

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU DÉTROIT  
DE CORFOU

VOLUME II

*Pièces de la procédure écrite (suite)*

1950

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

THE CORFU  
CHANNEL CASE

VOLUME II

*Documents of the written proceedings (cont.)*



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AFFAIRE DU DÉTROIT DE CORFOU

THE CORFU CHANNEL CASE

COUR INTERNATIONALE DE JUSTICE

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AFFAIRE DU DÉTROT  
DE CORFOU

ARRÊTS DES 25 MARS, 9 AVRIL ET 15 DÉCEMBRE 1949

VOLUME II





INTERNATIONAL COURT OF JUSTICE

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1950

THE CORFU  
CHANNEL CASE

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

VOLUME II



PREMIÈRE PARTIE (*suite*)

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PIÈCES DE LA PROCÉDURE ÉCRITE  
(*suite*)

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PART I (*cont.*)

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DOCUMENTS OF THE WRITTEN  
PROCEEDINGS (*cont.*)

5.—REPLY SUBMITTED, UNDER THE ORDER OF THE  
COURT OF 26th MARCH, 1948, BY THE GOVERNMENT OF  
THE UNITED KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND

INTRODUCTION

This Reply is submitted to the Court in pursuance of the Order of the Court of 26th March, 1948, and in reply to the Counter-Memorial submitted by the Government of the People's Republic of Albania on 15th June, 1948.

2. The Government of the United Kingdom agree that the future procedure in the present case is now based upon the agreement signed between the Agents of the two Governments on 25th March, 1948. They observe that the Albanian Government persists in criticizing the procedure, which the Government of the United Kingdom adopted prior to the signature of this special agreement. On this point the United Kingdom is content to rely upon the judgment of the Court (unanimous except for the judge *ad hoc*) delivered on 25th March, 1948, which the Albanian Government appears to ignore. The Government of the United Kingdom cannot accept the suggestion made in the introduction of the Albanian Counter-Memorial that this special agreement has totally changed the nature of the case before the Court. As the Government of the United Kingdom have made clear from the beginning, they have never had at any time any intention of trying to contest the jurisdiction of the Court to deal with the claims now made by Albania under the second question submitted to the Court under the special agreement. Albania could therefore have made these claims equally well in her Counter-Memorial even if the special agreement had not been concluded.

The Government of the United Kingdom does not assent to the propositions (1) that the principal question at issue is not the responsibility of the Albanian Government, (2) that the claim of the United Kingdom is not based on facts legally ascertainable, or (3) that the Albanian claim is so based.

## PART I

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

3. The Government of the United Kingdom now proceeds to deal *seriatim* with the facts and arguments set out in the Albanian Counter-Memorial. In so doing they desire to state, as the Albanian Government have done in paragraph 5 of their Counter-Memorial, that the Government of the United Kingdom reserves its position with regard to all facts and arguments adduced in the Albanian Counter-Memorial not expressly admitted in this Reply.

## A. THE FACTS

## THE NORTH CORFU CHANNEL

(Counter-Memorial, paragraphs 6-9.)

4. The Corfu Channel may indeed not have been used by shipping on a large scale, like the greater international straits such as the Sound or the Dardanelles. It must, however, have had greater importance than is indicated in paragraph 9 of the Albanian Counter-Memorial; otherwise the Germans and Italians would not have been at pains to lay so many minefields in that area during the Second World War, and, at the same time, to establish and maintain there a swept channel for navigation. Moreover, when the area was liberated, one of the first actions of the Allies was, as has already been shown, to resweep the channel. But, in any case, the character of the channel as an international route depends on the fact that it connects two parts of the open sea and is useful to navigation, not on the volume of traffic passing through it. Evidence of the character of the Corfu Channel as an international trade route is afforded by the ordinary commercial atlases which show three trade routes passing through this channel; examples are Bartholomew's *Citizens' Atlas of the World*, 1944 edition, page 74, and Philips *New Commercial Map of Europe*, scale 48 miles to 1 inch, 1944 print. That it is used as a route is admitted by the Albanian Government itself when it says in paragraph 135 of its Counter-Memorial:—

“En fait, le passage des navires marchands de toute sorte et de toute nationalité non suspects n'a été interféré par les autorités albanaises ni avant le 15 mai 1946 ni après.”

5. Although the Corfu Channel may be used principally (but not exclusively) by coastal traffic, this does not deprive it of its

status as an international highway and it does not appear very profitable to discuss the question whether such a highway is of major or minor importance. The right of passage through such a highway does not depend on the will of the Albanian State but is based on the law of nations, according to which (unless modified by treaty) there is a general right of navigation through straits useful for navigation and connecting two parts of the open sea and this right enures to the benefit of all States, whoever the littoral State may be. In the one case where the right is restricted by treaty, both shores of the strait belong to the same Power. It is relevant here to point out that Albania is not, as so many paragraphs of her Counter-Memorial appear to assume, the only State with an interest in the waters of the Channel or the traffic passing through it. One half of the Channel at its narrowest portion is Greek territorial water and the Channel is principally used as an approach to Corfu and other Greek ports. Albania is in fact trying to claim to control the traffic in an international strait, which is of more importance to Greece than to Albania.

6. The Albanian Government refers to 20 million tons of traffic plying to the major Adriatic ports of Trieste, Venice, etc., in 1934, most of which, it says, would naturally take the western and shorter route through the open seas. This may be so but ships plying between Corfu and the Adriatic, as well as between the Adriatic and other Greek ports, such as Preveza and Patras, inevitably use the Corfu Channel. In this connexion it should be noted that on 15th May, 1946, the two British cruisers were proceeding to Corfu, and that on 22nd October, 1946, the four British ships, after sojourning at Corfu, were proceeding to the waters north-west of Corfu. To have taken a course west of Corfu, instead of through the Straits, would have involved for these ships an additional distance of 100 miles. The suggestion, therefore, made, at the end of paragraph 6 of the Albanian Counter-Memorial, that the British warships had another purpose in passing through the Corfu Channel, has no foundation. The Government of the United Kingdom wishes to make clear that it only contends that the right of passage applies to the Channel and not to national (interior) waters outside the Channel, for example the Bay of Saranda north-east of the Channel. Further reference to this distinction between territorial and national waters is made later in this Reply.

7. The size of Albania's navy and merchant marine and the condition of its ports and harbours do not affect the status of the Channel as an international highway. In later paragraphs of this Reply (paras. 96-101) it is shown that a littoral State, whatever other measures it is entitled to take in the interests of defence, is not entitled to deny passage through an international strait to war vessels or merchant vessels.

THE NAVIGABLE CHANNEL  
(Counter-Memorial, paragraphs 10-14.)

8. The Albanian Government complains that no evidence is adduced to prove that a swept channel had existed since June 1940. Its existence, however, was known to the Allied Command. This knowledge and the German mine-information chart (filed as Annex 2 to the United Kingdom Memorial) show that, according to all available information, no minefield was laid by the German authorities in the Channel covering the Bay of Saranda or in any other area east of the channel immediately adjacent to that bay, although they had laid minefields west of the channel protecting the entry into the narrowest point of the Channel. Further, the swept channel was searched by British minesweepers in October 1944 and January and February 1945. The Government of the United Kingdom have shown that no mines existed in this area at the conclusion of hostilities and that mines were found in November 1946 right across the swept channel. These mines could not have remained there without incident for eighteen months after the end of hostilities, since shipping (including His Majesty's ships in May 1946) had for several months preceding October 1946 passed through the swept channel safely. Further, there is decisive evidence that the mines found had been recently laid. The Government of the United Kingdom refers again in this connexion to paragraphs 11, 12 and 13 and to Annex 18 of its Memorial. The presumption is therefore that the minefield found on 13th November, 1946, in Albanian territorial waters was laid in the Channel after the close of hostilities by or with the knowledge or connivance of the territorial Power. It is for the Albanian Government to disprove this presumption and to explain the existence of that minefield.

9. The Albanian Government seeks, in paragraph 11 of its Counter-Memorial, to throw discredit upon the German mine-information chart by alleging that it is not dated, that it does not indicate the swept channel, and that, in any case, it frequently happened that mines have been found which were not marked on the German charts.

In reply the Government of the United Kingdom points out, *first* that numerous other German charts have come into the possession of the Allies, which showed the same fields and the same channel, and that the information contained in these charts was verified by later experience, *secondly*, that the date of the German chart is irrelevant, because the Government of the United Kingdom is not seeking to show that this chart proved the existence of the channel at a given date, but simply to show the position of the German minefield, and to show that, at some time prior to October 1944, the Germans maintained a swept channel. This the chart clearly proves.



10. The Counter-Memorial states that the chart does not indicate the swept channel "si ce n'est une ligne passant à travers le canal et qui ne prouve rien". But the general direction of the swept route is indicated; and the chart does not purport to define the limits of the swept channel, and was not filed by the Government of the United Kingdom to show such limits, but merely to prove the fact that such a channel was established by the Germans. The chart proves this fact; it is incorrect to say it proves nothing.

11. It is not denied that in other areas mines laid by the Germans have been found, which were not marked on the appropriate German charts. This fact is, however, irrelevant for the following reasons: (1) a swept channel existed in the North Corfu Channel at the conclusion of hostilities; accordingly mines found in that Channel could not possibly have been laid by the Germans; (2) in general the only mines which have been found in swept channels, and which were not marked on German charts, have been ground mines, which had not responded to sweeping—no ground mines, however, could have been effectively laid in the Corfu Channel on account of its depth; (3) in a few cases moored mines have been found out of the position shown on the German chart, because the minelayers which laid the mines had not been able accurately to plot the position of the mines. In Annex 26, there is now attached a tracing of Mine-Information Chart 27II, a chart issued by the British authorities to members of the International Mine-Clearance Organization for the guidance of mine-sweeping authorities. On this chart are marked the position in other parts of the Adriatic of minefields as shown on German charts, or reported by German authorities. It is upon this chart that some of the charts and tracings filed by the Albanian Government with Annex 14 of the Counter-Memorial are based. A cautionary note (No. 2 in left-hand bottom corner) appears in Mine-Information Chart 27II that, since the minelays are plotted from positions given by the minelayers themselves, it must not be assumed that the extremities of the minefields are strictly accurate. Owing to inadequate instruments errors in position up to three miles or so may be expected in lays which are a long distance from land. It is stated conspicuously that the Chart is not to be used for navigation.

12. The examples given in paragraph 11 of the Albanian Counter-Memorial are wholly misleading. The mines alleged to have been found at Boka Kotorska, and on the west coast of the Island of Krk, were not notified to the International Minesweeping Organization, of which Yugoslavia is a member, and cannot therefore be accepted as established. The examples at the end of the same paragraph on page 14 of the Albanian Counter-Memorial are equally of no value. In the case of mines in the Farezina Channel which is in the North Adriatic, Yugoslav official reports show that thirteen mines were cut within one mile, and seven mines within

$\frac{1}{2}$  mile, of the reported positions of the German minefield A.R. 10, and not "twelve mines" "one mile away to the north and south" as stated in Annex 14 of the Albanian Counter-Memorial. Further, in order to support this inaccurate statement, a dotted line representing part of this minefield has been wrongly plotted on one of the sketches attached to Annex 14, namely, that which is described in the bottom right-hand corner as "D calqu  de la carte britannique". The true position of this minefield is shown on Mine-Information Chart No. 27II, Annex 26 of this Reply, by the red dotted line which appears above A.R. 10 in red letters in the northern portion of the chart.

In the Albanian Annex 14, reference is made in Example 3 (Sketch No. 3) to a "Z mine" where, in fact, an "obstructor" was cut. An "obstructor" is not a mine but an anti-sweeping device the object of which is to foul the sweep and thus prevent it cutting the mines. In Example 4 of Annex 14 (Sketch No. 4), the southern limit of where the mines were swept is given as  $44^{\circ} 53' 32''$  North, when, in fact, no mine from this field was cut south of  $44^{\circ} 55' 10''$  North. This represents the mines 1.7 miles South of their true position. The mines were, in fact, found approximately in the position shown on the German chart. The position of a swept mine given in Example 5 of Annex 14, and illustrated in Sketch 8, is ten miles inland and the reference to this mine is not understood.

As a further example, in minelay No. 127 the following words were printed on the chart, but are omitted from the sketch filed with Annex 14 of the Albanian Counter-Memorial: "scattered probably further to northward". This is precisely where the mines were found to be (see sketch No. 7 attached to Annex 14 of the Albanian Counter-Memorial and Annex 26 hereto).

The discrepancies between the examples given in the Counter-Memorial and the official reports submitted to the International Mine-Clearance Organization by Yugoslavia, on which the comments here made are based, show clearly that the former are totally misleading.

13. The Government of the United Kingdom submits that the existence of an unknown German minefield right across a channel of navigation in common use, and only discovered eighteen months after the conclusion of hostilities, when all the evidence available goes to show that the channel had been swept, and remained swept at the conclusion of hostilities, is an impossible supposition, contrary to common sense and the facts of general experience.

14. The Albanian Government professes to find discrepancies between the charts contained in Annex 5 and Annex 7 of the Memorial which a brief study of the charts themselves will show to be non-existent. Annex 5 contains a portion of "an *Index Medri Chart*" (as was made plain in para. 11 of the United Kingdom Memorial). This chart, being an index or key only, was intended to be used with the relevant Medri pamphlets (also in Annex 5)



which give detailed and accurate particulars of the routes for navigational purposes. It did not purport to do more than show the general direction of the route. On the other hand the chart in Annex 7 shows the swept channel itself. Again the German Mine-Information Chart (Annex 2 of the Memorial) only purports to show the central line of the swept channel and not its breadth.

15. The Albanian Government repeats, in paragraph 13 of the Counter-Memorial, its allegation that it knew nothing of the existence of a swept channel, notwithstanding the fact that Medri booklets and charts were despatched to it from March 1946 onwards (as proved by Annex 4 of the United Kingdom Memorial). It is true that the last issue (dated 7th September, 1946) was returned from Tirana with the indication that the office to which they were addressed had closed down. The eleven previous issues were apparently received for they were similarly addressed and were not returned. Paragraph 14 of the Counter-Memorial, moreover, shows that at any rate from January 1946, when General Hodgson gave it a copy, the Albanian Government was fully aware of the course of the navigable channel.

#### THE MINE-SWEEPINGS, 1944-1945

(Counter-Memorial, paragraphs 15-20.)

16. The Government of the United Kingdom, having stated as facts within its own knowledge that the Channel was swept or searched by British minesweepers in October 1944, January and February 1945, it is no evidence to the contrary that Albania was not aware of the sweepings or that, in some United Kingdom communications, two out of the three operations only were mentioned. It is further incorrect to say that the United Kingdom Government is the sole and exclusive judge of the results of these operations (para. 18 of the Counter-Memorial). In fact the routes 18/32 and 18/34 through the Corfu Straits were approved as fit for navigation by the International Routeing and Reporting Authority and so declared through the Medri pamphlets. This action would not have been taken had not the Authority been satisfied with the sweepings carried out. It is true that no written reports of the results of these sweepings were produced to the Medzon Board. In fact no written reports were made because it was not the practice of Allied minesweepers in war-time to make such reports unless mines had been found, but merely to report by signal that an area had been swept with negative results.

17. In Annex 27 to this Reply are two signals relating to the sweeping, in October 1944, of the Corfu Channel. The first dated 13th October reports "negative results" in the north-west portion. As this was only a signal from the officer carrying out the sweep to his local force commander, it is a pure accident that it happened to have been picked up by the Admiralty wireless and thus

preserved. The other signals relating to the remainder of this sweep were not so picked up. The second signal was one sent to all Allied naval authorities by the senior British naval officer in the Levant and reports that as a result of this sweeping a channel safe for navigation one mile wide had been established. Captain Blackburn, when he stated (p. 130, Annex 15 of Memorial) at a meeting of the Medzon Board that written reports would be produced, was not aware of, or overlooked, the fact that when negative results were obtained no written reports were made.

18. The Government of the United Kingdom notes that no particulars are given of the enquiries in paragraph 19 of the Counter-Memorial alleged to have been made by the Albanian authorities of the British Military Mission. For its part the Government of the United Kingdom knows of no such enquiries. The Albanian Government in fact, although supplied with all relevant information, manifested up till May 1946 a complete indifference regarding the condition of its territorial waters, and was content to leave their clearance, and the provision of information relating to routes, to the Powers responsible.

The Albanian Government refers, in paragraph 19, to General Hodgson's letter in which he states "the green lines on the chart show swept channels. Commander-in-Chief, Mediterranean, takes no responsibility for the accuracy of this chart and any Albanian vessels using the information given in it do so at their own risk." In this letter General Hodgson, with the usual official caution, was merely disclaiming any legal responsibility towards those who might use the swept channel in reliance on the charts. Such a disclaimer of responsibility is by no means the same thing as saying that the channel cannot in fact be considered safe. It is the common practice for authorities, when giving most reliable information for the benefit of other persons, at the same time to indicate that they accept no financial or legal responsibility to those persons who may make use of it.

The fact that precise dates have not been specified of the sweepings in October 1944 and January and February 1945 (as stated in para. 20 of the Albanian Counter-Memorial) does not seem pertinent since it is difficult to see what difference it would make so far as the questions at issue in these proceedings are concerned what the exact date of the sweepings in each of these three months was. In fact, as Annex 27 shows, the sweeping in October 1944 began on 13th October.

#### INTERNATIONAL ORGANIZATION FOR THE CLEARANCE OF MINES IN EUROPEAN WATERS

(Counter-Memorial, paragraphs 21-27.)

19. Before dealing with the interpretation of the Agreement for the International Minesweeping Organization and the position of

Albania in regard thereto, the Government of the United Kingdom thinks it is necessary to recite certain facts showing the anomalous position in which Albania was at the time this Agreement was concluded. In 1938, Albania was an independent kingdom, but on Good Friday, 1939, the Italian Government under Mussolini invaded Albania and, after a short space of time, all organized Albanian opposition was overcome. A "Constituent Assembly" claiming to be representative of the prefectures and of the three religions was convoked under Italian auspices and offered the Crown of Albania to the King of Italy. The legal position of Albania as defined by Italy was that it remained a State in personal union with Italy under the Italian crown. This situation, brought about by the conduct of the Fascist Italian Government, though condemned by the United Kingdom and other countries, was nevertheless by implication recognized on a *de facto* basis by applications to the Italian Ministry of Foreign Affairs for exequaturs in respect of consular officers to be stationed in Albania. An Albanian Government, set up in 1939 under Shevket Verlaci, remained in power until December 1941. This Government, on 17th June, 1940, approved a decree, according to which Albania declared herself at war with all countries at war with Italy. The Italian invasion of Greece took place through the territory of Albania and the Albanian Government facilitated that invasion. In consequence of this, Greece considered herself at war with Albania. The United Kingdom did not declare war on Albania but treated Albania as enemy territory in conducting hostilities against the Axis.

