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Burning Secrets of the Corfu Channel Incident

By Ana Lalaj, September 2014



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Christian F. Ostermann, Series Editor

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Burning Secrets of the Corfu Channel Incident

Ana Lalaj

On 22 October 1946, two British warships collided with mines in the Corfu Channel, causing loss of life and material damage and embroiled the governments of Albania and the United Kingdom in mutual recriminations. The case went to the United Nations Security Council and later to the International Court of Justice (ICJ), which found Albania liable and ordered it to pay reparations.

Since that time, the decision of the ICJ has given rise to many discussions among specialists. For Albanian scholars, the subject has become controversial only in recent years, when previously unknown evidence has come out. The sources revealed have increased, making the debate even more interesting. Among other things, an underwater archaeological expedition in the summer of 2009 found the bow of one of the British ships sunk by the mines. Meanwhile, parallel with the underwater discoveries, several British documents, previously unknown to the Albanian public, have been commented on by scholars. Without doubt, they shed sufficient light on the mission of the British ships on 22 October 1946 in the Albanian waters along the Saranda shoreline.

The Albanian archives have generated awakened no less interest. Several dozen files in the Archives of the Albanian Ministry of Foreign Affairs contain in detail everything that Albanian diplomats sought in the international confrontation on this issue. Important documents are also found in the archives of the Ministry of Defense and the Central State Archives, the fund of the Albanian Communist Party (ACP). Based on that broad documentation, as well as on the research of several of the most notable Albanian and foreign scholars, many of the debated issues related to the Corfu Channel Case can now be solved. Among them are the following questions: Was the Court of The Hague (the ICJ) biased in its decisions? Who were the guilty parties in the Corfu incident? What was the guilt of the British? And finally, is Albania at fault or not?

The Context of the Incident

The post-war political developments in which Albania found itself suggest that the incident in the Albanian waters of the Corfu Channel was not accidental. Up to the end of the

war on Albanian territory in November 1944, there was no sign that any of the great Allies—the United States of America, the Soviet Union and Great Britain—nourished any particular interest in Albania. But one short year later, it seemed that the interests had been defined.

The origin of this newfound interest might be found on 10 November 1945, when representatives of the Allied missions communicated to Albanian Prime Minister Enver Hoxha that the governments of their countries recognized the post-war Albanian government. On that occasion, both the Americans and the British made further relations with Albania contingent upon the freedom of the forthcoming elections that were scheduled to take place in three weeks. The Americans added that for them it was also a condition that the Albanian government acknowledge the pre-war agreements between the two countries.¹

Unlike the Western allies, the Soviets did not put conditions on their recognition of the post-war Albanian government. The plenipotentiary minister of the Soviet Union, Dimitri S. Çhuvakhin, arrived in Tirana on 10 January 1946 to a warm official welcome. The plans for the Sovietization of the country went forward with such speed that the head of the American Mission in Tirana, Joseph E. Jacobs, noted at the end of February that, “[it] is clear Albania has become nothing more than satellite state of the Soviet Union and Yugoslavia.”² For this reason, Jacobs repeatedly insisted to his government, “If there is any occupied country where in accordance [with the] Crimea declaration on Liberated Europe three Great Powers might collaborate on equal footing, that country is Albania.”³ The message was conveyed to Stalin, and he responded with a tactical withdrawal, leaving Albania under the tutelage of Belgrade. Nevertheless the division had occurred.

Albania lost the support of the West as soon as it lined up in the Soviet camp. In the first session of the UN General Assembly in January 1946, despite Soviet support, the application of Albania for membership was postponed to August, when it was rejected in the Security Council because of an American and British veto.

¹ *Arkivi i Ministrisë Punëve së Jashtme të Shqipërisë - AMPJSH (Archives of the Ministry of Foreign Affairs of Albania - hereafter AMFAA)*, V. 1945, D. 6; See also “Teksti i notave britanike dhe amerikane për njohjen e qeverisë sonë” [“Text of British and American notes for the recognition of our government”], Newspaper *Bashkimi*, year II, no. 270, 17 November 1945.

² *Foreign Relations of the United States - FRUS, Diplomatic Papers, 1946, Volume VI, Europe*, Washington, 1968. Tel. 711.75/2-2846, Representative in Albania (Jacobs) to the Secretary of State, no 135, Tirana, 28 February 1946.

³ *FRUS, Diplomatic Papers, 1946, Volume VI, Europe*, Washington, 1968. Tel. 875.00/4-2046, Representative in Albania (Jacobs) to the Secretary of State, no. 228, Tirana, 20 April 1946.

Albania is a typical example, where coldness or division among the Great States first occurs as a quarrel among the smaller ones. Such was the Albanian-Greek conflict, which was accompanied by numerous incidents at the border between the two countries. In August 1946, at the Paris Peace Conference, Greek Prime Minister Constantine Tsaldaris said that Greece was in a state of war with Albania and that Albania should be treated as a conquering country. Furthermore, the Greek delegation asked the Conference to put the issue of Northern Epirus on the agenda, which would see the return of Southern Albania to Greece. All of this was encouraged by the British and even in the US Senate, which on 29 July 1946 approved a resolution in favor of giving Northern Epirus to Greece,⁴ a gesture that was not consistent with Washington's policy up to that point.

On 21 August, Enver Hoxha responded to the declarations of Greek Prime Minister Tsaldaris with his own harsh political declaration. This was a Soviet encouragement, as was Albania's support of the Greek guerrillas in the civil war. Under those circumstances, relations with the Americans grew even colder. Hoxha did not agree to recognize the pre-war bilateral agreements between United States and Albania as a condition submitted by US government for entering into diplomatic relations. In November 1946, the American Mission left Albania.

Relations were not much better with the British. In December 1945 the Albanian government was notified that the government of the United Kingdom had appointed Mr. Thomas C. Rapp as its minister in Tirana, but he never arrived. The British government blamed the delay of the ambassador's arrival on the unfriendly climate towards its Mission in Tirana, the hindrances to accreditation for embassy personnel, as well as on the hindrances to finding the graves of British soldiers killed in the war.⁵ At the end of April 1946, the Albanian government

⁴ Stavro Skendi, *The Fate of East Central Europe*, University of Notre Dame Press, "Albania", 1956, p. 308. Sonila Boçi, *Minoritetet në Shqipëri midis identitetit dhe integritetit, 1939-1949*[*Minorities in Albania between Identity and Integration, 1939-1949*], Tiranë: Kristalina – KH", 2012, f. 183. On March 26, 1946, the Florida Senator, Cloude Paper Denson, who was supportive to the Greek lobby in the U.S. Senate, encouraged the Foreign Affairs Committee of the U.S. Senate to approve a draft -resolution in favor of granting the North Epirus and Dodecanese to Greece. This project, together with the report of the U.S. Senate Foreign Committee's chairman, Thomas Terry Connally, was submitted to the U.S. Senate on July 29, 1946, which unanimously had adopted them. According to the resolution, "Northern Epirus (including Korça) and Dodecanese would be given to Greece." But Secretary of State Dean G. Acheson asked the U.S. Mission in Albania, to notify the Albanian government to that "... the action taken by the Senate should not be considered as a executive stand of the U.S. government."

⁵ *AMFAA*, V. 1946, D. 25; the U.S. Senate Foreign Committee's chairman, Thomas Terry Connally, was submitted to the U.S. Senate on July 29, 1946, which unanimously had adopted them. According to the resolution, "Northern Epirus (including Korça) and Dodecanese would be given to Greece." But Secretary of State Dean G. Acheson asked the U.S. Mission in Albania, to notify the Albanian government to that "... the action taken by the Senate should not be considered as an executive stand of the U.S. government."

responded positively to the British demands and finally it appeared that the disputes between the two governments had been overcome.

The chargé d'affaires of the United Kingdom in Belgrade received an order from his government to tell the Albanian Minister that Britain agreed to enter into diplomatic relations with Albania and exchange representatives. The British note was delivered to Hysni Kapo, the Albanian minister in Belgrade, at noon on 18 May 1946. But as soon as he returned to his office, the British diplomat found a notification that his government withdrew the note and in its place, another note was delivered at 17:00P.M. on the same day.⁶

The reason for this unexpected withdrawal was that on 15 May 1946, at 8:30P.M., Albanian coastal forces had opened fire at two British military vessels that were sailing in Albanian waters near the Bay of Saranda. The ships did not return fire. In his report of that day, the Albanian commander of the Saranda military unit said that the ships were unidentified and that the shots fired were warnings.⁷ On the other hand, in another report dated 18 May 1946, the commander of the Saranda harbor, Ferik Hado, and the commissar Shuaip Panariti, reported that “after a clarification made with the coastal watchers and geometrists of the Third Coastal Battery here, we understand that the flag on the bow of the ships was not Greek, as was initially thought, but only the English war banner.”⁸

Nonetheless, the incident did not pass without consequences. In addition to the British government's reversal of its decision to send an ambassador to Tirana, there are indications that the Ministry of War was ready to authorize the British Mediterranean Command immediately to bombard the coastal defensive positions in the south of the country with artillery and aviation, or to disembark troops for the same purpose. But this did not happen, because Prime Minister Clement Attlee suggested waiting first for the Tirana government to respond.⁹

The 15 May 1946 incident was followed by several mutual notes between the two governments. In the first British note, on 18 May, the Albanian government was asked for “a

⁶ *AMFAA*, V. 1946, D. 45, Radiogram of Hysni Kapo to the Foreign Ministry, no. 79, “Secret, very urgent”, Belgrade, 18 May 1946.

