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COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU DÉTROIT DE CORFOU

PROCÉDURE ORALE (DEUXIÈME PARTIE)

IV

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

THE CORFU CHANNEL CASE

ORAL PROCEEDINGS (SECOND PART)

N° de vente :
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AFFAIRE DU DÉTROIT DE CORFOU

THE CORFU CHANNEL CASE

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU DÉTROIT DE CORFOU

ARRÊTS DES 25 MARS 1948, 9 AVRIL ET 15 DÉCEMBRE 1949

VOLUME IV

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

THE CORFU CHANNEL CASE

JUDGMENTS OF MARCH 25th, 1948, APRIL 9th AND DECEMBER 15th, 1949

VOLUME IV

PROCÉDURE ORALE (*suite*)

D. — SÉANCES PUBLIQUES

tenues au Palais de la Paix, La Haye,
les 17 novembre et 15 décembre 1949

ORAL PROCEEDINGS (*cont.*)

D.—PUBLIC SITTINGS

held at the Peace Palace, The Hague,
on November 17th and December 15th, 1949

MINUTES OF THE SITTINGS HELD ON NOVEMBER 17th AND DECEMBER 15th, 1949

(COMPENSATION)

YEAR 1949

TWELFTH PUBLIC SITTING[1] (17 XI 49, 4 *p.m.*)

Present: Vice-President GUERRERO, *acting as President; Judges* ALVAREZ, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir ARNOLD MCNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO; M. EČER, *Judge* ad hoc; *Registrar* HAMBRO; Sir Eric BECKETT, K.C.M.G., K.C., *Agent for the Government of the United Kingdom;* Sir Frank SOSKICE, K.C., M.P., *Counsel for the Government of the United Kingdom.*

The Government of the People's Republic of Albania was not represented.

The ACTING PRESIDENT, on taking his seat, expressed his regret that two members of the Court were absent: the President, M. Basdevant, was detained in the United States, where he was representing the Court at the United Nations' General Assembly; Judge Fabela was unable, for reasons of health, to be present on the Bench.

It was probable that President Basdevant would only be absent for one or two sittings. The President asked whether, if that were the case, the United Kingdom Agent would agree that President Basdevant should return to his place in the present proceedings, provided he were able to do so before the Court began its private deliberations.

The United Kingdom Agent, Sir Eric BECKETT, agreed.

The ACTING PRESIDENT then referred to the fact that on April 9th, 1949, the Court had given judgment that the People's Republic of Albania was responsible, in international law, for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of life that resulted therefrom. The Court reserved for further consideration the assessment of compensation, and, by an order of the same date, fixed the time-limits for the Governments concerned to file their observations on the amount of compensation claimed by the United Kingdom Government.

At the request of the Albanian Government—the United Kingdom Government having made no objection—these time-limits were extended to July 1st and August 1st, 1949, respectively, by an Order made on

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[1] Sixty-sixth meeting of the Court.

June 24th, 1949. A further time-limit, expiring on September 1st, 1949, was fixed for the Albanian Government to file any reply to the Observations of the United Kingdom Government.

In a letter of June 29th, the Agent of the Albanian Government informed the Registrar that :

> "... The Government of the People's Republic of Albania considers that, in accordance with the Special Agreement signed between the Agents of the People's Republic of Albania and of Great Britain, on March 25th, 1948, and presented to the Court on the same date, the Court had solely to consider the question whether Albania was, or was not, obliged to pay compensation for the damage caused to the British warships in the incident of October 22nd, 1946, and the Special Agreement did not provide that the Court should have the right to fix the amount of compensation and consequently to ask Albania for information on that subject."

A copy of this letter was transmitted to the Agent of the United Kingdom Government, and, within the time-limit specified, the Agent of the United Kingdom Government filed his Observations, in which he referred to Article 53 of the Statute and asked the Court to decide in favour of the claim of his Government and indicated the final amount claimed by the United Kingdom Government as compensation.