20. In the course of hostilities, resistance movements arose in Albania, as in other Balkan countries. The Government of the United Kingdom naturally encouraged all resistance movements actively engaged against the enemy. In Albania, as in these other countries, more than one resistance movement came into being and the different resistance movements did not always work in harmony with each other. In allocating the assistance which it was in a position to give to resistance movements in Albania, the Government of the United Kingdom supported any resistance movement which was embarrassing its enemies. Consequently, it gave assistance not merely to the movement, which ultimately became the Albanian Government under General Enver Hoxha, but also to other movements which, so far as Albanian internal politics were concerned, were opposed to him. It was only in November, 1945 (the same month in which the Agreement for the International Minesweeping Organization was signed), that the movement under General Enver Hoxha was recognized by the Government of the United Kingdom as the provisional Government of Albania, and Albania can be said to have again started on her course (albeit still on a somewhat provisional footing) as an independent State. This recognition was given after assur-

ances had been received that free elections would be held in the country, on the basis of which the future Government of Albania would be chosen. The internal position of Albania continued, however, throughout the ensuing months, to be anomalous and uncertain. The Government of the United Kingdom had a Military Mission in Albania from April, 1943, till April, 1946, through which relations with the Albanian authorities were conducted, and the question of establishing diplomatic relations with the Albanian Government was still under consideration by the Government of the United Kingdom when the incident of 15th May, 1946, occurred.

21. Albania had never been invited to sign the Washington Declaration of 1942, and consequently was not considered to be in a position to become an original Member of the United Nations. She was in the course of transition from an enemy territory to a Power in friendly relations with the United Nations countries, but the state of war between Albania and Greece, which had resulted from the Albanian declaration of 17th June, 1940, and the invasion of Greece through Albanian territory, had never been terminated. The position of Albania was anomalous but has some analogies to that of Austria. Both countries lost their independence as the result of aggressive acts of Powers, who became the enemies of the Allies, though, whereas Austria was simply included as part of Germany, Albania was left by Italy as a nominally separate State. As a result, both countries were in 1940 enemy countries, but in both cases the Allies entertained the most friendly feelings towards the people and desired that they should regain their independence. In the case of both countries the Government of the United Kingdom made or joined in declarations in this sense; in the year 1942 as regards Albania, and as regards Austria in 1943. The declaration relating to Albania was made by the Foreign Secretary in Parliament and is quoted in Annex 28. It is against this background that Albania's position with regard to the Agreement for the International Minesweeping Organization should be considered.

22. It is now desirable to consider the interpretation of this Agreement and in particular of paragraph 12, on which Albania has placed such stress. It must, however, be pointed out in the first place that this Agreement applied to the sweeping of mines throughout Europe, and that, from this point of view, there were at least five categories of States, namely: (1) Allied Powers such as the United Kingdom, the United States and the U.S.S.R. which had not been occupied, and possessed naval forces and minesweeping facilities; (2) Allied Powers such as France or the Netherlands which had suffered greatly from the occupation and in consequence had little or no facilities for minesweeping; (3) neutral Powers such as Sweden; (4) enemy States such as Italy and Germany; (5) Albania, which does not fall precisely into any of the above categories, but was completing her emergence from the



position of an enemy country. One thing, however, is perfectly clear in the operation of this Agreement, and that is that, in the case of the enemy, or ex-enemy, States, the responsibility for minesweeping in their territorial waters was not entrusted to the Governments of these States, but to the naval authorities of the Allies, though naturally these enemy or ex-enemy States were required to give all the assistance in this respect that they were in a position to afford.

23. In November, 1945, Albania's status was still so equivocal that there was then no question of entrusting her with any responsibility for minesweeping her waters, apart altogether from the fact (indicated in the Albanian Counter-Memorial) that she lacked the maritime and other resources which would enable her to give any assistance in the matter of mine clearance. The Agreement of 22nd November, 1945, setting up the International Organization for the Clearance of Mines in European waters (hereinafter referred to as "the Minesweeping Agreement") which was accepted unanimously by the Four Powers, including the U.S.S.R., did not attribute to Albania membership of the relevant Zone Board, the Medzon Board, nor did it provide for the representation of Albania even by an observer. On the other hand, the Agreement did not order Albania, as it did Germany and Italy as enemy or ex-enemy States, to send representatives to give information when required and to receive directions. The provisions of the Agreement illustrate, in fact, perfectly the intermediate status of Albania at the time it was drawn up.

24. As the composition of the various Zone Boards is defined exclusively by the Agreement, no further additions to the Medzon Board could be made save by the unanimous agreement of all the Powers parties to the Agreement. As stated above, the "exclusion" of Albania from the Medzon Board was the result of unanimous agreement of all the Four Great Powers. Subsequently, in the Medzon Board, suggestions were made, principally by the Yugoslav member, that Albania should be admitted. Albania's position was, as stated above, complicated *inter alia* by the fact that, from the point of view of Greece, she remained technically an enemy country, and was still not in normal diplomatic relations with a number of other countries. Nevertheless it is possible that, but for the incident of May 1946, which prevented the establishment of normal diplomatic relations between Albania and the United Kingdom, the countries concerned might have agreed to the admission of an Albanian observer, in spite of the fact that Albania would have been unable to give any practical assistance. Again, it is possible that agreement might have been reached later for the admission of Albania in some form, if the incident of October 1946 had not occurred.

25. The Medzon Board, which, acting under paragraph 7 (a) of the Minesweeping Agreement, had the duty to divide its zone into sub-areas and assign responsibility for the clearance of sub-areas amongst the "Powers involved," by unanimous agreement at its first meeting on 5th November, 1945, allocated to Greece area 18 (subsequently sub-divided into areas 18A, 18B, etc.; and area 18A contains the Corfu Channel). (The minutes of the earlier meetings of the Medzon Board are not at present available in London. One complete copy of these minutes is, however, being forwarded to the Registry of the Court. When doing so, the Government of the United Kingdom will also make the extract, which it desires to file as an additional annex to this Reply.) This decision having been taken, the result was that the responsibility for the sweeping in area 18A of any mines which had to be swept fell to Greece by international agreement, and it would consequently appear that, under the Agreement, the only Power whose consent was necessary for a sweeping of the Corfu Channel by the British Navy, after mines had been discovered therein, was Greece, which consent was given. In the light of the foregoing facts, the Government of the United Kingdom will now approach the interpretation of paragraph 12 of the Minesweeping Agreement.

26. The Albanian Government states that paragraph 12 of the Agreement ("Each Power will undertake the clearance of its own coastal waters") is based on the principle that a State has sovereignty over its own territorial waters, and that it is difficult to see how other States could supplant this right. Albania therefore contends that the word "Power" in paragraph 12 refers to any State whatever, presumably, therefore, including littoral enemy States such as Germany or Italy. An examination of the Agreement shows that the provision in paragraph 12 does not bear the construction for which the Albanian Government contends.

27. The Agreement of 1945 was directed to an immediate practical purpose—the clearance of mines. Article 2 is the first provision which is relevant, and states that the zones "shall be divided into areas and sub-areas the clearance of which shall be allocated to the interested littoral and other Powers under the direction of Boards set up under Article 7 below". It emerges from Article 2 that : (i) the clearance of zones is allocated to the interested *littoral and other naval Powers*; (ii) this clearance is subject to the direction of the Boards. Article 7 (a) refers to the manner in which the Boards proceed and states that the Zone Board "shall divide the zone into sub-areas" and "assign responsibility for the clearance of sub-areas among the *Powers involved*". This expression "the Powers involved" must be connected with Article 2, which refers to the interested littoral and other naval Powers. From this it would appear that respons-

ibility could be allocated to the littoral Power or to other naval Powers as the case might be, seeing that these were the only Powers involved. The idea was that the littoral Power should be given responsibility, if it was a Power represented on the Board and if it was in a position to give some practical assistance in mine clearance (Albania fulfilled neither of these requirements). Article 7 (b) entrusts the Zone Boards with the duty of "directing the general policy of mine clearance within the Zone, while leaving the executive control of minesweeping forces in the hands of the *individual Power responsible* for each sub-area. But the direct control in the clearance of sub-areas for which surrendered countries are responsible shall be exercised by the Supreme Allied Commander or the Allied Commission of Control." The expression "individual Power responsible" clearly refers to the Power to whom responsibility for the clearance of the sub-area has been assigned under 7 (a). The expression "for which surrendered countries are responsible" in the second sentence means, "for which enemy countries have been required to take action", and connects with 7 (c) immediately below which entrusts the Zone Boards with the duty of determining the responsibility of the capitulated Powers in the clearance of waters within the zone. Article 7 (d) provides that the Zone Board shall "allocate minesweeping forces assigned to the Zone by the Central Board" to "Powers represented on the Zone Board who have not sufficient minesweeping forces with which to clear the sub-area for which they are responsible". It is thus clear that the word "Powers" here only means Powers represented on the Zone Board.

28. The complete text of paragraph 12, the provision to be interpreted, reads as follows: "The allocation of responsibility within the zones is a matter for the decision of the respective Zone Boards. Each Power will undertake the clearance of its own coastal waters and, in addition, an adjoining area in the open sea in proportion to the minesweeping forces available or made available to it." The question which arises, therefore, is the interpretation of the word "Power" in the second sentence. It has been shown that in all other places in this Agreement where the word "Power" is used it always refers to a Power represented on either the Central Board or a Zone Board. It would therefore be extraordinary if the word "Power" in paragraph 12 had another meaning. The interpretation of the word "Power" as meaning "Power represented on the Board" is reinforced by the second part of the sentence which the Government of Albania do not quote. A Power, which is to undertake the clearance of its own coastal waters, is also to undertake responsibility for an adjoining area in the open sea. There is no idea of a Power being responsible for sweeping coastal waters only. Further, it is a Power which is to have minesweeping forces of its own available or made available to it by the Board and, as

has been pointed out, under Article 7 (d) only Powers represented on the Board are to be allocated minesweeping forces from outside. Consequently, the Government of the United Kingdom contend that this paragraph has no application to Albania at all because she was not a Power represented on the Board. In fact, under the Agreement, Albania in her anomalous international position at the time was treated *neither* as an Allied Power *nor* as a neutral Power *nor* as an enemy or ex-enemy Power. She was not given representation on the Board but she was not ordered, as ex-enemy Powers were, to send representatives when required. The sweeping of her waters in the Corfu Channel was simply entrusted entirely to Greece, the State which possessed the other half of the Channel.

CONDITIONS IN THE NORTH CORFU CHANNEL, 1945-1946

(Counter-Memorial, paragraphs 28-30.)

29. It should be made clear that the state of war referred to in paragraph 28 of the Counter-Memorial as existing between Greece and Albania was, as the observations of M. Dendramis themselves make clear, a technical state of war, not arising out of any incidents in the Channel or on the frontier but derived from the situation described in paragraph 18 above. For the rest the Government of the United Kingdom considers it superfluous to embark upon an examination of the merits of the small incidents between Greece and Albania here referred to, since the dispute before the Court is between the United Kingdom and Albania.

INCIDENT OF 15th MAY, 1946

(Counter-Memorial, paragraphs 31-37.)

30. The Government of the United Kingdom does not accept the account given by the Albanian Government of this incident and submits that it is not borne out by the evidence. His Majesty's ships, as already stated in paragraph 14 of the Memorial, were passing through the swept channel "exhibiting their national naval ensign in accordance with normal procedure and regulations in force in the Royal Navy". The allegation, in paragraph 31 of the Counter-Memorial, that these ships were not showing their flag is incorrect, and can only be understood as showing that the Albanian guards were unfamiliar with maritime flags. The telegram from the Flag Officer Commanding 15th Cruiser Squadron, in Annex 29 to this Reply, shows that the White Ensign, the British naval flag, had been worn throughout the night and, as the ships were approaching land, large White Ensigns (6 feet and 7½ feet broad respectively) had been hoisted eight minutes before the first shot was fired at His Majesty's ships. Moreover, the King's Regulations and Admiralty Instructions order the flying



of the ensign in these circumstances and there is no doubt whatever that it was so flown. No warning of any kind was received from the Albanian coast, as is proved by the telegram in Annex 29, and it is quite inaccurate to say that "some warning shots" were fired. In fact twelve shots were fired with high explosive not across the bows of the ships but astern of them.

31. As regards the position of the ships, regarding which the Albanian Counter-Memorial (in paras. 31 and 32) makes a number of allegations, the Government of the United Kingdom replies as follows:—

His Majesty's ships never left the swept channel and, therefore, never penetrated into Albanian national (interior) waters. The course taken by the ships, as plotted by the most modern navigational instruments, is shown on the second of the charts in Annex 7 of the Memorial and is obviously more reliable than the rough reckonings made by a coastal battery not equipped, as paragraphs 40, 91 (a) and 91 (d) of the Albanian Counter-Memorial admit, with scientific instruments. The ships made no sudden change of direction towards Limioni as the Albanian Counter-Memorial suggests. On the contrary, following the Channel, they turned away from Saranda when off Denta Point. As regards the position of the ships at the moment when they were fired on, the Government of the United Kingdom reaffirms that they were at a distance of 5,000 yards. This distance is not, of course, the distance of the ships from the coast but their distance from the Albanian batteries from which the shots were fired.

32. In paragraph 31, the Counter-Memorial refers to a secret report dated 29th July from General Hodgson, the Chief of the British Military Mission in Albania, and purport in their Annex 11 to give a photostat copy of this report. A glance at Annex 11 in fact shows that it is a putting together of five separate pieces of paper. The first four of these pieces are extracts from the first two and a half pages of the report and the last is simply the signature. The whole of these two and a half pages are now annexed as Annex 30 to this Reply. The first extract is the heading; the second is the last sentence of page 2; the third extract is the first three lines of page 3. The Albanian Government has then deliberately cut out the next eleven lines and added the fourth extract, also on page 3, which begins with the words "Such incidents". It will be seen that, by the omission of the eleven lines which come between the third and fourth extract given by the Albanian Government, the sense of the report has been completely inverted. So far, from the report confirming the existence of a number of incidents calculated to create a state of tension, it says that, in general, the situation on the frontier appeared remarkably quiet and peaceful, and that the statements made by the Albanian National Front about frontier incidents were largely exaggerated and had been put out to counter Greek Government statements

of the Albanian maltreatment of the Greek minority. It was only after this that the report said that such incidents as have occurred (which it will be seen were not numerous or important) would appear to have been caused either by irresponsible Greek elements, etc. The Government of the United Kingdom will ask the Court to take particular notice of Annex II of the Albanian Counter-Memorial as a deliberate attempt to mislead the Court. It was quite possible that a full copy of this report by General Hodgson might not have been traced by the Government of the United Kingdom and, indeed, the expectation that this would be so can be the only explanation of the filing of an Annex which is so completely misleading as to the sense.

The Government of the United Kingdom wish to state that no copy of this secret report was officially transmitted to the Albanian Government and the Albanian Government do not account for their possession of it.

33. The end of paragraph 33 of the Counter-Memorial distorts a statement made in paragraph 88 of the United Kingdom Memorial. The United Kingdom Government did not say that the *principle of innocent passage* is strictly limited, as alleged; they stated that the "right to *restrict passage*" must "in view of the *right of passage* through straits be a strictly limited one".

34. In paragraph 34 the Albanian Government declares that it "recognizes and respects the principle of innocent passage but cannot tolerate that use should be made of internal Albanian waters of the port of Saranda...". As stated above, His Majesty's ships in May 1946 never entered Albanian internal waters. The paragraph proceeds to refer to a notification made by the Chief of General Staff of the Albanian army of 17th May (that is to say, a notification made two days after the incident which is being discussed) and then proceeds to quote this notification incorrectly. In the Counter-Memorial reference is made to foreign ships penetrating in *Albanian ports* without previous notice or authorization, but in the full text of the notification given on page 17 of document S/300, in Annex 23 of the United Kingdom Memorial, the notification refers to "foreign battleships and merchant vessels entering *Albanian territorial waters* without prior notification or permission of our authorities. Please inform your authorities that such vessels must not sail in *Albanian territorial waters* without notification and permission from this Government." It will be observed that this notification refers not merely to foreign warships but also to merchant vessels, and that it refers not to Albanian internal waters but to Albanian territorial waters. The Government of the United Kingdom wish again, in connexion with this notice, to draw attention to the confusion between territorial waters, on the one hand, and internal waters on the other hand, which was constantly made by the Albanian authorities during this period. If the distinction between the two, which the Counter-

Memorial now admits, had been properly appreciated by the Albanian authorities at an earlier stage, it is possible that a great many of the difficulties which have arisen would have been avoided. If the notification had, as the Counter-Memorial says, been confined to entering into ports, the Government of the United Kingdom would never have thought of taking objection to it, but as applied to territorial waters, including the navigable channel of the Corfu Strait and applying to merchant ships as well as to warships, this notification most clearly exceeded any rights which Albania could possibly have had under international law. It will also be observed that the notification does not purport to justify itself upon the basis of the allegedly special conditions to which reference is made in the Counter-Memorial.

35. It is submitted that no credible evidence has been adduced by the Albanian Government in support of its contention that His Majesty's ships behaved in a provocative manner or in any way so as to indicate a menace to Albanian security. Indeed the manner in which the ships passed through the Channel, exposing themselves to attack at close range, the fact that they did not return fire when they had every reason so to do, and the fact that diplomatic relations were about to be established between Albania and the United Kingdom (to which the Albanian Government itself refers in para. 35 of the Counter-Memorial) all point most clearly in the opposite direction.

36. The Government of the United Kingdom agrees that in its Note of 2nd August, 1946, it informed the Albanian Government that if, in future, fire were opened on His Majesty's ships by Albanian coastal batteries fire would be returned. The description of this action as "threatening," after His Majesty's ships had already, under extreme provocation, not returned fire, can only be explained on the basis that Albania regarded herself as entitled to open fire on the ships of a friendly Power passing through the Straits in time of peace. This was in fact the conclusion to which the Government of the United Kingdom was driven after receipt of the Albanian Note of 19th June, 1946, although prior to this it was prepared to attribute the incident to the incompetence of the local commander.