⁷ *AMFAA*, V. 1946, D. 170, Tel. nr. 02-67, top secret, 15.5.1946, from the Command of the Saranda Regiment.

⁸ *Arkivi Qendror i Forcave të Armatosura* (Central Archives of the Armed Forces, hereafter: CAAF), Fund 100/1, Reel 10, D. 140, p.10.

⁹ Paskal Milo, “Incident i Kanalit të Korfuzit” [“The Corfu Channel Incident”] 1946-1949, *Historical Studies*, no. 3-4 (2000), Tirana 2001, p. 117.

rapid and public apology for this violent action of the Albanian batteries,” and “assurances that the persons responsible would be severely punished” were also requested.¹⁰

The Albanian government answered on 21 May, expressing regret for the incident but not blaming the coastal command: “It was never the purpose of our coastal command in Saranda to attack ships of our ally, Great Britain, if they had been recognized and if they hadn’t been in our territorial waters going toward the harbor of Saranda.”¹¹

Dissatisfied with the response, the British government delivered a second formal note on 30 May, referring to international law on “the right of passage both in peace and war, for warships and merchant ships, the straits forming part of the highways of international traffic and connecting two parts of the open sea.” The note concluded that, “it is immaterial that the straits consist of territorial waters. There is no doubt that the Corfu Channel falls within this definition of straits and there are certain shipping routes from Brindizi and other parts of the Adriatic which habitually pass through it.”¹²

Once more the British government asked for assurances that there would be no further interference in the right of navigation through the Corfu Channel. On 19 June, the Albanian government responded that it “neither had, nor has the intention of hindering navigation in the open sea or in the straits of Corfu by any kind of ship of any nationality, if the ship respects the rights and laws of our country, that is, if it does not enter Albanian territorial waters, is not heading toward our coast, without [first – author’s note] fulfilling the appropriate formalities and without the permission of the Albanian authorities.”¹³

In response, on 2 August, the Albanian Ambassador in Belgrade received another note from the British government, this time a threatening one. “His Majesty’s Government cannot accept the reply of the Albanian Government to their last communication as being satisfactory, and they cannot agree that British ships passing through the straits of Corfu should give prior notification of their passage to the Albanian authorities. Furthermore, the Albanian government should take note that should Albanian coastal batteries in future open fire on any of

¹⁰ *AMFAA*, V. 1946, D. 45.

¹¹ *AMFAA*, V. 1946, D. 25.

¹² *Ibid.*

¹³ *Ibid.*

His Majesty's vessels passing through the Corfu Channel, fire will be returned by His Majesty's ships."¹⁴ That was the final note.

The incident of 15 May was part of the political climate of the time. There is no evidence that the shots fired against the British military cruisers were ordered by the Albanian government, but the absence of its goodwill to overcome the incident is obvious. Secure in Moscow's support, but also guided in every step by the Yugoslavs, the Albanian government seems to have used this instance to remind the West that for it, the sovereignty of the country was primary.

On the other hand, the Albanian precedent of 15 May 1946 hurt the prestige of the British government and proved an infringement on the unlimited freedom of passage that the United Kingdom traditionally enjoyed as "mistress of the seas." And all the more, that this was done by a small country like Albania! After this incident, with the assistance of the Yugoslavs, the Albanians took measures to increase their coastal defense capability, whereas the British prepared a scheme to test the Albanians once again and to punish them if they hadn't "learned how to behave." In this way, the chance incident in May became the precursor of the tragic incident of 22 October 1946.

22 October 1946

The correspondence of the Foreign Office with the British Admiralty and of the latter with the British Mediterranean Command in the months between August and September 1946 has attracted the attention of scholars of the "Corfu Channel Incident." Part of this correspondence is a letter dated 21 September, in which the Mediterranean Commander-in-Chief was tasked with testing the Albanians:

Establishing diplomatic relations with Albania is part of the agenda of the government of Great Britain, which would like to know whether the government of Albania has learned how to behave. We would like to have information as to where any of your ships has passed through the Straits of the Corfu Channel since August and if not, you should plan to do so as soon as possible.

¹⁴ *Ibid*, Notë no. 408/39/46, 2 August 1946.

The answer of the Commander-in-Chief was that none of the ships had passed through the Straits yet, “but we contemplate doing this with the HMS Mauritius and the HMS Leander as well as two destroyers...on 22 October 1946.”¹⁵ The letter clearly shows that sending British warships through Albanian territorial waters one month later would be done deliberately for testing purposes and, even more, as a demonstration of force.

As had been planned, on 22 October, at 13:30 Central European Time Zone (UTC+01:00) the cruisers *HMS Mauritius* and *HMS Leander*, as well as two destroyers, the *HMS Saumarez* and *HMS Volage*, left the Port of Corfu in column formation. The squadron was commanded by Vice Admiral Harold R. Kinahan, the same person who had commended the cruisers *HMS Orion* and *HMS Superb* on 15 May. At 14:45 (UTC+01:00) the ships were at the point closest to the Albanian shore, 0.5 miles from Denta Cape (Kepi Delta), from where they took a north-west course. At 14:53 (UTC+01:00) the *HMS Saumarez* hit a mine. An Albanian speedboat from the Captain’s Office in the Port of Saranda arrived quickly, but the aid of the Albanian military personnel was refused without explanation.

The *HMS Volage* was ordered to go assist the damaged ship, but at 16:16(UTC+01:00) it too hit a mine. At 17:30 (UTC+01:00) two other ships from Corfu came to the rescue. Commander Kinahan followed the situation from the cruiser *HMS Mauritius*, where the command headquarters was located. The ships returned to the Port of Corfu about midnight on 22 October. From the explosions, 44 sailors lost their lives and 42 others were injured. But according to a news release from the *Reuters* agency, the loss would have been even greater if the ships had not been in action and their crew at readiness, prepared to respond to any possible firing from the coast.¹⁶

As happens in such cases, the respective cables followed the incident. The first formal response was that of the British government, on 26 October. It merely gave notice that “because of the serious accident that recently occurred to two ships of His Majesty[’s Navy] that were passing through the Corfu Channel and of which the Albanian authorities will doubtless be aware, the British mine authorities will very soon clean the Channel.”¹⁷ The Albanian government protested in its response of 29 October, saying that “for the second time warships of

¹⁵ www.icj-cij.org. “The International Court of Justice, Corfu Channel Case, Judgment of 9 April 1946”, p. 28; See also: AMFAA, The Case of the Corfu Channel, V. 1949, D. 219; Artur Meçollari, *Incidenti i Kanalit të Korfuzit, Drejtësi e anuar [The Corfu Channel Incident: One-sided Justice]*, Vlora: Triptik, 2009, p. 72.

¹⁶ AMFAA, Malta, 26 October 1946, Communiqué for the press of Admiral Willis, V. 1947, D. 177.

¹⁷ AMFAA, V. 1946, D. 179.

Great Britain have violated our territorial waters, without having any authorization from our government, and in this way have violated the integrity of our country.” In terms of cleaning the Channel, the formal note said that the Albanian government had no objection the British to doing so outside the territorial waters of Albania.¹⁸

One day earlier, a similar protest had also been sent to the Secretary General of the United Nations, Trygve Lie, asking that “such provocations against our country be ended.”¹⁹ When the British government announced that the clearing of the mines would be done on 12 November, the Albanian government answered with a counter-proposal to set up a mixed commission to determine the area involved.²⁰ The British saw the proposal of the Albanian government as an attempt to delay the mine clearing operation, but it seems that their interest was above all to examine the evidence.

On 12 November 1946, in the afternoon, several British ships “inspected” Albanian waters for two or three hours. During the next day, a large number of warships, minesweepers and speedboats took part in what was called “Operation Retail.” Mehmet Shehu, Chief of Staff of the Albanian Army, who was following the actions from the Castle of Saranda, notes that “23 mines in all were found, of which one exploded in the water,” “two were towed to Corfu” and “nine were sunk and ten others are still floating on the water.”²¹

In addition to the protest of the Albanian government about the violation of its sovereignty, the operation of 13 November also brought about other debates. The British government had notified the Albanian government that, “the cleaning of the Channel was unanimously recommended by the Central Mine Clearance Board,” an organization created in 1945 to clear the sea passages.

