

[CL-0251]

COUR INTERNATIONALE DE JUSTICE

RECUEIL

DES ARRÊTS, AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU DÉTROI
T DE CORFOU

(FOND)

ARRÊT DU 9 AVRIL 1949

1949

INTERNATIONAL COURT OF JUSTICE

REPORTS

OF

JUDGMENTS, ADVISORY OPINIONS AND ORDERS

THE CORFU
CHANNEL CASE

(MERITS)

JUDGMENT OF APRIL 9th, 1949

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Le présent arrêt doit être cité comme suit :

« *Affaire du Déroit de Corfou, Arrêt du 9 avril 1949 :*
C. I. J. Recueil 1949, p. 4. »

This Judgment should be cited as follows :

“*Corfu Channel case, Judgment of April 9th, 1949 :*
I.C.J. Reports 1949, p. 4.”

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INTERNATIONAL COURT OF JUSTICE

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THE CORFU CHANNEL CASE

(MERITS)

International responsibility for explosion of mines in territorial waters.—Connivance with another State; evidence.—Minelaying by persons unknown.—Knowledge of minelaying by State party to proceedings: control of territory as ground for responsibility; its influence on the choice of means of proof; indirect evidence, concordant inferences of fact.—Breach of obligations resulting from knowledge of minelaying, grounds for responsibility.—Court's jurisdiction to assess amount of compensation; interpretation of Special Agreement; subsequent attitude of Parties.

Right of passage of warships in time of peace through straits connecting two parts of the high seas.—International custom.—Straits in which right of passage exists.—North Corfu Channel.—Innocent passage; purpose of passage and manner of its execution.—Production of documents at Court's request; refusal to produce; Article 49 of Statute of Court and Article 54 of Rules.—Minesweeping undertaken in territorial waters contrary to wish of territorial State; justification derived from theory of intervention and notion of self-help.—Violation of territorial sovereignty; international responsibility; satisfaction in form of a declaration by the Court of violation of right.

JUDGMENT

Present: Acting President GUERRERO; President BASDEVANT; Judges ALVAREZ, FABELA, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir Arnold MCNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO; M. EČER, Judge ad hoc.

In the Corfu Channel case,

between

the Government of the United Kingdom of Great Britain and Northern Ireland, represented by :

Sir Eric Beckett, K.C.M.G., K.C., Legal Adviser to the Foreign Office, as Agent and Counsel, assisted by

The Right Honourable Sir Hartley Shawcross, K.C., M.P., Attorney-General, replaced on November 15th, 1948, by

Sir Frank Soskice, K.C., M.P., Solicitor-General ;

Mr. C. H. M. Waldock, Professor of international law in the University of Oxford,

Mr. R. O. Wilberforce,

Mr. J. Mervyn Jones, and

Mr. M. E. Reed (of the Attorney-General's Office), members of the English Bar, as Counsel,

and

the Government of the People's Republic of Albania, represented by :

M. Kahreman Ylli, Envoy Extraordinary and Minister Plenipotentiary of Albania in Paris, as Agent, replaced on February 14th, 1949, by

M. Behar Shtylla, Envoy Extraordinary and Minister Plenipotentiary of Albania in Paris, assisted by

M. Pierre Cot, *Professeur agrégé* of the Faculties of Law of France, and

Maître Joe Nordmann, of the Paris Bar, as Counsel ; and

Maître Marc Jacquier, of the Paris Bar, and

Maître Paul Villard, of the Paris Bar, as Advocates.

THE COURT,

composed as above,

delivers the following judgment :

By a Judgment delivered on March 25th, 1948 (I.C.J. Reports 1947-1948, p. 15), in the Corfu Channel case, in proceedings instituted on May 22nd, 1947, by an application of the Government of the United Kingdom of Great Britain and Northern Ireland against the Government of the People's Republic of Albania, the Court gave its decision

on the Preliminary Objection filed on December 9th, 1947, by the latter Government. The Court rejected the Objection and decided that proceedings on the merits should continue, and fixed the time-limits for the filing of subsequent pleadings as follows : for the Counter-Memorial of Albania : June 15th, 1948 ; for the Reply of the United Kingdom : August 2nd, 1948 ; for the Rejoinder of Albania : September 20th, 1948.

Immediately after the delivery of the judgment, the Court was notified by the Agents of the Parties of a Special Agreement, which is as follows :

“The Government of the People’s Republic of Albania, represented by their Agent Mr. Kahreman Ylli, Envoy Extraordinary and Minister Plenipotentiary of Albania at Paris ;

and

the Government of the United Kingdom of Great Britain and Northern Ireland, represented by their Agent, Mr. W. E. Beckett, C.M.G., K.C., Legal Adviser to the Foreign Office ;

Have accepted the present Special Agreement, which has been drawn up as a result of the Resolution of the Security Council of the 9th April, 1947, for the purpose of submitting to the International Court of Justice for decision the following questions :—

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

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

The Parties agree that the present Special Agreement shall be notified to the International Court of Justice immediately after the delivery on the 25th March of its judgment on the question of jurisdiction.

The Parties request the Court, having regard to the present Special Agreement, to make such orders with regard to procedure, in conformity with the Statute and the Rules of the Court, as the Court may deem fit, after having consulted the Agents of the Parties.

In witness whereof the above-mentioned Agents, being duly authorized by their Governments to this effect, have signed the present Special Agreement.

Done this 25th day of March, 1948, at midday, at The Hague, in English and French, both texts being equally authentic, in a single copy which shall be deposited with the International Court of Justice.”

On March 26th, 1948 (I.C.J. Reports 1947-1948, p. 53), the Court made an Order in which it placed on record that the Special

Agreement now formed the basis of further proceedings before the Court, and stated the questions submitted to it for decision. The Court noted that the United Kingdom Government on October 1st, 1947, that is within the time-limit fixed by the Court, had filed a Memorial with statements and submissions relating to the incident that occurred on October 22nd 1946. It further noted that the Agents, having been consulted, declared that they agreed in requesting that the order and time-limits for the filing of the subsequent pleadings as fixed by the Judgment of March 25th, 1948, be maintained. The Court confirmed this order and these time-limits.

The Counter-Memorial, Reply and Rejoinder were filed within these limits. The case was thus ready for hearing on September 20th, 1948, and the commencement of the oral proceedings was then fixed for November 5th, 1948.

As the Court did not include upon the Bench a judge of Albanian nationality, the Albanian Government availed itself during the proceedings on the Preliminary Objection of the right provided by Article 31, paragraph 2, of the Statute, and chose M. Igor Daxner, Doctor of Law, President of a Chamber of the Supreme Court of Czechoslovakia, as Judge *ad hoc*. On October 28th, 1948, the Registrar was informed that Judge Daxner was prevented by reasons of health from sitting on the date fixed. The Court decided on November 2nd, 1948, to fix a time-limit expiring on November 7th, within which the Albanian Government might notify the name of the person whom it wished to choose as Judge *ad hoc* in place of Dr. Daxner, and to postpone the opening of the hearing until November 9th. Within the time fixed the Albanian Government designated M. Bohuslav Ečer, Doctor of Law and Professor in the Faculty of Law at Brno, and delegate of the Czechoslovak Government to the International Military Tribunal at Nuremberg.

Public sittings were held by the Court on the following dates : November, 1948, 9th to 12th, 15th to 19th, 22nd to 26th, 28th and 29th ; December, 1948, 1st to 4th, 6th to 11th, 13th, 14th and 17th ; January, 1949, 17th to 22nd. In the course of the sittings from November 9th to 19th, 1948, and from January 17th to 22nd, 1949, the Court heard arguments by Sir Hartley Shawcross, K.C., Counsel, Sir Eric Beckett, K.C., Agent and Counsel, and Sir Frank Soskice, K.C., Counsel, on behalf of the United Kingdom ; and by M. Kahreman Ylli, Agent, and MM. J. Nordmann and Pierre Cot, Counsel, on behalf of Albania. In the course of the sittings from November 22nd to December 14th, 1948, the Court heard the evidence of the witnesses and experts called by each of the Parties in reply to questions put to them in examination and cross-examination on behalf of the Parties, and by the President on behalf of the Court or by a Member of the Court. The following persons gave evidence :

Called by the United Kingdom :

Commander E. R. D. Sworder, O.B.E., D.S.C., Royal Naval Volunteer Reserve, as witness and expert ;

Karel Kovacic, former Lieutenant-Commander in the Yugoslav Navy, as witness ;

Captain W. H. Selby, D.S.C., Royal Navy, as witness ;

Commander R. T. Paul, C.B.E., Royal Navy, as witness ;

Lieutenant-Commander P. K. Lankester, Royal Navy, as witness and expert ;

Commander R. Mestre, French Navy, as witness ;

Commander Q. P. Whitford, O.B.E., Royal Navy, as witness and expert ;

Called by Albania :

Captain Ali Shtino, Albanian Army, as witness ;

First Captain Aquile Połena, Albanian Army, as witness ;

Khavit Muço, former Vice-President of the Executive Committee of Saranda, as witness ;

Captain B. I. Ormanov, Bulgarian Navy, as expert ;

Rear-Admiral Raymond Moullec, French Navy, as expert.

Documents, including maps, photographs and sketches, were filed by both Parties, and on one occasion by the Parties jointly, both as annexes to the pleadings, and after the close of the written proceedings. On one occasion during the sittings when a photostat of an extract from a document was submitted, the Court, on November 24th, 1948, made a decision in which it reminded both Parties of the provisions of Article 48 and Article 43, paragraph 1, of the Rules of Court ; held that the document in question could be received only if it were presented in an original and complete form ; ordered that all documents which the Parties intended to use should previously be filed in the Registry ; and reserved the right to inform the Parties later which of these documents should be presented in an original, and which in certified true copy, form.

Another decision as to the production of a series of new documents was given by the Court on December 10th, 1948. This decision noted that the Parties were agreed as to the production of certain of these documents and that certain others were withdrawn ; authorized the production of certain other documents ; lastly, in the case of one of these documents, the examination

of which had been subjected to certain conditions, the Court's decision placed on record the consent of the other Party to its production and, in view of that consent, permitted its production, having regard to the special circumstances ; but the Court expressly stated that this permission could not form a precedent for the future¹.

By an Order of December 17th, 1948, the Court, having regard to the fact that certain points had been contested between the Parties which made it necessary to obtain an expert opinion, defined these points, and entrusted the duty of giving the expert opinion to a Committee composed of Commodore J. Bull of the Royal Norwegian Navy, Commodore S. A. Forshell of the Royal Swedish Navy, and Lieutenant-Commander S. J. W. Elfferich of the Royal Netherlands Navy. These Experts elected Commodore Bull as their chairman, and filed their Report on January 8th, 1949, within the prescribed time-limit. By a decision read at a public sitting on January 17th, the Court requested the Experts to proceed to Sibenik in Yugoslavia and Saranda in Albania and to make on the land and in the waters adjacent to these places any investigations and experiments that they might consider useful with a view to verifying, completing, and, if necessary, modifying the answers given in their report of January 8th. The Experts' second report—in which Commodore Bull did not join, having been unable to make the journey for reasons of health—was filed on February 8th, 1949. On February 10th, three members of the Court put questions to the Experts, to which the Experts replied on February 12th.

At sittings held from January 17th to 22nd, 1949, the representatives of the Parties had an opportunity of commenting orally on the Experts' report of January 8th. They also filed written observations² concerning the further statements contained in the Report of February 8th and the replies of February 12th, as provided in the Court's decision of January 17th.

The Parties' submissions, as formulated by their Agents or Counsel at the end of the hearings on the 18th, 19th, 21st and 22nd January, 1949, are as follows :

Question (I) of the Special Agreement.

On behalf of the United Kingdom :

“The Government of the United Kingdom asks the Court in this case to adjudge and declare as follows :

¹ The list of documents in support produced by the Parties and accepted by the Court will be found in Annex 1 to this Judgment.

² See Annex 2 for the Experts' Report of January 8th, the Court's decision of January 17th, the Experts' second Report of February 8th, the questions put by three members of the Court, and the Experts' replies of February 12th.

- (1) That, on October 22nd, 1946, damage was caused to His Majesty's ships *Saumarez* and *Volage*, which resulted in the death and injuries of 44, and personal injuries to 42, British officers and men by a minefield of anchored automatic mines in the international highway of the Corfu Strait in an area south-west of the Bay of Saranda ;
- (2) That the aforesaid minefield was laid between May 15th and October 22nd, 1946, by or with the connivance or knowledge of the Albanian Government ;
- (3) That (alternatively to 2) the Albanian Government knew that the said minefield was lying in a part of its territorial waters ;
- (4) That the Albanian Government did not notify the existence of these mines as required by the Hague Convention VIII of 1907 in accordance with the general principles of international law and humanity ;
- (5) That in addition, and as an aggravation of the conduct of Albania as set forth in Conclusions (3) and (4), the Albanian Government, or its agents, knowing that His Majesty's ships were going to make the passage through the North Corfu swept channel, and being in a position to observe their approach, and having omitted, as alleged in paragraph 4 of these conclusions, to notify the existence of the said mines, failed to warn His Majesty's ships of the danger of the said mines of which the Albanian Government or its agents were well aware ;
- (6) That in addition, and as a further aggravation of the conduct of Albania as set forth in Conclusions (3), (4), and (5), the permission of the existence without notification of the minefield in the North Corfu Channel, being an international highway, was a violation of the right of innocent passage which exists in favour of foreign vessels (whether warships or merchant ships) through such an international highway ;
- (7) That the passage of His Majesty's ships through the North Corfu Channel on October 22nd, 1946, was an exercise of the right of innocent passage, according to the law and practice of civilized nations ;
- (8) That even if, for any reason, it is held that conclusion (7) is not established, nevertheless, the Albanian Government is not thereby relieved of its international responsibility for the damage caused to the ships by reason of the existence of an unnotified minefield of which it had knowledge ;
- (9) That in the circumstances set forth in the Memorial as summarized in the preceding paragraphs of these Conclusions, the Albanian Government has committed a breach of its obligations under international law, and is internationally responsible to His Majesty's Government in the United Kingdom for the deaths, injuries and damage caused to His Majesty's ships and personnel, as set out more particularly in paragraph 18 of the Memorial and the Annexes thereto ;

- (IO) That the Albanian Government is under an obligation to the Government of the United Kingdom to make reparation in respect of the breach of its international obligations as aforesaid ;
- (II) That His Majesty's Government in the United Kingdom has, as a result of the breach by the Albanian Government of its obligations under international law, sustained the following damage :

Damage to H.M.S. <i>Saumarez</i>	£750,000
Damage to H.M.S. <i>Volage</i>	75,000
Compensation for the pensions and other expenses incurred by the Government of the United Kingdom in respect of the deaths and injuries of naval personnel. .	50,000
	£875,000"

On behalf of the Albanian Government :

[*Translation.*]

"(I) Under the terms of the Special Agreement of March 25th, 1948, the following question has been submitted to the International Court of Justice :

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

The Court would not have jurisdiction, in virtue of this Special Agreement, to decide, if the case arose, on the claim for the assessment of the compensation set out in the submissions of the United Kingdom Government.

