



# ICJ PACMUN 2017

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# PACIFIC MODEL UNITED NATIONS INTERNATIONAL COURT OF JUSTICE

Greetings Justices,

My name is Millen Katyal, and it is with great honor and enthusiasm that I serve as the President of the Pacific Model United Nations 2017 International Court of Justice. I, the Vice President, Savannah Rankich, and the Chair, Ariana Haji have all worked hard to develop a case that we feel pushes the Justices to understand the full range of the ICJ; not only will you have to evaluate all information pertinent to the case at hand, but with this case in particular, you must set the precedent for the interpretation of international law.

The background guide below covers the case of the United Kingdom v Albania, the first case reviewed by the International Court of Justice. An important aspect of this case is the interpretation of maritime laws, a much less defined concept during this time period, so it is encouraged that delegates come to committee with a full understanding of the context surrounding the case in addition to the arguments from both parties.

To emphasize both the difficult tasks that ICJ Justices are presented in unraveling international law and the weight that their verdicts hold in future international cases, Justices will be asked to re-define or create additional maritime laws as part of their final opinions on this case. This requires Justices to look beyond the case at hand and be aware of how their decision may affect later interpretations of the law. To this end, we request that Justices submit an evaluation of at least three laws, treaties, or precedents that they feel are relevant to the Corfu Channel case, submitted to the Dias by 11:59 on November 10th.

Please feel free to contact us at [icj@pacificmun.com](mailto:icj@pacificmun.com) if you have any questions. We are excited to see what all Justices will bring to the table at PACMUN 2017!

Best of luck,

Millen Katyal

President, ICJ

# INTRODUCTION: UNITED KINGDOM V. ALBANIA

The Corfu Channel case, *United Kingdom v. Albania*, holds a very special place in the history of the United Nations, as it is the first case heard before the International Court of Justice. It calls into question the idea of innocent passage during times of peace and how much responsibility one State has for another's safe passage. The United Kingdom, the Applicant, brought this case to the International Court of Justice in 1946. The United Kingdom claims that they had the right to safe passage through the narrow Corfu Channel - a small body of water along the coast of Albania. When passing through the Channel, United Kingdom also encountered several landmines in the channel, and argues that Albania was obliged to warn the United Kingdom of the landmines in the channel. In turn, Albania, the Respondent, claims that the United Kingdom had violated its territorial waters by travelling through the Channel. As justices debate this case, there are two essential questions to consider.

One, is it lawful for the United Kingdom to travel through a body of water just twelve miles off the coast of the Albania?

Two, if such travel by the United Kingdom was legal, should Albania have had the responsibility to inform the United Kingdom of the mines places in the Channel? Decisions made by justices will set the precedence for how maritime law is interpreted in future cases brought to the ICJ.

## HISTORY

The Corfu Channel Case was brought to the International Court of Justice in 1946 after a series of three encounters in the Corfu Channel (also referred to as the Straits of Curfu) between Albania and the United Kingdom during the Greek Civil War.

The first incident began on 15 May 1946, when the HMS Orion and HMS Superb, two Royal Navy ships from the United Kingdom, crossed the Corfu Channel. While crossing, fortifications situated on the Albanian coast began to fire at the ships. Upon this, although there were no damages, Britain issued a formal demand for "an immediate and public apology from the Albanian Government." Albania refused to issue such an apology, stating that Britain had trespassed in their territorial waters, and therefore Albania had the right to fire at the United Kingdom's ships. In response, the United Kingdom stated that they would return fire in the future.

