

THE CORFU CHANNEL CASE
(United Kingdom v. Albania)

ICJ Decision of 9 April 1949

[1949] ICJ Rep. 4

... The Albanian Government has...contended that the sovereignty of Albania was violated because the passage of the British warships on October 22nd, 1946, was not an *innocent passage*. The reasons advanced in support of this contention may be summed up as follows: The passage was not an ordinary passage, but a political mission; the ships were manoeuvring and sailing in diamond combat formation with soldiers on board; the position of the guns was not consistent with innocent passage; the vessels passed with crews at action stations; the number of the ships and their armament surpassed what was necessary in order to attain their object and showed an intention to intimidate and not merely to pass; the ships had received orders to observe and report upon the coastal defences and this order was carried out.

It is shown by the Admiralty telegram of September 21st, cited above, and admitted by the United Kingdom Agent, that the object of sending the warships through the Strait was not only to carry out a passage for purposes of navigation, but also to test Albania's attitude. As mentioned above, the Albanian Government, on May 15th, 1946, tried to impose by means of gunfire its view with regard to the passage. As the exchange of diplomatic notes did not lead to any clarification, the Government of the United Kingdom wanted to ascertain by other means whether the Albanian Government would maintain its illegal attitude and again impose its view by firing at passing ships. The legality of this measure taken-by the Government of the United Kingdom cannot be disputed, provided that it was carried out in a manner consistent with the requirements of international law. The "mission" was designed to affirm a right which had been unjustly denied. The Government of the United Kingdom was not bound to abstain from exercising its right of passage, which the Albanian Government had illegally denied. [Pg 30]...

In view of the firing from the Albanian battery on May 15th, this measure of precaution cannot, in itself, be regarded as unreasonable. But four warships -- two cruisers and two destroyers -- passed in this manner, with crews at action stations, ready to retaliate quickly if fired upon. They passed one after another through this narrow channel, close to the Albanian coast, at a time of political tension in this region. The intention must have been, not only to test Albania's attitude, but at the same time to demonstrate such force that she would abstain from firing again on passing ships. Having regard, however, to all the circumstances of the case, as described above, the Court is unable to characterize these measures taken by the United Kingdom authorities as a violation of Albania's sovereignty. [Pg 31]...

After the explosions of October 22nd, the United Kingdom Government sent a note to the Albanian Government, in which it announced its intention to sweep the Corfu Channel shortly. The Albanian reply, which was received in London on October 31st, stated that the Albanian Government would not give its consent to this unless the operation in question took place outside Albanian territorial waters. ...

After this exchange of notes, "Operation Retail" took place on November 12th and 13th. Commander Mestre, of the French Navy, was asked to attend as observer, and was present at the sweep on November 13th. The operation was carried out under the protection of an important covering force composed of an aircraft carrier, cruisers and other war vessels. This covering force remained throughout the operation at a certain distance to the west of the Channel, except for the frigate *St. Bride's Bay*, which was stationed in the Channel south-east of Cape Kiephali. The sweep began in the morning of November 13th, at about 9 o'clock, and ended in the afternoon near nightfall. The area swept was in Albanian territorial waters, and within the limits of the channel previously swept. [Pg 33]...

But, in fact, the explosions of October 22nd, 1946, in a channel declared safe for navigation, and one which the United Kingdom Government, more than any other government, had reason to consider safe, raised quite a different problem from that of a routine sweep carried out under the orders of the mineclearance organizations. These explosions were suspicious; they raised a question of responsibility.

Accordingly, this was the ground on which the United Kingdom Government chose to establish its main line of defence. According to that Government, the *corpora delicti* must be secured as quickly as possible, for fear they should be taken away, without leaving traces, by the authors of the minelaying or by the Albanian authorities. This justification took two distinct forms in the United Kingdom Government's arguments. It was presented first as a new and special application of the theory of intervention, by means of which the State intervening would secure possession of evidence in the territory of another State, in order to submit it to an international tribunal and thus facilitate its task.

The Court cannot accept such a line of defence. The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.

The United Kingdom Agent, in his speech in reply, has further classified "Operation Retail" among methods of self-protection or self-help. The Court cannot accept this defence either. Between independent States, respect for territorial sovereignty is an essential foundation of international relations. The Court recognizes that the Albanian Government's complete failure to carry out its duties after the explosions, and the dilatory nature of its diplomatic notes, are extenuating circumstances for the action of the United Kingdom Government. But to ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy constituted a violation of Albanian sovereignty. [Pg 34-35]