- (2) It has not been proved that the mines which caused the accidents of October 22nd, 1946, were laid by Albania.
- (3) It has not been proved that these mines were laid by a third Power on behalf of Albania.
- (4) It has not been proved that these mines were laid with the help or acquiescence of Albania.
- (5) It has not been proved that Albania knew, before the incidents of October 22nd, 1946, that these mines were in her territorial waters.
- (6) Consequently, Albania cannot be declared responsible, under international law, for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life which resulted from them. Albania owes no compensation to the United Kingdom Government."

Question (2) of the Special Agreement.

On behalf of the Albanian Government :

[*Translation.*]

"(I) Under the terms of the Special Agreement concluded on March 25th, 1948, the International Court of Justice has before it the following question :

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

- (2) The coastal State is entitled, in exceptional circumstances, to regulate the passage of foreign warships through its territorial waters.
- (3) This rule is applicable to the North Corfu Channel.
- (4) In October and November, 1946, there existed, in this area, exceptional circumstances which gave the Albanian Government the right to require that foreign warships should obtain previous authorization before passing through its territorial waters.
- (5) The passage of several British warships through Albanian territorial waters on October 22nd, 1946, without previous authorization, constituted a breach of international law.
- (6) In any case that passage was not of an innocent character.
- (7) The British naval authorities were not entitled to proceed, on November 12th and 13th, 1946, to sweep mines in Albanian territorial waters without the previous consent of the Albanian authorities.
- (8) The Court should find that, on both these occasions, the Government of the United Kingdom of Great Britain and Northern Ireland committed a breach of the rules of international law and that the Albanian Government has a right to demand that it should give satisfaction therefor."

On behalf of the United Kingdom Government :

"I ask the Court to decide that on neither head of the counter-claim has Albania made out her case, and that there is no ground for the Court to award nominal damages of one farthing or one franc."

* * *

By the first part of the Special Agreement, the following question is submitted to the Court :

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

On October 22nd, 1946, a squadron of British warships, the cruisers *Mauritius* and *Leander* and the destroyers *Saumarez* and *Volage*, left the port of Corfu and proceeded northward through a channel previously swept for mines in the North Corfu Strait. The cruiser *Mauritius* was leading, followed by the destroyer *Saumarez* ; at a certain distance thereafter came the cruiser *Leander* followed by the destroyer *Volage*. Outside the Bay of Saranda, *Saumarez* struck a mine and was heavily damaged. *Volage* was

ordered to give her assistance and to take her in tow. Whilst towing the damaged ship, *Volage* struck a mine and was much damaged. Nevertheless, she succeeded in towing the other ship back to Corfu.

Three weeks later, on November 13th, the North Corfu Channel was swept by British minesweepers and twenty-two moored mines were cut. Two mines were taken to Malta for expert examination. During the minesweeping operation it was thought that the mines were of the German GR type, but it was subsequently established that they were of the German GY type.

The Court will consider first whether the two explosions that occurred on October 22nd, 1946, were caused by mines belonging to the minefield discovered on November 13th.

It was pointed out on behalf of the United Kingdom Government that this minefield had been recently laid. This was disputed in the Albanian pleadings but was no longer disputed during the hearing. One of the Albanian Counsel expressly recognized that the minefield had been recently laid, and the other Counsel subsequently made a similar declaration. It was further asserted on behalf of the Albanian Government that the minefield must have been laid after October 22nd; this would make it impossible at the same time to maintain that the minefield was old. The documents produced by the United Kingdom Government and the statements made by the Court's Experts and based on these documents show that the minefield had been recently laid. This is now established.

The United Kingdom Government contended that the mines which struck the two ships on October 22nd were part of this minefield.

This was contested by the Albanian Government, which argued that these mines may have been floating mines, coming from old minefields in the vicinity, or magnetic ground mines, magnetic moored mines, or German GR mines. It was also contested by them that the explosions occurred in the previously swept channel at the place where the minefield was discovered. The Albanian Government also contended that the minefield was laid after October 22nd, between that date and the mine-sweeping operation on 12-13th November.

On the evidence produced, the Court finds that the following facts are established:

In October, 1944, the North Corfu Channel was swept by the British Navy and no mines were found in the channel thus swept, whereupon the existence of a safe route through the Channel was announced in November 1944. In January and February,

1945, the Channel was check-swept by the British Navy with negative results. That the British Admiralty must have considered the Channel to be a safe route for navigation is shown by the fact that on May 15th, 1946, it sent two British cruisers and on October 22nd a squadron through the Channel without any special measures of precaution against danger from moored mines. It was in this swept channel that the minefield was discovered on November 13th, 1946.

It is further proved by evidence produced by the United Kingdom Government that the mining of *Saumarez* and *Volage* occurred in Albanian territorial waters, just at the place in the swept channel where the minefield was found, as indicated on the chart forming Annex 9 to the United Kingdom Memorial. This is confirmed by the Court's Experts, who consider it to be free from any doubt that the two ships were mined in approximately the position indicated on this chart.

It is established by the evidence of witnesses that the minefield consisted of moored contact mines of the German GY type. It is further shown by the nature of the damage sustained by the two ships, and confirmed by witnesses and experts, that it could not have been caused by floating mines, magnetic ground mines, magnetic moored mines, or German GR mines. The experts of the Court have stated that the nature of the damage excludes the faintest possibility of its cause being a floating mine; nor could it have been caused by a ground mine. They also expressed the view that the damage must have been caused by the explosion of moored contact mines, each having a charge of approximately 600 lbs. of explosives, and that the two ships struck mines of the same type as those which were swept on November 13th, 1946.

The Albanian Government put forward a suggestion that the minefield discovered on November 13th may have been laid after October 22nd, so that the explosions that occurred on this latter date would not have been caused by mines from the field in question. But it brought no evidence in support of this supposition. As it has been established that the explosions could only have been due to moored mines having an explosive charge similar to that contained in GY mines, there would, if the Albanian contention were true, have been at least two mines of this nature in the channel outside the Bay of Saranda, in spite of the sweep in October 1944 and the check-sweeps in January and February 1945; and these mines would have been struck by the two vessels at points fairly close to one another on October 22nd, 1946. Such a supposition is too improbable to be accepted.

The Court consequently finds that the following facts are established. The two ships were mined in Albanian territorial waters in a previously swept and check-swept channel just at the place where a newly laid minefield consisting of moored contact German GY mines was discovered three weeks later. The damage sustained by the ships was inconsistent with damage which could have been caused by floating mines, magnetic ground mines, magnetic moored mines, or German GR mines, but its nature and extent were such as would be caused by mines of the type found in the minefield. In such circumstances the Court arrives at the conclusion that the explosions were due to mines belonging to that minefield.

* * *

Such are the facts upon which the Court must, in order to reply to the first question of the Special Agreement, give judgment as to Albania's responsibility for the explosions on October 22nd, 1946, and for the damage and loss of human life which resulted, and for the compensation, if any, due in respect of such damage and loss.

To begin with, the foundation for Albania's responsibility, as alleged by the United Kingdom, must be considered. On this subject, the main position of the United Kingdom is to be found in its submission No. 2 : that the minefield which caused the explosions was laid between May 15th, 1946, and October 22nd, 1946, by or with the connivance or knowledge of the Albanian Government.

The Court considered first the various grounds for responsibility alleged in this submission.

In fact, although the United Kingdom Government never abandoned its contention that Albania herself laid the mines, very little attempt was made by the Government to demonstrate this point. In the written Reply, the United Kingdom Government takes note of the Albanian Government's formal statement that it did not lay the mines, and was not in a position to do so, as Albania possessed no navy ; and that, on the whole Albanian littoral, the Albanian authorities only had a few launches and motor boats. In the light of these statements, the Albanian Government was called upon, in the Reply, to disclose the circumstances in which two Yugoslav war vessels, the *Mljet* and the *Meljine*, carrying contact mines of the GY type, sailed southward from the port of Sibenik on or about October 18th, and proceeded to the Corfu Channel. The United Kingdom Government, having thus indicated the argument upon

which it was thenceforth to concentrate, stated that it proposed to show that the said warships, with the knowledge and connivance of the Albanian Government, laid mines in the Corfu Channel just before October 22nd, 1946. The facts were presented in the same light and in the same language in the oral reply by Counsel for the United Kingdom Government at the sittings on January 17th and 18th, 1949.

Although the suggestion that the minefield was laid by Albania was repeated in the United Kingdom statement in Court on January 18th, 1949, and in the final submissions read in Court on the same day, this suggestion was in fact hardly put forward at that time except *pro memoria*, and no evidence in support was furnished.

In these circumstances, the Court need pay no further attention to this matter.

The Court now comes to the second alternative argument of the United Kingdom Government, namely, that the minefield was laid with the connivance of the Albanian Government. According to this argument, the minelaying operation was carried out by two Yugoslav warships at a date prior to October 22nd, but very near that date. This would imply collusion between the Albanian and the Yugoslav Governments, consisting either of a request by the Albanian Government to the Yugoslav Government for assistance, or of acquiescence by the Albanian authorities in the laying of the mines.

In proof of this collusion, the United Kingdom Government relied on the evidence of Lieutenant-Commander Kovacic, as shown in his affidavit of October 4th, 1948, and in his statements in Court at the public sittings on November 24th, 25th, 26th and 27th, 1948. The Court gave much attention to this evidence and to the documentary information supplied by the Parties. It supplemented and checked all this information by sending two experts appointed by it to Sibenik: Commodore S. A. Forshell and Lieutenant-Commander S. J. W. Elfferich.

Without deciding as to the personal sincerity of the witness Kovacic, or the truth of what he said, the Court finds that the facts stated by the witness from his personal knowledge are not sufficient to prove what the United Kingdom Government considered them to prove. His allegations that he saw mines being loaded upon two Yugoslav minesweepers at Sibenik and that these two vessels departed from Sibenik about October 18th and returned a few days after the occurrence of the explosions do not suffice to constitute decisive legal proof that the mines were laid by these two vessels in Albanian waters off Saranda. The statements attributed

by the witness Kovacic to third parties, of which the Court has received no personal and direct confirmation, can be regarded only as allegations falling short of conclusive evidence. A charge of such exceptional gravity against a State would require a degree of certainty that has not been reached here.

Apart from Kovacic's evidence, the United Kingdom Government endeavoured to prove collusion between Albania and Yugoslavia by certain presumptions of fact, or circumstantial evidence, such as the possession, at that time, by Yugoslavia, and by no other neighbouring State, of GY mines, and by the bond of close political and military alliance between Albania and Yugoslavia, resulting from the Treaty of friendship and mutual assistance signed by those two States on July 9th, 1946.

The Court considers that, even in so far as these facts are established, they lead to no firm conclusion. It has not been legally established that Yugoslavia possessed any GY mines, and the origin of the mines laid in Albanian territorial waters remains a matter for conjecture. It is clear that the existence of a treaty, such as that of July 9th, 1946, however close may be the bonds uniting its signatories, in no way leads to the conclusion that they participated in a criminal act.

On its side, the Yugoslav Government, although not a party to the proceedings, authorized the Albanian Government to produce certain Yugoslav documents, for the purpose of refuting the United Kingdom contention that the mines had been laid by two ships of the Yugoslav Navy. As the Court was anxious for full light to be thrown on the facts alleged, it did not refuse to receive these documents. But Yugoslavia's absence from the proceedings meant that these documents could only be admitted as evidence subject to reserves, and the Court finds it unnecessary to express an opinion upon their probative value.

The Court need not dwell on the assertion of one of the Counsel for the Albanian Government that the minefield might have been laid by the Greek Government. It is enough to say that this was a mere conjecture which, as Counsel himself admitted, was based on no proof.

In the light of the information now available to the Court, the authors of the minelaying remain unknown. In any case, the task of the Court, as defined by the Special Agreement, is to decide whether Albania is responsible, under international law, for the explosions which occurred on October 22nd, 1946, and to give judgment as to the compensation, if any.

Finally, the United Kingdom Government put forward the argument that, whoever the authors of the minelaying were, it could not have been done without the Albanian Government's knowledge.