Later in the year, on 22 October 1946, a flotilla from the Royal Navy travelled northward through the Corfu Channel with the intent of testing the Albanian reaction to what they claimed was their “right of innocent passage.” The United Kingdom’s opinion was that they had a right to travel through the Corfu Channel. The cruisers and destroyers of the flotilla-- HMS Mauritius, HMS Leander, HMS Suamarez, and HMS Volage-- were ordered to respond if attacked. The flotilla passed close to the Albanian coast in what was assumed to be a mine-free zone (since the United Kingdom had swept the channel for mines in 1944 and 1945). However, prior to 3 p.m., HMS Suamarez struck a mine along the coast. HMS Volage was then instructed to tow the heavily damaged HMS Suamarez to the Corfu harbor. As the ships sailed, HMS Volage struck another mine, and both ships had their bows destroyed. After twelve hours of difficulty, both ships eventually reached the Corfu harbor, sustaining forty-four casualties and forty-two injuries. Throughout this incident, Albania did not fire and an Albanian Navy vessel approached the scene flying the Albanian flag and a white flag. It was assumed that because Albania had no minelaying vessels at the time, the mines were laid by Yugoslavian minelayers upon Albanian request.

Following the second incident, a sweeping operation within Albanian territorial waters occurred on November 11th and 12th under instruction of the Allied Commander-in-Chief Mediterranean. This operation was completed without authorization from the Albanian government, and was used as *corpora delicti* to demonstrate that the British were acting in self-defense by attempting to clear any potential hazards to navigation. Upon investigation, twenty-two contact mines were discovered.

When debating this case, it is important to consider the legality of such an investigation; the placement of the mines indicate that that the minefield was deliberately designed. Following this third incident, Albania’s prime minister, Enver Hoxha, dispatched a telegram to the United Nations expressing his displeasure at the incursion of Royal Navy into Albanian coastal waters.

In January 1947, the United Kingdom brought the issue to the Security Council. On 9 April 1947, the United Nation’s Security Council (UNSC) passed a resolution recommending that the United Kingdom and Albania resolve the dispute in the International Court of Justice. Eventually, on 22 May, the U.K. brought the case against Albania to the International Court of Justice, asking for reparations on the grounds of Albania’s violation on their right of free passage.

# MEMORIAL OF THE GOVERNMENT OF THE UNITED KINGDOM (APPLICANT)

The subject of debate is Albania's claim to the Corfu Channel and the damages to the naval fleet of the United Kingdom which occurred during three separate incidents as the United Kingdom travelled through the Corfu Channel.

Preliminarily, the issue was brought to the United Nations Security Council (UNSC). On recommendation of the UNSC dated 9 April 1947, the Government of the United Kingdom of Great Britain and Northern Ireland filed an Application, thereby bringing the case to the ICJ. Within their memorial, the Government of the United Kingdom alleged that the Government of the People's Republic of Albania "either caused to be laid, or had knowledge of the laying of, mines in the territorial waters of the Strait of Corfu without notifying the existence of these mines as required by Articles 3 and 4 of the Hague Convention No. VIII of 1907." The United Kingdom argues that the laying of landmines in the Channel was an improper declaration of maritime territory by Albania. Moreover, the Government of the United Kingdom asserts that during the first incident of open fire from Albania on United Kingdom cruisers as they passed through the Corfu Channel, they were not in violation of Albanian territorial waters; in fact, they note that in demanding the UK to ask permission for passage through the Corfu Channel, Albania violated the United Nations Law of the Sea. The Government of the United Kingdom further asserts that Albania proceeded to mine the passageway of the Channel intentionally, resulting in the unprovoked deaths of forty-four United Kingdom naval personnel, and the unprovoked injury of forty-two The Government of the United Kingdom naval personnel. In addition, after such events, the nation of Albania made no such attempts at reparation, and only made contact with the United Kingdom naval vessels to question their presence in the channel.

The Government of the United Kingdom claims court jurisdiction under Article 36, Paragraph 1 of the ICJ statute, stating that "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force." Furthermore, the United Kingdom asserts court jurisdiction claiming "that the Albanian Government accepted the invitation of the Security Council under Article 32 of the Charter of the United Nations to participate in the discussion of the dispute, and accepted the condition laid down by the Security Council when conveying the invitation, thereby indicating that Albania accepts in the present case all the obligations which a Member of

the United Nations would have to assume in a similar case...” In a letter dated 23rd July 1947, addressed to the Registrar of the Court, the Government of the People’s Republic of Albania informed the court that it considered that the Government of the United Kingdom was “not entitled to refer this dispute to the Court by unilateral application and disputed the validity of the case. Additionally, in a letter dated 2nd July 1947, addressed to the Registrar of the Court and communicated to the former on 2nd July by the Agent of the Albanian Government, the Government contends, based on Article 25 of the UN Charter,