#### INCIDENTS BETWEEN 15th MAY AND 13th NOVEMBER, 1946

(Counter-Memorial, paragraphs 38-43.)

37. The Government of the United Kingdom takes note of the Albanian Government's formal statement that it did not lay the minefield and was not in a position to do so. It observes the statement in paragraph 8 of the Counter-Memorial (bottom of p. 35) that Albania possesses no navy, and that on the whole Albanian littoral the Albanian authorities only disposed of a few launches and motor boats. In the light of these statements, the Government of the United Kingdom calls upon the Albanian Government

to disclose the circumstances, in which two Yugoslav war vessels, *Mljet* and *Meljine*, carrying contact mines of the German Y type, sailed southwards from the port of Sibenik on or about 18th October, 1946, and proceeded to the Corfu Channel. The Government of the United Kingdom will allege, and will seek leave to call evidence to show, that the said vessels, *Mljet* and *Meljine*, with the knowledge and connivance of the Albanian Government, laid mines in the Corfu Channel just before 22nd October, 1946.

38. The Albanian Government in paragraph 40 of its Counter-Memorial appear to attach importance to a distinction between measures of "vigilance" and of "special vigilance". The Government of the United Kingdom is content to leave this point to be developed by the Albanian Government. The Court is asked to take note that measures of vigilance existed, and that this fact is admitted by the Albanian Government.

These admissions and facts, together with those alleged in the Memorial (paras. 6, 11, 12, 13, 14, 24 and 25), are sufficient upon which to base the conclusion which the Government of the United Kingdom invites the Court to draw, namely, that in the circumstances then prevailing the Albanian authorities could not have remained ignorant of the existence of the mines.

39. The suggestion made in paragraph 40 of the Albanian Counter-Memorial that the incident of the *Tanac* is a pure invention is inadmissible having regard to the positive evidence filed by the Government of the United Kingdom on this point (Annex 22 of its Memorial). The Court's attention is invited to *The Polish Upper Silesia case* (Series A, No. 7, p. 73), where the Permanent Court said it was always free to estimate the value of any evidence presented to it, and likewise to estimate the value of statements made by the parties.

40. The Government of the United Kingdom expressly controverts each and every one of the allegations made in paragraph 41 of the Counter-Memorial regarding the ease with which mines can be laid without being detected. These allegations are elaborated in paragraphs 66, 76 and 77 of the Counter-Memorial, and further comments will be made on them later. (Paras. 59 and 65.)

Furthermore, the allegation that the weather was stormy between 22nd October and 12th November, which is not admitted, is not relevant, as the mines, in the submission of the Government of the United Kingdom, were laid before 22nd October.

In paragraph 43 the Albanian Government does not shrink from accusing the Government of the United States of a deliberate invention of a libellous statement against Albania "in order to support the violation of Albanian waters by the British Navy".



INCIDENT OF 22nd OCTOBER, 1946  
(Counter-Memorial, paragraphs 44-53.)

41. It is true that no notice was given by the Government of the United Kingdom to the Albanian authorities of the intended passage by His Majesty's ships. In the submission of the Government of the United Kingdom no such notice was necessary. It does not follow from this, however, that the Albanian Government did not in fact know that the squadron was intending to pass through the Channel. As stated in the Security Council, the programme of naval cruises of this kind in peace time is not a secret.

The Government of the United Kingdom has never officially stated that notice of the intended passage of the ships on 22nd October, 1946, was given, and Captain Nichols in the Central Mine-Clearance Board, when he said notice had been given, was speaking without instructions and, in fact, incorrectly.

The statement in paragraph 44 (second sub-paragraph) of the Counter-Memorial that the passage of the British squadron was inconsistent with the orders, stated by the Representative of the United Kingdom before the Security Council to have been given to His Majesty's ships, is inexact. The orders which were given after the incident of 15th May, 1946, were orders given to the two particular ships H.M.S.S. *Orion* and *Superb*, not to return through the North Corfu Channel so as to avoid the possibility of a fresh incident while tempers were hot, and are evidence of non-provocative conduct. Such orders were in no way applicable to the passage of other ships at other times.

42. It is alleged by the Albanian Government that on 22nd October the ships had guns trained on the coast, were in combat formation, had troops on board and were ready to fire (para. 46). These allegations are untrue and have been repeatedly denied by the Government of the United Kingdom. They are proved to be untrue by the photographs filed in Annex 8 of the United Kingdom Memorial and by other photographs shown as Exhibit II b in Security Council *Official Records*, Second Year, Supplement No. 6. These photographs clearly show the guns trained fore and aft. There was no hostile act or intended hostile act, but the measures of alertness which were ordered were a reasonable precaution having regard to the incident of 15th May. Annex 8 of the Albanian Counter-Memorial purports to give the text of Admiral Willis's statement of 26th October, 1946. It is based on Reuter's inaccurate report of the statement. A fuller and correct report appeared in *The Times* of 28th October. Reuter's report omitted the important fact that the guns were not loaded. The text of Admiral Willis's statement is attached (Annex 31).

43. There were no soldiers on board the ships, only the normal complement of sailors and marines and also a band. It is true that some of the sailors and marines were wearing army khaki which had been issued in the Navy and was authorized for use as "sea-going rig". This fact probably led to the Albanian supposition that there were soldiers on board. Paragraph 46 of the Albanian Counter-Memorial misquotes its own Annex 8; the words "prêts à faire feu" do not appear there.

44. The ships were never in diamond formation but in line throughout. Moreover, the cruiser was ahead of the destroyer in each pair of ships, which would not have been the case had the squadron, as alleged by the Albanian Government, been contemplating hostile action. None of the allegations regarding the position of the ships made in paragraph 46 or in Annex 12 are true.

The positions of the ships were, in this case too, plotted by accurate navigational instruments and are correct as shown in the first and third of the charts in Annex 7 of the Memorial of the Government of the United Kingdom. None of the vessels left the swept channel except the two destroyers, which, after they had both been damaged, and were struggling to make Corfu, were carried by the wind slightly to the East of the Channel.

45. It is quite incorrect, as stated in paragraph 47 of the Albanian Counter-Memorial, to say that the British Government has continually modified the Medri routes 18/32 and 18/34 towards the Albanian coast. In the first place the fixing of these routes was not a matter for the British Government but for the International Routeing and Reporting Authority. Secondly these routes, once fixed (and it is agreed that for purposes of safety they were fixed further towards the east than was the previous German Channel) were not altered, as reference to the detailed bearings in the Medri pamphlets will readily prove. (See Annex 5 of the Memorial of the Government of the United Kingdom.)

46. The times of the passage of the British ships are incorrectly stated in paragraph 47 of the Counter-Memorial of the Albanian Government. Although it is possible that the ships may have been sighted from Cape Long shortly after 1300 hours the first ship in fact passed Cape Long at 1443 hours.

It will be noted that the report contained in Annex 7 of the Albanian Counter-Memorial (the accuracy of which, however, is in no way admitted) does not itself state that ships were at Cape Long at 1300 hours but only that they were seen at this time. The Albanian Government, in their Counter-Memorial, apparently misread the report contained in their own Annex 7, and this has caused them in their Counter-Memorial to dispute, upon no ground at all, the speed of the ships and their course as given by the Government of the United Kingdom.

47. The end of paragraph 47 of the Albanian Counter-Memorial states that the British squadron was first seen from Cape Long

at 1300 hours and that the explosion under the *Saumarez* took place at 1500 hours, that is to say, two hours after the ships were first seen. Consequently, the contention in paragraph 92 of the Memorial that the Albanian authorities had ample time in which to warn the ships that they were approaching a dangerous minefield, is more than confirmed. The passage in the Memorial reads as follows:— "Even if they [the Albanian authorities] were unaware of the programme of the cruise of this part of the British Mediterranean Fleet, they could observe the progress of the ships up to the swept channel for some time before the minefield was approached.... Even if, therefore, they were not seen until they were five miles away—which is most unlikely, the weather being quite clear—this would allow 30 minutes for a warning to be given." In fact, the Albanian Counter-Memorial shows that they had two hours for this purpose.

48. The Albanian Government correctly points out in paragraph 49 that the photograph taken of the *Saumarez* after the explosion, and filed in Annex 8 of the United Kingdom Memorial, could not have been taken 30 seconds after the explosion. The Government of the United Kingdom expresses to the Court its regret that the photograph, which was so taken, was by inadvertence omitted from Annex 8. This photograph, which was taken from the bridge of H.M.S. *Mauritius*, is now filed as Annex 32. This same photograph was filed in Exhibit II (b) before the Security Council (*Official Records*, Second Year, Supplement No. 6), where no question was raised regarding its authenticity.

The photograph filed in Annex 8 was taken some time after the explosion when the other ships had moved up, and shows *Volage* taking *Saumarez* in tow.

49. There is no discrepancy, as alleged by the Albanian Government, between the two statements quoted by it in paragraph 50 of the Counter-Memorial, since the first clearly refers to "shore-batteries" and the second to "machine-gun fire".

50. The Government of the United Kingdom notes that the Albanian Government profess ignorance of the explosion under H.M.S. *Volage*. The fact that this explosion, which was sufficient to blow off the ship's bows, was not observed by the coastal authorities, although the ships were, according to the Albanian account, only 1,000 metres from the shore, throws serious doubt on the accuracy of the Albanian report in Annex 7 of its Counter-Memorial. The explosion under H.M.S. *Volage* took place after she had come forward to assist H.M.S. *Saumarez* and had actually taken her in tow (as is stated in Exhibit II (c) (i) filed with the Security Council). Annex 9 of the Memorial shows the exact place where it occurred. The interval between the explosions (83 minutes) is explained by the fact that H.M.S. *Volage* was at the time of the first explosion about two miles astern of H.M.S.

*Saumarez*, and had to close this distance and take the damaged ship in tow. No other manoeuvres were carried out during this period.

51. The statement made by the Albanian Government in paragraph 53 that "hundreds" of vessels navigating international routes which have been declared safe have encountered accidents is untrue. While incidents have occurred, some of a deplorable character, these either have arisen from navigation outside the swept channel, or have been the result of ground mines (not moored mines) which had not responded to sweeping. No ground mines were laid, or could have been effectively laid, in the Corfu Channel, as it was too deep.

The case of the *Cassius Hudson* which is cited in paragraph 53 is an illustration of the danger of attempting to navigate outside a swept channel. The ship in question was 10 miles out of the swept channel, and entered Medri Danger Area 15 which was an existing and notified danger area on 16th October, 1946, in position 45° 32' N. and 13° 12' E. in the North Adriatic. Details of this were published in the Third Interim Report by the International Central Mine-Clearance Board, page 11, of which the relevant extract is given in Annex 33.

Further, the ten examples of "cases of ships that have struck mines" given in Annex 15 of the Counter-Memorial are totally misleading.

This Annex 15 purports to show that casualties, such as the mining of H.M.S.S. *Saumarez* and *Volage*, are "everyday occurrences", whereas in fact these two casualties are the only known cases of vessels striking contact, moored mines in a swept channel since the cessation of hostilities.

Of the ten cases represented by the Albanian Government in Annex 15, two are cases of fishing vessels which were casualties because they were fishing in declared mined waters, six are cases of merchant vessels having become casualties by entering declared minefields: a third fishing vessel was struck by a floating Russian mine; lastly, the s.s. *William Bursley*, which the Government of Albania claims struck a mine on 8th May, 1948, in fact touched a submerged object in the open sea which caused slight damage.

The Government of the United Kingdom asserts that the courses of the vessels, and the places where explosions occurred, are correctly shown in Annex 7 (first and third charts) and in Annex 9, and the Albanian Counter-Memorial produces no evidence to show that this is not accurate.

THE DIPLOMATIC CORRESPONDENCE BETWEEN 22nd OCTOBER  
AND 12th NOVEMBER

(Counter-Memorial, paragraphs 54-58.)

52. The Albanian Government was informed not only on 26th October of the general intentions of the Government of the



United Kingdom with regard to the proposed sweeping of the Channel, but also on 10th November of the exact date on which sweepings were to take place. The Note of 10th November was delivered to the Albanian diplomatic representative at Belgrade on that date. If, as is alleged in paragraph 58, this came to the knowledge of the Albanian Government only a few hours before the actual time of sweeping, that cannot be charged to the Government of the United Kingdom.

53. The Albanian Government contends that, after the incident of 22nd October, the Government of the United Kingdom should have sought agreement with Albania and the Mine-Clearance Board regarding the sweeping of the minefield. This contention is only relevant to the claim put forward by the Albanian Government in the second part of its Counter-Memorial that its sovereignty has been infringed and the Government of the United Kingdom will deal with it in its place (see paras. 80-83 of this Reply). It has no bearing on this part of the case where the Government of the United Kingdom is setting out the fact that the sweeping took place and that a number of new-laid mines were discovered. On this part of the case, the proceedings in the Mine-Clearance Boards and the lack of previous agreement with the Government of Albania have no relevance.

#### THE INCIDENT OF 12th-13th NOVEMBER

(Counter-Memorial, paragraphs 59-80.)

54. In these paragraphs the Albanian Government seeks to attack the credibility of the account given by the Government of the United Kingdom of the sweeping of the Channel on 13th November, 1946. The Albanian Government asks the Court to believe, as one explanation of the minefield discovered in the swept channel, that the mines were laid by British Naval Forces on 12th November in the absence of the French observer, in order that they might be swept up in his presence the following day, the 13th November. (See the end of para. 62, the second sentence of para. 72, para. 74 last sentence, para. 77 first sentence, para. 78 third sentence.) The object of this extraordinary "British machination" (*vide* the penultimate sentence of para. 73) was to create evidence to support the accusation, which the United Kingdom had already determined to make against Albania, and, at the same time, to exercise on Albania political pressure by means of an important part of the British Fleet (end of para. 74) and to obtain from Albania material damage and political condemnation for the incident of 22nd October (para. 77). This amazing accusation is chiefly supported on the basis of a paragraph of the Report of Commander Whitford, which is quoted at the end of paragraph 62. In this paragraph Commander Whitford stated that he had given orders that the personnel engaged in

the minesweeping should not allude to the operations except to say that a normal minesweeping operation had taken place and that mines had been cut. There is a simple explanation of these paragraphs which will be given later (para. 58 (c)).

55. Sensational journalists and historians have in the past, in connexion with the Ems telegram just before the Franco-Prussian war and in connexion with the murder of the Archduke Charles at Sarajevo just before the first World War, suggested deep machinations of this kind for the purpose of provoking a first-class war, the Power which indulged in these machinations expecting that their traces would be buried in the dust of the conflict. The Albanian Government asks the Court to believe that the United Kingdom indulged in such a machination, not as a preparatory step to the destruction of the principal Albanian ports by the British Navy or the razing of Tirana to the ground by the bombs of the Royal Air Force, but merely for the purpose of producing evidence before the Security Council (or the Court) with a view to obtaining from Albania some pecuniary compensation. The United Kingdom, in other words, fabricated evidence, in order to have the incident examined meticulously by an international organ or by the International Court and then obligingly disclosed to the Court, which is investigating the matter, the evidence from which these machinations are clearly to be seen. Leaving aside the aspersions thus made against the honour of the Government of the United Kingdom and against the officers and men of the Royal Navy involved, which the Government of the United Kingdom deeply resents, the suggestion implies on the part of the Government of the United Kingdom an almost incredible naïveté and the reckless taking of risks extraordinarily disproportionate to the end desired. In the circumstances, it is to be wondered why the Albanian Government, taking this view of the Government of the United Kingdom, has not also suggested that the United Kingdom laid the mines which blew up H.M.S. *Saumarez* and H.M.S. *Volage*. Moreover, it is to be noted, as the Counter-Memorial itself points out in paragraph 60, that the late arrival of the French observer was unexpected and consequently, if he had arrived at the time expected, he would presumably also have been present at the time when the mines were supposed to have been laid by the British Navy. Further, as pointed out in paragraph 40, the Albanian Government has not hesitated to implicate in this plot the Government of the United States, which is alleged to have fabricated other evidence. Further, any theory that the mines were laid after 22nd October, 1946, affords no explanation how it was that two British destroyers struck mines in the swept channel on that date.

56. The account of the operation given by the Government of the United Kingdom is based upon first-hand accounts of responsible naval officers made contemporaneously in the course of their duty, supported by the evidence of an independent observer and

of research experts. All these reports have been frankly laid before the Court exactly as they were written at the time with no attempt to eliminate any imperfections or inconsistencies. Against these accounts, the Albanian Government offers no positive evidence but only a number of criticisms based mainly upon inconsistencies in the various accounts. Though these are not so numerous as the Albanian Government suggests, the Government of the United Kingdom would not attempt to deny that there are certain minor discrepancies. The discrepancies are no greater than are commonly met with, when different persons set out honestly to describe what they have seen, and, in the submission of the Government of the United Kingdom, so far from destroying the effect of the evidence, establish its genuine character particularly when regard is had to the much larger measure of agreement between the witnesses.

57. The Albanian Government asks the Court to treat all these reports as having no value as evidence because they emanate from an interested party and the report of the French observer as having no evidential value because he was not designated officially by either of the mine-clearance boards. So far as the Government of the United Kingdom knows, it has never been contended in any case before the Court, or its predecessor the Permanent Court, in cases where the Court had to deal with questions of fact, that the Court should reject all evidence produced which emanates from the services of either the plaintiff or defendant State, or that it should receive as evidence only the reports of some witness appointed by an international authority, and, indeed, the Permanent Court in its judgments has found facts based on evidence which according to Albania should be rejected. In this connexion reference may again be made to the *Polish Upper Silesia case* already referred to in paragraph 39 above. Moreover, it is difficult to believe how any case could be proved or disproved before the Court if all such evidence were excluded. While making this contention, the Albanian Government submits, and bases most of its case, on evidence from Albanian sources.

58. The Government of the United Kingdom now proceeds to examine the Albanian criticisms of the account, given in the Memorial, of the sweeping of 13th November, 1946, and to avoid repetition it will deal on this occasion both with the criticisms contained in paragraphs 59 to 80 and with those contained in paragraphs 98 to 106 of the Albanian Counter-Memorial, which largely cover the same ground.

