requiring foreign warships and merchant ships to obtain permission of the Albanian authorities before navigating through the Corfu (swept) channel is not justified under international law.

2. Relating to the Minesweeping operations of November 12 and 13, 1946.
   a) That the United Kingdom was legally justified in sweeping the channel for mines.
   b) That no violation of any Albanian right was done by any British vessel during the operation of sweeping.

3. That all allegations made in the Counter-Memorial regarding passage of the squadrons on October 22, and November 12 and 13, should be rejected.

4. That the government of the United Kingdom has committed no violation of the rights of Albania under International law and in consequence owes to Albania no apologies or satisfaction.25

The Albanian rejoinder was presented to the Court on September 20, 1946. As a whole it reiterated the findings submitted in the Counter-Memorial. It stated, "The

24 This report stated that none of the ships were maneuvering in Albanian interior waters and that the two destroyers did so only after the explosion because of mechanical difficulties.

Albanian government maintains the conclusion presented to the Court in its Counter-Memorial.\textsuperscript{26} The Court assembled on November 2, 1948, to review the declarations of the two governments. The Albanian government again availed itself of its rights under Article 31, Paragraph II. However, instead of nominating Igor Daxner, as in the preliminary hearings, they appointed Bohesulalav Ecer.\textsuperscript{27} Public sittings were held by the Court on the following dates: 9-12, 15-19, 22-26, 28 and 29 of November; 1-4, 6-11, 13, 14, and 17th December, 1948.\textsuperscript{28}

During these sessions, the Court heard arguments by the representatives of both parties. The British case was presented jointly by Sir Hartley Shawcross, Sir Eric Beckett, and Sir Frank Soskice. Albania was represented by Kahreman Yilli, J. Nordmann and Pierre Cot.\textsuperscript{29} Britain's case centered around two main points—that the British

\textsuperscript{26} Ibid., II, p. 313-376.

\textsuperscript{27} Mr. Ecer was a Doctor of Law and a Professor on the Faculty of Law at Brno, Czechoslovakia.

\textsuperscript{28} For full hearings of this phase of the case, see The Corfu Channel Case, III, pp. 8-694.

\textsuperscript{29} Cot, Pierre, LLD, French politician; b '95; Radical Socialist Deputy; Legion of Honor, 1914; Under Secretary in Paul-Boncour Cabinet '32; Minister for Air in Delaider, Sarraud and Chautemps Cabinets, '33-'34; Plun Cabinet, June '36- June '37, and in Chautemps Cabinet June '37. Advocate at Court of Appeals; Professor of Law, University of Rennes, Lecturer at Yale University; Member Provisional Consultative Assembly 1943, Member of the Union of Progressive Republicans and of French Association for the United Nations.
squadron had not violated Albanian sovereignty and that the mines could not have been laid without the knowledge of the Albanian government. These arguments were supported by testimony of the Commanders of both the Volage and Sumarex as well as the Captains of the Cruisers Leander and Mauritius. All of these officers stated that the ships were passing through the channel in innocent passage. They further testified that the guns on all four of the ships were unloaded and not aimed at the Albanian shore. Pierre Cot answered by claiming that the British ships had been maneuvering in forbidden waters. He then presented to the Court a series of documents to substantiate this fact. The documents contained observations of the Albanian coastal authorities for the day of October 22, 1946. Besides substantiating this point, the statement also charged that the ships were carrying a supplement of soldiers. Sir Hartley denied this charge by presenting evidence that showed that the ships were only carrying their normal marine detachments. He then twisted the Albanian evidence to support the British case. For he stated, if the Albanian coastal authorities could pick out marine detachments, how could anyone mine the channel without their knowledge?

Sir Hartley then introduced Lieutenant Commander Karel Kovacitch, a former Yugoslavian Naval Officer.30

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30 Commander Kovacitch had fled on July 19, 1947 in a sailing dinghy to Italy and had been granted political asylum.
His testimony was probably the most startling of the whole session, in so far as it provided testimony regarding the responsibility for the laying of the mines. The absence of any such proof was the weakest link in the British case. This proof was furnished by the testimony of Commander Kovacitch. Before introducing the witness, Sir Hartley said, "Our case is against Albania and not Yugoslavia." When the witness was called to the stand, Sir Frank asked him to relate his knowledge of the minelaying.