“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

The Albanian Government, however, added that “it is prepared, notwithstanding this irregularity in the action taken by the Government has therefore accepted the jurisdiction of the Court in the present dispute, without, however, accepting the contentions of the Government of the United Kingdom as set out in the preceding paragraph.”

The Government of the United Kingdom has taken the statements in this letter to indicate that the Albanian Government has accepted the jurisdiction of the Court. The Government of the United Kingdom hopes for a verdict that would find the Albanian Government “internationally responsible for the said loss and injury” to the Royal Navy, and to theretofore receive reparations or compensation from Albania as determined by the Court.

## COUNTER-MEMORIAL FROM THE GOVERNMENT OF ALBANIA (PRELIMINARY OBJECTIONS)

The People’s Republic of Albania’s primary objections concerned the jurisdiction of the Court. During the time the case would brought to the ICJ, 1947, the Government of the People’s Republic of Albania had not yet been admitted as a member state of the United Nations. Citing Articles 26, paragraph 1, Article 40, paragraph 1, of the Statute of the ICJ, Albania claims that:

“When one or more parties are not bound to be subject to the jurisdiction of the ICJ, the court proceedings could only be instituted by a special agreement between the parties in question.”

Likewise, the Albanian Government contends that while Albania may submit a counter-memorial and participate in court proceedings, such acceptance does not constitute express acceptance of jurisdiction under the ICJ Statute and acceptance of court rulings.

In the same letter mentioned previously dated July 2nd, 1947, which the Albania government addressed to the Registrar of the Court,, Albania objected the admissibility of this case to the court, citing the resolution made by the UNSC on 9 April 1947 titled the Corfu Channel Incident which states

*“Recommends that the United Kingdom and Albanian Government should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statue of the Court.”*

Given that the Security Council had only made a recommendation on referring the dispute to the Court, Albania argued that because recommendations are non-binding, it does not create a basis for compulsory jurisdiction of the Court.

## ARGUMENTS OF THE CASE

### UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

- a)** The People’s Republic of Albania either laid the mines itself, or had knowledge of the laying of the mines. The geography and the positions of Albanian lookout posts on the water, as well as the time and physical presence of mine laying operations, made it such that there was no way for Albania not to notice the operations occurring whether Albania laid the mines herself or not.
- b)** Given that mine laying could not have occurred without the government of Albania’s knowledge, Albania was obliged, based on the Hague Convention of 1907 No. VIII, to exercise vigilance over military operations in its territory. Thusly, Albania is bound to give immediate information to countries that are concerned regarding the existence in its territory of dangers, resulting from either the action other States or itself, that have been brought to its knowledge.
- c)** The Albanian government was bound to inform other countries of the land mines by the principle of international delinquency - a fundamental precept of international law - which states that it is an act contrary to the sentiments of humanity to not warn other countries of sources of harm. Furthermore, Albania abrogated its obligation to not knowingly work contrary to the rights of other States, by failing to notify ships passing through the Strait of Corfu of the mines.
- d)** The United Kingdom had the right of innocent passage through Albania’s territorial waters, as the Atlantic Charter of 1941 has laid out that the freedom of the seas and oceans is a fundamental principle of international law.

**e)** On November 12th and 13th, the United Kingdom had the right to remove the mines due to self-help, and the right of intervention out of the fear that the Albanian Government would seize the mines first and harm their case.

**f)** If the People's Republic of Albania asserts that the Corfu Channel is indeed their territorial waters, than normal watch should have been kept over territorial water, hence the People's Republic of Albania should have witnessed the mines being laid from Denta Point (if the government had not laid the mines themselves), and thus had knowledge of the mines.