(a) The Government of the United Kingdom agrees that it attached importance to the presence of an independent observer, and that instructions were given that the operation should not be begun until he was present. It also agrees that detailed orders were given to the British Naval Forces to ensure the correct conduct of the operation and to avoid any action, which could be

construed as provocative or aggressive. These orders were scrupulously carried out.

(b) Capitaine Mestre was, in fact, the acting French representative on the Mediterranean Zone Board, but it is not suggested that he was present as representing the Board. He was a proper person to act as observer and no attack has been or can be made upon his professional competence, integrity and impartiality.

It is alleged in paragraph 99 of the Counter-Memorial that the report of Capitaine Mestre was entirely based upon hearsay. This is contrary to the fact. From his own report it appears that he was, during the greater part of the day of 13th November, on board B.Y.M.S. 2075, which took part directly in the mine-sweeping operations: he was equipped with binoculars and was in probably a better position than anyone to see the initial sweepings. He himself states that he "personally saw" mines swept in the first and second (*i.e.*, second and third) sweeps (see (d) (i) below). The fact that there are certain discrepancies between his report and the reports of the British officers—to which the Albanian Government itself points—is alone sufficient to show that his report was not merely copied from theirs but was independent. Though Capitaine Mestre had no special international authority on the occasion of the sweep of 12th-13th November, his evidence is that of an independent trustworthy witness with expert knowledge, whose testimony ought to be accepted, as in fact it was by the majority of the members of the Security Council.

(c) Paragraph 15 of Commander Whitford's report, on which the Albanian Government bases the astonishing suggestions referred to in paragraph 54 above, is, in fact, capable of the simplest explanation. The personnel of the British Naval Forces were, at the time of the operation, fully aware that only three weeks earlier, 44 of their comrades had lost their lives and 42 more had been injured through explosions in these waters. In these circumstances the Albanian Government might have been expected to understand that the recovery from these same waters of more than twenty newly-laid and highly dangerous mines would give rise to strong feelings of anger and resentment in the United Kingdom. The order given by Commander Whitford, which was that his men should not individually make public the results of the sweeping until higher authorities had been able to consider the reports, was the action which any responsible officer would take to avoid adding to the already considerable international tension. The suggestions made by the Albanian Government that there were "certain circumstances" connected with the operation known to some but not all the personnel seems to be based upon a misinterpretation of the wording of the paragraph in question. The "circumstances" were, in fact, that two explosions on 22nd October had caused a serious loss of life and that the operations had resulted in the discovery at the place where the explosions occurred of a minefield



of recently-laid mines, and these circumstances, likely to create anger and resentment, were known (as the paragraph states) to all officers and men and not merely to a section.

(d) The discrepancies in the descriptions of the mines as to colouring, marking, etc., and in the numbers of the mines cut in the various sweeps are no greater than might normally be expected in the accounts of different observers who were not at the same spot all the time. The following observations are made with regard to the alleged discrepancies:—

- (i) The total number of sweeps or laps carried out in the Channel on 13th November, 1946 (*i.e.*, apart from the preliminary sweeping of a different area on 12th November), was four. The first sweep was from N.W. to S.E., and was carried out by the four B.Y.M.S.—no mines were cut. The second sweep was also from N.W. to S.E. and was carried out by the five fleet minesweepers: two mines were cut, one exploding in the sweep. The third sweep was from S.E. to N.W., carried out by both B.Y.M.S. and fleet minesweepers: eight mines were cut. The fourth sweep was from N.W. to S.E., carried out by both B.Y.M.S. and fleet minesweepers, and twelve mines were cut. Owing to the fact that the first and second sweeps were carried out in the same direction and at a short interval, it would be quite natural for them to be regarded as two parts of one sweep. The report of the Commander-in-Chief to the Mediterranean Zone Board of 14th November referred to four sweeps. The report of Admiral Kinahan (paras. 11 to 13, Annex 17, p. 157) also refers to four sweeps, as does the preliminary report of Commander Whitford (para. 5, Annex 17, p. 152). This, however, like his final report, treats the first sweep as a searching sweep only and therefore refers to three effective sweeps only. The report of Capitaine Mestre treats the first and second sweeps, which were in the same direction, as one and therefore only refers to three effective sweeps. There is thus complete consistency between the reports except as to the terminology employed. Finally, the report of Admiral Kinahan referred to in paragraph 73 of the Albanian Counter-Memorial as dated 18th November (it was in fact dated 24th November) does not refer, as there alleged, to one mine being *found* in the second sweep but to one being *surfaced*. This was perfectly correct, as one had exploded when cut.
- (ii) As to the number of the mines cut, the Albanian Government correctly points out in paragraph 99 of its Counter-Memorial that Capitaine Mestre, while agreeing with the other witnesses in stating that 22 mines in all were cut,

differs from them in his allocation of these mines between the various sweeps. Capitaine Mestre says that 13 mines were cut in the last sweep, whereas in fact, as the other reports show, 12 mines were cut in the last sweep. In the last sweep but one, Capitaine Mestre says that 7 mines were cut, whereas in fact there were 8. The explanation of this discrepancy is as follows: Capitaine Mestre, as paragraph 2 of his report shows, did not actually see mines taken in the final sweep personally because, as he said, it was dark before he could arrive at the spot. He did see personally all the other sweeps and he states that he personally saw 8 mines. In fact, 10 mines were cut in these first three sweeps (Capitaine Mestre refers to them as two sweeps, as already explained, but that is immaterial for present purposes) and that therefore leaves 2 mines to be accounted for. One of these was the first mine encountered, which immediately exploded, and therefore Capitaine Mestre did not see a mine but an explosion, and the other was in fact taken in the penultimate sweep, but apparently he did not see this mine and therefore attributed it mistakenly to the final sweep, the mines taken in which he could not inspect. In fact he probably failed to see this mine because, during part of the penultimate sweep, he was also engaged in inspecting the mines which had first been cut (see the report of Gunner Powning, which appears at p. 168, Annex 17, of the Memorial).

- (iii) Although it does not specify details, the report of Capitaine Mestre of 23rd November provides definite confirmation of the fact that the markings on the mines were conspicuous. Although the various witnesses refer to different details, they are all (Commander Whitford, Capitaine Mestre, Gunner Powning and the Superintendent of the Admiralty Mining Establishment) in agreement that the mines were well preserved. Both Commander Whitford and the Superintendent refer to the black paint on the surface as in good condition; both refer to the red paint on the horns. Commander Whitford deals in his report with the mechanism and mooring wire and nothing contradicts his evidence that this was still greased. The Superintendent is the only witness who refers to the fact that the serial number had been recently painted in white. There is nothing surprising in the fact that this was not mentioned by Commander Whitford, since he saw the mines in the water. The white painting is entirely consistent with the observation of Capitaine Mestre in his second report made after he had seen the mines at Malta that the markings were still very visible.

(iv) As to the number of mines sunk. The report of Admiral Kinahan of 14th November (para. 11, p. 157) implies that five were sunk out of the ten mines taken in the first three laps. This report was, however, incomplete in the absence of reports from other ships (para. 14). The Minesweeping report of Commander Whitford of 14th November (para. 7, p. 152) states that three mines were sunk while the Minesweeping report No. 2, an enclosure in Commander Whitford's report of 20th November—Mine Records—states (Annex 17 of United Kingdom Memorial, p. 167 *ad fin.*) that two were sunk. It is probable the last report is correct and only two mines were sunk and that the larger numbers were arrived at through adding up the separate reports from different ships: and that it was discovered that some of these reports related to the same mines.

(e) The Government of the United Kingdom deny the contention in paragraph 66 of the Counter-Memorial to the effect that mines can remain under water for considerable periods without showing traces of rust or incrustation. In this connexion they refer to Exhibit 6 (e) headed "Marine growth on mines" in Supplement No. 6, Security Council, *Official Records*, Second Year.

(f) The Government of the United Kingdom agrees that the experts were at first mistaken as to the type of mine cut, believing it to be type G.R. and later recognizing it as type G.Y. The wrong identification appears to have been made by Lieutenant Phillips or Capitaine Mestre or by both of them on seeing the mines in the water, and so found its way into the earliest reports. It was promptly corrected when the mines were landed. An error of this kind is easily made even by experts when mines are still in the water, since they have both five horns on the upper hemisphere and their general appearance is very similar. Although there is a very large difference in the amount of explosive charge in each type, they would not appear to be so different in size when seen in the water, although the type G.Y. is in fact substantially larger than the type G.R., the respective diameters being 46 inches and 33½ inches. With regard to Capitaine Mestre's first report, it should be observed, *first*, that this officer did not see a mine on board B.Y.M.S. 2075, and this report was based on observations carried out while the mines were in the water, as he himself stated. As soon as the mines were seen at close quarters, the error was rapidly discovered and corrected, and there is no doubt that the mines cut were actually of the type G.Y. and not G.R., as Capitaine Mestre agreed in his second report made after he had seen the mines at Malta. *Secondly*, that immediately after the close of the operation he returned to Rome, where he wrote his report dated 16th November. While he was

writing this report he was not in possession of the revised conclusions, which had been quickly reached by Lieutenant Phillips after a closer inspection of the mines.

(g) The report of Capitaine Mestre, as paragraph 72 of the Counter-Memorial states, did not describe in detail the positions of the mines which were cut nor did he list the naval forces taking part. It was not his duty to do so but merely, as observer, to see whether the operations were correctly carried out and to verify the general results obtained. He did, however, in his report, give a detailed and accurate account of the sweeping operations carried out which agrees with the accounts of the other witnesses. The detailed positions of the mines were fixed by the forces engaged in the sweeping and are set out in the table of Mine Records attached to the Mine-sweeping Report No. 2 (Annex 17 of United Kingdom Memorial, p. 167).

(h) As to the flag carried by the Albanian launch, Capitaine Mestre, while stating that it carried what he thought was the Albanian flag, did not say, as alleged in paragraph 73 of the Albanian Counter-Memorial, that it carried no other flag. It will be noted that the white flag was a small flag carried below a much larger Albanian flag (Report of Commander Whitford, 14th November, 1946, para. 12).

59. With regard to paragraph 75 of the Counter-Memorial, the Government of the United Kingdom maintains its contention that mines of this type could not have been laid in these waters without the knowledge of the Albanian authorities. It is true that numbers of mines were laid in war time off enemy-held coasts in the English Channel. They were not in fact laid so close to the coast as the mines in the Corfu Channel were to the Albanian coast and, moreover, there is no proof that the minelaying was not observed from the shore. No type of mine with a diameter greater than 21" could be laid by the submarine mentioned or by any other type in commission in 1946.

60. With regard to paragraph 78 of the Counter-Memorial, the Government of the United Kingdom does not understand on what basis the Government of Albania contends that, technically, it was not necessary to sweep the portion of water in the neighbourhood of Cape Kiephali or what expert evidence it is prepared to set up against the opinion, that it was so necessary, of the experienced Rear-Admiral in charge of the British Naval Force. The decision to sweep these waters and the reasons for it are explained in paragraphs 2, 4 and 5 in the report of Rear-Admiral Kinahan, dated 14th November, 1946 (Annex 17 of the United Kingdom's Memorial, pp. 155-156).

61. With regard to paragraph 79 of the Counter-Memorial, after the discovery of the newly-laid minefield on 13th November the North Corfu Channel was closed by the International Routeing and Reporting Authority to maritime traffic, which was the only



humane course. It still remains closed, since it was not possible for any further steps to be taken by the Government of the United Kingdom or by Greece while the present dispute (in which Albania contends that no sweeping can take place without her assent) is still *sub judice*.

#### SECURITY COUNCIL DEBATES

(Counter-Memorial, paragraph 81.)

62. The Government of the United Kingdom contends that paragraphs 29 *et seq.* of the Memorial present a fair account of the proceedings in the Security Council. The salient fact of these proceedings is that seven States voted in favour of a resolution finding that a minefield was laid in the immediate vicinity of the coast resulting in damage to two of His Majesty's ships and loss of life of their crews, and that the minefield could not have been laid without the knowledge of the Albanian authorities. Syria abstained and the U.S.S.R. and Poland alone voted against this resolution. The Counter-Memorial quotes almost exclusively from the statements of the Polish and Soviet members and attempts no explanation as to how seven members of the Security Council voted in favour of this finding.

The incidents to the *Compiègne* on 26th June, 1946, and the *Christian Huygens* on 26th August, 1945, are irrelevant. These incidents were due to ground mines, not moored mines. In the Corfu Channel a minefield of moored mines was discovered.

#### THE LAW

(Counter-Memorial, paragraphs 82-85.)

63. The second paragraph of Article 5 of Hague Convention VIII reads:—

“As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the Power which laid them and each Power must proceed with the least possible delay to remove the mines in its own waters.”

It will be seen that this refers to mines laid by one belligerent off the coast of the other and the provision that each such Power, when notified of their position, must remove the mines in its own waters was due to the fear that the operation of clearing the mines of one Power by the forces of a Power which had lately been its enemy might be likely to lead to incidents. It is not clear how this provision has any relevance to the present case, or can bear the interpretation the Albanian Counter-Memorial has sought to put upon it, and that is why the United Kingdom Memorial, though mentioning it, did not lay stress upon it. The

Government of the United Kingdom takes note of the statement that the Albanian Government agrees with other States in holding that the laying of mines in time of peace is an international delinquency.

In fine the Albanian Government admits that if the facts as alleged in the Memorial of the United Kingdom are proved, the Albanian Government has committed a grave international delinquency.

#### ALLEGED RESPONSIBILITY OF THE ALBANIAN GOVERNMENT

(Counter-Memorial, paragraphs 86-88.)

64. This section is concerned with the distinction between laying the mines and, having knowledge of their existence, failing to warn of their existence. The Government of the United Kingdom does not dispute that there is such a distinction. It is not, however, correct to say that the Government of the United Kingdom rests its case upon mere knowledge on the part of Albania that the mines had been laid. On the facts set out in its Memorial and in this Reply, the Government of the United Kingdom establishes the responsibility of Albania either upon the basis that she instigated the laying of the mines, or that, knowing in advance that the mines were to be laid, and knowing at the time that the mines were being laid, she acquiesced in the laying. In the submission of the Government of the United Kingdom, it is impossible to avoid the conclusion on the evidence that one or other of these facts is established and either is sufficient to render Albania responsible in law. In any case, as the proposed Resolution of the Security Council referred to in paragraph 57 of the Memorial, for which seven members voted, indicates, Albania would still be responsible, if she knew that mines, however laid, were in her territorial waters and took no steps to notify shipping of the danger, especially ships that were observed approaching the mines, two hours before they reached them.

#### BRITISH PROOFS OF ALLEGED KNOWLEDGE BY THE ALBANIAN GOVERNMENT OF THE EXISTENCE OF THE MINEFIELD

(Counter-Memorial, paragraphs 89-92.)

65. As regards paragraph 90 of the Counter-Memorial, the statement under (a), regarding the weather, is incorrect in so far as 22nd October is concerned, as can plainly be seen from the photographs of the incident occurring that day (Annex 8, Memorial; Annex 32 hereto). Even assuming the weather was bad on the day on which the mines were laid (which was some date before 22nd October, *not* in the period immediately before 13th November, as alleged by the Albanian Government), the waters in which the mines were laid were sheltered waters. If

the weather had been as bad as the Albanian Government contends, anyone wishing to lay mines in the Channel would have set out from Saranda. The statement, under (b), that the mines could have been laid by submarine is irresponsible, being completely at variance with expert knowledge. The facts are that these mines could not have been laid by any submarine in commission at that time.

It is possible to launch mines from rails immersed in the water. This would hardly affect the noise of the launching unless the descent of the mines down the inclined rails were controlled. Such a procedure, even if practicable at all, would be very slow and cumbersome, and even if a mine is dropped from the level of the surface a substantial noise will nevertheless be audible.

There are no electric motor-boats known to be in existence which could have carried these mines, or any mines at all.

It is admitted that mines can be laid in a very short time, if no regard is paid to the noise of the operation.

The statements in (c), (d) and (e) of paragraph 90 are not admitted. In any event they throw no light on the possibility of laying 1-ton mines in sheltered waters.

#### OTHER BRITISH "INDIRECT PROOFS"

(Counter-Memorial, paragraphs 93-97.)

66. It does not seem necessary to deal with most of the arguments in this section of the Counter-Memorial. The Government of the United Kingdom wishes, however, to repeat that the attitude of the Albanian Representative before the Security Council towards the minefield discovered in the Channel was remarkable. He did, indeed, contend that Albania had known nothing of the existence of the mines, and indignantly repudiated the United Kingdom charge that Albania was responsible for laying them. He did not, however, suggest, as the Counter-Memorial has done, that the United Kingdom had laid this minefield on 12th November for the purpose of basing a case against Albania on fabricated evidence. But, faced with a situation in which, on his own view, a minefield unknown to Albania had been discovered in Albanian waters, he inveighed strongly against the United Kingdom which had discovered it and swept it because, as he said, the United Kingdom had done so illegally and without Albanian permission, but he showed no particular concern about the minefield having been laid there. He asked for no international enquiry to discover how what (in his view) must have been a serious violation of Albanian sovereignty had been committed. His anger was confined to the State which, wrongfully or rightly, had discovered and made known to Albania and the world this great danger to navigation, lying unknown to Albania in front of an Albanian port, and had indeed greatly lessened if

not removed this danger. It would appear that a minefield in this spot was, to say the least of it, not unwelcome to Albania, although the Albanian Representative professed to be surprised at its discovery. The same curious attitude towards the existence of the minefield was displayed by the Albanian Government in its Notes immediately after 22nd October. These Notes are full of charges and complaints against the passage through the Straits of the squadron of the Royal Navy, but there seemed to be no surprise or concern that two vessels had met in the Channel immediately opposite an Albanian port with an accident which should, on the Albanian Government's case, have been a most surprising one, nor indeed the least regret that such an accident involving a loss of life had happened.

"CORPORA DELICTI"

(Counter-Memorial, paragraphs 98-106.)