Commander Kovacitch stated that on October 17, he had observed mines being loaded aboard the Yugoslavian ships Mljet and Meljine. Later after inquiry among their officers he had learned that the ships had been involved in a minelaying operation. Immediately after this testimony, Pierre Cot, asked permission to question the witness. He conducted his cross examination in such a way as to question the Commander's character. He asked Kovacitch whether or not he was a deserter from the Yugoslavian Navy. Commander Kovacitch was forced to answer yes. Pierre Cot then presented to the Court an official communiqué from the Yugoslavian government. This note denied Commander Kovacitch's testimony completely and further stated, "That there are no such ships in the Yugoslavian Navy."32

Joseph Nordmann then took over the Albanian case.

31 The Corfu Channel Case, III, p. 240.
He stated that it was absurd to say that Albania would commit such a foul act. "Albania has no Navy, no Air Force, and only a very small Army. Who can possibly believe that such a country would embark upon such an adventure in the course of which it might lose its independence." He then brought out the charge that Greece might be the culprit. For he stated, "Had not the Greek government the greatest interest in increasing the tension between Britain and Albania."

Pierre Cot stressed the point that the British maneuvers of October 22, were not innocent passage, but rather, "... it was a mission to see whether the Albanian government would behave itself or fire once more as it had done the previous May." He then reiterated that the guns of the ships were aimed at the Albanian shore. Summarizing the Albanian position, he stated, "The truth is simply that the warships sought to impose by force the British Government's own interpretation of innocent passage."

After this conflicting testimony the Court was placed in an awkward position. If it were to accept the evidence

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33 Ibid., III, p. 312.
34 Ibid., III, p. 334.
36 Ibid., III, p. 408.
submitted by the British, it would have no choice but to judge Albania guilty. If it were to accept the Albanian viewpoint, British charges must be completely false. In an attempt to evaluate the evidence, the Court appointed a committee of experts including the following: Lieutenant Commander S. J. W. Elfferich of the Royal Netherlands Navy, Commodore S. A. Forshall of the Royal Swedish Navy, and Commodore J. Bull of the Royal Norwegian Navy. The order was issued on December 17, 1948, and stated: "Certain points have been contested between the Parties which make it necessary to obtain an expert opinion." Upon the President declared the hearings closed and postponed any further sittings until January 17, 1949.

The report of the Committee of experts was submitted to the International Court of Justice on January 8, 1949. The terms of the December 17th order had asked the experts to answer several questions. Their answers were "unanimous." Among the questions were:

1. How effective was the mine clearance carried on by the Royal Navy in 1944?

That the sweeping of a moored minefield if carried out in the proper way can be considered 100% safe.

2. Were the ships hit by floating mines?

The nature of the damage sustained by the Saumarez and Volage excludes the faintest possibility of its cause being a floating mine.

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3. What type of mines struck the vessels?

Damage must have been caused by the explosion of a moored contact mine of approximately 600# charge.

4. Were the mines moored before or after 22 October, 1946?

With nothing more than general information all we are prepared to state with certainty is that the mines could not possibly belong to a minefield laid during the war.°

In view of these findings the Court issued a subsequent order on January 17, to the committee. By this order the three experts were requested to proceed to the North Corfu Channel and "conduct firsthand observations."°

The report of this investigation was submitted to the Court on February 8, 1949. Its findings were quite startling. The experts considered it to be "indisputable" that, if look-outs were equipped with binoculars, "The minesweeping operations shown in the United Kingdom Memorial must have been noticed by these coastguards.° They stressed the point that look-outs on Cape Kiephali, Denta Point and San Giorgio Monastery could not help but notice the mine laying.

The hearings were again opened on January 17 and

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39 Ibid., p. 151.

40 Ibid., pp. 152-161. Quote is from page 161. Commander Bull did not take part in this investigation because of illness.
continued on through the 22nd. Proceedings during this time were primarily a reiteration by both sides presenting the highlights of their case. Soskice, representing the British government summarized the British case by stating: "The Albanian government's case should be regarded as one which is indeed difficult to support." Pierre Cot answered this by saying, "The decisions of the Government of Albania are legitimate." Thereupon, the President, on January 22, called the hearings closed and the Court withdrew into closed session.