These Observations were transmitted to the Agent of the Albanian Government, who, on September 1st, had filed no document.

The Acting President observed that the Court was now sitting to assess the amount of this compensation. The Parties had been duly notified of the sitting.

He took note that Sir Eric Beckett, K.C.M.G., K.C., Legal Adviser to the Foreign Office, and Sir Frank Soskice, K.C., M.P., Solicitor-General, who were respectively Agent and Counsel for the United Kingdom, were present in Court.

In a telegram to the Registrar filed in the Registry on November 16th, 1949, the Deputy-Minister for Foreign Affairs of the People's Republic of Albania had stated that, in accordance with the view expressed by the Albanian Government's Agent in a letter addressed to the Court on June 29th, 1949, the latter Government did not deem it necessary to be represented at the present hearing fixed for November 17th, 1949.

The Acting President therefore took formal notice that the Agent and Counsel for the Albanian Government were absent.

He announced that Judge Krylov wished to put a question to the United Kingdom Agent. Sir Eric Beckett would not, however, be obliged to reply immediately to that question.

Judge KRYLOV asked the question reproduced in the annex [1].

Sir Eric BECKETT gave the reply reproduced in the annex [1].

Judge KRYLOV was asked by the President whether he was satisfied with this reply, and answered in the affirmative.

The ACTING PRESIDENT then called on Sir Frank Soskice, Counsel for the United Kingdom Government.

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[1] See *infra*, p. 706.

Sir Frank SOSKICE made and concluded the speech reproduced in the annex [1].

The ACTING PRESIDENT stated that the Court intended to make an Order instructing experts to verify the figures contained in the claim of the United Kingdom Government for reparation. This task would be entrusted to two experts : Rear-Admiral Berck and Engineer De Rooy, Director of Naval Construction, both of Netherlands nationality.

In accordance with Article 50 of the Statute, the Acting President asked the United Kingdom Agent if he wished to be heard on this subject.

In reply to the President's question, Sir Eric BECKETT said he had no observations to make on the subject of the expert enquiry that had been announced.

The ACTING PRESIDENT stated that when the experts' report had been submitted, it would be forwarded to the Agent for the United Kingdom Government, who would be given a time-limit for the submission of any remarks. The Court would then deliberate and give a final decision.

The Court rose at 5.20 p.m.

(Signed) J. G. GUERRERO,
Acting President.

(Signed) E. HAMBRO,
Registrar.

THIRTEENTH PUBLIC SITTING [2] (15 XII 49, 10.30 *a.m.*)

Present : [See twelfth sitting, with the exception of Sir Eric Beckett and Sir Frank Soskice, replaced by Mr. Maurice Reed, on behalf of the Agent of the Government of the United Kingdom.]

The ACTING PRESIDENT opened the meeting and said that the Court had met to deliver Judgment on the assessment of compensation in the Corfu Channel case between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of Albania. This Judgment follows on that rendered by the Court on the merits in the same case on April 9th last. In conformity with Article 58 of the Statute, the Agents of the Parties had been duly notified that the Judgment would be read during the present public sitting.

The President stated that the official text of the Judgment had been handed to the Representative of the United Kingdom, who was alone present in Court, the Albanian Government having sent no representative.

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[1] See *infra*, p. 707.

[2] Eighty-fifth meeting of the Court.

He announced that, the Court having decided that the French was to be the authoritative text, he would read the decision in French [1].

The Acting President then asked the Registrar to read the operative clause of the Judgment in English.

The REGISTRAR having read the English text, the ACTING PRESIDENT stated that Judge Krylov had declared that he was unable to agree either with the operative clause or with the reasons for the Judgment.

Judge EČER, Judge *ad hoc*, having declared that he was unable to agree with the Judgment, availed himself of the right conferred on him by Article 57 of the Statute and appended to the Judgment a statement of his dissenting opinion.