67. In this connexion the Government of the United Kingdom refers to paragraph 58 of this Reply which contains replies to the Albanian criticisms of the reports of the sweeping of 13th November, 1946, and in addition, observes as follows:—

- (a) Capitaine Mestre was entitled to express the opinion that the Channel could be opened for surface navigation. In view, however, of the fact that a check sweep had not been carried out, the Mediterranean Zone Board decided that it should remain closed. This decision in no way invalidated Capitaine Mestre's report.
- (b) It appears to be suggested by the Government of Albania that the Royal Navy having recovered mines of the type G.R., afterwards substituted for them mines of the type G.Y. before Capitaine Mestre inspected them at Malta (para. 106, Counter-Memorial). This suggestion—which is presumably put forward as an alternative to the equally extravagant suggestion that the mines were "planted" by the British Government—the Government of the United Kingdom repudiates with equal indignation. It is, in fact, proved false by the reports. The sweeping took place on 13th November, 1946: already in his report dated 14th November, 1946, Commander Whitford had reported that the mines were of type G.Y. By this time the two mines had been dismantled and embarked on H.M.S. *Skipjack* for Malta. Annex 34 contains an affidavit by the Commanding Officer, H.M.S. *Skipjack*, identifying the mines brought by his ship to Malta with those examined by Lieutenant Phillips at Corfu. They were seen and identified by Capitaine Mestre on 23rd November. It can hardly be considered as credible that within twenty-four



hours after the sweeping the British Naval Authorities had already decided to substitute the mines, that they succeeded within nine days in arranging for two dismantled G.Y. mines to be placed at Malta and that they were prepared to take the risk of exposing these mines to inspection by Capitaine Mestre who had (if this theory is correct) seen much smaller mines only ten days earlier. In any case such a substitution seems singularly pointless, since if it had been the fact that G.R. mines were originally discovered Albania's liability would be the same as if they were G.Y. mines.

68. The argument put forward in paragraph 103 of the Counter-Memorial, which is designed to show that the mines encountered on 22nd October, 1946, were old German-laid mines, only attains a measure of plausibility if it is assumed that the minefield discovered on 13th November did not exist. If it is accepted that this minefield did exist and that it ran right across the navigable channel, it is quite inconceivable, having regard to the traffic passing through the Channel from May 1945 onwards, and particularly having regard to the passage of the *Orion* and *Superb* on 15th May, 1946, that the mines, by which the ships were struck in October 1946, were not mines forming part of this minefield.

69. In paragraph 104 the allegation is repeated that the British squadron on 22nd October navigated in Albanian interior waters, outside the swept channel, and that H.M.S. *Saumarez* was, at the moment she struck the mine to the east of the Channel, in Albanian national waters. This allegation has already been dealt with in paragraph 44 above. The Government of the United Kingdom merely wishes to point out that these allegations, that the vessels were outside the swept channel, are probably due to the legal advice on international law, which Albania has no doubt received since the present proceedings started. No such distinction between the Channel and Albanian national waters is made in the diplomatic Notes of the Albanian Government of 21st May, 19th June and 21st December, 1946.

70. With regard to the alleged Albanian offer to help to elucidate the facts, the Government of the United Kingdom observes that the only offer in fact made by the Albanian Government (in its Note of 11th November, 1946) was to establish a mixed Commission to decide what area should be considered to constitute the channel of navigation. The Government of the United Kingdom refers to paragraph 83 (c) below for the reasons why this offer was not accepted. Albania never offered to appoint observers to be present at the sweeping.

71. *Conclusions.*

The Government of the United Kingdom maintains the conclusions set forth in paragraph 96 of its Memorial. In further



support of Conclusion 2, the Government of the United Kingdom refers to paragraphs 37, 38, 51, 59, 65, and 66 of this Reply. In further support of Conclusion 3, the Government of the United Kingdom refers to paragraphs 4, 5, 15 and 16 of this Reply. In further support of Conclusion 5, the Government of the United Kingdom refers to paragraph 47 of this Reply. In further support of Conclusion 6, the Government of the United Kingdom refers to paragraphs 96-101 of this Reply. In further support of Conclusion 7, the Government of the United Kingdom refers to paragraphs 85-101 of this Reply. In further support of Conclusion 8, the Government of the United Kingdom refers to paragraph 64 of this Reply.

## PART II

**Question No. 2.—“Has the United Kingdom violated the sovereignty of the People’s Republic of Albania by the acts of the British Navy in Albanian waters on 22nd October, 1946, and on 12th and 13th November, 1946, and is there a duty to make reparation?”**

### THE FACTS

#### PRELIMINARY OBSERVATIONS

(Counter-Memorial, paragraphs 108-110.)

72. The question which is raised in this part of the Albanian Memorial is whether the Government of the United Kingdom has violated the sovereignty of Albania either—

- (a) By the passage of the British ships on 22nd October, 1946 ; or
- (b) By the sweeping of the North Corfu Channel on 13th November, 1946.

A correct answer to this question depends (1) upon an examination of the circumstances in which these respective events took place, which examination will be pursued in the paragraphs which follow, and (2) upon a consideration of the position under international law, which will be found below in paragraphs 84-104 as regards (a) and paragraphs 80-83 as regards (b). The Albanian Government, however, introduces its case under this heading with a diatribe of a political character against the Government of the United Kingdom seeking to make out that the Government of the United Kingdom was at the material times animated by hostility against the Government of Albania and was concerned in some way to arrange what are described as “provocative incidents”. The Government of Albania does not explain what advantage could possibly be gained by arranging such incidents which

consisted, according to the Counter-Memorial, of exposing valuable British ships and British lives to the close-range fire of coastal batteries and to the hazards of waters under the control of what (according to the Albanian hypothesis) was a hostile Power. If action of this kind was in fact intended to bear a provocative character it seems difficult to understand why, when the presumed objective had been achieved on 15th May, 1946, by the opening of fire by Albanian batteries and on 22nd October, 1946, by the explosions, instant advantage was not taken to reply with acts of a similar character. In fact, although, in each case, retaliatory action of a severe character would have been justified under international law, and also could have been carried out without the slightest difficulty, the British forces refrained from the use of any force and the incident was followed up in a peaceful manner in the first case by diplomatic protests and in the second case, after an operation to sweep the minefield in the Channel, by recourse to the Security Council of the United Nations.

73. In paragraph 109 the Albanian Government contends that the United Kingdom has adopted a general political attitude of hostility towards Albania and endeavours to support this general allegation by a number of particular charges. In paragraphs 19-21 above the Government of the United Kingdom has given a short summary of the anomalous position in which Albania was from 1939 onwards. It there stated that, as the World War progressed, various political groups and resistance movements came into being in Albania, that the United Kingdom, so far as its resources at the time permitted, helped each such group which engaged in embarrassing the German enemy. British officers were attached to the various bands and material help was furnished. Unfortunately, these bands sometimes engaged in conflict with each other to the detriment of their efforts against the Germans. It is quite untrue that the Government of the United Kingdom, by any means whatever, endeavoured to weaken Albania's war of national liberation or to destroy its political unity. On the contrary, it was always the policy of the United Kingdom actively to foster political unity in Albania as indicated amongst other things by the stipulation for free elections and the constitution of a Government based on the results thereof, made at the time of the provisional recognition of General Hoxha's Government in November 1945. The charge at the bottom of page 107 is merely an instance of the Government of the United Kingdom endeavouring to induce the Albanian resistance movements to concentrate their efforts, including the assistance given them by the Allies, against the Germans instead of using it against each other.

74. The Government of the United Kingdom has no information of the alleged attempted landing of British military forces in Albania under the cover of a Military liaison mission to assist Albania economically pending the arrival of U.N.R.R.A. It is

true that the Government of the United Kingdom proposed to send an U.N.R.R.A. mission consisting of less than 40 persons, most of whom were members of the forces or had recently served therein, headed by Colonel Oakley-Hill, who had been second in command of the Albanian gendarmerie before the Italian annexation of Albania, and that at first the Albanian Government were unwilling to receive it, though afterwards they consented to do so.

75. The United Kingdom denies the charge that the British Military Mission acted as an agency of espionage, sabotage or conspiracy and all the other charges made on page 108. If the Anglo-American forces had wished to land in Albania they were easily in a position to do so without first engaging in the activities which are alleged. In fact, so far from showing a hostile attitude towards Albania, the Government of the United Kingdom, after the British naval forces had liberated the port of Saranda at the same time as the Greek port of Corfu, contributed 20 per cent of the \$27 million worth of assistance which Albania received from U.N.R.R.A. Further, having furnished supplies to the value of £180,000 to Albania, at the close of hostilities the United Kingdom waived all claim to recover any payment therefor. It is true that the United Kingdom, together with a large majority of other Members of the United Nations, has opposed the application made by the present Government of Albania for admission to that Organization. Opposition to the application of a government for entry into the United Nations is not a sign of any hostility to that country; nor do His Majesty's Government entertain any hostility to the people of Albania.

76. Both in paragraphs 108 and 110 the Government of Albania repeats the allegation that both in October and November 1946 British vessels penetrated into Albanian interior waters outside the swept channel. These allegations are dealt with fully in paragraph 44 above (October) and paragraph 84 (c) below (November). The Government of the United Kingdom wishes to repeat that on neither occasion did the British naval vessels penetrate into interior waters except that on 22nd October His Majesty's ships *Saumarez* and *Volage*, when both badly damaged, were unable to avoid being carried by wind east of the swept channel. On the 13th November H.M.S. *Sylvia* swept very slightly E. of the Channel on the last lap. The Government of the United Kingdom repeats that it makes no claim that foreign warships have a right to enter the interior waters of any State without the permission or authorization of the territorial authority.

"OFFENSIVE" PASSAGE OF BRITISH SQUADRON  
ON 22nd OCTOBER, 1946  
(Counter-Memorial, paragraphs III-III7.)

77. In this section the Albanian Government again asserts that it requested the United Kingdom to give notice of any intended

passage, and that the passage bore an offensive character. The United Kingdom Government repeats its contention that no such notice was necessary, and that the passage was entirely innocent and inoffensive. It refers to paragraphs 15 and 85 to 90 of its Memorial and 41-50 and 87-104 of this Reply, where these contentions are justified in detail.

78. In addition, the Government of the United Kingdom makes the following observations :—

(a) The foundations upon which the Government of Albania, in paragraph 115 of its Memorial, bases its case that the passage of the ships possessed an offensive character are entirely unsound. There were no troops on the ships ; the ships were not in combat formation ; they carried out no "manoeuvres" at any time or place, until the explosions took place, when they carried out the manoeuvres necessary to bring the damaged ships to safety ; the crews were merely on defensive alert ; the ships did not enter interior waters, but were merely passing through the recognized channel on normal passage. (With regard to Admiral Willis' statement, see para. 42 above.)

(b) The Albanian launch emerged from Saranda after the first explosion took place. At this time all crews were concerned with the urgent tasks of saving the ships and of rescuing the men. In these conditions, and having regard to the possibility of an incident developing, it was not thought necessary to engage in prolonged discussions with the Albanian launch, which was offering no help. The Government of the United Kingdom understands that certain conversations did take place which, as they were conducted in Italian, the only common language, were necessarily of a limited character.

(c) The Government of the United Kingdom observe that the Albanian authorities did not even mention the damage to the *Volage*, and that the report contained in the Albanian Annex 7 omits all reference to it. The value of the evidence contained in that Annex is substantially diminished, as, if the Albanian authorities failed to observe the second explosion, it cannot be supposed that their observation of other details set forth in the Annex was correct.

(d) The Government of the United Kingdom deny that the ships had instructions to, or that they did in fact, carry out acts of espionage. After the first explosion had taken place, causing serious damage and loss of life, and rendering one ship helpless, and bearing in mind the fire that was opened on 15th May, and particularly after the first explosion had taken place, all ships were naturally and properly concerned to keep a close watch on shore against the development of further acts of hostility. The observations made, and subsequently recorded on the map reproduced as Annex 21 of the United Kingdom's Memorial, were the



result of direct observations made by the ships in the above circumstances.

(e) Although the Government of Albania maintains that three-engined aircraft, one of which bore the markings P K 4, flew over Albanian territory (Albanian Note to United Nations, Annex 6 of United Kingdom Memorial, Second Incident, No. III), the Government of the United Kingdom has pointed out that it possessed and possesses no aircraft of this type or with these markings and denies that any of its aircraft flew over Albania at the time in question. (Security Council Records, 107th Meeting, p. 217.) Further, although it is alleged that other British aircraft flew over Albanian territory at a very low altitude (Albanian Memorial, para. 112), no particulars of markings are given by which such aircraft could be identified.

“INVASION” OF ALBANIAN WATERS, 12th-13th NOVEMBER, 1946  
(Counter-Memorial, paragraphs 118-125.)

79. The account given by the Albanian Government of the operations of the 12th-13th November is substantially inaccurate as to the facts, and quite unjustified in its treatment of these operations as a violation of Albanian sovereignty. In paragraphs 80-83 below, the Government of the United Kingdom give grounds on which they claim that they were justified in international law in undertaking the sweeping of the mines in the Channel. Independently of this contention the Government of the United Kingdom submit that there was nothing in the manner in which the operation was conducted to which objection could reasonably be taken (see paras. 84-85 below).

80. The Government of the United Kingdom do not contend that any decision of either the Central or Medzon Board, taken after 22nd October, 1946, authorized the Government of the United Kingdom to sweep the Corfu Channel without the consent of Albania. Both Boards did, however, declare that it was important that the Channel should be reswept (Minute 326, Central Board, United Kingdom Memorial, Annex 15, p. 104; Minute 138, Medzon Board, *ibid.*, p. 125). There are two separate independent grounds on which the Government of the United Kingdom contend that their action in sweeping the Corfu Strait is justified, namely—

- (a) in view of the fact that the Corfu Channel was in the sub-area allocated to Greece for minesweeping purposes, the Greek Government had the right to sweep the Channel itself or to authorize the Government of the United Kingdom to do so, and the Greek Government did consent to the sweeping;
- (b) as, on 22nd October, His Majesty's ships had been struck by mines in the Channel in circumstances which created



justifiable suspicion that these mines had been deliberately placed there, and that His Majesty's ships had been deliberately allowed by the Albanian authorities to run into them, the Government of the United Kingdom was entitled to sweep the Channel, both to remove an immediate source of danger to shipping and to investigate whether there was any foundation for these suspicions, and to do so without delay to prevent the removal of the evidence, if there was any, justifying these suspicions.

81. The first contention (a) in paragraph 80 is supported on the following grounds. In paragraphs 25-28 above, it has been shown that, under the Minesweeping Agreement, the Corfu Channel was included in the sub-area for the sweeping of which Greece was made responsible, and that paragraph 12 of the Agreement, referring to the sweeping of littoral waters by the coastal Power, only refers to Powers who were members of a Board. It is clear that, so far as the Agreement is concerned, Greece was entitled to sweep any part of her area, including the Corfu Channel, where minesweeping was required.

It is true that Albania was not a party to the Agreement, and therefore it may be argued that the Agreement could not affect any rights which Albania might otherwise have. The anomalous status, however, of Albania in November 1945 has been shown in paragraph 19 above to have been that of a State just completing its emergence from the position of an enemy country, and the first recognition of Albania's independence in that month was clearly intended to be on the basis that she accepted arrangements such as this, which the Allied Powers had by unanimous agreement made. Further, the Government of the United Kingdom contends that, under international law, Albania had no right to object to the clearing of the Corfu Channel of mines, notwithstanding the fact that part of the Channel lies in Albanian territorial waters. The Corfu Channel is an international highway subject to the important right of passage. From the point of view of territorial waters it may be divided between Greece and Albania, but, as a highway, it has to be considered as one entity. If, as is shown in paragraphs 96-101 below, neither Greece nor Albania had the right to prevent the passage of traffic through this highway, it is submitted that neither of them alone had the right to prevent the clearance of obstructions to this passage (*cp.* para. 89 below with regard to the laying of mines in straits). If this is not so, the right of passage through an international strait may become nugatory, seeing that the territorial Power can prevent it by refusing to consent to the removal of obstructions.

82. The arguments on which the Government of the United Kingdom bases its contention in (b) of paragraph 80 above are as follows:—

(a) There is recognized in international law the right of a State, when a state of affairs involving a serious and flagrant breach of the law has been brought about by another State or has been permitted to come about, to intervene by direct action. The purpose of such intervention may be to prevent the continuance of the situation which is in breach of the law, or, where the intervening State has suffered an injury of a nature capable of being redressed, to further the administration of international justice by preventing the removal of the evidence.

(b) In this case it was plain from the nature of the incident of 22nd October that a serious breach of international law had been committed by some State whether Albania or another. Not only had a dangerous obstruction been placed right across an international highway of navigation, thus constituting a threat to the shipping of all nations, but this obstruction took the form of a minefield the laying of which was a manifest breach of the Hague Convention VIII of 1907. Either of these grounds was in itself sufficient to justify intervention by the United Kingdom, the State which had suffered from it.

(c) Thus Oppenheim, Volume I, 6th edition (Section 135 (4)), recognizes the right of a State to intervene if another State in time of peace or war violates such rules of the Law of Nations as are universally recognized by custom and to make the delinquent submit to the rules concerned. The right of innocent passage through straits is one of such rules. Hall, 8th edition (Section 90), recognizes the right of intervention by way of opposition to wrongdoing, and a similar doctrine is found in Fauchille-Bonfils (1922) (Section 304<sup>1</sup>). This right is sometimes described as the right to abate an international nuisance by analogy to the right which is recognized by the common law to abate (*i.e.*, to remove) a nuisance (*i.e.*, a state of affairs which constitutes an interference with the right of another). Thus Moore ("Principles of American Diplomacy", p. 208) quoted in Stowell, "Intervention in International Law", page 62, says:—

"The intervention of the United States in Cuba .... rested upon the ground that there existed in Cuba conditions so injurious to the United States as a neighbouring nation that they could no longer be endured. Its action was analogous to what is known in private law as the abatement of a nuisance. On this ground the intervention was justified by Rivier, one of the most eminent publicists in Europe, and on this ground its justification must continue to rest."

Bluntschli (Sections 471 and 472) recognizes a general right of intervention in cases where a breach of international law, creating a common danger, has been committed. He lists a number of specific situations such as piracy, *the disturbance of international traffic routes* (die Zerstörung der Weltverkehrswege), the assertion

of exclusive sovereignty over the sea (die Anmassung einer ausschliesslichen Meeresherrschaft), and then states that generally any serious and undoubted breach or contempt of international law can justify the intervention even of States not directly concerned.

(d) The situation brought about by the placing of these mines in an international channel, coupled with the attitude of the Albanian Government as shown by the diplomatic correspondence following the incident of 15th May, thus clearly falls within the class of situation recognized by international law as justifying intervention. Moreover, even on the hypothesis that Albania was not itself actively responsible for the laying of the mines, the same right exists. Hyde (2nd edition), page 247, note 5, states:—

“It should be observed that the wrong with which a State may be chargeable may be attributable to its own impotence to maintain its supremacy in fact over its own domain or its own property or thereby permit their use in such a way by a foreign Power as to cause injury to a third State.”