It is clear that knowledge of the minelaying cannot be imputed to the Albanian Government by reason merely of the fact that a minefield discovered in Albanian territorial waters caused the explosions of which the British warships were the victims. It is true, as international practice shows, that a State on whose territory or in whose waters an act contrary to international law has occurred, may be called upon to give an explanation. It is also true that that State cannot evade such a request by limiting itself to a reply that it is ignorant of the circumstances of the act and of its authors. The State may, up to a certain point, be bound to supply particulars of the use made by it of the means of information and inquiry at its disposal. But it cannot be concluded from the mere fact of the control exercised by a State over its territory and waters that that State necessarily knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from other circumstances, neither involves *prima facie* responsibility nor shifts the burden of proof.

On the other hand, the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion.

The Court must examine therefore whether it has been established by means of indirect evidence that Albania has knowledge of minelaying in her territorial waters independently of any connivance on her part in this operation. The proof may be drawn from inferences of fact, provided that they leave *no room* for reasonable doubt. The elements of fact on which these inferences can be based may differ from those which are relevant to the question of connivance.

In the present case, two series of facts, which corroborate one another, have to be considered: the first relates to Albania's attitude before and after the disaster of October 22nd, 1946; the other concerns the feasibility of observing minelaying from the Albanian coast.

1. It is clearly established that the Albanian Government constantly kept a close watch over the waters of the North Corfu Channel, at any rate after May 1946. This vigilance is proved

by the declaration of the Albanian Delegate in the Security Council on February 19th, 1947 (*Official Records of the Security Council*, Second Year, No. 16, p. 328), and especially by the diplomatic notes of the Albanian Government concerning the passage of foreign ships through its territorial waters. This vigilance sometimes went so far as to involve the use of force: for example the gunfire in the direction of the British cruisers *Orion* and *Superb* on May 15th, 1946, and the shots fired at the U.N.R.R.A. tug and barges on October 29th, 1946, as established by the affidavit of Enrico Bargellini, which was not seriously contested.

The Albanian Government's notes are all evidence of its intention to keep a jealous watch on its territorial waters. The *note verbale* addressed to the United Kingdom on May 21st, 1946, reveals the existence of a "General Order", in execution of which the Coastal Commander gave the order to fire in the direction of the British cruisers. This same note formulates a demand that "permission" shall be given, by the Albanian authorities, for passage through territorial waters. The insistence on "formalities" and "permission" by Albania is repeated in the Albanian note of June 19th.

As the Parties agree that the minefield had been recently laid, it must be concluded that the operation was carried out during the period of close watch by the Albanian authorities in this sector. This conclusion renders the Albanian Government's assertion of ignorance *a priori* somewhat improbable.

The Court also noted the reply of Captain Ali Shtino to a question put by it; this reply shows that the witness, who had been called on to replace the Coastal Defence Commander for a period of thirteen to fifteen days, immediately before the events of October 22nd, had received the following order: "That the look-out posts must inform me of every movement [in the Corfu Channel], and that no action would be taken on our part."

The telegrams sent by the Albanian Government on November 13th and November 27th, 1946, to the Secretary-General of the United Nations, at a time when that Government was fully aware of the discovery of the minefield in Albanian territorial waters, are especially significant of the measures taken by the Albanian Government. In the first telegram, that Government raised the strongest protest against the movements and activity of British naval units in its territorial waters on November 12th and 13th, 1946, without even mentioning the existence of a minefield in these waters. In the second, it repeats its accusations against the United Kingdom, without in any way protesting against the laying of this minefield which, if effected without Albania's consent, constituted a very serious violation of her sovereignty.

Another indication of the Albanian Government's knowledge consists in the fact that that Government did not notify the

presence of mines in its waters, at the moment when it must have known this, at the latest after the sweep on November 13th, and further, whereas the Greek Government immediately appointed a Commission to inquire into the events of October 22nd, the Albanian Government took no decision of such a nature, nor did it proceed to the judicial investigation incumbent, in such a case, on the territorial sovereign.

This attitude does not seem reconcilable with the alleged ignorance of the Albanian authorities that the minefield had been laid in Albanian territorial waters. It could be explained if the Albanian Government, while knowing of the minelaying, desired the circumstances of the operation to remain secret.

2. As regards the possibility of observing minelaying from the Albanian coast, the Court regards the following facts, relating to the technical conditions of a secret minelaying and to the Albanian surveillance, as particularly important.

The Bay of Saranda and the channel used by shipping through the Strait are, from their geographical configuration, easily watched ; the entrance of the bay is dominated by heights offering excellent observation points, both over the bay and over the Strait ; whilst the channel throughout is close to the Albanian coast. The laying of a minefield in these waters could hardly fail to have been observed by the Albanian coastal defences.

On this subject, it must first be said that the minelaying operation itself must have required a certain time. The method adopted required, according to the Experts of the Court, the methodical and well thought-out laying of two rows of mines that had clearly a combined offensive and defensive purpose : offensive, to prevent the passage, through the Channel, of vessels drawing ten feet of water or more ; defensive, to prevent vessels of the same draught from entering the Bay of Saranda. The report of the Experts reckons the time that the minelayers would have been in the waters, between Cape Kiephali and St. George's Monastery, at between two and two and a half hours. This is sufficient time to attract the attention of the observation posts, placed, as the Albanian Government stated, at Cape Kiephali and St. George's Monastery.

The facilities for observation from the coast are confirmed by the two following circumstances : the distance of the nearest mine from the coast was only 500 metres ; the minelayers must have passed at not more than about 500 metres from the coast between Denta Point and St. George's Monastery.

Being anxious to obtain any technical information that might guide it in its search for the truth, the Court submitted the following question to the Experts appointed by it :

“On the assumption that the mines discovered on November 13th, 1946, were laid at some date within the few preceding months, whoever may have laid them, you are requested to examine the information available regarding (a) the number and the nature of the mines, (b) the means for laying them, and (c) the time required to do so, having regard to the different states of the sea, the conditions of the locality, and the different weather conditions, and to ascertain whether it is possible in that way to draw any conclusions, and, if so, what conclusions, in regard to :

(1) the means employed for laying the minefield discovered on November 13th, 1946, and

(2) the possibility of mooring those mines with those means without the Albanian authorities being aware of it, having regard to the extent of the measures of vigilance existing in the Saranda region.”

As the first Report submitted by the Experts did not seem entirely conclusive, the Court, by a decision of January 17th, 1949, asked the Experts to go to Saranda and to verify, complete and, if necessary, modify their answers. In this way, observations were made and various experiments carried out on the spot, in the presence of the experts of the Parties and of Albanian officials, with a view to estimating the possibility of the mine-laying having been observed by the Albanian look-out posts. On this subject reference must be made to a test of visibility by night, carried out on the evening of January 28th, 1949, at St. George's Monastery. A motor ship, 27 metres long, and with no bridge, wheel-house, or funnel, and very low on the water, was used. The ship was completely blacked out, and on a moonless night, i.e., under the most favourable conditions for avoiding discovery, it was clearly seen and heard from St. George's Monastery. The noise of the motor was heard at a distance of 1,800 metres, and the ship itself was sighted at 670 metres and remained visible up to about 1,900 metres.

The Experts' Report on this visit stated that :

“The Experts consider it to be indisputable that if a normal look-out was kept at Cape Kiephali, Denta Point, and St. George's Monastery, and if the look-outs were equipped with binoculars as has been stated, under normal weather conditions for this area, the minelaying operations shown in Annex 9 to the United Kingdom Memorial must have been noticed by these coastguards.”

The Court cannot fail to give great weight to the opinion of the Experts who examined the locality in a manner giving every guarantee of correct and impartial information. Apart from the existence of a look-out post at Cape Denta, which has not been proved, the Court, basing itself on the declarations of the Albanian Government that look-out posts were stationed at Cape Kiephali and St. George's Monastery, refers to the following conclusions

in the Experts' Report : (1) that in the case of minelaying from the North towards the South, the minelayers would have been seen from Cape Kiephali ; (2) in the case of minelaying from the South, the minelayers would have been seen from Cape Kiephali and St. George's Monastery.

From all the facts and observations mentioned above, the Court draws the conclusion that the laying of the minefield which caused the explosions on October 22nd, 1946, could not have been accomplished without the knowledge of the Albanian Government.

The obligations resulting for Albania from this knowledge are not disputed between the Parties. Counsel for the Albanian Government expressly recognized that [*translation*] "if Albania had been informed of the operation before the incidents of October 22nd, and in time to warn the British vessels and shipping in general of the existence of mines in the Corfu Channel, her responsibility would be involved....".

The obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based, not on the Hague Convention of 1907, No. VIII, which is applicable in time of war, but on certain general and well-recognized principles, namely : elementary considerations of humanity, even more exacting in peace than in war ; the principle of the freedom of maritime communication ; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.

In fact, Albania neither notified the existence of the minefield, nor warned the British warships of the danger they were approaching.

But Albania's obligation to notify shipping of the existence of mines in her waters depends on her having obtained knowledge of that fact in sufficient time before October 22nd ; and the duty of the Albanian coastal authorities to warn the British ships depends on the time that elapsed between the moment that these ships were reported and the moment of the first explosion.

On this subject, the Court makes the following observations. As has already been stated, the Parties agree that the mines were recently laid. It must be concluded that the minelaying, whatever may have been its exact date, was done at a time when there was a close Albanian surveillance over the Strait. If it be supposed that it took place at the last possible moment, i.e., in the night of October 21st-22nd, the only conclusion to be drawn would

be that a general notification to the shipping of all States before the time of the explosions would have been difficult, perhaps even impossible. But this would certainly not have prevented the Albanian authorities from taking, as they should have done, all necessary steps immediately to warn ships near the danger zone, more especially those that were approaching that zone. When on October 22nd about 13.00 hours the British warships were reported by the look-out post at St. George's Monastery to the Commander of the Coastal Defences as approaching Cape Long, it was perfectly possible for the Albanian authorities to use the interval of almost two hours that elapsed before the explosion affecting *Saumarez* (14.53 hours or 14.55 hours) to warn the vessels of the danger into which they were running.

In fact, nothing was attempted by the Albanian authorities to prevent the disaster. These grave omissions involve the international responsibility of Albania.

The Court therefore reaches the conclusion that Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life which resulted from them, and that there is a duty upon Albania to pay compensation to the United Kingdom.

* * *

In the final submissions contained in its oral reply, the United Kingdom Government asked the Court to give judgment that, as a result of the breach by the Albanian Government of its obligations under international law, it had sustained damages amounting to £875,000.

In the last oral statement submitted in its name, the Albanian Government, for the first time, asserted that the Court would not have jurisdiction, in virtue of the Special Agreement, to assess the amount of compensation. No reason was given in support of this new assertion, and the United Kingdom Agent did not ask leave to reply. The question of the Court's jurisdiction was not argued between the Parties.

In the first question of the Special Agreement the Court is asked :

(i) Is Albania under international law responsible for the explosions and for the damage and loss of human life which resulted from them, and

(ii) is there any duty to pay compensation ?

This text gives rise to certain doubts. If point (i) is answered in the affirmative, it follows from the establishment of respons-

ibility that compensation is due, and it would be superfluous to add point (ii) unless the Parties had something else in mind than a mere declaration by the Court that compensation is due. It would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring in a special agreement should be devoid of purport or effect. In this connexion, the Court refers to the views expressed by the Permanent Court of International Justice with regard to similar questions of interpretation. In Advisory Opinion No. 13 of July 23rd, 1926, that Court said (Series B., No. 13, p. 19): "But, so far as concerns the specific question of competence now pending, it may suffice to observe that the Court, in determining the nature and scope of a measure, must look to its practical effect rather than to the predominant motive that may be conjectured to have inspired it." In its Order of August 19th, 1929, in the Free Zones case, the Court said (Series A., No. 22, p. 13): "in case of doubt, the clauses of a special agreement by which a dispute is referred to the Court must, if it does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects"

The Court thinks it necessary to refer to the different stages of the procedure. In its Resolution of April 9th, 1947, the Security Council recommended that the two Governments should immediately refer "the dispute" to the Court. This Resolution had without doubt for its aim the final adjustment of the whole dispute. In pursuance of the Resolution, the Government of the United Kingdom filed an Application in which the Court was asked, *inter alia*, to "determine the reparation or compensation", and in its Memorial that Government stated the various sums claimed. The Albanian Government thereupon submitted a Preliminary Objection, which was rejected by the Court by its Judgment of March 25th, 1948. Immediately after this judgment was delivered, the Agents of the Parties notified the Court of the conclusion of a Special Agreement. Commenting upon this step taken by the Parties, the Agent of the Albanian Government said that in the circumstances of the present case a special agreement on which "the whole procedure" should be based was essential. He further said [*translation*]: "As I have stated on several occasions, it has always been the intention of the Albanian Government to respect the decision taken by the Security Council on April 9th, 1947, in virtue of which the present Special Agreement is submitted to the International Court of Justice."

Neither the Albanian nor the United Kingdom Agent suggested in any way that the Special Agreement had limited the competence of the Court in this matter to a decision merely upon the principle of compensation or that the United Kingdom Government had abandoned an important part of its original claim. The main

object both Parties had in mind when they concluded the Special Agreement was to establish a complete equality between them by replacing the original procedure based on a unilateral Application by a procedure based on a Special Agreement. There is no suggestion that this change as to procedure was intended to involve any change with regard to the merits of the British claim as originally presented in the Application and Memorial. Accordingly, the Court, after consulting the Parties, in its Order of March 26th, 1948, maintained the United Kingdom's Memorial, filed previously, "with statements and submissions". These submissions included the claim for a fixed sum of compensation.