On April 9, 1949, the Court, in full session, delivered its judgment. The Court held, by 11 votes to 5, that Albania was responsible for the explosions of the two destroyers on the 22nd of October 1946. By 10 votes to 6, the Court reserved for further consideration the assessment of the amount of compensation. On the question of the British violation of Albanian sovereignty, the Court voted 14-2 that the United Kingdom did not violate Albanian sovereignty on the 22nd of October, 1946. However the Court held unanimously that the British government had

41 The Corfu Channel Case, IV, p. 497.

42 Ibid., IV, p. 683.

43 President Guerrero was ill and the Vice President, Judge Basdevant acted as President during the hearings of January 17-22. On February 28, 1949, Judge Basdevant was elected President and Judge Guerrero, Vice-President.
violated Albanian sovereignty on the 12th and 13th of November. 44

On the first point the Five Judges who did not agree with the majority's findings were: Judges Bogdan Winiarski of Poland, Abdel Hamid Badawi Pasha of Egypt, Surge Borisouitch Drylov of the Soviet Union, Jose Philadelphio de Azevedo of Brazil, and Buhunslav Ecer of Czechoslovakia. Each of these Judges added a statement of their individual opinions. They insisted that the facts were not conclusive enough to substantiate the question of "Albanian knowledge." Judges Bogdan Winiarski of Poland, Abdel Hamid Badawi Pasha of Egypt, Surge Borisouitch Krylov of the Soviet Union, Jose Philadelphio de Azevedo of Brazil, Cuhuslav Ecer of Czechoslovakia and Basdevant, of France voted in the negative on the second point. They all contended that the Special agreement asked the Court only whether Albania was or was not to pay compensation and not to assess the amount. Judges Krylov of the USSR and Azevedo of Brazil cast the negative vote on the third issue. They concluded that the British Navy, on October 22 had violated Albanian sovereignty. As stated previously, the Judges were unanimous on the British actions of November 12 and 13. In this opinion the judgment stated that British actions were an intervention of Albanian sovereignty

44 This minesweeping operation was referred to in the World Court proceedings as "Operation Retail."
and can be looked upon "as a manifestation of a policy of force." Commenting on this point it added, "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." After the presentation of this judgment, the Court presented an order to the Governments of the United Kingdom and Albania. By this order the two governments were asked to submit briefs for the assessment of compensation. The time limits were as follows:

- June 25, 1949: Submission by Albania of its observations on amount demanded by the United Kingdom.
- July 25, 1949: Submission of the United Kingdom reply.

The Albanian viewpoint of this judgment was expressed in a radio broadcast reported by the New York Times. In this commentary, Tirana stated, "Judgement was unjust and nonsense." It further elaborated this point by quoting the Albanian newspaper, Bashkimi. This newspaper had written that the "... incident of the Corfu Channel was an act of provocation against Albania concocted by British imperialists with a view of realizing definite ends with

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45 International Court of Justice, "Reports of Judgements, Etc.," 1949, p. 35.

46 Ibid., p. 35. The judgement of April 9, 1949, as well as dissenting opinions. Pp. 4-131.

47 Ibid., pp. 171-172.
regard to our Country. The 25th of June came and no word was received from the Albanian government. However, on June 29, a letter was deposited with the Registrar. This note completely repudiated the right of the Court to assess the amount of compensation. The letter ended by stating that Albania "... sees no need for including such information."

In view of this, the Court issued another order of June 29. This order extended the time limits for the subsequent declarations. The deadline for the Albanian observation was changed to July 1, the United Kingdom reply to August 1, and the Albanian reply to September 1. In spite of this the Albanian government still failed to submit any declaration. The British reply, however, was submitted to the Court on July 28, 1949. It listed the following damages:

- In respect of H.M.S. Saumarez: £700,087
- In respect of H.M.S. Volage: £93,812
- In respect of deaths and injuries of Navy personnel: £50,048

On September 30, the Registrar, Hambro informed the British and Albanian governments that public hearings

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49 The Corfu Channel Case, II, p. 400.
50 Ibid., II, p. 394. For the complete British declaration, see pp. 390-394.
would begin on November 17, 1949. In spite of this letter no word was received from the Albanian government. On November 15 however, a telegram was received from Tirana reexpressing the opinion of the letter of June 29.

Although no Albanian Consuls were present, the hearings began on the designated day. The Court heard statements by Sir Eric Beckett and Sir Frank Soskice. They asked the Court to invoke Article 53 of the Court Statute. According to this Article, when one party does not appear before the Court, the other party may call upon the Court to decide in favor of its claim.