## PEOPLE'S REPUBLIC OF ALBANIA

**a)** The United Kingdom violated Albanian sovereignty when they sent warships into Albania's territorial waters on the day of the mine explosions.

**b)** The United Kingdom did not have the right of innocent passage through the Strait on October 22, since their passage was by means of Warships and Warships only enjoy and unrestricted right of passage when they are engaged in an international mission assigned to them by the United Nations.

**c)** The United Kingdom also violated Albanian sovereignty on November 12th and 13th, 1946 when they enacted minesweeping operations.

**d)** On November 12th and 13th, when the United Kingdom removed the mines in the Corfu Channel, they were working against the clearly stated wishes of the Albanian Government and did not have approval of international mine clearing organizations; thus the United Kingdom was once again violating Albanian sovereignty.

**e)** The Atlantic Charter of 1941 was not a binding treaty and thus the United Kingdom did not necessarily have the right to innocent passage through the Corfu Channel.

**f)** There is no substantial evidence that Albania had laid the mines in the water nor is there any substantial evidence that they had knowledge that another nation had laid the mines, especially considering that the government of Albania does not possess a navy.

**g)** Albania could not have had knowledge of the mines being laid as the closest town to the Corfu Channel is Saranada. It would be difficult to argue that such an operation would have been noticed by the Coast Guard, especially considering that the coastal defences during this time were manifestly inefficient due to the absence of the commander of the coastal defence.

# LEGAL PRINCIPLES

## Charter of the United Nations

### **Article 2 (4)**

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

### **Article 25**

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

### **Article 32**

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

### **Article 36**

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.
2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.
3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

# Statue of the International Court of Justice

## Article 26 (1)

The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.

## Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without agreement, in relation to any state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
  - a) the interpretation of a treaty;
  - b) any question of international law;
  - c) the existence of any fact which, if established, would constitute a breach of an international obligation;
  - d) the nature or extent of the reparation to be made for the breach of an international obligation

## Article 40 (1)

Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

# Hague Convention No. VIII of 1907

## Preamble

“...Inspired by the principle of the freedom of the seas as the common highway of all nations”...“seeing that, while the existing position of affairs makes it impossible to forbid the employment of automatic submarine contact mines, it is, nevertheless, expedient to restrict and regulate their employment in order to mitigate the severity of war and to ensure, as far as possible, to peaceful navigation the security to which it is entitled, despite the existence of war.”

## Article 1

It is forbidden...

1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them;
2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;
3. To use torpedoes which do not become harmless when they have missed their mark

## Article 2

It is forbidden to lay automatic contact mines off the coast and ports of the enemy, with the sole object of intercepting commercial shipping.

## Article 3

When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice addressed to ship owners, which must also be communicated to the Governments through the diplomatic channel.

## **Article 4**

Neutral Powers which lay automatic contact mines off their coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The Neutral Powers must inform ship owners, by a notice issued in advance, where automatic contact mines have been laid. This notice must be communicated at once to the Governments through the diplomatic channel.

## **Article 5**

At the close of the war, the Contracting Powers undertake to do their utmost to remove the mines which they have laid, each Power removing its own mines.

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

## **Article 6**

The Contracting Powers which do not at present own perfected mines of the pattern contemplated in the present Convention, and which, consequently, could not at present carry out the rules laid down in Articles 1 and 3, undertake to convert the materiel of their mines as soon as possible, so as to bring it into conformity with the foregoing requirements.

# SOURCES

*United Kingdom of Great Britain and Northern Ireland v. Albania*

<http://www.icj-cij.org/en/case/1>

United Nations Charter

<http://www.un.org/en/charter-united-nations/>

Statute of the International Court of Justice

[http://legal.un.org/avl/pdf/ha/sicj/icj\\_statute\\_e.pdf](http://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf)

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Security Council Resolution of April 9th 1947

<http://www.worldlii.org/int/other/UNSC/1947/4.pdf>

Summary of Corfu Channel Case

<http://realcorfu.com/the-corfu-channel-incident/>