

The ICJ's First Contentious Case

The Corfu Channel Case
United Kingdom v. Albania
1949





Albania

• Saranda

Corfu

• Corfu

Greece

Innocent Passage?



HMS Orion



HMS Superb



HMS Mauritius



HMS Leander



HMS Volage (HMS Saumarez is similar)

German GY mine



HMS Saumarez towed by HMS Volage



HMS Volage after being mined



The Court in Corfu

- Vice-President **Guerrero** (El Salvador), President pro tempore for this case
- President **Basdevant** (France), not sitting as president for this case
- **Read** (Canada)
- **De Visscher** (Belgium)
- **McNair** (UK)
- **Hackworth** (USA)
- **Klaestad** (Norway)
- **Fabela** (Mexico)
- **Alvarez** (Chile)
- **Winiarski** (Poland)
- **Badawi Pasha** (Egypt)
- **Krylov** (USSR)
- **Azevedo** (Brazil)
- **Hsu Mo** (Republic of China)
- **Zoričić** (Yugoslavia)

The Court in Corfu

- The Judges *ad hoc*):
 - **Daxner** (Czechoslovakia, sitting by the request of Albania) for the Preliminary Objections
 - **Ečer** (Czechoslovakia, sitting by the request of Albania) for the Merits and Compensation

The Judgment on the Preliminary Objection

- On 25 March 1948 the ICJ rejected Albania's Preliminary Objections 15 to 1
 - Unilateral applications were possible not only where compulsory jurisdiction exists.
 - Albania accepted with their letter of 2 July 1947
 - **Daxner** dissented
 - 7 of the judges felt that ICJ should have explicitly dismissed UK contention that SC recommendation is basis for jurisdiction

The Special Agreement

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

The Special Agreement

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

The Judgment on Merits

- Is Albania responsible?
 - 11 to 5, yes, dissents: **Ečer, Krylov, Badawi, Winiarski, Zoričić**
- Can the Court assess compensation?
 - 10 to 6, yes, dissents: **Winiarski, Badawi, Ečer, Krylov, Azevedo, Basdevant**

The Judgment on Merits

- Did the UK violate Albanian sovereignty on 22 October 1946?
 - 14 to 2, no, dissents: **Krylov, Azevedo**
- Did the UK violate Albanian sovereignty on 12 and 13 November 1946?
 - 16 to 0, yes

The subsequent proceedings in Corfu

- ICJ ordered submissions on compensation
 - UK responded
 - Albania did not, say compensation was not in ICJ's purview
- Albania attempted to settle out of court twice, both times UK refused
- Albania boycotted compensation hearing
- ICJ empaneled a committee of experts to examine UK claims
 - They reported £857,628 in damages
- Albania asked court to re-evaluate the committee's report or extend deadline for their response

The Subsequent Proceedings in Corfu

- ICJ refused and issued judgment on compensation
 - Compromis cannot narrow their jurisdiction for a case they had already decided: *res judicata* prevails
 - They set compensation at £843,947
 - Decision was 12 to 2 for UK (**Krylov** & **Ečer** dissenting, President **Basdevant**, who was on a mission for the Court to New York, and thus away from court, & **Fabela**, who was ill, not participating)

The Monetary Gold Case

- Germans looted from Rome 2338 kg of gold that was the gold reserve of the National Bank of Albania (1943)
 - National Bank of Albania (formed in 1925) was financed by Italian investors, and 88.5% owned by the government of Italy. The gold reserve was held in Rome.
- When Germany fell in 1945, the Allies seized all monetary gold for restitution to the countries from which it had been looted
- Paris Conference on Reparation (1945) set up the Tripartite Gold Commission to settle claims, with each claimant to get a common percentage of their claim (not enough gold to fully settle all claims)

The Monetary Gold Case

- By arbitration (under the Paris Convention), the gold the Germans had seized from the National Bank of Albania's vaults belonged to Albania, and counted toward their claim percentage
- Albania nationalized the Bank of Albania without providing compensation to Italian investors (1945), giving Italy a claim for the gold
- UK had its claim to some of the gold for Corfu compensation (1949)
- TGC decided that the gold should go to the UK unless Italy made a timely application to the ICJ to determine claim priority (1953)

The Monetary Gold Case

- In 1953, Italy filed with the ICJ against the TGC executors (USA, UK, France) asking:
 - TGC should deliver Albania's gold to Italy in partial satisfaction for the expropriation
 - Italy's claim should have priority over the UK claim
- Then Italy filed a Preliminary Objection to the jurisdiction of the court to hear the first question above (that **they** had asked!)
 - Since Albania did not join the proceedings, the court lacked an essential third-party
 - The ICJ agreed

Resolution (1991-1996)

- Socialist People's Republic of Albania fell (1990)
- Newly democratic Republic of Albania agreed to pay US\$ 2 million to UK in "full & final settlement" (1992)
- UK released hold on TGC gold (1992)
- USA released hold on TGC gold (1995)
- France released hold on TGC gold (1996)
- 1574 kg of gold were transferred to Albania & Albania paid US\$ 2 million to UK (1996)
- UK increased aid to Albania by US\$ 313 million (1991)