But the Board, with the insistence of the Soviet representative, was compelled to make the following declaration on 14 November: “In connection with the latest press statements having to do with sweeping the territorial waters of Albania in the northern part of the Straits of Corfu by British minesweepers, the Central Board notes that this sweeping was not done under

¹⁸ *Ibid.*

¹⁹ *AMFAA*, V. 1946, D. 178.

²⁰ *AMFAA*, Report on the history of the Corfu Incident from the Ministry of Foreign Affairs to the Albanian embassies in Paris, Belgrade and Moscow, V. 1947, D. 160.

²¹ *AMFAA*, V. 1946, D. 170.

its directive nor with its sanction.”²² However, neither the American naval authorities nor the British ones gave this declaration to the press, reasoning that it exceeded the authority of the Board.

The report on the operation of 13 November and the examination of evidence about the mines became a fundamental part of the ICJ Corfu file. The British government insisted:

- 1) that on 22 October the ships ran into mines exactly where the waters had been cleared two years earlier by British minesweepers and that since that time the Channel had been used for navigation;
- 2) that the specialized examination of 13 November 1946 confirmed that 22 other mines were laid in the waters where the Corfu Channel incident occurred; the mines were of German manufacture; the mines still had grease on their anchor cables and were just recently painted; the pieces of mines found in the damaged ship *Volage* since 22 October 1946 were of the same type with the mines found on the Corfu Channel on 13 November, and therefore the mines were located just before the date on which His Majesty's ships, *Saumarez* and *Volage*, suffered damage and casualties;
- 3) that the area mined was so near the Albanian shore shows that they were put there by the Albanian government itself or with its knowledge without notifying the users of the

²² *AMFAA*, V. 1947, D. 175. At the end of the Second World War, the four Great Powers reached an agreement to create an international organization for clearing the seas from mines put there during the war. The International Organization for Clearing Mines from European Waters, with headquarters in London, started work on 22 November 1945. According to the charter of the organization, it had a central board, with representatives of the maritime commands of Great Britain, France, the Soviet Union and the United States, chaired by a high official of the British fleet. The sea waters of Europe were divided into four zones, one of which was the Mediterranean Zone. The Board of that zone was made up of representatives from the United Kingdom, the Soviet Union, Spain and Turkey, whereas Italy and Germany, as countries that had lost the war, were summoned to give information and to receive duties. Albania was not summoned to that organization, with the reasoning that it did not have the equipment or specialists to remove mines. Its sea waters were left under the care of Greece. The failure to include Albania in the International Organization for Clearing Mines, the absence of representation by it on the Mediterranean Board as well as leaving Albanian waters under the care of Greece led to many debates, both in the Central Board as well as the Mediterranean Board. This is shown in the minutes of the meetings of those boards, some of which can be found in the Archives of the Albanian Ministry of Foreign Affairs, apparently obtained at that time from the Soviet and Yugoslav representatives on the boards.

According to those documents, it comes out that a request for Albanian participation in the Mediterranean Board was brought up by the Yugoslav representative and supported by the Soviet representative in February 1946, but the Greek representative declared that his government was against this. Even more insistent was the repeated request that it was not in the rights of the Board for the territorial waters of a country to come under the responsibility of another country, because it put the sovereign rights of the state into question. But neither issue found support from the western representatives, a clear sign of the reflection of a new political relationship between East and West.

Channel, as required by the article 3 and 4 of the 8th Hague Convention of 1907 and simple rules of humanity;

4) that for those reasons, the Albanian government should make a public apology, as well as pay reparations for the material damages and human losses²³.

These points were included in the British notes for the Albanian government, were emphasized in the report to the Security Council, and were finally included in the British memoranda for the ICJ.

On its part, the Albanian government brought out as a counterargument a letter and several *MEDRI (Mediterranean Route Instructions)* maps which the Head of the British Military Mission in Albania, Brigadier Edward Hodgson²⁴, sent to the General Staff of the Albanian National Army on 25 January 1946. According to the letter: “On the map of mines, the green lines indicate zones cleared of mines, but the Mediterranean Command takes no responsibility for the accuracy of this map and every Albanian ship that uses the information given in it does so at its own risk.”²⁵ Albania neither admitted that it had planted the mines nor that it had knowledge of them. It even accused the British of possibly putting the mines there on the afternoon of 12 November, when several ships entered Albanian waters one day before the cleaning operation.

In January 1947, the conflict between the British and Albanian governments was put on the agenda of the United Nations Security Council. The debate about the case began on 18 February. Alexander Cadogan, Great Britain’s permanent representative in the Security Council, repeated the well-known accusations of the British. On the other hand, the remarks of the head of the Albanian delegation, Hysni Kapo, were a political counter-response in harsh tones of the British representative. Unable to settle the conflict between the parties, the Security Council decided in April to send the case to the International Court of Justice (ICJ or Court) to be examined.

On 22 May, the Court registered the British complaint against the Albanian government. The latter was notified on the same day to appoint a representative at the Court as well as an *ad*

²³ *AMFAA*, V. 1946, D. 179; V. 1948, D. 228.

²⁴ Brigadier Dante Edward Pemberton Hodgson (1904-1978).

²⁵ *AMFAA*, V. 1946, D. 174, Minefields of Albania, British Military Mission, Albania, to ANA General Staff, 25 January 1946.

hoc judge who would have equal rights with the other judges.²⁶ This was the first case with which the International Court of Justice, created according to the United Nations Charter in 1945, began its work.

The Court case and the British secret

On 2 July 1947, the Albanian government announced that it would take part in the trial and that its official representative would be Kahreman Ylli, the Plenipotentiary Minister of Albania in Paris. (In February 1949, Behar Shtylla was appointed to represent Albania in the place of Kahreman Ylli at the ICJ). However, the Albanian government did not forget to say in its notification that the British government had made a biased application in taking the case to court, in contravention of the Security Council Resolution and the provisions of the Charter of the Court, which meant that the two governments that were parties to the conflict had to make an initial compromise. The Albanian government utilized this circumstance to gain time until 25 March 1948, when an agreement was reached between the parties. It was signed for the British party by Eric Beckett, legal adviser in the Foreign Office, and for the Albanian party by Kahreman Ylli.

In essence, the agreement posed two questions for the Court:

- 1) According to international law, was Albania liable for the explosions that occurred on 22 October 1946 in Albanian waters, and should it pay indemnification for the damage and losses that followed?
- 2) By the actions of its fleet, had the United Kingdom violated the sovereignty of the People's Republic of Albania on 22 October and 12-13 November 1946, and should it also be obliged to give compensation to Albania?²⁷

In September 1948, the file of the *Corfu Channel Case* was ready. In November, the ICJ started public hearings. By then the Albanian party, with the assistance of the Yugoslavs, had appointed as *ad hoc* judge the chairman of the Bratislava Court, Igor Daxner. It called on professors Vladimir Vochoč and Ivo Lapena, specialists in international law, to defend the case—The former was Czech and the latter was Croatian. In November, because he fell ill, Daxner was replaced by Bohuslav Ečer, a Czech jurist.

²⁶ *AMFAA*, V. 1947, D. 163.

²⁷ www.icj-cij.org, International Court of justice, The Corfu Channel Case, Special Agreement concluded on 25 March 1948.

The Albanian party seems not to have liked Vochoč very much. In June, Kahreman Ylli sent Hysni Kapo confidential information in which he expressed a total lack of confidence that Vochoč would be able to defend the Albanian arguments in the Corfu case.²⁸ Vochoč was replaced. It was reported later that the Czech authorities arrested him for attempting to escape from the country and that he was sentenced to ten years in prison.²⁹ The French jurist and politician Pierre Cot undertook the Albanian defense, along with three Paris-based assistants. In addition to government representative Eric Beckett, the British government assigned the case to Attorney General Hartley Shawcross, evidence that this proceeding was truly important for the Royal Government.

But on the eve of the oral sessions, something happened that took the British by surprise. One of the most important points of the proceeding was that of the nature of the passage (the navigation) of the ships on 22 October. Before the Court, as well as before the Security Council, the British maintained that the passage of their ships in the Corfu Channel on 22 October had been done in conformity with customary international law and that the passage had been peaceful (*innocent passage*). On their part, the Albanians argued that the passage was not peaceful but on the contrary was aggressive and provocative. In support of this version, the Albanian party asked the judicial panel to let it review the squadron's navigation orders. The Court judged the request to be reasonable and forwarded it to the official representative of the British government. The navigation orders were kept in the Mediterranean Station Command in Malta and were taken from there on 1 October 1948. But knowledge of these documents caused a real disturbance in the British administration, where in addition to the legal advisers, the Attorney General, the Lord Chancellor, the Foreign Secretary and the First Lord of the Admiralty became involved, and even the Prime Minister.

The documents in which the mystery was hidden bore the code name XCU (*Exercise Corfu*) and XCU ONE, and they were dated 5 and 13 October 1946. The fact that those documents were kept away from the defense group caused irritation, especially with Attorney General Hartley Shawcross. But that was not the main thing. What happened is that the documents were also kept secret even from the Court up to the end of the case. Now they belong to the National Archives in London and are open for use. In his work "The Corfu Channel Case

²⁸ *AMFAA*, V. 1948, D. 227.