After this request, Judge Krylov asked Sir Eric, "If the Albanian government tried to approach you with the intention to come to the settlement of the question of compensation." Sir Eric answered that he had received a letter from the Albanian government. But he continued, "I replied to that letter on the 12th of September and I would like to read to the Court one sentence from my reply-- "That the procedure before the Court should not be interrupted and that the Court must be left to give its judgment

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51 Ibid., V, p. 286.
52 Ibid., V, p. 288.
53 See Appendix for Article 53.
54 The Corfu Channel Case, IV, p. 706. For complete procedure of this hearing, see pp. 702-712. These facts are presented as such for, except for this hearing I did not come across this information.
on the amount of damages."
He further acknowledged that a
similar letter had been received on October 4, but added,
"we again said we wished the proceedings before the Court
to continue." After this questioning, the President
announced the hearings closed. On November 19, 1949, the
Court appointed a Committee to evaluate the British Claim.
The members were Rear Admiral J. P. Berck of the Royal
Netherlands Navy and Mr. G. deRooy, Director of Naval
Construction in the Royal Netherlands Navy. The findings
of these experts were submitted to the Court on December 1,
1949. The report completely justified the British claims,
"as a fair and accurate estimate of the damages sustained."

The Court assembled on December 15, 1949 and formally
presented its judgment. By a vote of 12-2 it upheld the
British Declaration. The dissenting votes were cast by
Judges Krylov of the USSR and Ecer of Czechoslovakia.
Judge Krylov did not present a dissenting opinion, but
Ecer did. He stated that the British Claim did not take
into consideration the question of depreciation; therefore,

55 Vice President, Guerrero was acting President
since President Basdevant was in New York representing
the Court in the General Assembly.

56 International Court of Justice, "Reports and
Judgements, etc., 1949, pp. 258-260. This committee only
evaluated the damages to the ships. As far as compensation
for the dead and wounded, the Court accepted the British
Documents.

57 The President, M. Bastevant was representing the
Court at the United Nations General Assembly whereas
Judge Eabela was unable to be present for reasons of
health. The Corfu Channel Case, IV, p. 702.
the amount awarded to the United Kingdom was altogether too high. He then closed his statement by saying that the judgment "... rejects the rule that a sum in respect of depreciation must be deducted from the building cost without assigning any reason in law for doing so. What would be the effect of this principle in practice is a matter of calculation."\(^58\)

In spite of the Court's decision no word was received from the Albanian government. Therefore, on January 18, 1950, the United Kingdom sent a note to the Albanian government asking for payment.\(^59\) The British letter was answered on March 14, 1950 when the Albanian government announced its willingness to enter negotiations for payment.\(^60\)

Discussions were opened on April 14, in Paris. Behar Shtylla and Sir Eric Beckett of Albania and Britain respectively led the two delegations. As a sign of conciliation, Shtylla offered to pay 10,000 Pounds for the casualties.\(^61\) Yet in spite of this offer, the Albanian legation refused to commit itself as to whether Albania accepted the Court's

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\(^58\) [International Court of Justice, "Reports of Judgements, etc.", 1949, p. 257. For complete judgement see pages 244-257.]

\(^59\) This information was obtained in a letter sent to Arthur A. Bennett from the British Information Service on August 6, 1953.

\(^60\) British Information Service Letter, August 6, 1953, p. 1

\(^61\) The British government has not received any compensation from the Albanian government. British Information Service letter to Arthur A. Bennett, September 24, 1953.
liability under the award. Thus, on June 29, 1951, Sir Ernest Davies, Under-Secretary of State for Foreign Affairs, announced in the House of Commons that the discussions had closed without any agreement. 62

After this failure no direct actions were attempted by either side. British hesitancy to press the issue was well stated in a comment made by Sir Davies in the House of Commons on March 1, 1951. When the question was asked on Albanian failure to pay, Sir Ernest stated:

Albania is a country which is no larger than Wales and has a population of only a little over one million. There is no record of any trade with the United Kingdom at the present time and before the war the trade was roughly only 6,000 Pounds a year, which is obviously negligible. It has no assets abroad or assets known to be transferable. . . . Perhaps it is not out of place to say also that the Albanian Government happens to be a Communist Government who do not respect the rule of law or the principles of international law as do the Western democracies. 63

Meanwhile it became known that Albania could raise a claim to specific foreign assets in gold. When German troops evacuated Rome in 1943, they had taken with them a gold reserve valued at $2,600,000. 64 Previously, in 1939, Italian occupation of Albania had been accompanied with the movement of Albanian assets to Rome. Now therefore, both Albania and Italy claimed the gold reserve which was