The subsequent attitude of the Parties shows that it was not their intention, by entering into the Special Agreement, to preclude the Court from fixing the amount of the compensation. In its Reply (paragraph 71) the United Kingdom Government maintained the submissions contained in paragraph 96 of its Memorial, including the claim for a fixed amount of reparation. This claim was expressly repeated in the final United Kingdom submissions. In paragraph 52 of its Counter-Memorial, the Albanian Government stated that it had no knowledge of the loss of human life and damage to ships, but it did not contest the Court's competence to decide this question. In the Rejoinder, paragraph 96, that Government declared that, owing to its claim for the dismissal of the case, it was unnecessary for it to examine the United Kingdom's claim for reparation. [*Translation.*] "It reserves the right if need be, to discuss this point which should obviously form the subject of an expert opinion." Having regard to what is said above as to the previous attitude of that Government, this statement must be considered as an implied acceptance of the Court's jurisdiction to decide this question.

It may be asked why the Parties, when drafting the Special Agreement, did not expressly ask the Court to assess the amount of the damage, but used the words: "and is there any duty to pay compensation?" It seems probable that the explanation is to be found in the similarity between this clause and the corresponding clause in the second part of the Special Agreement: "and is there any duty to give satisfaction?"

The Albanian Government has not disputed the competence of the Court to decide what kind of *satisfaction* is due under this part of the Agreement. The case was argued on behalf of both Parties on the basis that this question should be decided by the Court. In the written pleadings, the Albanian Government contended that it was entitled to apologies. During the oral proceedings,

Counsel for Albania discussed the question whether a pecuniary satisfaction was due. As no damage was caused, he did not claim any sum of money. He concluded [*translation*]: "What we desire is the declaration of the Court from a legal point of view..."

If, however, the Court is competent to decide what kind of *satisfaction* is due to Albania under the second part of the Special Agreement, it is difficult to see why it should lack competence to decide the amount of *compensation* which is due to the United Kingdom under the first part. The clauses used in the Special Agreement are parallel. It cannot be supposed that the Parties, while drafting these clauses in the same form, intended to give them opposite meanings—the one as giving the Court jurisdiction, the other as denying such jurisdiction.

As has been said above, the Security Council, in its Resolution of April 9th, 1947, undoubtedly intended that the whole dispute should be decided by the Court. If, however, the Court should limit itself to saying that there is a duty to pay compensation without deciding what amount of compensation is due, the dispute would not be finally decided. An important part of it would remain unsettled. As both Parties have repeatedly declared that they accept the Resolution of the Security Council, such a result would not conform with their declarations. It would not give full effect to the Resolution, but would leave open the possibility of a further dispute.

For the foregoing reasons, the Court has arrived at the conclusion that it has jurisdiction to assess the amount of the compensation. This cannot, however, be done in the present Judgment. The Albanian Government has not yet stated which items, if any, of the various sums claimed it contests, and the United Kingdom Government has not submitted its evidence with regard to them.

The Court therefore considers that further proceedings on this subject are necessary; the order and time-limits of these proceedings will be fixed by the Order of this date.

* * *

In the second part of the Special Agreement, the following question is submitted to the Court:

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

The Court will first consider whether the sovereignty of Albania was violated by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946.

On May 15th, 1946, the British cruisers *Orion* and *Superb*, while passing southward through the North Corfu Channel, were fired at by an Albanian battery in the vicinity of Saranda. It appears from the report of the commanding naval officer dated May 29th, 1946, that the firing started when the ships had already passed the battery and were moving away from it ; that from 12 to 20 rounds were fired ; that the firing lasted 12 minutes and ceased only when the ships were out of range ; but that the ships were not hit although there were a number of "shorts" and of "overs". An Albanian note of May 21st states that the Coastal Commander ordered a few shots to be fired in the direction of the ships "in accordance with a General Order founded on international law".

The United Kingdom Government at once protested to the Albanian Government, stating that innocent passage through straits is a right recognized by international law. There ensued a diplomatic correspondence in which the Albanian Government asserted that foreign warships and merchant vessels had no right to pass through Albanian territorial waters without prior notification to, and the permission of, the Albanian authorities. This view was put into effect by a communication of the Albanian Chief of Staff, dated May 17th, 1946, which purported to subject the passage of foreign warships and merchant vessels in Albanian territorial waters to previous notification to and authorization by the Albanian Government. The diplomatic correspondence continued, and culminated in a United Kingdom note of August 2nd, 1946, in which the United Kingdom Government maintained its view with regard to the right of innocent passage through straits forming routes for international maritime traffic between two parts of the high seas. The note ended with the warning that if Albanian coastal batteries in the future opened fire on any British warship passing through the Corfu Channel, the fire would be returned.

The contents of this note were, on August 1st, communicated by the British Admiralty to the Commander-in-Chief, Mediterranean, with the instruction that he should refrain from using the Channel until the note had been presented to the Albanian Government. On August 10th, he received from the Admiralty the following telegram : "The Albanians have now received the note. North Corfu Strait may now be used by ships of your fleet, but only when essential and with armament in fore and aft position. If coastal guns fire at ships passing through the Strait, ships should fire back." On September 21st, the following telegram

was sent by the Admiralty to the Commander-in-Chief, Mediterranean: "Establishment of diplomatic relations with Albania is again under consideration by His Majesty's Government who wish to know whether the Albanian Government have learnt to behave themselves. Information is requested whether any ships under your command have passed through the North Corfu Strait since August and, if not, whether you intend them to do so shortly." The Commander-in-Chief answered the next day that his ships had not done so yet, but that it was his intention that *Mauritius* and *Leander* and two destroyers should do so when they departed from Corfu on October 22nd.

It was in such circumstances that these two cruisers together with the destroyers *Saumarez* and *Volage* were sent through the North Corfu Strait on that date.

The Court will now consider the Albanian contention that the United Kingdom Government violated Albanian sovereignty by sending the warships through this Strait without the previous authorization of the Albanian Government.

It is, in the opinion of the Court, generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal State, provided that the passage is *innocent*. Unless otherwise prescribed in an international convention, there is no right for a coastal State to prohibit such passage through straits in time of peace.

The Albanian Government does not dispute that the North Corfu Channel is a strait in the geographical sense; but it denies that this Channel belongs to the class of international highways through which a right of passage exists, on the grounds that it is only of secondary importance and not even a necessary route between two parts of the high seas, and that it is used almost exclusively for local traffic to and from the ports of Corfu and Saranda.

It may be asked whether the test is to be found in the volume of traffic passing through the Strait or in its greater or lesser importance for international navigation. But in the opinion of the Court the decisive criterion is rather its geographical situation as connecting two parts of the high seas and the fact of its being used for international navigation. Nor can it be decisive that this Strait is not a necessary route between two parts of the high seas, but only an alternative passage between the Ægean and the Adriatic Seas. It has nevertheless been a useful route for international maritime traffic. In this respect, the Agent of the United Kingdom Government gave the Court the following information relating to the

period from April 1st, 1936, to December 31st, 1937: "The following is the total number of ships putting in at the Port of Corfu after passing through or just before passing through the Channel. During the period of one year nine months, the total number of ships was 2,884. The flags of the ships are Greek, Italian, Roumanian, Yugoslav, French, Albanian and British. Clearly, very small vessels are included, as the entries for Albanian vessels are high, and of course one vessel may make several journeys, but 2,884 ships for a period of one year nine months is quite a large figure. These figures relate to vessels visited by the Customs at Corfu and so do not include the large number of vessels which went through the Strait without calling at Corfu at all." There were also regular sailings through the Strait by Greek vessels three times weekly, by a British ship fortnightly, and by two Yugoslav vessels weekly and by two others fortnightly. The Court is further informed that the British Navy has regularly used this Channel for eighty years or more, and that it has also been used by the navies of other States.

One fact of particular importance is that the North Corfu Channel constitutes a frontier between Albania and Greece, that a part of it is wholly within the territorial waters of these States, and that the Strait is of special importance to Greece by reason of the traffic to and from the port of Corfu.

Having regard to these various considerations, the Court has arrived at the conclusion that the North Corfu Channel should be considered as belonging to the class of international highways through which passage cannot be prohibited by a coastal State in time of peace.

On the other hand, it is a fact that the two coastal States did not maintain normal relations, that Greece had made territorial claims precisely with regard to a part of Albanian territory bordering on the Channel, that Greece had declared that she considered herself technically in a state of war with Albania, and that Albania, invoking the danger of Greek incursions, had considered it necessary to take certain measures of vigilance in this region. The Court is of opinion that Albania, in view of these exceptional circumstances, would have been justified in issuing regulations in respect of the passage of warships through the Strait, but not in prohibiting such passage or in subjecting it to the requirement of special authorization.

For these reasons the Court is unable to accept the Albanian contention that the Government of the United Kingdom has violated Albanian sovereignty by sending the warships through

the Strait without having obtained the previous authorization of the Albanian Government.

In these circumstances, it is unnecessary to consider the more general question, much debated by the Parties, whether States under international law have a right to send warships in time of peace through territorial waters not included in a strait.

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

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

It remains, therefore, to consider whether the *manner* in which the passage was carried out was consistent with the principle of innocent passage and to examine the various contentions of the Albanian Government in so far as they appear to be relevant.

When the Albanian coastguards at St. George's Monastery reported that the British warships were sailing in combat formation and were manoeuvring, they must have been under a misapprehension. It is shown by the evidence that the ships were not proceeding in combat formation, but in line, one after the other,

and that they were not manoeuvring until after the first explosion. Their movements thereafter were due to the explosions and were made necessary in order to save human life and the mined ships. It is shown by the evidence of witnesses that the contention that soldiers were on board must be due to a misunderstanding probably arising from the fact that the two cruisers carried their usual detachment of marines.

It is known from the above-mentioned order issued by the British Admiralty on August 10th, 1946, that ships, when using the North Corfu Strait, must pass with armament in fore and aft position. That this order was carried out during the passage on October 22nd is stated by the Commander-in-Chief, Mediterranean, in a telegram of October 26th to the Admiralty. The guns were, he reported, "trained fore and aft, which is their normal position at sea in peace time, and were not loaded". It is confirmed by the commanders of *Saumarez* and *Volage* that the guns were in this position before the explosions. The navigating officer on board *Mauritius* explained that all guns on that cruiser were in their normal stowage position. The main guns were in the line of the ship, and the anti-aircraft guns were pointing outwards and up into the air, which is the normal position of these guns on a cruiser both in harbour and at sea. In the light of this evidence, the Court cannot accept the Albanian contention that the position of the guns was inconsistent with the rules of innocent passage.

In the above-mentioned telegram of October 26th, the Commander-in-Chief reported that the passage "was made with ships at action stations in order that they might be able to retaliate quickly if fired upon again". In view of the firing from the Albanian battery on May 15th, this measure of precaution cannot, in itself, be regarded as unreasonable. But four warships—two cruisers and two destroyers—passed in this manner, with crews at action stations, ready to retaliate quickly if fired upon. They passed one after another through this narrow channel, close to the Albanian coast, at a time of political tension in this region. The intention must have been, not only to test Albania's attitude, but at the same time to demonstrate such force that she would abstain from firing again on passing ships. Having regard, however, to all the circumstances of the case, as described above, the Court is unable to characterize these measures taken by the United Kingdom authorities as a violation of Albania's sovereignty.

The Admiralty Chart, Annex 21 to the Memorial, shows that coastal defences in the Saranda region had been observed and reported. In a report of the commander of *Volage*, dated Octo-

ber 23rd, 1946—a report relating to the passage on the 22nd—it is stated: “The most was made of the opportunities to study Albanian defences at close range. These included, with reference to XCU...”—and he then gives a description of some coastal defences.

In accordance with Article 49 of the Statute of the Court and Article 54 of its Rules, the Court requested the United Kingdom Agent to produce the documents referred to as XCU for the use of the Court. Those documents were not produced, the Agent pleading naval secrecy; and the United Kingdom witnesses declined to answer questions relating to them. It is not therefore possible to know the real content of these naval orders. The Court cannot, however, draw from this refusal to produce the orders any conclusions differing from those to which the actual events gave rise. The United Kingdom Agent stated that the instructions in these orders related solely to the contingency of shots being fired from the coast—which did not happen. If it is true, as the commander of *Volage* said in evidence, that the orders contained information concerning certain positions from which the British warships might have been fired at, it cannot be deduced therefrom that the vessels had received orders to reconnoitre Albanian coastal defences. Lastly, as the Court has to judge of the innocent nature of the passage, it cannot remain indifferent to the fact that, though two warships struck mines, there was no reaction, either on their part or on that of the cruisers that accompanied them.

With regard to the observations of coastal defences made after the explosions, these were justified by the fact that two ships had just been blown up and that, in this critical situation, their commanders might fear that they would be fired on from the coast, as on May 15th.

Having thus examined the various contentions of the Albanian Government in so far as they appear to be relevant, the Court has arrived at the conclusion that the United Kingdom did not violate the sovereignty of Albania by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946.

* * *

In addition to the passage of the United Kingdom warships on October 22nd, 1946, the second question in the Special Agreement relates to the acts of the Royal Navy in Albanian waters on November 12th and 13th, 1946. This is the minesweeping operation called “Operation Retail” by the Parties during the proceedings. This name will be used in the present Judgment.

After the explosions of October 22nd, the United Kingdom Government sent a note to the Albanian Government, in which it announced its intention to sweep the Corfu Channel shortly. The Albanian reply, which was received in London on October 31st, stated that the Albanian Government would not give its consent to this unless the operation in question took place outside Albanian territorial waters. Meanwhile, at the United Kingdom Government's request, the International Central Mine Clearance Board decided, in a resolution of November 1st, 1946, that there should be a further sweep of the Channel, subject to Albania's consent. The United Kingdom Government having informed the Albanian Government, in a communication of November 10th, that the proposed sweep would take place on November 12th, the Albanian Government replied on the 11th, protesting against this "unilateral decision of His Majesty's Government". It said it did not consider it inconvenient that the British fleet should undertake the sweeping of the channel of navigation, but added that, before sweeping was carried out, it considered it indispensable to decide what area of the sea should be deemed to constitute this channel, and proposed the establishment of a Mixed Commission for the purpose. It ended by saying that any sweeping undertaken without the consent of the Albanian Government outside the channel thus constituted, i.e., inside Albanian territorial waters where foreign warships have no reason to sail, could only be considered as a deliberate violation of Albanian territory and sovereignty.