²⁹ *AMFAA*, V. 1949, D. 216/1.

and the Missing Admiralty Orders,” published in 2004, Professor Anthony Carty has brought us an illuminating perspective on those two documents and the confusion they created in the Cabinet of the British Prime Minister, Clement Attlee.³⁰

The Attorney General, Hartley Shawcross, observed that document XCU, dated 5 October 1946, was a memorandum classified “top secret” from Vice Admiral Harold R. G. Kinahan, implementing the order of the First Lord of the Admiralty to test the Albanian reaction after the notes exchanged between the two governments on the 15 May incident. The document explained the passage of the ships in the northern part of the Corfu Channel, in the *MEDRI* route. It explained that two planes would be in the air at all times to offer artillery cover and be ready for action if necessary. It explained the location of the Saranda coastal batteries, the firing positions, trenches, armaments identified and so forth.

After document XCU came document XCU ONE, dated 13 October, which contained the plan of operation, the navigation route of the ships, their avoidance of a route that took them near the Albanian coast and the possible use of air cover in that case. The document made it even clearer that if the Albanian batteries were to open fire in the direction of the British ships, then a retaliatory operation would be undertaken by sea and air, which, it was hoped, would last no more than an hour. If there were no shooting, the ships would turn in a westerly direction, outside of Cape Qefali (Kepi i Qefalit). Finally, the means of radio communication were explained, including the frequencies and reserve frequencies.³¹

For Attorney General Shawcross everything became clear. On 15 October 1948, he withdrew from the defense group, leaving his place to his deputy, Solicitor General Frank Soskice. From that day he communicated repeatedly with all the ministers who had a connection with the proceeding, as well as the Prime Minister. He wrote to the latter that the military marine documents showed that “Exercise Corfu” was not an innocent passage but rather a deliberate

³⁰ Anthony Carty, “The Corfu Channel case – and the missing Admiralty orders,” *The Law and Practice of International Courts and Tribunals*, Koninklijke Brill NV, Leiden, The Netherlands, 2004, pp. 1-35. Carty is the head of the department of Public Law at the University of Aberdeen in Scotland and the author of a broad range of studies and scientific publications within England and outside of it, primarily about international law, human rights and the relations of the powers. For the first time a summary of the work cited in this reference was made known to the Albanian public by the author of this work in an interview in the daily newspaper *Panorama*, 10 December 2009. The work was also mentioned later by Paskal Milo in *Gazeta Shqiptare*, on 2 February 2010, and by Auron Tare in the same newspaper on 7 February 2010.

³¹ *Public Record Office*, Ref. ADM 1 22704, Memorandum nr. 0321/13, The Use of the North Channel of Corfu (XCU), 5 October 1946, XCU ONE, Plan of Operations (Further Memorandum XCU dated 5 October 1946), Top secret, *HMS Mauritius* at Famagusta, 13 October 1946; cited by A. Carty, The Corfu Channel case... pp. 30-34.

“trailing of our coats,” in other words seeking a skirmish with the Albanians. He highlighted all the compromising points of the British account of the incident: the order to make a sudden change of the direction of navigation or a “turn about” to *MEDRI*, the preparation with airplanes, the one-hour firing and up to the prior investigation of Albanian territory, which was a violation of Albania’s sovereignty but which had been denied before the Security Council.³²

The question of whether or not the documents requested by the Court should be given to it consumed three months of discussions. Initially, the debates centered on the difficulties that might come from opening or not opening the documents. Many people thought that opening them would bring negative consequences, but there were others who defended the idea of opening them, saying that a refusal to do so was evidence that there was something to hide. Even Attorney General Shawcross eventually agreed with the decision not to open them, reasoning that “my country [...] right or wrong, my country’.”³³ The point about how to justify not opening the documents was quickly concluded: they would not be declassified “for state security reasons.”

Two extended conferences were held in January 1949 to discuss how the failure to open the documents would be confronted among the governments and institutions involved. Understandably, the most zealous voice for not opening the documents came from the First Lord of the Admiralty because he was implicated. He even suggested that the Court “should be left to guess.” The Prime Minister also joined the insistence of the First Lord of the Admiralty. However, Attorney General Shawcross left a window open for his deputy, Soskice, instructing him that it was his judgment as to whether the opening of the documents would be unavoidable. But the Prime Minister closed every opportunity for opening the documents, asking the Attorney General to return for instructions.³⁴

Eric Beckett defended not opening the documents in the Court. Resolution of the issue came from what had happened on the ground: after hitting the mines, the squadron had not responded with fire but rather took measures to withdraw. It seems that Beckett’s words had the desired effect, when he declared that if the navigation order had authorized other actions besides

³² A. Carty, “The Corfu Channel Case...”, p. 6.

³³ *Ibid.* p. 28.

³⁴ *PREM*, Personal and Secret, CRA to Sir Hartley Shawcross, 14 January 1949; Ref. taken from A. Carty, The Corfu Channel case... p. 25.

innocent passage, then the ships certainly would have followed the order.³⁵ According to the defense, the most important thing was what the ships did in fact and not what they might have been permitted to do by their orders.

The British secret was preserved through manipulating the proceeding.³⁶ The protection of this secret saved the “honor” of the United Kingdom, but it was a blow to the prestige of this high temple of justice.

The Punishment

In its 9 April 1949 decision, the International Court of Justice gave its opinion about the liability of the parties as had been requested in the Agreement of 25 March 1948. Ironically, one of the two most debatable points, precisely the one that had brought so much uncertainty and confusion to the British administration, went in favor of London. Of 16 judges, 14 voted that on 22 October 1946 the United Kingdom had not violated the sovereignty of Albania. On the other point, as to whether Albania was liable for the explosions that occurred on 22 October, for the damage and human losses that they cause, Albania was held liable by 11 votes for and 5 against.

However, the Albanian government felt relieved that the Court unanimously concluded that the operation by the British ships on 12 and 13 November was a violation of its sovereignty. This decision was met with satisfaction in Tiriana.³⁷

It was decided in The Hague not only that Albania was responsible for the explosions in the waters of its sea, but that it should pay compensation for the material damage and human losses. The Court decided to deliberate in another session about the amount of the indemnification. This was the part of the decision that brought the strongest reaction from the Albanian government. According to it, the Court did not have the right to give an opinion about

³⁵ ADM 116/ 5758, Closing Addresses to the Court, at p. 96; Ref. taken from A. Carty, *The Corfu Channel case*,... p. 27. “Our ships made the passage through the channel and in spite of the mining of two destroyers we took no hostile action against Albania. XCU cannot have contained any instructions which would authorize anything except the whole peaceful passage...” through the straits

³⁶ In a British memorandum of 1 October 1947 prepared for the International Court of Justice, among other things the moment of the explosion on the *HMS Saumarez* is explained, attaching a photograph said to have been taken 30 seconds after the explosion (AMFAA, V. 1947, D. 163). The Albanian media have recently shown several filmed sequences taken from the British archives, showing the navigation moments on 22 October 1946, including the moment of the explosion on the *HMS Saumarez*. The filmed chronicles show that measures to document everything from the operation and a possible incident were also provided in the preparations for this voyage. But this document, which is evidence of the first second of the explosion, was never submitted to the Court. Instead, a photograph of the 30th second was submitted, which speaks of another deliberate hiding. (Author’s note)

³⁷ AMFAA, *The Corfu Channel Case*, V. 1949, D. 219; See also AMFAA, V. 1949, D. 216/1, Coded radiogram no. 1/34, secret, from Behar Shtylla to the Foreign Ministry, Paris, 10 April 1949.

the amount of indemnification, because that was not covered in the 25 March Agreement, and that this was an issue to be resolved between the two governments.

The Albanian government was afraid of severe penalties, and for this reason Behar Shtylla was instructed to let the British know that the government had the desire to hold direct discussions with the representatives of the London government and to reach a conclusion satisfactory to both parties.³⁸ But Beckett's response was "I have consulted with the authorities here, who are of the opinion not to interrupt the court procedures and that the court should be competent to give a judgment about the amount of damages."³⁹

The documents show that even before the ICJ decision was given, the Albanian administration was concerned that the British government would get its hands on Albanian gold deposited in London, either by a conservative sequestration until the trial concluded or by executing the decision, if the Albanian party was found guilty.⁴⁰

On 16 September 1943, the German Embassy in Rome announced that a surprise action by SS commandos had made it possible for approximately three tons of gold and 12 tons of paper money to be confiscated from the Bank of Rome in the account of the National Bank of Albania. According to the announcement, the gold would be taken to Berlin the next day in one or two special airplanes, whereas the paper money would come in several deliveries to Tirana together with the plates for printing the money.⁴¹ The gold taken from the Bank of Rome was the financial reserve backing the paper money put into circulation by the Bank of Albania, and as such it was the property of the Albanian state. "It was wrapped up in 55 chests, sealed with iron band ... and put in underground storage places of the Reichsbank as gold that belonged to the Central Directorate of the National Bank of Albania."⁴² In April 1945, in a salt mine in Kaiserode in Germany, Allied forces found a part of a vast sum of treasure stolen from 11 separate European countries to fuel the Nazi war machine. 55 chests of Albanian gold were among the finds in this warehouse.⁴³

³⁸ AMFAA, V. 1949, D. 217/2.