The ACTING PRESIDENT asked Judge Ečer if he wished to read his dissenting opinion.

Judge EČER answered in the affirmative and read his opinion [2].

The ACTING PRESIDENT then closed the sitting.

The Court rose at 11.20 a.m.

[*Signatures.*]

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[1] See *Reports of Judgments, Advisory Opinions and Orders* 1949, pp. 244-251 (Sales No. 28).

[2] See *idem*, pp. 252-256.

ANNEXE AUX PROCÈS-VERBAUX

EXPOSÉ ORAL DU 17 NOVEMBRE 1949

(RÉPARATIONS)

ANNEX TO THE MINUTES

ORAL STATEMENT OF NOVEMBER 17th, 1949

(COMPENSATION)

STATEMENT BY SIR FRANK SOSKICE

(COUNSEL FOR THE GOVERNMENT OF THE UNITED KINGDOM)

Judge KRYLOV. Sir Eric, I feel it necessary to ask you the following question : Having in mind that in the Order of the 9th April, the Court reserved the right of the Parties to make use of Article 68 of the Rules of Court, could you tell the Court if the Albanian Government tried to approach you, as Agent of the British Government, with the intention to come to the settlement of the question of compensation, and if the British Government tried to come to such final agreement ? That is all.

Sir Eric BECKETT. Mr. President, I am prepared to reply to that question immediately.

By a letter of the 13th July, the Albanian Ambassador at Paris wrote to me and suggested that we should discuss out of Court and try to reach agreement on the amount of damages. I replied to that letter on the 12th September and I will read to the Court two sentences from my reply.

The first sentence stated that the Government of the United Kingdom considered "that the procedure before the Court should not be interrupted and that the Court must be left to give its judgment on the amount of damages".

The second sentence is : "My Government (i.e. the United Kingdom Government) are therefore not prepared to enter into discussions with the representatives of the Albanian Government on this question at the present moment."

The Albanian Ambassador in Paris, in a letter of 4th October, again declared the readiness of the Albanian Government to discuss this matter out of Court and in a further letter which I wrote to him on the 12th October, we again said we wished the proceedings before the Court to continue.

Le PRÉSIDENT. Êtes-vous satisfait, Monsieur Krylov ?

M. KRYLOV. Oui.

Le PRÉSIDENT. Je donne la parole au conseil du Gouvernement du Royaume-Uni.

Sir Frank SOSKICE. May it please the Court.

In this case, the Court pronounced its Judgment on April 9th, 1949. The decision of the Court (p. 23 of the Judgment) was that "Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life which resulted from them, and that there is a duty upon Albania to pay compensation to the United Kingdom".

In the last two minutes of their last oral submission before the Court, Counsel for the Albanian Government for the first time asserted that the Court would have no jurisdiction by virtue of the Special Agreement to assess the amount of the compensation. The Court in its Judgment considered this submission made on behalf of the Albanian Government and (p. 26) arrived at the conclusion that it has jurisdiction to assess the amount of the compensation. This issue of jurisdiction is now *res judicata*. I say no more on this point beyond referring to paragraph 3 of the Observations of the United Kingdom delivered in July last. The Court having held it had jurisdiction went on to say in its Judgment that the amount of damages could not be fixed at that time and, if I might quote, stated :

> "The Albanian Government has not yet stated which items, if any, of the various sums claimed it contests, and the United Kingdom has not submitted its evidence with regard to them.
>
> The Court therefore considers that further proceedings on this subject are necessary ; the order and time-limits of these proceedings will be fixed by the Order of this date."

On the 9th April the Order was made. In this Order the Court reserves for further consideration the assessment of the amount of compensation and fixes the time-limits within which the two Parties should deliver written Observations on the amount of damages. The Albanian Government, however, had not seen fit to plead before the Court on the issue of the amount of damages, but the United Kingdom duly delivered its written Observations on the 28th July, in compliance with the Court's Order. As stated in paragraphs 4 and 5 of the United Kingdom Observations, I submit that Article 53 of the Court's Statute is now applicable and I now desire to make submissions with a view to assisting the Court, in the words of Article 53 (2) to "satisfy itself" that the amount of damages which the United Kingdom is now claiming is "well founded in fact and law".