63 Ibid., p. 2.
64 The background of this German looting as well as the amount was presented in a New York Times comment on May 2, 1951.
destined to be returned to its rightful owners. The three nations responsible for this disbursement were the United States, United Kingdom and France. Thus, on April 25, 1951, the three powers agreed to ask the International Court to name an arbitrator to rule on the conflicting claims. The three governments further agreed that if Albania were awarded the decision, the gold would be delivered to Britain in partial satisfaction of the Court's judgment "... unless within 90 days from the date of the arbitrators' opinion, either country makes application to the International Court against this decision." An arbitrator was chosen by the International Court and a meeting of the representatives of Albania and Italy was held in Brussels, Belgium, on November 5, 1951. The oral hearings took place in September, 1952, and on February 20, 1953 the gold was awarded to the Albanian government.

Selwyn Lloyd, Minister of State commented in the House of Commons on April 15, 1953, that he hoped the gold would now be given to the British government. However, on June 10, 1953 it was announced in the House of Commons that the Italian government had appealed the arbitrators' decision.

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65 British Information Service letter of August 6, 1953.
66 Ibid., p. 3.
67 Loc. cit.
68 Loc. cit.
decision to the International Court of Justice. 69

The World Court proceedings may be divided into
three main phases—Albanian preliminary objection, judg-
ment on the special agreement, and the decision on the
amount of compensation. The first part was somewhat of
a draw. The Court upheld the British application but
not on the grounds of the Security Council resolution,
but rather because of the Albanian letter of July 2, 1948.

The second question or the real core of the case
was viciously contested by both sides. The Court was
confronted with a maze of conflicting evidence. Being
unable to judge which facts were right, the Court appointed
a committee of experts to evaluate the testimony. These
experts completely upheld the British contention that
"the mines could not have been laid without the knowledge
of the Albanian government." On the report of these experts,
the Court judged Albania guilty. Yet showing its thor-
oughness, the Court also ruled that British action in
sweeping the channel was illegal and a "manifestation of
a policy of force."

The amount of compensation was not even contested
by the Albanian government. Yet the Court's fairness was
exemplified in the nominating of a Committee of experts
to evaluate the British claim. Then and only then did

69 British Information Service letter of August 6, 1953, p. 3.
the Court grant the British amount.

The voting was not on East and West lines. Of the whole Court only the Judges of Albania and the USSR voted consistently for one side.

Since this time, however, the British government has not consistently or strongly pressed Albania for payment. Thus, it may be inferred that Britain was more interested in upholding the principles involved than the receipt of payment. Yet, the willingness of Albania to make a token payment represents a concession to the British viewpoint in the dispute.
CHAPTER V

CONCLUSION

The bickering and melodrama that accompanied the Corfu Channel Incident were certainly overplayed. If both sides had truly desired to negotiate, the event could have been easily settled in a matter of weeks. Albanian actions were spurred more by a desire to raise insinuations and counter charges than to settle the dispute. Britain in turn, although somewhat more tactful, was just as uncompromising. Nevertheless, each side had good reasons for its actions. British policy during the war of supporting the more conservative resistance groups had aroused the suspicions of the Hoxha regime. In view of the existing pro-Greek policy of Britain, the Albanian nation could not help but look upon the United Kingdom as the instigator of Greek demands for Southern Albania. Albanian relations with Britain both following the war and up to the incident itself were definitely unfriendly. Thus this friction was responsible for the momentum of this incident even though peace existed between the two nations.

The most outstanding feature was the East-West conflict. Albanian aggressiveness would be difficult to explain except in the light of the fact that she was an ally of Russia. If she had not been certain of Russian
support her attitude would no doubt have been different. In the same light, Britain could have been more forceful if she would have had to deal only with Albania. Instead, the British government did not officially protest until the charges had been substantiated by the findings of the Zone Mine Clearance report.

The Security Council's failure in this case can certainly be blamed on the East-West schism. The Eastern bloc, represented by Russia and Poland never once deviated from their pro-Albanian viewpoint. The Western bloc, in turn, although definitely pro-British, did attempt to be somewhat impartial. The amendments of both France and the United States to the British resolution exemplified the desire of the Western bloc to compromise.