³⁹ *Ibid.*, Secret coded radiogram no. 2/97, from Behar Shtylla for the Foreign Ministry, Paris, 15 September 1949.

⁴⁰ AMFAA, V. 1949, D. 220.

⁴¹ German Embassy to Rome to the Ministry of Foreign Affairs, Coded telegram no. 23, Rome, 16 September 1943. *Dokumente të institucioneve gjermane për historinë shqiptare [Documents of the German institutions on Albanian history] 1941-1944*, prepared by dr. Hakif Bajrami, Vatra, Prishtina 1998, p. 76.

⁴² Pirro Vito, *Ari Monetar Shqiptar i grabitur nga pushtuesit fashistë dhe nazistët gjermanë gjatë Luftës së Dytë Botërore [The Albanian monetary gold stolen by the Fascist and Nazi conquerors during the Second World War]*, dissertation deposited in the Archives of the Albanian Ministry of Foreign Affairs, p. 13.

⁴³ Ksenofon Krisafi, *Në kërkim të arit [Searching for the Gold]*, "Dita" Publications, 2000, UET Press, p. 68.

The Trilateral Commission to Return Monetary Gold, created in September 1946 with the participation of the United States, Great Britain and France, received a request from the Albanian government for “the treasury of the Bank of Albania to be returned in one piece to it.” Meanwhile, another claim was lodged contrary to the Albanian request, that the National Bank of Albania had been founded in 1925 using capital invested by an Italian financial group, and for this reason the treasury did not belong to Albania, but rather to Italy.⁴⁴

Nevertheless, in 1948 the Commission rejected the Italian claims and notified the Albanian representative in the IARA (the Inter-Allied Reparations Agency) that 1121 kg of gold would be returned. Together with the notification came a request that the Albanian government sign a declaration waiving all additional claims for reparations. Hesitance to sign such a declaration postponed debate on the question until the following year. But when the Albanian government decided to sign the declaration and begin discussions with the banks on transferring the gold, other obstacles appeared.

On 19 May 1949, the Albanian representative in the Inter-Allied Reparation Agency (IARA) notified the Trilateral Commission that the Albanian government was ready to accept delivery of the specified quantity of gold. But on 1 June, the Secretary General of IARA, J. A. Watson, answered that the Commission operated under the order of the three governments for the preservation and delivery of the gold and that he would respond to the request of the Albanian party as soon as he had received instructions from the three governments.⁴⁵ In the same month, Ambassador Shtylla wrote to Tirana: “It seems clear that England will withhold the gold for the trial reparations, and therefore, this new situation should be studied over time.”⁴⁶

In the context of the aforementioned communications, one detail is worth noting. Among the reasons why the Trilateral Commission allegedly blocked delivery of the gold was that the Italian government had reactivated its claims. Strangely, the Italian claims were the same as those raised two years earlier and which the Commission had rejected after examining them in detail. It seems that until the ICJ would decide on the amount of indemnification from the Albanian government, the Commission, under British pressure, merely found a way to delay the execution of decisions it had itself already taken.

⁴⁴ *Ibid.*, p. 85.

⁴⁵ *AMFAA*, V. 1949, D. 220.

⁴⁶ *Ibid.*

This was also an answer to the game of the Albanians, who were interested in the opposite—that is, delaying the trial for as long as possible and gaining time with the Commission.⁴⁷ Later developments showed that the question of the Albanian gold “was interwoven with the Anglo-Albanian conflict about the Corfu Channel incident and blocked together with it. Whole decades would pass without it being possible either to separate [one] issue from [the other] or to resolve it.”⁴⁸

On 15 December 1949, with 12 votes for and 2 against, the ICJ decided that Albania should indemnify the United Kingdom in the amount of £843,947. The Albanian government did not cooperate with The Hague, nor did it take part in the trial that led to this decision. But both parties proved themselves willing to discuss damages with one another; the British based on the right to ask for the execution of a judicial decision, the Albanians with the argument that although they did not recognize the competence of the Court to decide on this issue, they were interested in a reasonable solution.

From 13 April 1950 to 22 January 1951, five meetings were held between Behar Shtylla and Eric Beckett at the Hotel Bristol in Paris. The meetings were unfettered, without a strict protocol, something that the Albanian scholar Ksenofon Krisafi has rightly noted. Perhaps the secrets of the event and the secrets of the proceeding itself, known to the governing parties, suggested moderate solutions. However, the negotiations were unsuccessful. The British accepted half the amount that the Court had awarded, but Shtylla had received orders not to agree to more than 40,000 pounds, which would mean 5% of the indemnification. On 25 January 1951, Beckett transmitted the order of his government that the offer was not worth taking into consideration nor could it be the basis for starting discussions again.⁴⁹

Only in 1985 were the discussions reopened, and 11 years later, on 29 October 1996, an agreement was reached in London between a delegation of the Republic of Albania and a delegation of the Trilateral Commission of Monetary Gold, ending the long odyssey of the Albanian gold. In this agreement, 1,574.35 kilograms of gold were returned to Albania which had been stolen by the Germans in the Second World War and kept sequestered for 50 years. In

⁴⁷ *Ibid.* According to a radiogram from Paris, on 7 June 1949, the Albanian Legation was asking for clarification from the Foreign Ministry in order to confirm whether “its opinion is to delay the trial as long as possible”. The answer of the Ministry was given the next day: “Yes, but this is only for the ears of Behar and the friends and it is top secret. Manush [Myftiu], Minister without portfolio.”

⁴⁸ K. Krisafi, *Searching for the Gold*,... p. 125.

⁴⁹ *AMFAA*, V. 1951, D. 265.

exchange, the Albanian government agreed to satisfy England with \$2,000,000 for its financial claims against Albania. The ruling of The Hague about that \$2,000,000 is not mentioned in the documents, even though the payment is entirely linked to it.

The Albanian Secret

Albania was found guilty by the International Court of Justice with circumstantial evidence. The accusation that the Albanian government had planted the mines was refuted by the argument that it had neither the means nor the specialists to do so. The testimony of two Yugoslav officers proved that several days before the incident, two Yugoslav ships loaded with German GY type mines had set out from the Port of Šebeniq. It remained to be proven whether the Albanian party had knowledge that its territorial waters had been mined.

A commission of experts went twice to the coast of Saranda, and it concluded that the mining operation must have been noticed by the coastal watchers if meteorological conditions had been normal. Among other things, the Court had found that, regardless of the exact date when the mines were put there, the Channel was observed with extreme vigilance by the coastal watchers. With this reasoning, it came to the conclusion that “the installation of the mined areas could not have been done without the knowledge of Albania.”

According to the logic of indirect evidences for the guilt of Albania, the Court also drew attention to another fact. The Albanian government rightly protested that on 12 and 13 November the British had violated the sovereignty of Albania by undertaking the mine cleaning operation without its permission. But it was silent and did not ask for investigations when it was suspected that the country’s territorial waters had been secretly mined. This was also underlined in a report of Albania’s official representative to the Court proceedings, Behar Shtylla, who concludes that “this leaves the impression that we did know of the existence of the mines or, at least, were not interested in knowing the source.”⁵⁰

We may also recall that when Tito met with Hoxha in Belgrade in June 1946, the subject of the coastal defense of Albania was discussed at length. According to Tito, Vlora and Saranda had great strategic importance because they dominated both the entrance to the Adriatic as well as its outlet. For this reason, Hoxha was promised that some Yugoslav military specialists would

⁵⁰ AMFAA, Coded radiogram 1/35, secret, 11 April 1949, from Behar Shtylla in Paris to the Foreign Ministry, V. 1949, D. 216/1.

go to Albania.⁵¹ Although there is no record in that meeting that they spoke about mining the coast, it is certain that the further steps derived from that discussion.

Following this reasoning, we may note that on the eve of the signing of the Economic Treaty between Albania and Yugoslavia, Enver Hoxha transmitted information about the mine cleaning operation on 12 and 13 November hour by hour through radiograms to Koçi Xoxe and Nako Spiru, who were in Belgrade, on the eve of the signing of the Albanian-Yugoslav Convention of Commerce.