I apprehend that the Court would desire me to call their attention to the specific items making up the amount claimed by the United Kingdom and the evidence we tender in support of our claim. The total amount of the claim as set out at the end of the conclusions of the United Kingdom Memorial is £875,000, consisting of £750,000 in respect of H.M.S. *Saumarez*, which was a total loss, £75,000 for damage to H.M.S. *Volage* and £50,000 compensation for the death and injuries of naval personnel.

The Court will remember that Annex 10 of the Memorial contains a report on the damage to H.M.S. *Saumarez* and Annex 11 a report on the damage to H.M.S. *Volage*. Annex 14 contains a statement of the cost of repairs to the *Volage* and the cost of replacement of the *Saumarez*. Annexes 12 and 13 contain a list of the sailors killed and injured, together with a statement of the pensions and expenses payable in respect of them and their dependants. In the United Kingdom Observations of the

28th July and for reasons set out in these Observations, we seek to make some change in the previous figures presented in the Memorial, which were estimated figures. As revised in the Observations of July last, the United Kingdom claim now stands at £843,947 instead of as before at £875,000. Appended to the Observations are appendices consisting of affidavits on which, together with the annexes to the Memorial to which I previously referred, the United Kingdom relies as constituting evidence to substantiate the various items which go to make up the claim. In addition I also rely on the affidavit of Mr. Richard Royle Powell, the Deputy-Secretary of the Admiralty, which was filed with the Court a week ago.

Before dealing further with the individual items, I should like to refer the Court to a decision of its predecessor, the Permanent Court, which is generally taken as being the leading authority on the principles of international law relating to the assessment of damages. This decision of the Permanent Court was given in 1925. It is Judgment No. 13, Chorzów Factory, Merits, reported in Series A, No. 17. The passage which I shall quote will be found at page 47 of the Judgment, and reads as follows : —

> "The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear ; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law."

Mr. President, perhaps it would be convenient if I pause here for a moment in order that the translator may translate what I have said into the French language.

I would like however to begin by referring to that part of our claim which relates to the human victims of this tragedy. Whatever can be said of anybody else concerned in the incidents on which the Court has pronounced judgment, these persons—86 officers and men killed and injured—were beyond controversy innocent from all points of view and the least deserving of the fate that befell them when these explosions took place. As stated in paragraph 6 of our Observations, it might perhaps have been possible consistently with legal principle to include some claim in respect of the sufferings and physical injuries inflicted on these men resulting in many cases in their death as representing a loss to the United Kingdom which is the only actual claimant in this case. At the same time, no money award can compensate in the real sense for the loss of so many brave lives or adequately redress the wrong that has been done to the many killed and injured. These are losses which cannot be reckoned in money. It seemed to us that to be more fitting and more in accord with the reverence due to their memory that we should not treat these matters as heads of monetary loss. We have accordingly limited our claim, as will be seen from our pleadings and observations, to expenditure in regard to the pensions and awards made

to these men or their dependants, costs of administration, cost of medical treatment, etc., representing actual or prospective outlay to the United Kingdom. The actual sum now claimed is £50,048, and the detailed statement showing how this is made up is to be found in Annexes 12 and 13 to the Memorial as supplemented and amended by Appendix 1 to the Observations of the 28th July.

I submit to the Court that this head of claim has been moderately and carefully prepared and that the affidavits filed with the Court amply substantiate it.