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

The United Kingdom Government does not dispute that "Operation Retail" was carried out against the clearly expressed wish of the Albanian Government. It recognizes that the operation had not the consent of the international mine clearance organizations, that it could not be justified as the exercise of a right of innocent passage, and lastly that, in principle, international law does not allow a State to assemble a large number of warships in the

territorial waters of another State and to carry out minesweeping in those waters. The United Kingdom Government states that the operation was one of extreme urgency, and that it considered itself entitled to carry it out without anybody's consent.

The United Kingdom Government put forward two reasons in justification. First, the Agreement of November 22nd, 1945, signed by the Governments of the United Kingdom, France, the Soviet Union and the United States of America, authorizing regional mine clearance organizations, such as the Mediterranean Zone Board, to divide the sectors in their respective zones amongst the States concerned for sweeping. Relying on the circumstance that the Corfu Channel was in the sector allotted to Greece by the Mediterranean Zone Board on November 5th, i.e., before the signing of the above-mentioned Agreement, the United Kingdom Government put forward a permission given by the Hellenic Government to resweep the navigable channel.

The Court does not consider this argument convincing.

It must be noted that, as the United Kingdom Government admits, the need for resweeping the Channel was not under consideration in November 1945; for previous sweeps in 1944 and 1945 were considered as having effected complete safety. As a consequence, the allocation of the sector in question to Greece, and, therefore, the permission of the Hellenic Government which is relied on, were both of them merely nominal. It is also to be remarked that Albania was not consulted regarding the allocation to Greece of the sector in question, despite the fact that the Channel passed through Albanian territorial waters.

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

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

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

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

This declaration is in accordance with the request made by Albania through her Counsel, and is in itself appropriate satisfaction.

The method of carrying out "Operation Retail" has also been criticized by the Albanian Government, the main ground of complaint being that the United Kingdom, on that occasion, made use of an unnecessarily large display of force, out of proportion to the requirements of the sweep. The Court thinks that this criticism is not justified. It does not consider that the action of the British Navy was a demonstration of force for the purpose of exercising political pressure on Albania. The responsible naval commander, who kept his ships at a distance from the coast, cannot be reproached for having employed an important covering force in a region where twice within a few months his ships had been the object of serious outrages.

FOR THESE REASONS,

THE COURT,

on the first question put by the Special Agreement of March 25th, 1948,

by eleven votes to five,

Gives judgment that the People's Republic of Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life that resulted therefrom ; and

by ten votes to six,

Reserves for further consideration the assessment of the amount of compensation and regulates the procedure on this subject by an Order dated this day ;

on the second question put by the Special Agreement of March 25th, 1948,

by fourteen votes to two,

Gives judgment that the United Kingdom did not violate the sovereignty of the People's Republic of Albania by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946 ; and

unanimously,

Gives judgment that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People's Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this ninth day of April, one thousand nine hundred and forty-nine, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the United Kingdom of Great Britain and Northern Ireland and of the People's Republic of Albania respectively.

(Signed) J. G. GUERRERO,
Acting President.

(Signed) E. HAMBRO,
Registrar.

Judge BASDEVANT, President of the Court, whilst accepting the whole of the operative part of the Judgment, feels bound to state that he cannot accept the reasons given by the Court in support of its jurisdiction to assess the amount of compensation, other reasons being in his opinion more decisive.

Judge ZORIČIĆ declares that he is unable to agree either with the operative clause or with the reasons for the Judgment in the part relating to Albania's responsibility ; the arguments submitted, and the facts established are not such as to convince him that the Albanian Government was, or ought to have been, aware, before November 13th, 1946, of the existence of the minefield discovered on that date. On the one hand, the attitude adopted by a government when confronted by certain facts varies according to the circumstances, to its mentality, to the means at its disposal and to its experience in the conduct of public affairs. But it has not been contested that, in 1946, Albania had a new Government possessing no experience in international practice. It is therefore difficult to draw any inferences whatever from its attitude. Again, the conclusion of the Experts that the operation of laying the mines must have been seen is subject to an express reservation : it would be necessary to assume the realization of several conditions, in particular the maintenance of normal look-out posts at Cape

Kiephali, Denta Point and San Giorgio Monastery, and the existence of normal weather conditions at the date. But the Court knows neither the date on which the mines were laid nor the weather conditions prevailing on that date. Furthermore, no proof has been furnished of the presence of a look-out post on Denta Point, though that, according to the Experts, would have been the only post which would necessarily have observed the minelaying. On the other hand, the remaining posts would merely have been able to observe the passage of the ships, and there is no evidence to show that they ought to have concluded that the ships were going to lay mines. According to the Experts, these posts could neither have seen nor heard the minelaying, because the San Giorgio Monastery was 2,000 m. from the nearest mine and Cape Kiephali was several kilometres away from it. As a result, the Court is confronted with suspicions, conjectures and presumptions, the foundations for which, in Judge Zoričić's view, are too uncertain to justify him in imputing to a State the responsibility for a grave delinquency in international law.

Judge ALVAREZ, whilst concurring in the Judgment of the Court, has availed himself of the right conferred on him by Article 57 of the Statute and appended to the Judgment a statement of his individual opinion.

Judges WINIARSKI, BADAWI PASHA, KRYLOV and AZEVEDO, and Judge *ad hoc* EČER, declaring that they are unable to concur in the Judgment of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the Judgment statements of their dissenting opinions.

(Initialled) J. G. G.

(Initialled) E. H.

ANNEX 1.

LIST OF DOCUMENTS SUBMITTED TO THE COURT.

I.—ANNEXES DEPOSITED BY THE GOVERNMENT
OF THE UNITED KINGDOM.

A.—During the written proceedings :

1. Admiralty Chart No. 206 showing the Corfu Strait.
2. Section of German Mine Information Chart.
(This is a chart which was captured by the Allies, showing the North Corfu Channel and the position of mines laid by the Axis there ; the original chart has been filed with the Registry.)
3. International Agreement between the Governments of the United Kingdom, France, U.S.S.R. and the United States, setting up the Mine Clearance Boards and dated November 22nd, 1945.
4. Affidavit by despatch clerk at the Admiralty proving despatch of Medri Charts to Albania (August 20th, 1947).
5. Section of Medri Index Chart showing North Corfu swept channel and the international highway established therein together with Medri pamphlets for use with the Index Chart.
(Single copy of the entire Chart and of the complete pamphlets numbered 5, 9 and 12 have been filed with Registry.)
6. Diplomatic correspondence between the Government of the United Kingdom and Albania regarding the right of navigation in the Strait of Corfu.
7. Admiralty tracings showing the North Corfu swept channel and the position and tracks of H.M.S. *Orion*, *Superb*, *Leander*, *Saumarez* and *Mauritius*, passing through the North Corfu Channel on May 15th, 1946, and on October 22nd, 1946.
8. Photographs of H.M.S. *Saumarez* (below water line) and *Volage* (bows blown off) taken shortly after the explosion on October 22nd, 1946.
9. Admiralty tracing showing position of H.M. ships at the time of the explosion.
10. Report on damage to H.M.S. *Saumarez* (December 8th, 1946).
11. Report on damage to H.M.S. *Volage* (November 30th, 1946).
12. List of sailors killed, with statement of pensions, etc., payable to dependants.
13. List of sailors injured, with statement of expenses, pensions, etc.
14. Statement of cost of repairs to the *Volage* and cost of replacement of the *Saumarez*.
15. Minutes of Mine Clearance Boards.
16. Reports of Capitaine Mestre (November 16th and 23rd, 1946).
(There were two reports, both in French. The reason why there were two reports was that Capitaine Mestre wished to make certain corrections in his second report of certain statements which he had made in his first report.)
17. Reports on Operation Retail by Rear-Admiral Kinahan and Commander Whitford. (The minesweeping operation of November 13th, 1946.)

18. Chart showing position in which mines were found on November 13th, 1946.
19. Photographs of the mines.
20. Report on mines examined at Admiralty Mining Establishment, Leigh Park House, Hants.
21. Chart showing the defences of Saranda.
22. Affidavit of Skipper Bargellini regarding the incident of U.N.R.R.A. barges on October 29th, 1946 (December 31st, 1946).
23. Documents and records of the Security Council, etc., relative to the dispute.
24. Third Interim Report of the Central Mine Clearance Board in European Waters after the war (October 1st, 1946—June 30th, 1947).
25. Mine Information Chart No. 27II.
26. Two signals relating to the sweeping in October 1944 of the Corfu Channel.
27. Extracts from *Hansard* (Parliamentary Debates), containing Statements by the Secretary of State for Foreign Affairs regarding Albania.
28. Telegram from Flag Officer Commanding 15th Cruiser Squadron, describing the incident of May 15th, 1946.
29. Photostat copies of extracts from Political Report of July 29th, 1945, portions of which appear in Annex II of the Albanian Counter-Memorial.
30. Text of Admiral Willis's statement of October 26th, 1946.
31. Photograph of *Saumarez* omitted from Annex 8 of United Kingdom Memorial.
32. Extract from Third Interim Report of Central Mine Clearance Board in European waters after the war.
33. Affidavit by Commanding Officer of *Skipjack* identifying mines brought to Malta with those found at Corfu (September 5th, 1947).
34. Chartlet showing areas swept on November 12th, 1946.
35. Minutes of the Central Mine Clearance Board in European waters after the war (May 25th, 1945—May 19th, 1948).
36. Minutes of the Mediterranean Zone Mine Clearance Board (November 5th, 1945—May 11th, 1948).
37. Extracts from the Minutes of the First Meeting of the Mediterranean Zone Mine Clearance Board (November 5th, 1945), and of the Fourth Meeting (Second Sitting—February 27th, 1946).

B.— *After the closure of the written proceedings.*

(a) *Before the hearing :*

38. Affidavit sworn in London on October 4th, 1948, by Karel Kovacic, former Lieutenant-Commander in the Yugoslav Navy.
39. Chart annexed to above affidavit, showing the route probably followed by the vessels in going from Sibenik to Boka Kotorska and to Corfu Channel.

39. *bis*. Tracing made from sketch of Panikovac from the Yugoslav Hydrographic Institute, November 20th, 1948 (filed by Albanian Government's Agent), showing the position of M-minesweepers in Panikovac Cove.
40. Copy of a note from the Ministry for Foreign Affairs to the British Embassy, Athens, August 13th, 1948.
41. Affidavit by Commander Sworder (October 22nd, 1948) regarding minesweeping in the Corfu Channel in October 1944, January and February, 1945.
42. Extract from Admiralty Instructions on minesweeping in war time.
43. Chart showing sectors swept in October 1944.
44. Affidavit by D. G. Jacobs, First Lieutenant of BYMS 2009 of the 153rd Minesweeping Flotilla, in October 1944 (October 22nd, 1948).
45. Affidavit by Commander Sworder showing the manner in which Medri Charts were drawn up (October 22nd, 1948).
46. Log-books of the *Volage*, *Mauritius* and *Leander*.
47. Affidavit by Lieutenant Godsall, Officer of the Watch on board the *Saumarez* on October 22nd, 1946, from 14.00 hours to 14.53 hours (October 22nd, 1948).
48. Report of a Board of Enquiry set up on the arrival of the *Saumarez* at Corfu (October 24th, 1946).
49. Chart prepared by the Members of the above-mentioned Board of Enquiry, showing the route followed by the *Saumarez*.
50. Affidavit by Commander Paul, in command of the *Volage* on October 22nd, 1946 (October 22nd, 1948).
51. Track-chart of the *Volage* prepared by Commander Paul.
52. Certified true copy of the letter of the Commander-in-Chief, Mediterranean, to the Admiralty of August 15th, 1946, transmitting the programme for the autumn cruise of his Fleet.
53. Photostat copy of Report of Proceedings of *Volage*, by Commander Paul (October 23rd, 1946).
54. Photostat copy of Report of Proceedings of *Saumarez*, by Captain Selby (October 23rd, 1946).
55. Photostat copy of Report of Proceedings of *Leander*, by Captain Otway Ruthven (October 23rd, 1946).
56. Photostat copy of Report of Proceedings of *Ocean*, by Captain John (October 24th, 1946).
57. Certified true copy of Report of Rear-Admiral Kinahan, Commanding First Cruiser Squadron in H.M.S. *Mauritius*, on the explosions caused on board the *Saumarez* and *Volage* by mines (October 23rd, 1946).
58. Original copy of a German chart captured by the Allies at the German Admiralty, Berlin (Ionian Sea and Gulf of Taranto, south-western coast of Greece).
59. Affidavit by Commander Whitford, Senior Officer of the 5th Minesweeping Flotilla from March to December, 1946, explaining the difference between mines recently laid and those that have been long in the water (October 22nd, 1948).

60. Photographs M 1, 2 and 3 of a German mine that had been two years in the water, with a certificate by Colonel Golemis.
61. Photographs M 4, 5, 6, 7 and 8 of a German mine that had been five years in the water, with a certificate by Commander Littleboy.
62. Telegrams passing between the Commander-in-Chief, Mediterranean, and the Admiralty, prior to the incident of October 22nd, 1946, embodying the instructions of the Admiralty regarding the passage of H.M. ships through the Corfu Channel.
63. Telegrams passing between the Commander-in-Chief, Mediterranean, and the Admiralty, embodying the instructions of the Admiralty regarding Operation Retail.
64. Affidavit by Professor J. E. Harris, Professor of Zoology in the University of Bristol, concerning the state of the mines swept in the Corfu Channel on November 13th, 1946 (October 27th, 1948).
65. Affidavit by Mr. N. I. Hendey, of the Admiralty Central Metallurgical Laboratory, Emsworth, giving the reasons for the absence of fouling on mines in the Black Sea (October 25th, 1948).
66. Affidavit by Commander Moloney, certifying that no dumps of German mines had been left in Greece (October 29th, 1948).