Naturally, all this information was forwarded to the Yugoslav leaders. In this morass of radiograms, two are especially notable. The first, which is probably the radiogram of 14 November, Hoxha writes to Xoxe: “Now that the English ships have come and taken away the mines, we have to think about *how we will protect our ports and waters* [emphasis by the author]. I am thinking about such things, but before we decide, talk to Marko [Alexander Ranković] about the following and what the Yugoslav General Staff thinks and might suggest to us.”⁵²

Without waiting for instructions, on 15 November Hoxha again addressed Xoxe: “What does the Yugoslav General Staff think about declaring the Port of Saranda a military zone, as well as all the other small ports around Saranda?”⁵³ It is more than clear that Hoxha was conscious that the minefields had been an effective means of defense up to then, and that after they were cleared he seems to be more and more motivated to look for other measures to compensate.

This and other circumstantial evidence has reinforced the suspicions that the Albanians had knowledge of the mines along their seashore. But the Albanian archives also preserve direct evidence, kept secret for more than 60 years, that reveals an Albanian secret as inflammatory as the British one.

The first piece of evidence is a radiogram that the Albanian Interior Minister Koçi Xoxe sent to the Yugoslav Interior Minister Alexander Ranković, informing him about the incident in the waters of Saranda. This radiogram was sent on 24 October 1946, following an earlier radiogram on 23 October. In the Serbian translation, the document did not seem to hide anything

⁵¹ *Vostočnaja Evropa v Dokumentah Rosijskih Arkivov [Eastern Europe in the Documents of the Russian Archives] 1944-1953, Volume I (1944-1948)*, Moskow-Novosibirsk, 1997. Document no. 159.

⁵² *Arkivi i Ministrisë së Brendshme (Archives of the Ministry of Internal Affairs of Albania, hereafter: AMIAA)*, Cryptology Branch, tel. no. 27, undated, V. 1946, D. 1.

⁵³ *Ibid.*, tel. no. 30, 15 November 1946.

special. But the original document in Albanian was found in the Central State Archives in a file with material of Koçi Xoxe which was still being processed by Archive specialists. The Albanian document begins this way:

To Shpend [Dega], Extremely urgent. Following our [note] no. Extra dated 23 October 1946. For General Ranković. In connection with the four British steamships we give these details: the four ships were British warships, travelling from Corfu through the waters of Saranda, near the Albanian coast. The warship that hit a mine **within the zone mined by us** [Author's emphasis] bore the number RE 62; the attempt took place about 2000 m (two thousand meters) from our coast...⁵⁴

In the archives of the Central Committee of the Yugoslav Communist League (CK SKJ), this radiogram is *ad litteram* just as Xoxe dictated it to his liaison [Shpend Dega] in the Albanian legation in Belgrade, but with a small change that bears great weight in the case we are talking about. The words “*within the zone mined by us*” were edited, during translation, to “*within our mined zone*” (Serbian: *unutar naše miniranje zone*).⁵⁵ What is important for the verification of the information remains the primary source, that is, what Xoxe wrote and not the editing during translation.

Another piece of evidence is a document from January 1957, a time when a parliamentary delegation from the People's Republic of China visited Tirana headed by Peng Zhen, a member of the Politburo and secretary of the Central Committee of the Communist Party of China. On 16 January, in official talks, Albanian Prime Minister Mehmet Shehu declared to the Chinese official:

⁵⁴ *Central Archives of Albania*, Radiogram of K. Xoxe for A. Raković, 24 October 1946. File with material of Koçi Xoxe undergoing processing.

⁵⁵ *Arhiv Jugoslavije (Archives of Yugoslavia)*, Fond Central Komitet Saveza Komunista Jugoslavije (CK SKJ) - (Central Committee of the Yugoslav Communist League), Komisija za Medunarodne odnose i Veze Albanie (Commission for International Relations and connection with Albania), hereafter AJ, CKSKJ, 507/IX, 1/I-104. The part cited in the text reads in Serbian as follows: “Br. Ekstra hitno, U vezi našeg radiograma od 24.10.1946 god. U vezi sa četiri engleska broda javljamo vam ove pojedinosti: četiri lađe bile su engleski ratni brodovi, putovali su iz Krfa po vodama Sarande blizu albanske obale. Ratni brod koji je našao na minu unutar naše miniranje zone imao je broj RE 62, a ovo se desilo oko 2000 m. od naše obale”.

In reality, our territorial waters **had been mined by our side** [Author's emphasis]. It happened under these conditions. In 1946, I went to Belgrade. I was at that time Chief of the General Staff of our army. Tito proposed that the Corfu Channel should be mined. So we put the mines there with help from Yugoslav sailors. After I got the consent of Comrade Enver, I agreed with Tito's proposals for mining the Channel. On our side, Comrade Enver and I, and a single Albanian sailor, knew about this issue whereas from the Yugoslav party, Tito, the Chief of the General Staff of the Yugoslav Army and their sailors were aware of it, and no one else, not even the comrades of the Politburo of our party.⁵⁶

Although *post factum*, the document remains quite illuminating and equally credible. One may wonder why this secret, kept as such with considerable ferocity, was told precisely to the Chinese, when diplomatic relations with them were still in their infancy. Be that as it may, the explanations of Mehmet Shehu, in addition to ending speculation about the perpetrators of the mine placement, also allude to the approximate time when the mines were placed, which coincides with the British assessment.

As Shehu himself says, the mines were placed when he was Chief of the General Staff of the Albanian army. He was summoned to this duty to replace Spiro Moisiu at the end of July 1946, without yet having completed his studies at the "Voroshilov" Military Academy in Moscow.⁵⁷ The new official appointment of Mehmet Shehu was on August 19, 1946.⁵⁸ On his way from Moscow to Tirana, Mehmet Shehu stopped in Belgrade and met General Hamović⁵⁹,

⁵⁶ *Arkivi Qendror Shtetëror (AQSH) (Central State Archives - hereafter CSA)*, F. 14/Labour Party of Albania (LPA) - Relations of the LPA with the Chinese Communist Party, V. 1957, D. 1. See also: Ana Lalaj, "The Corfu Channel Incident: Both Parties were Responsible," *Panorama* newspaper, issue of 10 December 2009.

⁵⁷ *AMFAA*, Radiogram of Enver Hoxha to the Albanian Minister in Belgrade, Hysni Kapo, 27 July 1946; Nr. B. XIV, 250/5, secret, V. 1946, D. 6, f 54. In this radiogram Hoxha gives orders to the Albanian ambassador to meet Mehmet Shehu, who was returning from Moscow, and to make him aware of the agreements with the Yugoslavs before he meets with the military officials in Belgrade. Hoxha also mentions a preliminary agreement, which has been made for armaments with the General Rade Hamovic, when he had been in Albania. The radiogram explains that Mehmet Shehu would be Chief of the General Staff, but his appointment to that position would be kept secret until it was publicly announced.

⁵⁸ *CAAF*, Fund 100/1, V. 1946, D. 54, Bobbin 10. The source contains a circular reference with the number AI-5568, dated 19 August 1946, by which the Head of the General Staff, Major General Spiro Moisiu, notifies all the commands of the country's military units that "on the basis of the order of the Ministry of National Defense no. 07-1049 dated 19 August 1946, the undersigned [that is, Moisiu – author's note] is ceasing as of today to be Head of the General Staff and Major General Mehmet Shehu takes his place."

⁵⁹ *AJ*, CKSKJ, 507/IX, 1/I-84. Josiph Gjergjia's cable, Yugoslav Minister to Tirana sent to Marshall Josip Broz Tito, on July 28, 1946.

as Enver Hoxha had ordered in his cable sent to Albanian ambassador, Hysni Kapo, in Belgrade, on 27 July 1946.

On 3 September, Shehu paid a short visit to Belgrade, but the Albanian Embassy was not informed for his visit neither by Albanian Ministry of Foreign Affairs nor by the Albanian military attaché in Belgrade.⁶⁰

In addition, the records of the Airport Police Office hide the true purpose of the trip, alleged to be “for health reasons.”⁶¹ There is now no doubt that it was on this occasion when the discussions were held about the mines and that later the maritime vessels, together with the mines, proper tools and experts, were sent to Saranda from Yugoslav ports. Everything seems to have gone very quickly, and on 7 September Mehmet Shehu returned from Belgrade.⁶²

On 10 September, the Yugoslav General Staff sent two radiograms to the Yugoslav Mission in Tirana. The first radiogram, no. 48, said:

Notify Chief of the General Staff Mehmet Shehu as follows: A ship ready with the necessary personnel to mine the Albanian coastal waters can be found in one of our maritime bases. We have 100 mines at our disposition for this matter. Our opinion is that these mines should be put in front of Saranda, in front of Himara and Borsh and eventually in Palermo [Porto Palermo - author]. Great discretion is necessary, especially as far as concerns our personnel.⁶³

⁶⁰ AMFAA, Secret radiogram of the Albanian Legation in Belgrade for the Ministry of Foreign Affairs, 4 September 1946, no. 142/2, V. 1946, D. 6. Sofo Çomora, chargé d'affaires in the Albanian Legation in Belgrade, informed his superiors in the Ministry of Foreign Affairs on 4 September 1946: “The Chief of the General Staff, Major General Mehmet Shehu, arrived yesterday in Belgrade from Tirana by airplane. Since this Legation had no knowledge about the coming of the general, neither anyone from that Ministry nor the military attaché here, there was no one from this Legation to meet him at the aerodrome.”