Violation of the Hague Convention VIII rests upon a similar footing. Thus Oppenheim (*loc. cit.*) states that, if a party to the Hague Regulations concerning Land Warfare were to violate one of those regulations, all other signatory Powers would have a right to intervene. The same rule must apply to the Hague Convention No. VIII of 1907 and, although Albania was not a signatory of this Convention, she has admitted that she recognizes, as it may be assumed that all civilized States recognize, the principle of law declared therein.

(e) Apart from this general right, it must be remembered that the United Kingdom was itself an injured party. The loss of life and damage to its ships which had been sustained was an injury of a nature for which redress was capable of being recovered by process of law. The right of the United Kingdom to take, without delay, such steps as were necessary to secure its position in this respect is therefore analogous to the recognized doctrine of “hot pursuit” which is necessary for the effective administration of justice and the secure enjoyment of fishery rights in time of peace (Westlake, Vol. I, p. 177). In view of the secrecy with which these mines had been laid in the Channel there was ample reason to suppose that the *corpora delicti* would be removed, if opportunity to do so was given, before the necessary evidence to enable reparation to be obtained, could be recovered.

(f) The Government of the United Kingdom fully recognizes that the exercise of this right of direct action is exceptional and must be justified according to the circumstances of each case. As Hyde (2nd edit., p. 247) says:—

“The gravity of what takes place whenever an act of intervention is committed is, however, such as to require by way of justification

the presence of unusual if not extraordinary circumstances. Moreover, the legal value of these for such purposes is not to be derived from the power of the intervening State but rather from the sinister and lawless conduct of that other whose freedom of will is opposed."

Further, the Government of the United Kingdom recognizes, as it did at the time, that the right must be exercised in a reasonable manner so as to cause the minimum interference with the sovereignty of the State concerned. That this requirement was amply fulfilled is shown in paragraph 84 of this Reply.

(g) If it is argued that this right of self-help or intervention can only be exercised when there is an immediate necessity and that in this case the proper course for the United Kingdom to have taken was to have applied to the Security Council immediately after the incident of 22nd October, and to have asked the Security Council to arrange for the sweeping of the Channel under international auspices instead of acting herself, the answer is that it was urgent to take this action quickly. The Security Council took a period of many weeks to deal with the Corfu issue when it was brought before it and could not even begin the hearing of the case, until the Albanian representative arrived, which he did not do till after a considerable delay. Consequently, there would have been every opportunity for the removal of the evidence, which it would be the object of the sweeping under international auspices to obtain. Owing to the attitude of a minority of the representatives thereon, neither the Central Mine-sweeping Board nor the Medzon Board, both of them bodies which could only take decisions by unanimous vote, were in a position to take a decision to act without the consent of Albania. The United Kingdom only attempted to secure such a decision because it desired that the sweeping should take place under international auspices and not because it doubted its right to sweep the Channel, when the Greek Government consented. The United Kingdom did its best in the short time available to obtain impartial observers for its own sweeping and, as it has already been shown, it succeeded only in obtaining the services of one such impartial observer, namely, the French officer, Capitaine Mestre. Moreover, if it were held (contrary to the arguments put forward in paras. 25 and 81 above) that the United Kingdom was not entitled to sweep this Channel (with the consent of the Greek Government because the Channel had been allocated to the Greek sub-area) on the ground that Albania was not a party to the Agreement and the Agreement could not affect the rights of Albania, the position would have been exactly the same, even if either of the Boards had taken a unanimous decision authorizing the sweeping of the Channel because even a unanimous decision on that view could not have prejudiced the rights of Albania, which was not a party to the Agreement.



83. Account must also be taken of the diplomatic correspondence immediately preceding the sweeping of 13th November, 1946 (Annex 6 of United Kingdom Memorial, pp. 72-75).

(a) The Albanian Government was notified on 26th October of the intention to sweep, and, on 31st October, the Albanian Government replied that it had no objection to the sweeping provided that Albanian territorial waters were not entered (p. 76 of Annex 6 to the United Kingdom Memorial). It will be observed that in this Note Albania makes no distinction between territorial waters and interior waters. After the Central Mine-clearance Board had, on 1st November, decided that it was desirable that the Channel should be swept, subject to the approval of Albania, the Government of the United Kingdom on 10th November notified the Government of Albania that the proposed sweeping would take place on 12th November, and said that this would be carried out in the same manner as previous sweepings in October 1944 and in February 1945, to which the Albanian Government had not raised any objection.

(b) On 11th November, 1946, the Albanian Government replied protesting against the "unilateral decision of the Government of the United Kingdom", but went on to state that it did not consider it inconvenient that the British fleet should undertake the sweeping of the waters of the channel of navigation, adding that "before the sweeping is carried out the Albanian Government consider it indispensable to decide what area of the sea should be considered to constitute the channel of navigation and to this end propose the establishment of a Mixed Commission competent to submit to the two Governments an actual solution". The Albanian Government continued that it requested the Government of the United Kingdom "to draw the attention to all subordinate authorities, when they undertake the sweeping of the Channel, to the necessity of confining themselves strictly to the sweeping of the determined passage in accordance with the British Note of 10th October", and concluded that "any sweeping undertaken without the consent of the Albanian Government outside the determined passage, *i.e.*, inside Albanian territorial waters where foreign warships have no reason to sail, can only be considered as a deliberate violation of Albanian sovereignty. The Albanian Government attaches particular importance to this statement because the two British warships which were shipwrecked were sailing, as competent British authorities have themselves admitted, outside the Straits and within Albanian territorial waters."

(c) From the terms of the Albanian Notes of 31st October and 11th November, the Government of the United Kingdom concluded that the Albanian Government, while not able to put forward any substantial objection to the sweeping of the Channel, was anxious to delay the sweeping or at least to divert the sweeping



away from those portions of Albanian territorial waters where incriminating evidence was likely to be found. Although the terminology is confusing, it would appear from the general tenor of these notes that, at least at this stage, the Albanian Government did not consider itself justified in law in objecting to the sweeping provided that it was confined to the limits of the Channel, and even though this might involve entry into Albanian territorial waters: nor did the Albanian Government raise any objections in principle to the sweeping being undertaken by ships of the Royal Navy. Objections on these points were only made afterwards. At that time it only objected to entry into Albanian internal waters outside the Channel.

At this time the efforts of the Albanian Government, as is shown by its proposal to establish a Mixed Commission to decide what area should be considered to constitute the Channel, were directed to limiting the area to be swept and to delaying the execution of the operation. In view of the fact that the Channel had been long established within quite definite limits, the Government of the United Kingdom was fully justified in assuming that either—

- (i) the proposal of the Government of Albania was not a genuine one and that it was seeking to obstruct the sweeping because it was implicated in the laying of mines; or
- (ii) if the Government of Albania was not so implicated, it had no substantial objection to the Channel being swept by ships of the Royal Navy.

The Government of the United Kingdom accordingly submits that in the circumstances it acted reasonably and legitimately in proceeding at once to the sweeping of the mines.

84. As to the manner in which the operation was conducted, the Government of the United Kingdom in fact took the utmost precautions to ensure that all aggressive and provocative acts were avoided and that Albanian sovereign rights were not infringed. The orders given to this end were detailed and were fully carried out.

(a) Orders were given that no ships were to approach within 20 miles of the Albanian coast until at least one independent foreign observer was present. These orders were carried out and the order to move east of this limit was not given until 1233 hours on 12th November, when Capitaine Mestre landed on H.M.S. *Ocean*. (Report of Admiral Kinahan dated 14th November, 1946, Annex 17, of the United Kingdom Memorial.) The allegation in paragraph 118 of the Counter-Memorial that in the morning of 12th November a large number of warships navigated along the Albanian shore is thus inaccurate. It is further incorrect to state that five ships, on the same day, sailed as far as Butrinto. Operations on 12th November were in fact confined to preliminary sweep-

ing operations north-west of the Channel. Annex 35 of this Reply shows the three areas swept on this day. The principal area is marked "Searched (b) area". This area is also defined by reference to latitude and longitude on page 161 of Annex 17 of the Memorial, Serial 2, 1 (b). The approaches to this area were also swept on 12th November and they are marked on Annex 35 as "north approach Channel (a)" and "north-west approach Channel (c)". Further, it is inaccurate to state that British ships cruised in Albanian waters till late at night. Sweeping was concluded at 1842 hours and the minesweeping flotilla was anchored east of Merlera Island at 1950 hours. (Minesweeping Report No. 2, Annex 17, of United Kingdom Memorial, p. 164.)

(b) It is entirely incorrect to state, as is alleged in sub-paragraph 4 of paragraph 118 of the Albanian Memorial, that on 13th November, 1946, groups of ships in combat formation approached the Albanian coast. No ships were in combat formation at any time. No guns were trained on the land (Report of Capitaine Mestre dated 16th November). The only ships "in formation" were the minesweepers, which were in the formation necessary to carry out the sweeping. The five ships referred to in this sub-paragraph were merely the five fleet sweepers which, after sweeping to the south-east, returned in a sweep to the north-west. They had, however, anchored overnight east of Merlera Island (see above) and had made a sweep from north-west to south-east before returning up the Channel. The return sweep (No. 3) was not begun until approximately 1245 hours.

(c) The ships not engaged in minesweeping were, with the exception of H.M.S. *Ocean*, which was west of Fano Island, stationed in search (b) area (see Annex 35) and thus were at least 4 miles from the Albanian coast. H.M.S. *St. Bride's Bay* (which is a frigate and not a cruiser) was stationed south-east of Cape Kiephali in the swept channel. This position was not taken up for any offensive reason but solely to enable the Rear-Admiral in command effectively to supervise the operation.

(d) No arms or machine-guns were fired in the air or towards the Albanian coast; on the contrary, strict orders were given that the rifle fire necessary to destroy the cut mines should be directed away from the coast (Report of Rear-Admiral Kinahan, para. 11), and these were complied with throughout the operation (Report of Capitaine Mestre dated 16th November, para. 5).

(e) It is quite untrue to say that the Albanian launch was fired on by machine-guns or otherwise. No machine-guns were fired at any time. It is equally incorrect to state that British ships approached within 300-500 metres of the port of Saranda. Apart from H.M.S. *Sylvia*, which on the last lap swept slightly to the east of the swept channel, no ship went outside the Channel, and no ship approached within one mile of the port of Saranda.

(f) It is admitted that aircraft flew over the minesweeping forces so as to be ready to protect them against any attempted interference by force.

(g) No sweeping was carried out in the extreme eastern parts of the Channel where this closely approached the Albanian shore. A stretch of water in the Channel south-east of Cape Kiephali and another stretch abreast of Denta Point were left unswept. (Report of Commander Whitford dated 14th November, 1946.)

(h) No "special observations" were carried out apart from those necessary to ensure the safety of the operations. The cruisers themselves being at some distance from the coast, it was a natural course to detach a few observers to accompany the minesweepers operating in the Channel. Apart from the 200-300 Albanian troops in uniform and the inscription above Saranda no special observations were in fact made. It is evident from the Report of Commander Whitford that these observations were not made in any spirit of hostility.

(i) It was unfortunately impossible to destroy the majority of mines cut. The reason for this was the late hour at which they were found and the severe restrictions placed upon the use of weapons to destroy them. At the same time, contrary to the statement of the Albanian Government, mines of this type when floating constitute a far less menace to navigation than when moored below water.

85. From the above and from reports given of this operation, including the Report of Capitaine Mestre, it appears beyond dispute that the sweeping was carried out without any element of offence or provocation and under conditions which were entirely in accordance with the request made by Albania in her Note of 11th November that the sweeping should be confined to the "determined passage", *i.e.*, Medri Route 18/32 and 18/34. The action taken by the Government of the United Kingdom was amply justified in its results, when twenty-two highly dangerous mines were cut. Incidents of any kind were avoided, and this was due both to the care with which the operation was planned and also to the scrupulous manner in which orders were carried out and the discipline of the British crews. In these circumstances the Government of the United Kingdom cannot admit any claim by the Government of Albania that its sovereignty has been violated or that an international wrong has been committed.

## THE LAW

### PASSAGE OF FOREIGN WARSHIPS THROUGH TERRITORIAL WATERS (Counter-Memorial, paragraphs 131-135.)

86. The Government of the United Kingdom will discuss the legal position with regard to the passage of warships both through territorial waters, which are not straits forming international high-

ways, and also through such straits, because the Albanian Counter-Memorial has done so. It is, however, strictly only the latter question which is relevant to the present case and the former is pertinent only in so far as it throws the light upon the latter. As already stated the Government of the United Kingdom claims no right of entry into, or of passage through, national (interior) waters. The contentions of the Government of the United Kingdom with regard to passage through straits will be found at paragraphs 96-101 below.

#### PASSAGE THROUGH TERRITORIAL WATERS

87. The Counter-Memorial represents as incorrect the view expressed by the United Kingdom in its Memorial that under international law warships have a right of innocent passage through territorial waters and in particular through territorial waters in straits. The Counter-Memorial supports this proposition by reference to selected passages from the proceedings of the Hague Codification Conference of 1930 and to the opinions of three selected writers on international law. It is to be observed that it does not refer in this connexion to the practice of States which in questions of customary law is of decisive importance as evidence of the existing law. The reason for this omission no doubt is that the practice of States strongly supports the view of the United Kingdom Government that warships have in general a right of innocent passage through territorial waters.

88.—(a) The Counter-Memorial cites the proceedings of the Hague Conference of 1930 to show that passage of warships through territorial waters is a matter of comity and not of legal right, and it relies particularly on statements of the United Kingdom and United States delegates. It is admitted that the United States delegate maintained the opinion previously expressed by his Government in its reply to the questionnaire addressed to States before the Conference (League of Nations, No. C74M39. 1929. V, p. 66), that warships have not a *right* of passage. It is also admitted that Sir Maurice Gwyer, the British delegate, indicated his readiness to fall in with the proposal of the United States delegate that in *the proposed Convention* "this should be treated as a matter of international comity and courtesy though without necessarily adopting every one of the arguments used by him" (League of Nations, C351(b). M145(b). 1930. V, p. 63). It is, however, entirely incorrect to say, as the Counter-Memorial says, that the United Kingdom delegate treated the passage of warships not as a right but as depending on the *comitas gentium*. The United Kingdom Government in their reply to the questionnaire had expressed the passage of warships unequivocally as a right (League of Nations, C74M39. 1929. V, p. 67), and Sir Maurice Gwyer at the 6th Meeting of the Second Committee was making a concession to the United States point of view for the sole purpose of promoting an agreement on the draft



Convention as a whole and in particular to smooth the way for the settlement of the controversial issue of the extent of territorial waters. Indeed he said, at the same time, that he would prefer simply to leave the passage of warships to be governed by existing usage and practice without attempting to define more precisely "what the respective *rights* and *obligations* are".

(b) It is therefore quite wrong to represent the statement of Sir Maurice Gwyer as committing the United Kingdom to the view that passage of warships is a matter of comity and not of legal right. The statement being a mere concession offered in negotiation was withdrawn and of no effect when no agreement was reached through the breakdown of the Conference. Indeed several delegates at the 15th Meeting of the Second Committee (League of Nations, C341(b). M145(b). 1930. V, pp. 146-160) stressed that the draft articles resulting from the work of their sub-committee, if they were to be annexed to the Report at all, must be regarded as provisional and as a mere basis for further study, and not as representing the existing law. M. Spiropoulos expressed this consideration with particular force (*loc. cit.*, p. 149), "I would say frankly that, if we leave our work in its present state, we shall only create a certain confusion in regard to the existing law. Can a judge, who in future is called upon to decide a question of international law, regard our discussions and the statements which have been made here as the expression of the legal concepts of States and of the principles of international law? I should not venture to give an affirmative answer.

"As I have already stated, the majority of our discussions were governed by the desire to find a compromise. I do not think, therefore, that they are of very great value as an interpretation of existing law. It will hardly be possible for a judge to be guided to any great extent by what has been said here, because most of our discussions have been influenced by the hope of reaching an agreement, and in many cases the existing law was passed over for that purpose."

89.—(a) The draft provisions concerning the legal status of the territorial sea as prepared by the sub-committee and annexed to the Report of the sub-committee cannot therefore be regarded as necessarily stating the existing law. Nevertheless Albania relies upon Article 12 of the draft as supporting the view that the passage of warships is a matter of comity and not of legal rights. The text of Article 12 reads as follows :—

"As a general rule a coastal State will not forbid the passage of foreign warships in its territorial sea and will not require a previous authorization or notification.

The coastal State has the right to regulate the conditions of such passage.

Submarines shall navigate on the surface.



*Observations.*

To state that a coastal State will not forbid the innocent passage of foreign warships is but to recognize existing practice. That practice also without laying down any strict and absolute rule leaves to the State the power in exceptional cases to prohibit the passage of foreign warships in its territorial sea. The coastal State may regulate the conditions of passage, particularly as regards the number of foreign units passing simultaneously through its territorial sea—or through any particular portion of that sea—though as a general rule no previous authorization or even notification will be required. Under no pretext, however, may there be any interference with the passage of warships through straits constituting a route for international maritime traffic, between two parts of the high seas.”

(b) This draft article and the observations appended to it were prepared by the sub-committee in the light of the views expressed by the United States and United Kingdom delegates in discussion. The proposed article is plainly a compromise formula to meet both points of view. Admittedly it does not, in terms, express the passage of warships as an absolute right in all circumstances, but at the same time it does require the coastal State not to forbid passage save in exceptional cases. The language is by no means appropriate to express the passage of warships as a mere matter of comity. It is also to be observed that at the 6th meeting of the second committee (*loc. cit.*, pp. 58-59) the United States delegate, in putting forward his draft, at first proposed as the text, that a coastal State “should ordinarily as a matter of comity permit innocent passage”, etc., and that, nevertheless, the draft article eventually submitted was expressed as a rule of law. It is further to be observed that the United States delegate proposed that, in the second rule in Basis of Discussion No. 20, “A coastal State is entitled to make rules regulating the conditions of such passage without, however, having the right to require a previous authorization”, the words concerning previous authorization should be struck out (*loc. cit.*, p. 59). He explained that, if passage was a matter of comity, these words were inappropriate. Yet the draft article when in its final form expressly states that as a general rule the coastal State is not to require a previous authorization. In these circumstances the United Kingdom Government submits that it is impossible to regard the draft Article 12 as representing the passage of warships merely as a matter of comity.