The voting however, except for Syria, was definitely along the East-West lines. It is true that when the Polish amendment was voted on in the April 3 meeting, the United States and Brazil voted with Russia. However, the opposition of the other states was not against adjournment but against the Polish reasons for adjournment. For when the Russian delegate asked for postponement in order to restudy the British resolution, all the states unanimously approved. Thus the voting of Brazil and the United States cannot be taken as a true test of East and West lines.

The Security Council did not accomplish its end. The case was still not settled. Yet in emphasizing the
legal aspects of the case, and the passing of the proposal to send the incident to the World Court, the Security Council did make progress.

The World Court did an admirable job. It was confronted with more conflicting testimony than the Security Council. In spite of this, the Court evaluated the case and presented a judgment. As for the proceedings, the hearings were certainly impartial. The Preliminary Albanian Objection was settled before any attempt was made to judge the issue. Both sides were given ample time to present their case. Because of the maze of conflicting testimony, the World Court did not attempt to judge the facts until they were first evaluated by an impartial board of experts. The fair attitude of the Court is particularly evident in the third phase of the case—the question of compensation to the United Kingdom. In view of Albanian failure to present a counterdeclaration, an order was issued on July 29, 1949 extending the time limits for the briefs. Then also, the Court did not accept the British figure until experts had first audited the amount.

The Court's voting was not on East and West lines. Of all sixteen members only the judges from Russia and Czechoslovakia voted consistently for one side. The unanimous judgment that the British government, on November 12 and 13 had violated Albanian sovereignty is both a credit to Britain and to the Court as a whole. The throwing out
of the testimony of Commander Kovacitich on the grounds "that not enough facts are available"¹ is also a compliment to the thoroughness of the International Court.

In comparing the success of the World Court and the failure of the Security Council, one fact must be taken into consideration. In the World Court no state has the veto power as is the case with the permanent members in the Security Council. The World Court, moreover, was free to decide the issue on the basis of existing evidence, undisturbed by political consideration. Hence the World Court was able to pronounce a judgment.

The ability of the judges as a whole to separate themselves from their nationalistic ideas and to judge the case by its merits is certainly a credit. The Judges of Yugoslavia, Poland, United States, France, and Britain, etc., did not vote straight national tickets. Neither the minutes nor the judgments ever mentioned the nationality of the members. In the Security Council, however, the countries names are recorded in the voting, instead of the names of the individuals.

The time element cannot be overlooked in evaluating the success of the World Court in the Corfu affair. The passing of the months into years allowed both sides to approach the issue from a more logical viewpoint. Britain's sense of grievance was appeased by the Court's favorable

¹International Court of Justice, "Reports of Judgments, etc." 1949, p. 17.
decision. Thus an incident that was not worth the risk of war has, for all practical purposes, been taken out of the headlines.
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Volume 6 is a thorough and complete index. Proved especially useful in checking information.

Contains the Security Council proceedings on this incident.
SECONDARY SOURCES

A. BOOKS


B. PERIODICALS

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A somewhat pro-Albanian comment on the British resolution to bring case before Security Council. Very interesting.

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Interesting background material emphasizing Albania's ingratitude to Britain's wartime aide.


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Mentions interesting trends of Communist gains in Albania.

Good but brief summary of the incident in the World Court.

C. NEWSPAPERS

Proved invaluable for general background and "behind-the-scenes" reporting.

* All the United Nations Bulletin articles were very interesting and invaluable in approaching the Security Council documents.
APPENDIX
ARTICLES OF THE CHARTER OF THE UNITED NATIONS

ARTICLE XXVII:

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

ARTICLE XXXII:

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a member of the United Nations.

ARTICLE XXXIII:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.
ARTICLE XXXV:

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34 to the attention of the Security Council or of the General Assembly.

ARTICLE XXXVI:

1. The Security Council may at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.
ARTICLES OF THE CHARTER OF THE HAGUE CONVENTION

Number 8, 1907

ARTICLE II:
The laying of automatic contact mines off the coast and ports of the enemy with the sole object of intercepting commercial shipping is forbidden.

ARTICLE V:
When anchored, automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.
APPENDIX C

ARTICLES OF THE CHARTER OF THE INTERNATIONAL COURT OF JUSTICE

ARTICLE XXV:

The Members of the United Nations agree to agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

ARTICLE XXXI:

If the Court includes upon the bench a judge of the nationality of one of the parties, any other party may choose a person to set as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates...

ARTICLE XL:

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall notify the Members of the United Nations through the Secretary General, and also any other states entitled to appear before the Court.

ARTICLE LIII:

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.