⁶¹ CAAF, F. 100/1, V. 1946, D. 194, Bobbin 11, pp. 180 and 184. Two notifications are found in this Fund that the Airport Police Office of Tirana sent to the Adjutant's Office of the General Staff and the Directorate of State Security in the Interior Ministry. The first notification, no. M/391 dated 3 September 1946, says that at 11.50P.M. on that day, an airplane flew to Belgrade and among the passengers was “...Mehmet Shehu, an Albanian, major general, going to Belgrade for health reasons. Passport issued by the MIA [Ministry of Interior Affairs] with number B-151”. The second notification, of the same office with no. M/327, is dated 7 September 1946 and shows that the airplane from Belgrade landed at 10.05P.M. and shows the name of Mehmet Shehu in the list of passengers, with the respective personal identification data as in the first notification.

⁶² *Ibid.*

⁶³ CAAF, F. 100/1, V. 1946, D. 312, Bobbin 12, p. 3, nr. 48. See also: AQFA, F. MMK, Shtatmadhoria, V. 1946, D. 16, f.1, used by Paskal Milo, *Të vërtetat e fshehura, Incidenti i Kanalit të Korfuzit [Hidden truths: the Corfu Channel incident]*, Toena publications, Tirana 2010, p. 93.

In the other radiogram, no. 71, information is requested about where on the shore the Albanian officer assigned by the Albanian General Staff would wait for the Yugoslav ship. The Albanian officer was also to have with him “the plan for placing the mines, approved by the Albanian General Staff.”⁶⁴ What happened next is still unknown, since the respective report about the mining operation is missing. But we know now that on 17 September, not one but three Yugoslav ships arrived at Sazan island without prior notice. The island command received an order by Mehmet Shehu to give them shelter.⁶⁵

Also interesting is an order of the Chief of the Albanian General Staff, Mehmet Shehu, on 19 September: “It is categorically prohibited to travel by sea between Saranda and Durrës, until a second order is given.”⁶⁶ This order leaves it to be understood that the exact time of placement of the mines must have been precisely the night of 18-19 September 1946 and that this order is meant to avoid a possible accident in the waters of Saranda.

The Historiography to Date

There is a large bibliography about the ‘Corfu Channel Incident.’ In more than four decades, dozens of publications and academic texts have used the public file of the International Court of Justice as the basic material. Politicians, jurists and scholars, almost all of them foreign, have made assessments and thrown out suspicions of all kinds. Despite the intriguing circumstances of this event and the developments after it, studies of this incident were lacking in the Albanian historiography of the time.

Apparently, this was a delicate subject for the Communist leadership, and as such it was kept archived. As in other similar cases, a cliché surrounding the Corfu event was formulated, carried from one text to another and used whenever there was a need to speak about it in a political atmosphere. This cliché conformed with the version of the Albanian political leadership, according to which those mines were either German ones left over from the war or possibly a provocation of the British themselves. The Albanian government claimed it knew nothing about

⁶⁴ *Ibid*, radiogram no. 71.

⁶⁵ CAAF, F 100/1, V. 1946, D. 150, Bobbin 10, Radiogram nr. 59, urgent, top secret, of the Adjutant’s Office of the General Staff for Major Mevlan Dervishaj, 17 September 1946.

⁶⁶ CAAF, F 100/1, V. 1946, D. 27, Bobbin 9, Radiogram nr. 60, prot., top secret, of the Adjutant’s Office of the General Staff for the Directorate of the Albanian Air Transport Agency [ATASH], Tirana, 19 September 1946.

the placement of the mines; it did not have any such mines nor did it have the means or the specialists to place them.⁶⁷

Professor Paskal Milo was the first to question the official version of the historiography. In 1994 he published data from the Russian archives reporting that the mines had been placed by the Yugoslavs and that the Albanian government knew this. This thesis was not followed up with new evidence for several years, until documents that were quite interesting were published in various places. Mr. Milo has recently brought out a fuller study of this theme in his book *Të vërtetat e fshehura, incidenti i Kanalit të Korfuzit [Hidden truths; the Corfu Channel incident]*.

Among contributions to Albanian scholarship of recent years, those of Professor Arben Puto stand out. Prof. Puto deals with this subject as part of his own scientific works on international law. Professor Ksenofon Krisafi, in his book *Në kërkim të arit [Searching for the Gold]* also broadly addresses the difficult diplomatic relations lasting more than four decades between the Albanian and British governments after the punitive sanctions of the ICJ. Further, in a recent academic publication on the *History of the Albanian People*, it is noted that the guilt for the Corfu Channel incident is mutual.⁶⁸ This seems to be a reasonable conclusion.

There are, certainly, other studies of interest. For instance, a book by Albert Kotini, *Piratët e Korfuzit [Pirates in the Corfu Channel]*,⁶⁹ contains many documents from the Albanian archives which make it valuable. Another author, Artur Meçollari, a military man, despite the lack of sufficient archival documents at hand, he reached interesting conclusions about the British culpability in his study *Incidenti i Kanalit të Korfuzit: Drejtësi e anuar [The Corfu Channel Incident: One-sided Justice]*.⁷⁰ At the time of publication of that study, the author still did not know about the content of the XCU and XCU ONE orders, but this did not prevent him from reconstructing the exact navigation route of 22 October 1946. Relying on reports of the location of the ships as Commander Harold R. Kinahan presented them in the Court, the author shows that the navigation was neither in a straight line nor the shortest route. To the contrary, when the ships were between the Rock of Barketa [Shkëmbi i Barketës] and the Monastery of St.

⁶⁷ E. Hoxha, *Rreziku anglo-amerikan për Shqipërinë [The Anglo-American Threat to Albania]*, memoirs, Publishing House “8 Nëntori”, Tirana 1982, p. 405

⁶⁸ *Historia e popullit shqiptar [History of the Albanian People]*, v. IV, Publishing House “Toena”, Tirana 2008, p. 237.

⁶⁹ Albert Kotini, *Piratë në Kanalin e Korfuzit [Pirates in the Corfu Channel]*, Publishing House “Arbëria”, Tirana 2007.

⁷⁰ Artur Meçollari, *Incidenti i Kanalit të Korfuzit, Drejtësi e anuar [The Corfu Channel incident: One-sided justice]*, Publishing House “Triptik”, Vlora 2009.

George [Manastiri i Shën Xhorxhit] at 14:30 (UTC+01:00) instead of arching west they turned to the east, with their bows opposite the Port of Saranda, entering the country's territorial waters.

This was the moment of the provocation,⁷¹ which the port authorities noted in their reports to their commanders. According to one of the reports, “the ships continued their route toward Denta Point and within the Bay of Saranda, in our internal waters, so much that we thought they would enter the port, but at a distance of about 1.5 kilometers from the port, they changed direction from Limion and Cape Baladha.”⁷² This moment, recorded by the coastal watchers, is in full conformity with the “*Plan of operations XCU ONE,*” point 4, paragraph c, which says exactly: “If the Albanian batteries take no action Groups I and II will turn to the westward off Cape Kiephali and proceed to Angostoli.”⁷³

According to Kinahan's coordinates, Meçollari notes that the military ships would have been at the closest point to the Port of Saranda at 14:45 (UTC+01:00) the moment when they again changed course, this time toward the west, parallel with the Albanian coast. Ten minutes later, the explosion occurred.

At the beginning of the 1960s, the British archives opened many of the war and post-war files for scholars and the public, but the documents related to the “Corfu Channel Incident” were kept sealed for 40 more years. The most important documents about this event are only now reaching Tirana. Their arrival coincided with the announcement that an expedition headed by Professor James P. Delgado, an expert on underwater archaeology and president of the Institute of Nautical Archaeology, had found in the summer of 2009 the bow of a damaged ship in the Bay of Saranda, which is thought to be the bow of the destroyer *HMS Volage*.

Both the archival documents as well as the underwater findings are without doubt determinative for clarifying all that happened in the Corfu Channel. This is the reason why,

⁷¹ After the incident of 15 May, an order from the head of the Albanian General Staff, Spiro Moisiu, for the coastal defense units, issued on 21 May 1946, gives a precise list of all the actions that are to be taken in cases of violations of Albanian waters by foreign vessels. Among other things, it is said in the order that when foreign ships, whether or not identified, go in the direction of the ports, there may be shooting over the ships only when they undertake actions of disembarking. Clearly, in obedience to this order, the Saranda coastal command avoided provoking the British ships on 22 October 1946, when they initially headed toward the port. (The document belongs to the Archive of the Ministry of Defense of Albania and has been taken from Albert Kotini, *Piratë në Kanalin e Korfuzit [Pirates in the Corfu Channel]*, Publishing House “Arbëria”, Tirana 2007, pp. 185-186).