90. It is true that M. Gidel (*Le droit international public de la Mer*, III, p. 284), basing himself upon the distinction in wording between Article 4, dealing with merchant ships, and Article 12, dealing with warships, concludes that the liberty of passage of warships is not a right, but a tolerance on the part of the territorial

State. But M. Gidel takes insufficient account of the facts that Article 12, as explained above, represents a compromise formula reached *de lege ferenda* and that its own language by no means expressed the passage of warships as a matter of comity. M. Gidel also takes insufficient account of the practice of States, under which warships navigate in territorial waters as of right. The Counter-Memorial claims that a number of other writers adopt the same view as M. Gidel. There are some writers who do so, but M. Gidel himself (*op. cit.*, p. 279) acknowledges that writers who deny warships a legal right of passage are in a small minority. In any event, as has already been stated, it is the practice of States which is of decisive importance in this matter, and the writers who oppose a right of passage for warships do not draw their conclusions from an analysis of that practice but *a priori* from their concepts of territorial sovereignty.

91. The Government of the United Kingdom submits that the best evidence of the existing law is to be found in the practice of States as shown by the regulations they have issued in regard to the entry of foreign warships into their waters and by their replies to the *questionnaire* addressed to governments before the Hague Conference of 1930 (League of Nations, C74M39. 1929. V, p. 72). The Office of Naval Intelligence of the United States Navy published the regulations of States concerning the entry of warships as known to that Office up to 1916, and these regulations are reprinted in the *American Journal of International Law*—Volume 10, Supplement 1, pages 121-178. The regulations of 37 States were there set out, of which 34 either declared simply that there are no restrictions affecting entry into ports (21 States) or promulgated rules concerning entry into ports and interior waters or *anchoring* in territorial waters (13 States). Some of these 13 States prescribed special rules in time of war and in addition made regulations prohibiting certain acts within territorial waters. But none of the 34 regulations, either by way of formal grant of permission or by formal disclaimer of any restrictions, make any mention whatever of a right for warships to traverse territorial waters, although they all stated in terms whether they did or did not impose restrictions on visits to ports. This omission is of great significance, for the plain fact is that the regulations of 34 States out of 37 were issued on the assumption that foreign warships did not require to be informed that in time of peace they had full right of innocent passage through territorial waters. In short, these regulations appear to assume a right of passage for warships through territorial waters subject only to certain limited rights of regulation. The three remaining States were Denmark, the Netherlands and Roumania. Denmark expressly conceded permission to foreign warships to navigate in its territorial waters, and it is clear, from Denmark's reply to the questionnaire before the 1930 Conference, that Denmark recognized warships to have a *right* of passage (*loc.*

*cit.*, pp. 123-124). The Netherlands regulations, after making a reservation about sea openings leading to interior waters, also conceded permission to foreign warships to enter territorial waters "provided such is done by the shortest possible course". This regulation ended with the statement that "this provision does not prevent the free passage through territorial waters in so far as such is recognized by international law", a statement which is repeated in the Regulations of 1931. Roumania was alone in forbidding cruising in Roumanian waters without previous notification and even it did not require a previous authorization.

92. The Government of the United Kingdom submits that the above-mentioned regulations are strong evidence that the customary law recognized a definite right of passage for warships through territorial waters. This is borne out by the fact that, in the replies of governments to the *questionnaire* before the 1930 Conference, 15 States recognized that warships have such right of passage and, apart from Roumania, only 3 States, the United States, Bulgaria and Latvia, denied the right. Of these three, the United States did not base its reply upon its own practice but merely upon a dictum of Mr. Elihu Root in argument during the North Atlantic Fisheries Arbitration. In fact, the Navy Regulations No. 78 issued by the United States Government concerning the admission of foreign warships into ports of the United States contain no rules regarding passage through territorial waters. Bulgaria did not refer to its practice and in fact its own regulations of 1916 placed no restriction whatever on the general navigation of warships in territorial waters. Nor is it at all clear that the reply of Latvia was by any means intended to deny to warships a right of mere passage, since the regulations to which it refers appear primarily directed towards entry into ports and *anchoring* within territorial waters.

93. The Government of the United Kingdom emphasizes that it does not claim and has never claimed any larger right of passage for warships than that of mere passage in the normal course of navigation, but the evidence of the practice of States adduced above establishes that this reasonable and necessary right does exist for warships under customary international law. In addition to this documentary evidence in favour of a customary right of passage for warships, it is the undoubted fact that warships in time of peace have habitually and as of right made passage through foreign territorial waters, when such passage was necessary in the ordinary course of navigation without authorization or even notification. It is also the fact, subject to the limited exceptions mentioned below, that in time of war even belligerent warships have also habitually and as of right made passage through neutral territorial waters when required in the ordinary course of navigation. Notwithstanding the strict concepts of neutrality upon which are based the laws relating to neutral rights and duties in maritime war in the 13th

Hague Convention of 1907, the passage of warships through neutral territorial waters is stated, in Article 10, not to compromise the neutrality of the territorial Power. It is true that Great Britain proposed an article stating that "no provisions in the Convention should be interpreted so as to prohibit the innocent passage of neutral waters in time of war by a warships of a belligerent", and that this was not accepted, but, as was explained by the eminent Rapporteur of the Third Committee, M. Renault, this was because the general feeling was that a neutral State ought to be able to forbid even innocent passage "so far as it was necessary to maintain its neutrality" (*Actes et Documents*, Vol. I, p. 305). In other words, the Report of the Rapporteur at the 1907 Conference recognized the passage of warships through neutral territorial waters as a right subject only to the needs of the territorial State to protect its neutrality. The course of the discussion at the 4th Meeting of the 2nd Sub-Committee of the 3rd Commission held on 30th July, 1907. (*loc. cit.*, Vol. 3, pp. 95-96), makes it plain that the delegates were assuming that warships had a right of innocent passage and that the only question was how far it should be qualified in the interests of neutrals in war time. Moreover, in practice, States have not attempted to forbid the passage of belligerent warships through neutral waters, except under the most urgent need to protect their neutrality in regard to the abuse of neutral waters by German U-boats. When in the 1914-1918 war the Netherlands went so far as to make a general prohibition of passage by belligerent warships for the protection of its neutrality, Germany protested vigorously. This was the first time that any neutral State had made such a general prohibition, and the Netherlands ultimately admitted that their regulations might be in conflict with international law if applied to ordinary navigation through territorial waters (Vandenbosch—*Neutrality of Netherlands during the World War*, pp. 88-89). It is noteworthy that in 1939 the Netherlands neutrality regulations did not repeat this general prohibition, but allowed "free passage in so far as this is recognized in international law".

94. The Government of the United Kingdom emphasizes that the law applicable in the present case is that relating to the innocent passage of warships in time of peace. Reference has been made to the practice of States in time of war only for the purpose of showing the sanctity, with which the freedom of innocent passage of warships in territorial waters is regarded even in the circumstances of war. This practice serves to confirm that warships enjoy a general right of innocent passage through territorial waters in the ordinary course of navigation and that this right is subject to restriction only in very exceptional circumstances for the security of the coastal State.

95. It is not disputed that the practice of States, while recognizing a right of passage for warships, also concedes to the coastal State the right to make reasonable regulations for navigational,



fiscal, sanitary and other administrative purposes. But such regulations must plainly have full regard to the right of passage possessed by warships and merchant ships and avoid unnecessary hindrances to navigation. Moreover, as stated in paragraph 88 of the Memorial and expanded above, the practice of States does not recognize as included in this ordinary right of regulation, a power in the coastal State to require previous authorization or notification of the passage. The Government of the United Kingdom again does not dispute that apart from Straits the practice of States recognizes that in exceptional circumstances the coastal State may take special measures restricting navigation in its territorial waters for its own safety including, as a temporary rule, the requirement of notification for the passage of warships. But such special circumstances must be of compelling urgency before the customary right of navigation vested in other States can be curtailed and plainly any limitation thus placed upon navigation is only lawful when exercised *bona fide* and when strictly necessary for the security of the coastal State.

#### PASSAGE THROUGH STRAITS

96. The right of passage of warships through territorial waters forming part of straits follows *a fortiori* from what has been said concerning the practice of States in regard to passage through territorial waters generally. Not only do States in their practice accord a right of passage for warships through straits but they recognize it to be of even higher degree than the right of passage through other territorial waters. States do not recognize that the territorial State has the power in any circumstances to interfere with passage through straits forming a route of international maritime navigation. Thus, the Observation upon the draft Article 12 annexed to the Report of the Second Committee of the 1930 Convention, the text of which is set out in paragraph 89 (a) above, declares explicitly "under no pretext, however, may there be any interference with the passage of warships through straits constituting a route for international maritime traffic between two parts of the high sea".

97. Nevertheless, the Counter-Memorial contests the contention of the United Kingdom set forth in paragraph 88 of the Memorial that Albania had no right to interfere with the passage of British warships through the Corfu Channel, (1) by alleging that the Observation (the reference is of course only to the *last* sentence of the Observation—Albania herself relies on the *third* sentence) has less authority than the text of Article 12, and (2) by disputing that this Observation is a correct statement of the law. It is said that the Observation "was in no way one of the Articles drafted by the Committee in question but was only an explanatory note inserted at the end in a spirit of compromise without any discussion on such a profound subject having taken place". The implication is that the last sentence of the Observation is therefore of less force than

Article 12 upon the text of which Albania has herself placed reliance. (See para. 132 of the Counter-Memorial.) This argument is completely misleading. As explained in paragraph 89 (b) above, Article 12 was itself no more than a compromise not adopted by the Conference but merely transmitted as a basis for further study. The last sentence of the Observations was originally intended to find a place in the Draft Convention and to be numbered Article 19. It was only because the work of Sub-Committee 2 was rendered nugatory by the Second Committee's failure to agree concerning the extent of territorial waters, that draft Articles 14 to 19 relating to the legal status of straits were abandoned (League of Nations, C.351. M.145. 1930. V, p. 125). This was done in order that some draft might go forward concerning territorial waters. In point of fact there appears to have been unanimity in Sub-Committee 2 concerning the content of Article 19 and also afterwards in Committee 2, when it repeated the substance of Article 19 as the last sentence of the Observation on Article 12. If there was no discussion, it was because there was no disagreement about a rule which was an established part of customary law. Furthermore, the circumstances surrounding the introduction of the Observation into the text of the draft annexed to the report of the Second Committee completely disprove Albania's contention that it was intended to have less force than Article 12. After Article 12 had been read in the Second Committee, Dr. Schücking (Sixteenth Meeting, *loc. cit.*, p. 171) said it was necessary to introduce a reservation of the right of warships to pass through straits, even if territorial waters. He had in mind that under Article 12 a coastal State might in exceptional circumstances interfere with passage through territorial waters. In discussion, M. Giannini suggested that the words "as a general rule" in Article 12 really met Dr. Schücking's point. It is true that, as the Counter-Memorial says, M. Giannini asked that his view should be recorded in the minutes, but the Chairman then insisted that the position of straits is a special one and proposed that the sense of Article 19 should be included in the Observations on Article 12. This proposal was adopted without comment. Thus, the inclusion of the Observation was a considered decision of the Second Committee and was intended to make it plain that any rights possessed by a coastal State to interfere with passage through the territorial waters do not apply to straits constituting a route for international maritime traffic between two parts of the high sea.

*The Observation, unlike Article 12 itself, was not a compromise but a statement of what was regarded as an accepted rule of law that passage through straits may not be barred in any circumstances.*

98. Nor is the Observation on Article 12 the only evidence that the right of passage of warships through territorial waters within straits is a special right in international law. The question of the right to close straits was considered in two connexions

at the 1907 Hague Conference, and in both the principle that navigation through straits should not be barred was asserted. Firstly, in the discussion on Convention VIII regarding the laying of mines, the Netherlands, in proposing that neutrals should equally be allowed to lay mines, qualified their proposal by a provision that in no case might straits uniting two open seas be barred (*Actes et Documents*, Vol. 3, p. 661, Annex 12). This principle was not contested, though ultimately it was not incorporated in the Convention. Secondly, the question was dealt with in the Rapporteur's Report on Article 10 of Convention XIII already mentioned in paragraph 93 above. M. Renault, after stating that the result of the Sub-Committee's discussion was that a neutral could prohibit even innocent passage through territorial waters so far as is necessary to maintain neutrality, added, "but this prohibition may not extend to straits uniting two open seas". Again, the point did not ultimately find a place in the Convention, but there can be no doubt that States at the 1907 Conference regarded a coastal State as having no right to prohibit innocent navigation of warships through the territorial waters of straits even in time of war.

99. In addition, the International Law Association, in its Resolutions of 1895 (Report, Seventeenth Conference, p. 116, Article 10(4)) and 1922 (Report, Thirty-First Conference, p. 99, Article 9) laid down that straits which serve as a passage from one open sea to another open sea can never be closed. These Resolutions not only accord with the views expressed by States at the 1907 and 1930 Hague Conferences, but reflect the consensus of the opinion of writers. So far as concerns the evidence of treaties establishing special régimes for particular straits, it has been pointed out in paragraph 5 above that in only one case are restrictions imposed upon the right of passage for warships, namely, in the Montreux Convention of 1936, and that there both shores of the strait are in the possession of the same State, and that in that case there are unique historical and geographical circumstances.

100. Albania seeks in paragraph 132 of the Counter-Memorial to imply that the United Kingdom has never itself subscribed to the view that the right of passage through territorial waters within straits is a special right. It cites in this connexion an abstract from volume 2 of H. A. Smith's book, *Great Britain and the Law of Nations*. But so far as concerns the right of passage, it is entirely incorrect to say that Great Britain has not subscribed to any particular doctrine, for Great Britain was a party to both the proceedings of the 1907 and 1930 Conferences and endorsed the views expressed against there being any right to close straits.

101. The Counter-Memorial secondly maintains (para. 134) that, even if international law recognizes a special right of passage through the territorial waters of straits, it is confined to straits constituting "an ordinary route for international shipping" and that

the North Corfu Channel is not such a strait. This argument has been dealt with in paragraphs 4-6 above. The Corfu Channel constitutes a route for international maritime traffic which is the ordinary and seamanlike route for shipping to take when proceeding to Corfu from the north or from Corfu to the north, as were the British warships on 15th May and 22nd October, 1946. The United Kingdom Government accordingly submit that on those dates Albania was not entitled to bar or make subject to its authorization the passage of British warships through the North Corfu Channel.

102. If the United Kingdom are right in their contention that the North Corfu Channel is "a strait constituting a route for international maritime traffic between two parts of the high sea", the authorities relied upon by Albania as establishing a right to restrict innocent passage through territorial waters are not pertinent to the present case. The Counter-Memorial (para. 135) nevertheless maintains that Albania was within her rights in requiring prior notice of the passage of British warships with a view to granting authorization. If, contrary to the contention of the United Kingdom, Albania possessed any such rights, it is submitted that they were not exercised for good and sufficient reasons, but *mala fide*, with the mere intention of barring the right of innocent passage enjoyed by the British warships under international law. The United Kingdom Government acknowledges that on 29th May, 1946, it received a copy of the Note addressed to the United States representative at Tirana in which the Government of Albania purported to impose a restriction on passage through the Corfu Strait. It points out, however, that this Note was dated 17th May, 1946, *i.e.*, two days after British warships had already been attacked in the North Corfu Channel by Albanian shore batteries. It is to be observed that this Note does not invoke any special circumstances pretended to exist in the area as a justification for this serious derogation from the customary right of passage vested in other States by international law. The Note, on the contrary, appears to claim an absolute right to subject all passage of warships and merchant ships to the prior authorization of the Albanian Government.

103. This interpretation is borne out by a detailed examination of the terms of the Note. It refers in the first place to "penetration into Albanian territorial waters". No reference is made to the established and recognized channel of navigation and, as has been pointed out in paragraph 83 (c) of this Reply, the Albanian Government has elsewhere used the expression "territorial waters" as meaning "waters outside the channel". Next, the Note makes no distinction between warships and merchant ships but appears to apply indifferently to both classes and therefore as regards merchant ships violated all the authorities including those cited in the Counter-Memorial. It is to be noted that Albanian batteries did in fact



fire on merchant vessels (see para. 26 of the Memorial and Annex 22). Finally, the Note demands prior notification and permission. This being the effect of the note the Government of the United Kingdom was amply justified in regarding it not as a *bona fide* exercise, in exceptional circumstances, of whatever right may exist to place restrictions upon the passage of warships, but as the expression of a belief which has no foundation in international law that a State may regard the passage of any foreign ship through its territorial waters as an infringement of sovereignty, which can be resisted by force.

104. The Government of the United Kingdom was confirmed in this opinion by the fact that fire had already been opened on its ships passing innocently through the Channel on 15th May, 1946. The mining of the two British destroyers in the North Corfu swept channel on 22nd October in addition provides retrospective confirmation of the correctness of the United Kingdom's interpretation of the Albanian Notes as emanating from a State which at the time had erroneous conceptions of its rights under international law with regard to the right of innocent passage (see para. 89 of the Memorial). The complicity of Albania in the laying of the minefield which damaged these ships is, it is submitted, established. It is thus plain that the policy of Albania was to exclude foreign ships from all navigation within its territorial waters and that it was prepared to go to any lengths to achieve its object. It invoked a pretended right to regulate passage only as an afterthought to give colour to the action which it had decided to take.

This being the nature of the claim put forward by the Government of Albania, the Government of the United Kingdom made it quite plain in its telegram of 29th May, 1946, and its note of 2nd August, 1946, that it regarded such a claim as having no validity in international law and that it intended to continue to exercise the rights existing under international law to navigate through the Channel. Such navigation conducted in a normal and innocent manner cannot, in the submission of the Government of the United Kingdom, be considered an infringement of Albanian sovereign rights.

“OFFENSIVE” PASSAGE OF THE BRITISH SQUADRON THROUGH  
ALBANIAN WATERS ON 22nd OCTOBER, 1946

(Counter-Memorial, paragraphs 136-140.)