I will now pass, if I may, to the claim in respect of the total loss of H.M.S. *Saumarez*. As amended in the further Observations filed by the United Kingdom this claim now figures as £700,087. The estimated amount of this claim, as stated in Annex 14 to the Memorial, was, as I have already said, £750,000. The reasons why this estimated figure was reduced to the present figure of our claim, namely, £700,087, appear in paragraphs 13 and 14 of our further Observations of July last. We thought that the Court might desire to have further information and evidence to substantiate the figure of £700,000 mentioned in our Observations and accordingly the further affidavit of Mr. Powell was filed a week ago, showing on what basis this figure was arrived at. From this it will appear that £700,000 is a conservative figure for the cost of building an identical ship at 1946 prices. In order to implement in relation to the facts of this case the general principle relating to the assessment of damages as enunciated in the passage from the Chorzów Judgment which I have quoted, I submit that the only basis which can be adopted is the replacement cost as at the time when the wrongful act was committed in the case of the *Saumarez* and the cost of repairs in the case of the *Volage*. The Court will remember that the *Saumarez* became a total loss as a result of the explosion and the claim put forward in respect of her is the amount which it would have been necessary to expend in 1946, at 1946 prices, in order to replace her with a ship as far as possible exactly similar. In the Chorzów case the Permanent Court said that if restitution in kind is not possible a sum should be paid "corresponding to the value which a restitution in kind would bear". Restitution in kind would have been another ship exactly like the *Saumarez* and a sum of money corresponding to another ship like the *Saumarez* is her replacement value at 1946 prices. Not only is this the basis indicated by the Chorzów Judgment, but in fact, no other obvious basis on which the computation can be made presents itself. In the case of articles which have a market value, the market value should perhaps be taken into account, but it is not possible to say that there was a market value for the *Saumarez*. It is true that on occasions and for special reasons warships which have been in commission (as distinct, of course, from new warships made by private shipbuilders to the order of a foreign government) have been sold between governments as, for example, when during World War II the United Kingdom sold ships in commission to Allied Governments in order to assist the joint Allied war effort.

Furthermore, as stated by Mr. Powell in his affidavit, the Admiralty have sold a number of warships to foreign governments since the end of the Second World War. The ships to which he refers in fact include four ships of the *Saumarez* class, three of which were sold to the Dutch Government and one to the Norwegian Government. These ships were sold at special prices to these Governments. In the case of the ships sold

to the Dutch Government, a circumstance which influenced the price was the desire of Great Britain to assist its Ally the Netherlands, whose Navy had been seriously depleted, in carrying on the war in the Far East, and although the ships themselves were delivered in October 1945 after the war ended, the negotiations for the sale of these ships to the Dutch Government were begun during the war. In the case of Norway, the ship in question was sold as part of a larger transaction and special considerations also were taken into account. In the case of the *Saumarez*, however, the British Government was not and would not have been prepared to dispose of her as she was actually in commission and not surplus to requirements in October 1946. Therefore I submit that there is no other basis of valuation to which recourse could be had except the replacement value at 1946 prices. It is true that the ship was completed in 1943, but at the same time, as stated by Mr. Powell, she was, immediately before the incident of October 22nd, 1946, as good as new. The Court will appreciate that a warship which is an operative unit in commission in the British Navy has to be maintained in first-class condition, and it therefore would be unrealistic in the case of such a warship to apply rates of depreciation which might be considered applicable in other cases.

(Pause for interpretation.)

There are some further individual items of loss to which I would like to refer.

In paragraph 13 of our Observations the value of the stores actually lost with H.M.S. *Saumarez* is given at £23,887, and the value of the equipment which might be used from H.M.S. *Saumarez* is given as £20,000. In this connexion I should explain the difference between stores and equipment. By stores is meant portable things, whereas equipment is built into the structure of the ship. Thus guns are stores, but gun mountings are equipment. Apart from a small amount in respect of the outfit of "first fitting stores" (anchors, cables, etc.), the value of stores is not included in the cost of constructing the ship, whereas the cost of equipment is so included. Radar, asdics and echo-sounding gear are stores, even when they have been installed in the ship. The method of arriving at the figure of £20,000 for re-usable equipment was as follows :