(b) *At the hearing :*

67. Photograph of Panikovac Cove.
68. Copies of two telegrams from the British Admiralty dated November 9th, 1948, relating to the *Mljet* and *Meljine*.
69. Copy of two telegrams from the Air Ministry, United Kingdom, dated November 8th, 1948, and concerning weather conditions and the angle of the sun at Sibenik on October 16th, 17th and 18th, 1946.
70. *Jane's Fighting Ships 1946-1947*.
71. Photographs of mines found during the sweep on November 13th, 1946. (These photographs had been submitted to the Security Council in 1947 and were marked VI (b) and VI (c).)
72. Treaty of Friendship and Mutual Assistance between Yugoslavia and Albania (July 9th, 1946.—The date did not appear on the copy filed).
73. Economic Agreement between Yugoslavia and Albania (November 27th, 1946.—The date did not appear on the copy filed).
74. *Marinkalender 1947*.
75. *School and College Atlas* (London : G. W. Bacon & Co.).
76. *Leopold's Wereldatlas* (The Hague : H. P. Leopold).
77. *Serial Map Service Atlas* (London, 1947).
78. *The Citizen's Atlas of the World* (Edinburgh & London, 1944).
79. Rough copy of log of the *Mauritius*.
80. Document showing the differences between the entries in the log-book (fair copy) and the rough log of the *Mauritius*.
81. Three fragments of the mine which struck *Volage*.
82. Extract from Report dated May 29th, 1946, from Rear-Admiral Kinahan, addressed to the Commander-in-Chief of the Mediter-

ranean, reporting the proceedings of the squadron under his command for the period April 29th to May 25th, 1946 (paragraph 23, relating to the passage of the squadron through the Corfu Channel on May 15th, 1946).

83. *Warships of the World*, Victory Edition, U.S.A.
84. Two sketches made by Commander Kovacic at the hearing on November 24th, 1948, morning, showing one of the Yugoslav ships with the rails and minelaying mechanism.
85. Photograph of Panikovac Cove on which Commander Kovacic drew an arrow showing the entrance to the tunnel used as a mine store (hearing on November 24th, 1948, morning).
86. Two plans of the region of Sibenik on which Commander Kovacic had marked : (a) the course followed in the launch and the place from which he could recognize the mines ; (b) the jetty from which the photograph of Panikovac Cove was probably taken (hearing on November 24th, 1948, morning).
87. Report of the 153rd Minesweeping Flotilla (October 8th, 1944) on the sweeping of the Korcula and Sedro Channels, with a tracing showing the minesweeping operations.
88. File relating to mines laid by the Germans (German documents).
89. German files relating to mine stocks.
90. Original of the Report of Proceedings of the *Leander*, made by Captain Otway Ruthven (October 23rd, 1946) (a photocopy had already been filed), with signature certified by Captain Selby.
91. Tracing showing course followed by the *Leander* on October 22nd, 1946, dated October 23rd, 1946, and attached to the Report of Captain Otway Ruthven (this tracing replaces the track-chart made on December 26th, 1946, and filed as Annex 7 to the United Kingdom Memorial).
92. Typewritten copy of the Report of the *Volage* made on October 23rd, 1946, by Commander Paul (a photocopy had already been filed), with certificate by Commander Paul.
93. Original of Report sent by Rear-Admiral Kinahan on May 29th, 1946, to Commander-in-Chief, Mediterranean, on proceedings of his Squadron from April 29th to May 25th, 1946, with signature certified by Commander Whitford.
94. Sketch made by Lieutenant-Commander Kovacic at the hearing on the morning of November 26th, 1948, showing the position of *Mljet* and *Meljine* as he saw them on the evening of October 17th or 18th, 1946, about 18.30 hours.
95. Plan of environs of Sibenik, on which Commander Kovacic marked the site of the house from which he saw the *Mljet* and the *Meljine* on October 17th or 18th, 1946, about 18.30 hours (hearing on morning of November 26th, 1948).
96. Sketch made by Lieutenant-Commander Kovacic at the hearing in the afternoon of November 25th, 1948, showing the position of *Mljet* and *Meljine* in relation to the mouth of the tunnel at Panikovac Cove, on October 17th or 18th, about 16.30 hours.

97. Two sketches made by Lieutenant-Commander Kovacic at the hearing in the afternoon of November 26th, 1948, showing the manoeuvre made by the *Mljet* and *Meljine* to facilitate the loading of the mines, and the position of the two vessels during the loading.
98. Sketch showing a minesweeper with its cable cutting the mooring of a mine, and a mine already swept (sketch made by Commander Sworder and shown to the Court at the hearing in the morning of November 22nd, 1948).
99. Diagram showing sweeps of moored mines, 100% safe (made by Commander Sworder and shown to the Court at the hearing on the morning of November 22nd, 1948).
100. Photograph showing *Mauritius* and *Saumarez* after the explosion (this photograph was submitted to the Security Council in 1947, and was numbered II (a), A. 4).
101. Two extracts from Yugoslav illustrated papers, showing two photographs of a minelayer with its derrick.
102. Map of Sibenik, from U.S. Army (scale 1/50,000).
103. Admiralty Chart No. 1581 : Approach to Sibenik harbour.
104. Air photograph (No. 4025) of Sibenik and Panikovac Cove.
105. Page of an illustrated paper, showing the view over the sea from a house situated near Keric's house.
106. Tracing of Panikovac Cove, made by Yugoslav Hydrographic Institute, November 20th, 1940 (original filed by Albania).
107. Telegram received from Rome by United Kingdom Delegation, concerning weather reports published at Sibenik on October 17th and 18th, 1946 (November 24th, 1948).
108. Reply by the United Kingdom experts to questions put to the Mixed Committee of Experts by Judge Ečer on November 30th, 1948 : (1) Was the light sufficient at 17.35 hours to enable Lieutenant-Commander Kovacic to see the vessels moored in Panikovac Cove ? (2) If the light was sufficient, would the view have been interrupted by the lie of the land ?
109. Letter from Commander Sworder to Rear-Admiral Moullec, dated December 8th, 1948, forwarding a revision of the common reply to question 5 of the Questionnaire by the agents submitted on November 26th, 1948, to the experts of the two Parties.
110. Affidavit by M. Zivan Pavlov (December 10th, 1948), certifying that between October 23rd and 26th, 1946, in the Gulf of Kotor, he saw a Yugoslav minelayer of the *Meljine* class, moving towards the fuel refilling points at Boka Kotorska (original in Serb-Croat, with English translation).
111. Membership card of the Yugoslav Seamen's and Port-workers' Union, bearing name of Zivan Pavlov (in Serbo-Croat language, with English translation of pertinent passages).
112. Instructions for rendering Safe Underwater Weapons—German Buoyant Mines—1943.

- 113. Air photograph of the environs of Saranda, showing certain paths and roads (1943).
- 114. Map of Saranda District (1/50,000 Albania sheet 26-IV Saranda).
- 115. Amendments submitted by the United Kingdom naval experts to the replies they had given to questions by Judge Ečer.
- 116. Six copies of photographs of H.M.S. *Mauritius* (photographs Nos. A 1, A 2, A 3 and A 4 are additional copies of photographs appearing in Supplement 6 to Minutes of the Security Council, and are bad reproductions).

II.—ANNEXES DEPOSITED BY THE ALBANIAN GOVERNMENT.

A.—During the written proceedings :

- 1. Letter from the Greek Representative to the Secretary-General of the United Nations (March 10th, 1947).
- 2. Declaration by Captain Avdi Mati (October 4th, 1947).
- 3. Letter from the Head of the United Kingdom Military Mission in Albania to the Albanian Army General Staff (January 25th, 1946).
- 4. Minutes of the Meeting of the Mediterranean Zone Mine Clearance Board, held on July 2nd, 1946.
- 5. Report on the incident of May 15th, 1946.
- 6. Letter from the Albanian Representative to the Secretary-General of the United Nations, April 12th, 1947.
- 7. Report on the incident of October 22nd, 1946.
- 8. Reuter's communiqué of October 26th, 1946.
- 9. Article 3 of the Albanian-Yugoslav Maritime Arrangement of September 10th, 1946.
- 10. Report on the occurrences on November 12th and 13th, 1946.
- 11. Report by General Hodgson (July 29th, 1945) on Greek provocation.
- 12. Chart showing passage of British war squadron on October 22nd, 1946.
- 13. Map of Albanian coast ; Saranda and environs.
- 14. Report of the Commander of the Yugoslav Navy on German minefields.
- 15. List of cases of vessels that have struck mines, published by Lloyds.
- 16. "Aggressive acts of the Greek monarcho-fascist Government against Albania."
- 17. "War provocation by the Greek monarcho-fascist Government against Albania."
- 18. Full text of the Albanian-Yugoslav Maritime Arrangement of September 10th, 1946.
- 19. Message from General Maitland Wilson, Allied Commander-in-Chief, Mediterranean, to Colonel-General Enver Hoxha (November 12th, 1944).
- 20. Message from Mr. Cordell Hull (November 28th, 1943).
- 21. Message from Mr. Edward Stettinius (May 22nd, 1945).

22. Declaration by Mr. Winston Churchill (November 4th, 1943).
23. Declaration by Mr. Cordell Hull (undated).
24. Letter from General Hodgson congratulating General Enver Hoxha on the general elections (December 4th, 1945).
25. Photocopies of parts of Medri Charts, M.6502 : No. 3, December 17th, 1945 ; No. 8, May 6th, 1946 ; No. 12, August 26th, 1946, showing the route through the North Corfu Channel on those dates. The map of December 17th, 1945, gives to the route the number 18/54.
26. Telegram from harbour-master of Saranda, October 22nd, 1946.
27. Letter from the Albanian Army General Staff to the Foreign Ministry, Tirana, August 30th, 1948.
28. Summary of an article in the "Red Star", appearing in the *Bashkimi* newspaper, May 18th, 1947.
29. Letters from two Greek sailors to the United Nations Commission of Enquiry in Greece (February 15th, 1947).
30. Report on the possibility of secret minelaying.
31. Tracing of track-chart of *Mauritius*, taken from British Chart Annex 7, and position of mines according to British Chart, Annex 9.

B.— *After the closure of the written proceedings :*

(a) *Before the hearing :*

32. Note from the Yugoslav Legation at The Hague to the Agent for the Albanian Government, dated November 8th, 1948, and forwarding a communiqué of the Yugoslav Government concerning Lieutenant-Commander Kovacic's evidence.
33. Tracing of swept channel and normal route for shipping through the middle of the North Corfu Channel.
34. Tracing of swept channel and of the North Corfu Channel Zone not deeper than 25 fathoms.
35. Tracing of respective positions of German channel and swept channel.
36. Tracing of position of the minefield and track of *Mauritius*, *Leander*, *Superb* and *Orion*.
37. Minutes of the Security Council, First Year, Second Series, Supplement No. 4.

(b) *At the hearing :*

38. Report by M. Jacques Chapelon, Professor of Analysis at the École polytechnique, Paris, concerning the passage of *Mauritius* through a minefield.
39. Extract from Order No. 892 of the Yugoslav Ministry of National Defence, dated November 17th, 1945, concerning minesweepers M 1, M 2 and M 3 (in Serbo-Croat, with French translation certified correct by Yugoslav Legation at The Hague).
40. Sworn statement, dated November 17th, 1948, relating to repair of ships of the M class and type in Sibenik dockyard, between September 27th and November 9th, 1946 (in Serbo-Croat, with

- French translation certified correct by Yugoslav Legation at The Hague).
41. Photocopy of a page of the Repairs Register of Sibenik dockyard (copy, with French translation of the entries concerning the M 1, M 2 and M 3 vessels, certified correct by Yugoslav Legation at The Hague).
 42. Calculation made by Captain Ormanov of height of sun at Sibenik on October 18th, 1946, at 15.15 hours.
 43. Sworn statement concerning the officer Drago Blazevic, dated November 17th, 1948 (in Serbo-Croat, with French translation certified correct by Yugoslav Legation at The Hague).
 44. Certificate concerning movements of ships of the M-class and type in October 1946, dated November 17th, 1948 (in Serbo-Croat, with French translation certified correct by Yugoslav Legation at The Hague).
 45. British Admiralty Chart No. 1581 : Approach to Sibenik harbour.
 46. Sketch of Panikovac by Yugoslav Hydrographic Institute, dated November 20th, 1948.
 47. Cadastral plan of town of Sibenik.
 48. Photographs Nos. I, II and III of Panikovac, taken from Cipad quay, or near by.
 49. Photographs Nos. IV and V, looking towards Panikovac from the terrace on which Lieutenant-Commander Kovacic was.
 50. Italian map of Sibenik (No. 558).
 51. Report of the Yugoslav "Commission" concerning the non-availability of the M 1, M 2 and M 3 (three original documents dated November 11th, 1946, with French translations certified correct by Yugoslav Legation at The Hague).
 52. Work dockets of Sibenik dockyard for Orders Nos. 920, 921 and 922, relating to ships M 1, M 2 and M 3 (original documents in Serbo-Croat, with French translations certified correct by Yugoslav Legation at The Hague).
 53. Work docket concerning ship M 1, signed by Lieutenant-Commander Kovacic (original in Serbo-Croat, with French translation certified correct by the Yugoslav Legation at The Hague).
 54. "Work Orders" Nos. 920, 921 and 922, addressed to the Directorate of Sibenik Dockyard, dated September 26th, 1946, and concerning repairs to be done to the boilers of the ships M 1, M 2 and M 3 (three original documents in Serbo-Croat, with French translations certified correct by Yugoslav Legation at The Hague).
 55. Affidavit by the Presidency of the Government of the People's Federal Republic of Yugoslavia, on the subject of legal time in Yugoslavia (in Serbo-Croat, dated November 27th, 1948, with French translation certified correct by Yugoslav Legation at The Hague).
 56. Reply by the experts of the Albanian Delegation (December 4th 1948) to questions put by Judge Ecer to the Mixed Committee of Experts on November 30th, 1948 : (1) Was there sufficient light

at 17.35 hours to enable Lieutenant-Commander Kovacic to see the vessels moored in Panikovac Cove? (2) If the light was sufficient, would the lie of the land have obstructed the view?