105. In these paragraphs the Albanian Government repeats the allegation previously made that the passage of the British ships on 22nd October, 1946, was not innocent. These allegations have already been fully answered in paragraphs 77 and 78 to which the Government of the United Kingdom refers. The Government of the United Kingdom admits that the Albanian Government was not notified of the passage of the ships but it does not admit that the

Albanian Government had no knowledge of it. It admits that the Albanian notice of 17th May requiring permission was not complied with, but contends that this requirement was illegal under international law with regard to passage through a strait such as the Corfu Channel. It is not Article 12 of the draft Hague Rules of 1930 which is applicable to the case but the last sentence of the Observation which, as explained above, really has greater authority than draft Rule 12. The naval vessels did ignore a requirement, which Albania illegally tried to impose. Until the first destroyer struck a mine, the vessels kept to the Channel and passed along it normally. The only "operations" thereafter were that the second destroyer proceeded to the assistance of the first and then she too struck a mine, but, nevertheless, succeeded with the first destroyer in tow in turning about and struggling with difficulty to Corfu, in the course of which the destroyers drifted slightly east of the Channel. No other entry into the interior waters was made. The Government of the United Kingdom has dealt in paragraphs 78 (b) and 78 (d) of this Reply with the complaints of the Albanian Government regarding the launch which appeared from Saranda and regarding alleged espionage of British ships.

THE "INVASION" OF ALBANIAN TERRITORY BY THE BRITISH NAVY  
ON 12th AND 13th NOVEMBER, 1946

(Counter-Memorial, paragraphs 141-144.)

106. In these paragraphs the Albanian Government repeats its charges regarding the "invasion" of its waters on 12th and 13th November, 1946. The justification for the action of sweeping the Channel has been given in paragraphs above in 79-83. The answers to the charges relating to the manner in which the operation was carried out are found in paragraph 84. Those charges were, naturally, not dealt with in the Memorial of the United Kingdom because the legality or otherwise of the sweeping of 13th November, 1946, is not material to the claim of the United Kingdom against Albania in respect of the laying of the mines and it was for Albania to make her claims before the United Kingdom answered them.

107. The Government of the United Kingdom adds that, contrary to what is stated in paragraph 143 of the Counter-Memorial, the British Naval forces at no time and in no manner desired or attempted to or did in fact hinder whatever actions the Government of Albania desired to carry out in its territorial waters.

The only operation carried out by the Government of the United Kingdom in those waters was the peaceable task of sweeping the mines from the Channel, a task which, upon any hypothesis, except that Albania herself laid or was party to laying the mines, was in no sense hostile to Albania. The fact that Albania chooses to regard the objectives pursued on this occasion as hostile to her—"fins hostiles au Gouvernement albanais"—(para. 143 of the Albanian

Counter-Memorial) is not without bearing upon the truth of this hypothesis.

The Government of the United Kingdom was determined to ensure that the task of sweeping the Channel was not interrupted and that incidents which might have had serious results did not occur, and it took precautions which, having regard to the previous incidents, can, in its submission, be regarded as in no way unreasonable. It is *not* true that G.Y. mines which have been cut and left floating are more dangerous than they are when moored. In the first place they are visible and secondly their existence is known. The dangerous character of the Channel had been notified. The charge at the top of page 140 is therefore absurd.

108. With regard to paragraph 144 of the Albanian Counter-Memorial, as has already been pointed out, Article 5 of the Hague Convention VIII of 1907 is dealing with the duties of belligerents at the close of a war. It has no application to the present case. The passage quoted in the Counter-Memorial from the report of the Hague Conference points out that, in a case where two hostile Powers have each laid mines along each other's shores, an arrangement by which each Power is obliged to clear its own coasts is preferable to one by which each Power is obliged to remove its own mines. This report shows that the Article has no application to the present case.

### PART III

#### CONCLUSIONS

109. The Government of the United Kingdom ask the Court to judge and declare as follows:—

I.—Relating to the passage of the cruisers *Mauritius* and *Leander* and the destroyers *Saumarez* and *Volage* on 22nd October, 1946,

- (1) that the passage of this squadron through the swept Corfu Channel was in exercise of the right of innocent passage and involved no violation of any right of Albania (paras. 86-101);
- (2) that, with the exception that the two destroyers involuntarily drifted east of the Channel after they had been seriously injured by mines, no vessel of the squadron entered Albanian interior waters (paras. 31 and 34);
- (3) that nothing done by any vessel of the squadron constituted a violation of any Albanian right;
- (4) that the swept Corfu Channel is an international highway, which is subject to the special rules of international law which apply to such highways (paras. 4 and 5);

- (5) that the Albanian notice of May 1946 requiring both foreign warships and foreign merchant ships to obtain permission of the Albanian authorities before navigating through Albanian waters was, in relation to the Corfu swept channel, not justified by Albanian rights under international law (paras. 102-104).

II.—With reference to the sweeping of the Channel on 12th and 13th November, 1946,

- (1) that the Government of the United Kingdom were legally justified in sweeping the Channel for mines (paras. 79-83);  
 (2) that no improper act constituting a violation of any Albanian right was done by any British vessel during the operation of sweeping (para. 84).

III.—With regard to both the passage of the squadron on 22nd October and the sweeping operation on 12th and 13th November, to reject all allegations made in the Albanian Counter-Memorial which are not admitted in this Reply.

IV.—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.

### EVIDENCE

110. The following passage occurs in Hudson on the Permanent Court of International Justice, page 565 :—

“Where a question of fact arises, the Court must usually base its finding on statements made on behalf of the parties either in the documents of the proceedings or in the course of oral proceedings. On several occasions the Court has referred to the burden of proof as falling on a particular party, but without distinguishing it from the burden of going forward with proof.... The Court is always free to estimate the value of any evidence presented to it, likewise to estimate the value of statements made by the parties.... In general, the Court has refrained from requiring specific types of proof for particular matters; thus in the German interests in Upper Silesia case, it rejected a contention that the acquisition of Czechoslovak nationality could be established only by a certificate from the Czechoslovak Government.”

Article 54 of the Rules of Court provides :—

“The Court may request the parties to call witnesses or experts, or may call for the production of any other evidence on points of fact in regard to which the parties are not in agreement.”



The Government of the United Kingdom supposes that it is for the Court to decide whether it will determine the issues of fact simply on the written evidence placed before it or whether, acting under Article 54 of the Rules, it will direct the parties to call any of their witnesses before the Court for examination there.

The Government of the United Kingdom therefore will await any direction which the Court may see fit to give on this point.

Dated this 30th day of July, 1948.

(Signed) W. E. BECKETT,  
Agent for the Government  
of the United Kingdom.

#### PART IV

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## ANNEXES

*Annex 26 to No. 5.*

MINE INFORMATION CHART No. 2711

See special volume.

*Annex 27 to No. 5.*TWO SIGNALS RELATING TO THE SWEEPING  
IN OCTOBER 1944 OF THE CORFU CHANNELFrom : S.O. M/SF 153.  
To : N.F.C.  
(Important.)130815A October.  
Date : 13.10.44.  
Recd. 2227.

Sweep 100 per cent. and check sweep completed to a depth of five fathoms. Negative result. Particulars of area as follows:—

Rectangular area with N.E. corner bearing 310 degs. Cape Kiephali distance  $1\frac{1}{2}$  miles and running 4 miles in direction 130 degs. and 1 mile in direction 220 degs. and the edge of the area from N.W. to S.W. corner is marked by three duns in following positions—

N.W. Dan.	039 degs.	54' N.	019 degs.	53' 55" East.
Mid. Dan.	039 degs.	53' N.	019 degs.	55' 30" East.
S.W. Dan.	039 degs.	52' N.	019 degs.	57' 10" East.

(Confidential.)

From : F.O.L.E.M.  
To : Q.B.C. Addressees.  
(Important.)

071345B November, 1944.

Q.B.C. 925. Corfu. Admiralty Chart 206.

A safe channel 1 mile wide except as restricted by land with centre line passing through the following positions:—

A.	39°-55'-30" N.	19°-52'-30" E.
B.	39°-50'-00" N.	20°-01'-00" E.
C.	39°-47'-24" N.	20°-00'-12" E.
D.	39°-43'-00" N.	19°-57'-24" E.
E.	39°-37'-36" N.	19°-57'-24" E.

Time of Origin 071345B November, 1944.

*Annex 28 to No. 5.*

EXTRACT FROM HANSARD, 18th NOVEMBER, 1942

ALBANIA

*Mr. Mander* asked the Secretary of State for Foreign Affairs whether he will give an assurance that the Government, at the final peace settlement, in so far as Albania is concerned, will not be influenced by any changes brought about by Italian aggression?

*Mr. Eden*: Yes, Sir.

EXTRACT FROM HANSARD, 17th DECEMBER, 1942

ALBANIA

*Mr. Butcher* asked the Secretary of State for Foreign Affairs whether he has any statement to make on the policy of His Majesty's Government towards Albania?

*Mr. Eden*: Yes, Sir. His Majesty's Government sympathize with the fate of Albanians, a people amongst the earliest victims of Fascist aggression. They wish to see Albania freed from the Italian yoke and restored to her independence. The form of régime and Government to be introduced into Albania will be a matter for the Albanian people themselves to decide at the end of the war. What I have said does not in any way prejudge the question of Albania's position in relation to such future arrangements as may be reached between the various Balkan States. His Majesty's Government regard the question of the frontiers of the Albanian State after the war as a question which will have to be considered at the peace settlement.

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*Annex 29 to No. 5.*

TELEGRAM FROM FLAG OFFICER  
COMMANDING 15th CRUISER SQUADRON  
DESCRIBING THE INCIDENT OF 15th MAY

To: C. in C. Med. Fleet (A).  
Info: C. in C. Med. Fleet, S.B.N.O. Greece, Admiralty.  
(Immediate.)

Answers to paragraph 6 A.M. 232143.

No signals or activity of any sort were seen on shore and no message was received by W/T from Albanians. First round was H.E. and fell astern so could not be mistaken for heave-to signal. Second round followed within a minute.

2. R.A.'s Flag at the fore in H.M.S. *Orion* and ensigns in both ships had been worn throughout the night. At least eight minutes before first round 8 and 10 breadth ensigns were hoisted at Ensign Stuffs in

H.M.S. *Superb* and H.M.S. *Orion* respectively and peak ensigns subsequently hauled down. No additional ensigns were hoisted subsequently.

3. It was broad daylight with (? fair) visibility and bright sun.

4. Ships were in Medri Channel which is only 1 mile wide and in view of areas covered by QBY 539 and QBY 257 I would not have felt justified in continuing my passage further off shore even if asked to do so.



*Annex 30 to No. 5.*

PHOTOSTAT COPIES OF EXTRACT FROM POLITICAL REPORT,  
PORTIONS OF WHICH APPEAR IN ANNEX II  
OF THE ALBANIAN COUNTER-MEMORIAL  
BMM/101/12. Secret.

## BRITISH MILITARY MISSION ALBANIA

PERIODICAL POLITICAL REPORT NO. 10 DATED 29 JULY 1945. REPORT  
ON VISIT TO SOUTHERN ALBANIA BY BRIGADIER D. E. P. HODGSON, O.B.E.,  
AND LT.-COLONEL C. A. S. PALMER

*Reference Map: 1:200,000 Albania.*

I. *General.*1. *Object.*

The objects of the tour were:—

- (a) To investigate the military situation in the South, where large concentrations of Albanian and Yugoslav troops were rumoured to be, and
- (b) To get some first-hand information on the treatment of the Greek minority in South Albania, and other matters affecting the Greek/Albanian frontier question.

2. *Itinerary.*

- 20 July TIRANA—VALONA.
- 21 July GJINOKASTER—LIBOHOVO (R.59).
- 22 July DELVINE—HIMARE.
- 23 July SARANDE—PERMET (M.61).
- 24 July PERAT (R.89)—BILISHTE (N.25)—LAKE PRESPA (N.27).
- 25 July KORCA.
- 26 July POGRADEC.
- 27 July ELBASAN.

3. The FNC insisted on a guard of two officers and twelve ORs in two vehicles accompanying the British party, in spite of a direct request to the contrary. However, this guard and two other guards, subsequently attached to the party at various points on the route, did not in fact influence in any way the contacts made or the conversations held as they were quite incapable, due to continual mechanical breakdowns, of keeping with the party.

The party was consequently able to have open conversations with all sections of the people, Albanian or Greek, Beys, and peasants, lawyers, shopkeepers, farmers, FNC officials, military leaders and the common partisans without interference from its escort.

II. *Political.*1. *The Treatment of the Greek Minority.*

- (a) Primary Schools in which the Greek language is taught for 80 % of the time and Albanian for 20 % exist in certain towns such

as DELVINE with an outstandingly large Greek population. Such a school was visited in HIMARE.

No Secondary Schools exist in which Greek is taught.

- (b) A Greek paper AA.I.KO BHMA is produced in GJINOKASTER on alternate days. This paper, a propaganda weapon of FNC, is distributed to all Greek speaking villages.
- (c) In DELVINE, where a majority of the population is from the Greek minority, the latter has a majority of seats on the local council.
- (d) Certain instances were found in the SARANDE area of the removal North of families with either anti-FNC or pro-Greek sympathies but such cases appear to be the exception rather than the rule.
- (e) Of the Greeks questioned, only a very small proportion expressed the desire for South Albania to be under Greek rule. The Greek Government's present hysterical propaganda employing as it does so many unreasoned and incorrect statements has certainly had the effect of discouraging such irredentist sentiments.
- (f) The FNC has always firmly stated that the Greek minority is treated in just the same way as are other Albanians. The information gained during the tour would seem to indicate that the FNC's statements are largely true. There was no indication that any measures of the severity suggested by the Greek Government have been taken by the FNC against individuals or groups for the reason that they are Greek.

As has been previously reported (BMM Political Report No. 9 dated 27 July para. 1-5(d)) the only firm reasons for Greek claims may be that:—

- (i) the families of deserters who happen to be of the Greek minority are maltreated in the same way as the families of Albanian deserters, that is by confiscation of property and removal to an area of concentration;
- (ii) Certain Greek families whose presence in the South of Albania is thought by FNC to constitute a danger to their control have been moved North. The number of such cases in no way indicates a policy of removing the Greek minority from the disputed area of South Albania.

## 2. *Greek Border Incidents.*

- (a) As reported in BMM Political Report No. 7 dated 3 July Appendix 'A' Annexure 5 the FNC has made several statements alleging the violation of the Southern frontier by Greek National Guards.
- (b) The frontier was visited at PERAT (R.89) and KAPESHTICE (N.25) where the Albanian frontier post was questioned. Other enquiries were made of Partisan officials in all areas where news of frontier incidents might be available.

A partisan at the PERAT post stated that he had been there for two months during which time no incident of any kind had occurred.

A partisan at KAPESHTICE reported one minor incident, stating that someone had appeared a week before on the Greek side of the frontier, fired one shot in his direction from 500 yards and disappeared.

Confirmation was received of the incident reported in BMM Political Report No. 9 dated 27 July Appendix 'A' Annexure 1 of two Greek boats approaching SARANDE and firing machine-guns at the Albanian Coast.

- (c) In general the situation of the frontier appeared remarkably quiet and peaceful and while the presence of Albanian formations, including special frontier battalions, guarding the approaches was ascertained there appeared to be no excitement or worry on the part of individuals or officials. In particular the Commander of 3 Div. in Korca appeared perfectly happy about the situation.
- (d) It would appear that the statements made by FNC about frontier incidents are largely exaggerated and are put out to counter the Greek Government's statements of the Albanian maltreatment of the Greek minority.

Such incidents as have occurred would appear to be caused either by irresponsible Greek elements or possibly by Albanians who have deserted into Greece from ANA formations.

C. A. S. PALMER,  
Brigadier Commanding  
British Military Mission  
Albania.

BMM/101/12/  
29.7.45.

*Annex 31 to No. 5.*

TELEGRAM FROM COMMANDER-IN-CHIEF, MEDITERRANEAN,  
TO THE ADMIRALTY.—26th OCTOBER, 1946

2. *Begins.*—The Commander-in-Chief, Mediterranean, has issued the following statement with reference to the damage sustained by H.M. Ships *Saumarez* and *Volage* on Tuesday, 22nd October.

3. H.M. Ships *Mauritius*, *Leander*, *Saumarez* and *Volage*, under command of Rear-Admiral H. R. G. Kinahan, were proceeding by the North Corfu Channel to carry out exercise with H.M.S. *Ocean*. In October 1944 this Channel was established for the use of shipping and has been used since by H.M. Ships. It is one mile wide and passed close to the Albanian coast near Sarande.

4. On the last occasion of H.M. Ships using this Channel in May 1946, H.M. Ships *Orion* and *Superb* were fired on by Albanian shore batteries. On this occasion therefore the passage was made with ships at action stations in order that they might be able to retaliate quickly if fired upon again. To avoid provocation, however, the guns were trained fore and aft, which is their normal position at sea in peace time and were not loaded. The fact that ships were at action stations reduced considerably the number of casualties sustained.

5. Shore batteries were clearly seen with men in their immediate vicinity but no hostile action was taken by them.

6. While the damaged ships were endeavouring to extricate themselves, a boat flying the Albanian ensign and the white flag came along-

side *Volage* and asked what the ships were doing. Apart from this no action was taken by the local authorities.

7. By dint of fine seamanship *Volage*, steaming stern first, managed to tow *Saumarez* also stern first out of the Channel and back to Corfu, the cruisers were ordered to continue their passage through the Channel.

8. It is much regretted that there are 23 ratings of *Saumarez* and one officer and five ratings of *Volage* missing, believed killed. Ten ratings of *Saumarez* and two ratings of *Volage* who were killed or died of their injuries were buried in the British Cemetery at Corfu on 24th and 25th October with full naval honours. The injured, amounting to three officers and thirty-nine ratings of *Saumarez* and two ratings of *Volage* are in the Hospital Ship *Maine* and, apart from a few on the Dangerous List, are progressing satisfactorily.

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*Annex 32 to No. 5.*

PHOTOGRAPH OF "SAUMAREZ" OMITTED FROM ANNEX 8  
OF UNITED KINGDOM MEMORIAL.

See special volume.

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I accordingly conveyed the said two mines to Malta for examination and handed them to the representative of the Naval Armament Store Officer.

(Signed) RICHARD TREVENEN WILSON.

Courts of Judicial Proof.

Signed and sworn before me,  
This 5th day of September, 1947.

(Magistrate.)

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*Annex 35 to No. 5.*

CHARTLET SHOWING AREAS  
SWEPT ON 12th NOVEMBER, 1946

See special volume.

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