All the departments in the Admiralty concerned with equipment, as distinct from stores, were asked to say what equipment they wanted removed from H.M.S. *Saumarez* for possible re-use and to give its value as new. They produced a list of equipment valued as new at £74,870. A reduction of 50 % was made to allow for depreciation in respect of the three years that the hulk of the *Saumarez* had been lying at Malta since 1946 and possible damage in the incident in the Corfu Channel. I should point out that the United Kingdom Government did not think it right to remove or make use of the equipment until the Court had pronounced judgment, in case it was necessary for an inspection to be made of the vessel as evidence in the case. The only exception is a single mechanical pump which was taken from *Saumarez* and installed on *Volage*. In view of the cost of removing any equipment which it might be desired to use, transporting it and reinstalling it in another ship, it was thought reasonable further to reduce the figure of £37,500 to £20,000. It must be borne in mind that it cannot be known until the equipment has been removed and tested whether in fact it would be serviceable for further

use. In the result the figure which is allowed for usable equipment and in reduction of the claim is now £20,000.

With regard to the £23,887 for stores lost in the *Saumarez*, this is subdivided as set out in Appendix 5 to the Observations of July.

Perhaps I should say a word with regard to the figure for scrap value of £3,800 mentioned in paragraph 13 of the Observations. This figure is arrived at as follows:

Of the standard displacement of the *Saumarez*, namely, 1,730 tons, it was estimated that some 80 % namely, 1,384 tons, including steel scrap and non-ferrous scrap, were recoverable. From this a further 150 tons were deducted as it was necessary to cut off and jettison the damaged bows of the *Saumarez* in order to tow her to Malta from Corfu. (In order to avoid confusion, I would remind the Court that it was the *Volage* whose bows were blown off and sank to the bottom.) The net result was that some 1,234 tons of steel scrap and non-ferrous scrap are recoverable. After allowing for shipbreaking costs, transport and so on, and taking the controlled price of £3.10.0 per ton for steel scrap and £5.0.0 for ferrous scrap (including castings) and £50 for non-ferrous material (that is, brass, copper, etc.) the estimated scrap value was brought out at the figure given in our Observations, namely, £3,800.

There remains the final head of claim, namely, that in respect of H.M.S. *Volage*. This, as originally put forward in the Memorial and Annex 14 to the Memorial, was in the estimated sum of £75.000. In the Observations of July this estimated figure is amended to the figure of £93,812., as appears in paragraph 11 and the appendices referred to in this paragraph. It will be seen that while the actual cost of repairs to the *Volage* was reduced to £65,830, a figure of £27,982 was included for stores lost, bringing out the figure which I have mentioned of £93,812. With regard to the individual figures making up the cost of repairing the *Volage*, namely, £65,830, and the cost of the stores and equipment to the value of £27,982, I do not think that I can usefully add any further details to those already given in Appendices 4 and 5 of our Observations, but, of course, the United Kingdom Government will be happy to supply further information on any matter which the Court requires.

Mr. President, this completes what I desire to say in substantiation of the United Kingdom claim totalling, as I have said, £843,947. If the Court desire any further information I will be only too happy to furnish it to the best of my ability, but subject to this, I do not think that I would be usefully occupying the time of the Court by dilating further on individual items, and I submit that the Court now has before it evidence substantiating to the full the claim we have put forward. I accordingly ask that judgment may be pronounced in favour of the United Kingdom that they are entitled to be paid the amount claimed.

Mr. President and Members of the Court, I would not like to part from this long and difficult case in which I believe I am probably now making my final address to you without expressing to you on my own behalf and on behalf of my colleagues with whom I have collaborated in presenting the United Kingdom case, their deep sense of gratitude for the unremitting courtesy with which you have treated us and the care and patience with which you have received and examined the various arguments and the evidence which has been brought before you.