57. Nautical instructions for the East Mediterranean (Imprimerie nationale, 1945).
58. Sketch showing part of a vessel of the M-class that might have been seen from the coast at night from an altitude of 15 feet, the vessel being: (1) 550 metres from the shore; (2) $1\frac{1}{2}$ miles from the shore (sketch made by Captain Ormanov and shown to the Court at the hearing on the afternoon of December 8th, 1948).
59. Register of the naval dockyard at Sibenik.
60. Map of "Europe and North Africa", sheet 4, published by the French National Geographical Institute in 1941—showing shipping routes.
61. Four photographs of the coast near Saranda.
62. Sketch showing roughly the hills around Panikovac Cove towards Sibenik (sketch made by Rear-Admiral Moullec).
63. Observations by Rear-Admiral Moullec on the Reports of Commander Sworder as to the position of the ships in Panikovac Bay.
64. Original of Report of Commander of First Infantry Regiment, dated May 15th, 1946.
65. Original of letter of May 16th, 1946, addressed to Tirana.
66. Original of Captain Ali Shtino's Report, dated October 23rd, 1946 (concerning events on October 22nd, 1946).

III.—ANNEXES DEPOSITED JOINTLY BY THE PARTIES.

A.—*During the written proceedings:*

1. Special Agreement between Albania and the United Kingdom, dated March 25th, 1948.

B.—*During the hearing:*

2. Questionnaire prepared by M. Pierre Cot and Sir Eric Beckett, and submitted to the experts of the two Parties on November 26th, 1948: height of the sun at Sibenik on October 17th and 18th, 1946.
3. Replies established jointly by the Parties to above Questionnaire (November 27th, 1948).
4. Two diagrams showing the moment when a shadow would have fallen on the jetty where the mines were being loaded.
5. Sketch of the environs of Sibenik showing nearest points from which the jetty would have been visible during the journey of the motor-boat that Lieutenant-Commander Kovacic was in. (Three possible routes are given in the Questionnaire.)
6. Joint Note of United Kingdom and Albanian experts on the questions put by Judge Ečer to the Mixed Committee of Experts on November 30th, 1948: (1) Was there sufficient light at 17.35 hours to enable Lieutenant-Commander Kovacic to see the vessels moored in Panikovac Cove? (2) If the light was sufficient, would the lie of the land have obstructed the view?

ANNEX 2.

EXPERTS' REPORT OF JANUARY 8th, 1949.

The Committee of Naval Experts appointed by the International Court of Justice on December 17th, 1948, have the honour to submit to the Court the following unanimous answers to the questions put to them :

Question (I). You are requested to examine the situation in the North Corfu Strait immediately before October 22nd, 1946, from the point of view of

(a) the position of the swept channel.

(I) (a) ANSWER :

The German track shown in Annex 2 to the United Kingdom Memorial could not be the centre line of a one-mile swept channel because the western boundary would in this case intersect Minefield G 146 c.

When the Royal Navy planned to sweep a channel through the North Corfu Strait in 1944, route 18/32 and 18/34 was established, which was, according to us, the only feasible way to make a passage through Corfu Channel without doing unnecessary sweeping of Minefield QBY 539. We consider therefore route 18/32 and 18/34 the quickest and safest way to open up a route through the North Corfu Channel.

(b) the effectiveness of the mineclearance previously carried out.

(I) (b) ANSWER :

In order to decide whether the sweeping operations which were carried out in October 1944 and January 1945 were effective, it is necessary to study the minesweeping reports. The latter, however, could not be produced. But bearing in mind :

- 1st. That the Royal Navy had a great experience in mineclearing ;
- 2nd. That the sweeping of a moored minefield is far easier than sweeping a ground minefield ;
- 3rd. That the sweeping of a moored minefield, if carried out in the proper way, can be considered 100% safe ;

Note.—Speaking strictly, a channel can only be declared safe at the time when it is cleared. One cannot guarantee that the channel in the future will remain so. Some evil person may lay mines—as in fact has been done in this case—and there is also the very remote possibility of a mine which went to the bottom when laid, rising to “correct” depth later on.

But if such eventualities were to be taken into account, it would mean that no waters could be declared safe, and mined areas could never be used any more ;

- 4th. That this channel was swept for troopships and supplies to pass through for the Italian front,

we assume that the clearing was carried out with the greatest possible care.

and (c) the risk of encountering floating mines in this channel owing to the proximity of the old minefields, and to study the German documents in order to obtain information from them concerning the types of mines laid in those minefields.

(I) (c) ANSWER :

The presence of moored Italian minefields off Corfu explains the possibility of floating mines in this area. We cannot see, however, that the possible presence of floating mines could be connected with the mining of H.M.S. *Saumarez* and H.M.S. *Volage*, as the nature of the damage sustained by the above ships excludes the faintest possibility of its cause being a floating mine.

It is often thought that floating mines are a serious danger to shipping. This is entirely wrong.

To our knowledge, it has not been definitely proved that more than one single ship¹, steaming on a straight course (as was the case with *Saumarez* and *Volage*), has been damaged by a floating mine, although thousands have been afloat during the two great wars.

Admittedly, there are ten more cases of ships having been struck by *alleged* floating mines ; but these cases have not been proved.

Apart from other obvious reasons, such as the very minute space of sea occupied by a mine, the ease with which it is seen in daylight and its normally harmless condition, there is the fact that the bow wave brushes the mine clear of the ship.

Extensive practical tests have proved that it is impossible to ram a floating mine, however hard one tries.

Whatever the possibility may be of two mines from the old German minefield floating about, it is, as stated above, of no interest in this case, as the damage done to the two ships could not possibly be caused by floating mines.

A close study of the German documents shows :

1. That until October 23rd, 1944, only Italian mines were laid in the North Corfu Channel area ;

¹ The *Betty Hindley*, October 1947.

2. That GY types of mines were available at Trieste on April 25th, 1945 ;
3. No manufacturer's numbers are shown in these documents.

Note.—Each mine has a number stamped on the bottom plate. The Germans had a very elaborate system of tabulating all particulars of the mines on so-called *Kennkarten*. If those cards could be traced for the Adriatic Zone, one could compare the numbers on the bottom plates of the swept mines with these *Kennkarten* in order to find out the place of origin of the mines that were laid in North Corfu Channel.

Question (2). You are requested to examine the information and documents available concerning the navigation of the *Mauritius*, the *Saumarez* and the *Volage*, in order to ascertain what conclusions, if any, may be drawn concerning the identity of the type of mines which struck the two last-named vessels with the type of mines discovered on November 13th, 1946, and to state how far, in your opinion, these conclusions can be regarded as valid.

(2) ANSWER :

Although the log-books of *Mauritius*, *Leander* and *Volage* show some inaccuracies in speed and course, we consider it beyond any doubt that *Saumarez* and *Volage* were mined in approximately the positions indicated in Annex 9 to the United Kingdom Memorial.

Even if both ships were mined nearer the northern edge of the channel, they would still have been victims of the two lines of mines shown in Annex 9.

Our conclusion, therefore, is definite : that both ships were struck by the type of mine which was swept on November 13th, 1946.

Question (3). You are requested to examine the information and documents available relating to the damage suffered by the *Saumarez* and the *Volage*, and to the fragments of a mine found in the *Volage*, with a view to ascertaining what conclusions, if any, may be drawn regarding the type of mines which struck these vessels, and how far these conclusions can, in your opinion, be regarded as valid.

(3) ANSWER :

As far as it is possible to estimate the damage sustained by *Saumarez* and *Volage*, which were ships of modern construction, this damage must have been caused by the explosion of a moored contact mine of approximately 600 lb. charge. The reasons for this are :

- 1st. A ground mine would not cause this type of damage, and certainly not at this depth of water ;
- 2nd. A floating mine can be excluded altogether, as previously explained ;
- 3rd. The only remaining possibility is a moored contact mine.

Of the fragments found in *Volage*, the two small, slightly curved pieces are obviously not parts of a mine shell ; for they are of cast iron. The third piece, which is part of a horn adapter, fits closely to the horns and elements of a GY mine or of a GR mine, the adapters of these two types of mine being identical.

Question (4). You are requested to examine the questions whether it is possible to draw (a) from the position of the mines swept on November 13th, 1946 ; (b) from the fact that a complete mineclearance of the Albanian waters in this area had not yet been carried out at that time ; and (c) from the passage of the Mauritius on the 22nd October, 1946, without striking any mine, any conclusions, and, if so, what conclusions, regarding the existence of a methodically laid minefield and the object for which, in the light of the disposition of the mines, they appear to have been laid.

(4) ANSWER :

The position of the mines swept on the 13th November, 1946, strongly indicates that the mines were methodically laid in two rows.

Any previous minesweeping in the Medri Route Channel would necessarily have detected such mines, if they had been laid at that time.

The minefield was skilfully placed, as if its combined object was : (1) offensive : to stop ships drawing some 10 feet or more from passing through the channel ; (2) defensive : to stop ships of the same draught from entering Saranda Bay.

That *Mauritius* passed unmolested through the minefield only shows she had good luck. There is nothing strange in a ship getting through a minefield with a density of mines as indicated by the sweep.

Question (5). From the state of the mines swept on November 13th, 1946, can you draw any conclusions, and, if so, what conclusions, as to the date on which they were moored, and, in particular, on the question whether they were moored before or after the 22nd October, 1946 ?

(5) ANSWER :

The condition of the mines swept during the sweeping operation on the 13th November, 1946, as shown in Supplement No. 6 of the Security Council Official Records, leads to the conclusion that the mines should be considered as recently laid.

We are not in a position to give even an approximate *date* for the minelaying. The amount of barnacles, growth, rust, etc., is dependent on many factors which vary considerably with prevailing conditions. Only actual tests at the same time of the year and in the same waters could give sufficient information to afford a rough estimate of the age of the minefield.

With nothing more than general information, all we are prepared to state with certainty is that the mines cannot possibly belong to a minefield laid during the war.

The question whether the mines were laid before or after the 22nd October, 1946, cannot possibly be answered. The state of the mines would certainly not alter noticeably from the 21st to the 23rd of October.

Question (6). Having regard to the replies given, by agreement between the Parties, to the questions concerning the position of the sun at Sibenik on October 17th and 18th, 1946, and on the basis of the documents in the case, does the examination of the factual circumstances concerning (a) the date, (b) the time of day, (c) the lie of the land, (d) the conditions of visibility, (e) the position of the objects (ships, mines, horns, rails), (f) their form, colour and dimensions, lead you to the conclusion that, in the circumstances in which the witness Kovacic was situated, it was possible for him to see the loading and the presence of GY mines on board two ships of the "M"-class in Panikovac Cove and the rails on the ships?

(6) ANSWER :

The following could have been seen :

I. At 16.15 hours :

- (a) The two ships of the "M"-class, if moored at Panikovac Cove ;
- (b) the mine-bodies and sinkers on board these ships ;
- (c) the loading of the mines.

These observations could easily have been made, whichever of the three courses indicated on map N.I.D. 14/32/48, Annex C in File E.II/1/72, was followed by the launch.

Provided that the ships were moored on the northern side of the Cove, as stated by the witness Kovacic, also :

- (d) that the mines were newly painted (the gloss).

If the launch had followed course (i), it would have passed within about 450 metres of the Cove, and then

- (e) horns and rails could have been seen, although faintly.

If either of courses (ii) or (iii) was followed, we think it must have been impossible to see horns or rails.

II. *At 17.35 hours :*

Given no obstacles in the line of sight :

- (f) It would perhaps be possible from Keric's house to see the silhouettes of the ships loaded with mines.

The above conclusions (a) to (f) are based upon tests made at "Naval Base A" (see Annex 1¹) which were carried out at a time corresponding to 17.28 hours in Sibenik, on October 18th, 1946, and under similar circumstances.

Possible obstructions to the line of sight :

Three different opinions have been given by the Parties as to the possible position of the ships at 17.35 hours.

1. Ships moored along the south-western pier. In this case the configuration of the land would prevent the ships from being seen.
2. Ships moored in the most westerly part of the north-eastern pier, where they also would have been hidden.
3. Ships moored along the "built-up" extension of the north-eastern quay.

From the documents filed with the Court—especially Annex 4 (V), File E.II/1/77 — we think that the statement made by the United Kingdom expert in Appendix 2 to Annex 1, File E.II/1/89, as to the configuration of the land, appears to be the more correct. In that case the silhouettes of the ships may partly have been seen from Keric's house.

A more definite statement cannot be made without inspection of the locality.

Question (7). You are requested to state your opinion as to

- (a) *the number of GY mines which a minelayer of the "M"-class could load.*

(7) (a) ANSWER :

We assume that the "M"-class ships are of about 130 tons, in which case the dimensions given in the Swedish *Marinkalender* would be approximately correct.

According to these dimensions, the number of GY mines these minelayers can take would be twenty, if stability allowed for this top weight.