⁷² AMFAA, The Captain's Office of the Port of Saranda to the Directorate of Coastal Defense, Tirana, no. 138/II, 23 October 1946, secret, very urgent, V. 1946, D. 170.

⁷³ HMS Mauritius at Famagusta, 13 October 1946, Memorandum no. 0321/13 XCU ONE – Plan of operations (Further memorandum XCU dated 5 October 1946) Tab A, Top secret. Cited according to A. Carty, “The Corfu Channel Case...” p. 32.

several media outlets in Albania hastened to bring to the forefront the debate on Corfu Channel incident, involving both journalists and historians. All of this has helped inform public opinion about the truth of the incident.

As happens in this kind of case, debatable issues still remain and inaccuracies persist, sometimes from lack of knowledge and sometimes from acting too quickly. The comments go as far as saying that since the remnants of the *HMS Volage* were found in Albanian waters, this is a sufficient reason for reviewing the decisions of the Court of the Hague.

It should be kept in mind that before being damaged, the *HMS Volage* went to the aid of the second ship in the formation and the first one to be damaged, the *HMS Saumarez*. It has been explained that the *Volage* hit a mine in the rescue operation for the *Saumarez*, while pulling it toward Corfu. The difference in time from the first ship hitting a mine to the second was one hour and 23 minutes, and during this time, as has been shown again by the port authorities, they made maneuvers of assistance and towing. Under such circumstances and in the case of that ship, the exact location of the damaged bow, about one kilometer and two hundred meters from the coast of Saranda, cannot be evidence for assigning guilt since the location on the ocean floor where the bow settled and the course the ship was on can differ dramatically depending on water conditions and current.

It may be that Professor Milo also falls into this misunderstanding when he says that, “a good part of the decision of [the ICJ] is finally proven incorrect through the new documents, that is, the Court’s conclusion that the passage of the military ships on 22 October 1946 in the Corfu Channel *was outside the territorial waters of Albania* [my emphasis, A.L.] is refuted.”⁷⁴

Neither the British in their memoranda to the Court, nor even the Court itself in its conclusions said in any instance that the mined area was outside Albanian territorial waters. On the contrary, the documents only say that the mines were in Albanian waters. Another statement that does not seem strongly rooted in fact is that “the mines had been put not only in the Corfu Channel, but also in the port of Durrës and the port of Vlora, because according to the Albanian authorities, the danger of intervention by the British or others existed at that time not only in the

⁷⁴ Paskal Milo, “Qeveria shqiptare të kërkojë rishqyrtimin e çështjes së Incidentit të Kanalit të Korfuzit” [The Albanian government should seek a review of the case of the Corfu Channel Incident], newspaper *Gazeta shqiptare*, no. 4826, 2 February 2010.

South, but along the entire Albanian coast.”⁷⁵ This seems doubtful, and perhaps we are again dealing with a misunderstanding or the lack of a complete picture of how events unfolded.

The truth is that because of the lack of security in that area due to the presence of mines routes *MEDRI* 17/1 and 17/2 for Durrës and Vlora, there was a notification in a radiogram of the British Command in Malta, in February 1947. In response, the Albanian Ministry of National Defense issued this announcement on 28 July: “At the request of the Albanian government, three Yugoslav minesweepers came to our territorial waters in June of this year... From the report submitted, it turns out that no mine was found in routes 17/1 and 17/2 in the check that was made, and those routes can be considered safe and valid for navigation.”⁷⁶

The least that can be concluded from this is that the Albanian government would not have issued a public announcement about the safety of the water routes if it had not indeed checked and all the more if those areas had in fact been mined; and secondly, this would have been a suitable moment for the Yugoslavs to have removed the mines which, as has now been proven, it had itself placed. In other words, unlike the case of the Corfu Channel, where a minefield was laid after the war, in the case of the waters of Vlora and Durrës, it was only a question of rechecking the mines left over from the war. So far as concerns the complete cleaning of the Corfu Channel, this is work that continued for some time. It can even be said that it was the first fruitful cooperation between the Albanian and Greek governments, in 1957.⁷⁷

The ‘Corfu Channel Incident’ is one of those few cases which, although subjected to two years of examination by an international court, is today more doubted than ever with respect to the professionalism and partiality of handling the event and the conclusions about it. If historiography on this subject has, up until now, had to operate from time to time by intuition, the truth is much clearer today. Thanks to this rich supply of documents, future studies will have the possibility of shedding light not only on the incident, but also on the echoes that the new world division would bring and the conflicts in which it would be included.

Conclusions

1. Albania was found guilty on the basis of circumstantial evidence. Great Britain was exonerated of the counter-accusations, hiding several pieces of evidence from the court and

⁷⁵ *Ibid.*

⁷⁶ *AMFAA*, V. 1947, D. 166.

⁷⁷ *AMFAA*, V. 1957, D. 462.

benefiting from the lack of will of the latter to investigate and confront it up to the end. Thus, the Court exonerated the British from the charge of making a provocative or non-innocent passage through the Channel. On the other hand, as to the other issue, the Albanians were found guilty because they did not notify the users of the Channel although, according to the Court, they could not have failed to know about the mines. Nonetheless, guilt was not proven.

2. Both governments engaged the best experts for the defense of their case. For the British government this was not difficult, whereas the Albanian government needed time to find specialists who were both good professionals and politically credible. In the end, a group of French lawyers, under the direction of Pierre Cot, turned out to be quite a professional team that challenged the opposing side more than once.

However, both governments kept secrets from their legal teams, putting first one and then the other into difficult situations. The British defense did not know about the secret order of Commander Kinahan, which blew the claim of ‘innocent passage’ sky high. Nor did the Albanian defense know that the leaders of the Albanian government were not only aware of the mines, but collaborated in the act of their placement. In the end, the British defense learned the truth, thanks to the insistence of Pierre Cot. Strangely, the disconcerting effects passed quickly, and all of this dictated an even more refined strategy to win the case definitively. The Albanian defense never learned the truth.

3. The Court of The Hague showed a lack of impartiality in its decision. Even if it was not influenced by the governments of the countries that made up the judicial panel, at least an absence of will by the judges to thoroughly investigate the event could be seen. For example, a letter of 21 September 1946 is telling. In that letter the British Admiralty told the Mediterranean Command to plan a passage of ships “to see whether the Albanians had been “taught their lesson.”⁷⁸

A casual scholar has mistakenly said that this letter was unknown to the Court, because if it had been known it might have brought about another assessment by the Court. To the contrary, the letter was administered by the Court but the comment was made about the letter as if the passage had been non-violent, because it “had been planned to affirm the right of innocent

⁷⁸ A. Carty, “The Corfu Channel Case...”, p. 6.

passage, denied in an unlawful manner.” Comments might have continued in the same logic even if the navigation orders XCU and XCU ONE had been revealed.

4. The event of Corfu is a part of the misconception of Albanian-Yugoslav relations, the court proceeding took place as this relationship was falling apart. Numerous documents testify to the extreme care by the Yugoslavs up to June 1948 to address everything related to the Corfu Channel File minutely. The Yugoslavs were even ready to assist after the break, but the representatives sent by the Albanian government to The Hague had received an order from Tirana that every meeting with the Yugoslavs should be interrupted, because “we cannot expect anything from them.”⁷⁹ After the Cominform Resolution, Albania was the first and fiercest to denounce all public acts with Yugoslavia. Corfu continued to remain a mutual secret, as such secrets are left over in every divorce.

5. So far as the facts are concerned, the Corfu Channel Incident has now become clearer. Nonetheless, the space for interpretations seems to have become broader, not only in the historical sense or that of international relations, but especially in the legal one. Voices have increased recently that the ICJ should return to its judgment in order to correct it. Procedurally this seems to be a difficult matter, but what is most important is that it does not turn out to be particularly useful. In any case of review, finding the guilt of the British party does not entail any exoneration of the Albanian party. These are two different issues. The new documents do not make one party guilty while exonerating the other, but speak to the guilt of both parties.

However, the interpretations of the event are not over. There are those who consider justified the decision of the Albanian government to suspend the right of innocent passage in its terrestrial waters because of the state of war with Greece. According to this interpretation, on 22 October 1946, the regime in the Corfu Channel was not governed by the customary international law of the sea, which is applicable in time of peace, but rather by the international law for armed conflicts, which is applicable in a combat region. The reasoning continues that Great Britain had


⁷⁹ *AMFAA*, V. 1948, D. 236, Coded radiogram no. 26/336, secret, dated 19 October 1948, from the Ministry of Foreign Affairs to the Albanian Legation in Paris.

lost neutral status because it was in an alliance with Greece, and its military ships did not have the status of protected property.⁸⁰

In conclusion, new data about the Corfu Channel Incident means that there are fewer unknowns today and fewer dilemmas, but this does not mean that the event has been laid bare. On the contrary it remains, with its complexity, a provocative challenge for serious historiography.

[Translated by Kathleen Imholz]

⁸⁰ A. Meçollari, *Incident i Kanalit të Korfuzit*,... p. 128.



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