- (b) *the time required by two ships of this class, each possessing a derrick and a steam winch, and lying approximately in the positions indicated by the witness Kovacic, to take their complete load of mines.*

(7) (b) ANSWER :

Under normal conditions, it should be possible to load one mine with one derrick in 1½ minutes' time. This time is based upon a great number

¹ Not reproduced.

of actual reports from our three navies, and the times are remarkably consistent.

Under less favourable conditions, the time required should not be more than 3 minutes per mine per derrick.

We assume that the full load of mines could have been taken on board within an hour.

and (c) whether GY mines are normally fitted with horns when they are loaded on ships, or whether, on the contrary, they normally have to be fitted with the horns at the time when they are moored.

(7) (c) ANSWER :

Guards to the horns are not fitted to GY mines.

These mines are loaded with or without horns in place, according to the rules laid down by the authorities concerned. In our opinion, the safest procedure would be to unscrew the bakelite covers and screw in the horns after the mines were on board.

This requires approximately 5 minutes per mine per unskilled person and could be done at any time before the mines are laid.

Question (8) (i). *On the assumption that the mines discovered on November 13th, 1946, were laid at some date within the few preceding months, whoever may have laid them, you are requested to examine the information available regarding (a) the number and the nature of the mines, (b) the means for laying them, and (c) the time required to do so, having regard to the different states of the sea, the conditions of the locality, and the different weather conditions, and to ascertain whether it is possible in that way to draw any conclusions, and, if so, what conclusions, in regard to—(i) the means employed for laying the minefield discovered on November 13th, 1946.*

(8) (i) ANSWER :

There is no doubt that the 24 or more GY mines which were laid at Saranda, were placed in their position by means of surface craft. The laying of GY mines is not done by submarine or by aircraft.

The time necessary to lay those mines is approximately the same as the time taken to steam the distance between the points where the mine barrage is to be laid, plus the necessary time to approach and leave the area of vigilance and to take fixes.

The total time that the minelayers would be in the waters between Cape Kiephali and San Giorgio Monastery amounts to about two and a half hours at a speed of six knots, if the ships are approaching from the North and leaving towards the North.

If they approached from the South the time would be about two hours from the neighbourhood of Barchetta Rock to the northern end of the minefield, provided they left towards the South.

If the ships approached the area of vigilance from the North and left towards the South, the time necessary between Cape Kiephali and San Giorgio Monastery would be about two hours.

If the ships approached from the South and left towards the North, the time would be about two hours.

Question (8) (ii). and to (ii) the possibility of mooring those mines with those means without the Albanian authorities being aware of it, having regard to the extent of the measures of vigilance existing in the Saranda region.

(8) (ii) ANSWER :

The possibility of seeing the operation. The Corfu Channel can be navigated with no great difficulty, when it is a question of simply passing through. But to place a minefield accurately, as was done, requires a reasonably good visibility so that definite cross-bearings on the coast can be taken, as there is only one lighthouse in the vicinity.

The necessary landmarks would probably be at a greater distance away than the distance from the fix (taken before starting the minelaying) to the shore: for instance, the Monastery and Limion Point might be selected. Incidentally, one row of mines does actually point to both of these landmarks. Another bearing might be taken on the north-west promontory of Denta Point. Of course, objects can be seen much more clearly when looking seawards than when looking landwards.

The minelayer must have passed at about 500 metres off the coast between Denta Point (an obvious place for a look-out) and the San Giorgio Monastery.

From this part of the coast the minelaying could easily have been observed by a look-out with ordinary binoculars.

The ships would probably have kept to the swept channel and might therefore also have been seen from Cape Kiephali and even more so from the San Giorgio Monastery; for if the eastern line of mines was laid from the South, the minelayer must probably have been within half a mile of the Monastery.

If the minelaying was done in darkness, it is doubtful whether it could have been observed from Porto Edda.

If done in daylight, it can unhesitatingly be said that the operation must have been noticed by the Albanian authorities.

The possibility of hearing. The most favourable conditions for hearing a minelaying operation would be :

(a) dead quiet in the immediate vicinity of the observer ;

- (b) wind blowing off shore (no surf) ;
- (c) wind force 3 or less (scale Beaufort) ;
- (d) people ashore suspecting some action to be going on, and being on the alert ;
- (e) people on board minelayers not skilful (unnecessary lights and noises) ;
- (f) where echoes strengthen the sound.

Tests which we have carried out at "Naval Base B" (see Annex 2¹) under similar conditions to those stated above show that rail noise could be heard faintly at a distance of about 1,200 metres, while a splash could be heard faintly only at about 650 metres.

Additional noises quickly reduce the audibility.

Accordingly, under favourable conditions it would be possible to hear the minelaying operation from Limion Point and from the coast between Denta Point and San Giorgio Monastery, but not from Porto Edda.

Under less favourable conditions it would, however, be impossible to hear the minelaying from any of the positions mentioned.

We are not in the possession of sufficient information as to conditions when the mines were laid to give a more definite statement.

This Report was drawn up in English in one copy, at the Peace Palace, The Hague, this eighth day of January, one thousand nine hundred and forty-nine.

(Signed) S. ELFFERICH. J. BULL. AND. FORSHELL.

(Signed) S. T. CROSS,
Secretary of the Committee.

¹ Not reproduced.

DECISION OF THE COURT, DATED JANUARY 17th, 1949,
REGARDING AN ENQUIRY ON THE SPOT.

The Court requests the Experts appointed by the Order of the 17th December, 1948, to proceed to Sibenik and Saranda, and to make, on the land and in the waters adjacent to these two places, any investigations and, so far as possible, any experiments which they may consider useful with a view to verifying, completing and, if necessary, modifying the answers given in their Report filed by them on January 8th, 1949.

The Parties shall have the right to make suggestions to the Experts regarding the points to which their investigations and experiments should be directed.

The Registrar, with the authority of the President, shall make the preparations required for the journey of the Experts and for ensuring that they will receive all the facilities essential to the due and prompt accomplishment of their mission.

Within one week of the filing of the complementary Report of the Experts in the Registry, the Parties may file in the Registry their observations upon any new statements which it may contain.

EXPERTS' REPORT DATED FEBRUARY 8th, 1949, ON THE INVESTIGATIONS AND TESTS AT SIBENIK AND SARANDA.

THE NAVAL EXPERTS

appointed by Order of Court of December 17th, 1948, visited Sibenik and Saranda in pursuance of the Court's decision of January 17th, 1949. They have the honour to submit to the Court a report on the observations made and tests carried out by them.

Investigations were made as to the following points :

I. *At Sibenik on January 24th and 25th, 1949 :*

- (a) Length of the quays at Panikovac Cove ;
- (b) existence of a "built-up quay" ;
- (c) depth of water alongside the quays in Panikovac Cove ;
- (d) existence of a wreck or of obstructions alongside the south-western quay ;
- (e) configuration of the land at Panikovac Cove ;
- (f) general lay-out of the tunnels at Panikovac Cove ;
- (g) what could be seen of an "M"-class minelayer moored in Panikovac Cove, during the course of the journey by motor boat past the Cove, following :

- (1) route (i),
- (2) route (iii),

as these routes are described in Annex C to the document filed in the Registry on November 27th, 1948, and headed : "Agreed answers to questions in connexion with state of sun at Sibenik" ;

- (h) possibility of mooring a motor launch at Kulina Point ;
- (i) a general inspection of "M 2" ;
- (j) the line of sight from Keric's terrace, and what could be seen from the terrace in broad daylight, and at the end of civil twilight on January 24th, 1949 (17.30 hours) ;
- (k) the time required for walking from Molo Krka, via Kovacic's house, to Keric's house ;

II. *At Saranda on January 28th and 29th, 1949 :*

- (a) Survey of the coast from Limion Hill to San Giorgio Monastery ;
- (b) visit to the Monastery by land ;
- (c) visit to Denta Point by land ;
- (d) possibility of observing, from the San Giorgio Monastery, the passage of a ship by night along the line on which the eastern row of mines was laid (as shown in Annex 9 of the United Kingdom Memorial) ;
- (e) a landing at Denta Point to check the accuracy of observations made of this area from the sea ;

- (f) survey of the coast from Saranda to Cape Kiephali;
- (g) visit to Limion Hill;
- (h) visit to Saranda lighthouse.

The attached sketch (Annex I¹) shows the situation as it was found to be at Panikovac Cove.

* * *

DETAILS OF INVESTIGATION MENTIONED UNDER I.

I (a) The quays were measured and the dimensions found to be approximately as given by Admiral Moullec (dimensions are shown in Annex I¹).

At the north-eastern quay, standard small-gauge rails and mine-transport cars were observed; the latter were evidently not of the type used to transport German GY mines.

I (b) No "built-up quay" was observed, nor were any remnants seen such as would indicate the previous existence of such a quay.

I (c) Soundings of the depth of water alongside the quays were taken at low tide, and are shown in Annex I¹. Difference between high and low water: approximately 60 cm.

I (d) There were no traces of any wrecks or obstructions alongside the south-western quay.

I (e) The configuration of the land was such that, at 16.06 hours on January 24th, 1949, a ship moored anywhere in Panikovac Cove would be in the shade. On this day and at this time, the altitude of the sun was 7° 6'.

Note.—16.06 hours on January 24th, was 55 minutes before sunset; 16.20 hours on October 19th, 1946, was also 55 minutes before sunset.

I (f) The entrances to the tunnels were measured. The rails leading to them appeared to be in working order and had probably been used not long before. This was proved by the absence of rust, which was apparent on the rails mentioned under I (a).

The fact that the floor of the tunnels was covered with iron sheeting prevented rails from being observed.

The tunnel led to a widened excavation which the experts did not insist on examining entirely. But they were able to see old ammunition and ground mines stored in the tunnel and modern German ground mines (oval) stored in the excavation.

Electric light was installed in the tunnels, but was not working at the time of our visit. Observations were made with the aid of a single electric torch and details could not be seen very distinctly.

¹ Not reproduced.

The following conclusions can be drawn from the above observations at Panikovac Cove :

- (i) An "M"-class minelayer could have been moored along the south-western or along the north-eastern quay. The best place for loading would be the south-western quay, which is closest to both tunnels. If loading were to be done simultaneously from both tunnels, the quickest way to load two "M"-class minelayers would be to moor them alongside the south-western quay, one astern of the other.

As there is no "built-up quay", two ships could not be moored along the north-eastern quay, one behind the other.
- (ii) The gloss of newly painted mines could not have been observed at any time after 16.15 hours on October 19th, 1946; for at that time the ships were in the shade.
- (iii) The entrances to the tunnels were wide enough to permit their being used to accommodate German GY mines. If both GY mines (moored mines) and ground mines were stored in the excavations, it would be feasible to stow the moored mines in the widened area and the others in the tunnel itself. If this were done and if the GY mines had to be loaded, the ground mines would have to be cleared from the tunnel and placed temporarily on the quay-side, in order to remove the GY mines.

Note.—The Yugoslav representative said that it was impossible to carry out tests with GY mines (e.g., loading on board ship), since no such mines were available.

I (g) Observations were made as to visibility while passing Panikovac Cove in a launch, at various distances, as shown in Annex C to the document filed in the Registry on November 27th, 1948, and mentioned above.

At 16.16 hours on January 24th, 1949, the first trip was made on route (i). The altitude of the sun at the moment was 6° 1'.

The "M 2" was moored with her stern towards the Sibenik Bay alongside the north-eastern quay, and was completely in the shade of the hills

When passing Panikovac Cove on route (i), the distance from the launch to the Cove was measured and found to be 520 metres.

At 16.25 hours a second trip was made over the same route.

During both trips it was possible to observe :

- (a) the "M 2" moored at any place in Panikovac Cove ;
- (b) people walking on the deck of the "M 2".

It would be possible to see :

- (c) mines being loaded on board the "M 2".

It might be possible to see :

- (d) mine bodies and sinkers on board these ships.

It would have been impossible to see :

- (e) that the mines were newly painted ;
- (f) horns or rails (ships being in the shade).

A third trip was made at 16.35 hours on January 24th, 1949, on route (iii).

The altitude of the sun at this moment was $3^{\circ} 2'$.

The "M 2" was moored in the same position and the distance measured from the launch to the "M 2" was found to be 840 metres.

During this run *it was found possible to observe* ships moored in Panikovac Cove.

It would be possible to observe the actual loading of mines.

No other observations could have been made while following this route.

I (h) During the preparation for the trips mentioned under I (g), the north-east coast of Mandalina Peninsula was observed. Several jetties were seen at which a launch could easily be moored. If the launch called at Kulina Point, it would, however, follow route (ii) from Kulina Point to Molo Krka.

We can see no reason why route (i) should be followed. Route (iii) would be followed if the launch did not call at Kulina Point.

The distance from route (ii) to Panikovac Cove would be 600 metres and the possibility of observation would be the same as mentioned for route (i).

I (i) The "M 2" was found to be fitted out as a minesweeper. Minesweeping gear consisted of Oropesa gear for moored mines ; the minesweeping winch was situated about one metre in front of the aft mast.

This ship could, however, easily be converted into a minelayer, and had for the purpose the following equipment :

- (a) a derrick to load mines.
Length of derrick: 7.80 metres. Diameter of shackle: 1 inch ;
- (b) props in the deck to fix the sleepers of the mine rails.
These props were well greased, and easily removable ;
- (c) length of rails on starboard and port side : each 12.70 metres ;
distance between props : 0.675 metres ;
three joints on either rail ;
no turntables.

These rails are of a sufficient length to accommodate 18-20 GY mines in all.

Although the inside width of rails needed for GY mines is 70 cm. and the distance between the props on "M 2" is 67.5 cm., it should be borne in mind that the actual width of the rails depends entirely on the construction of the sleepers and the attachment of the rails to the sleepers. There exist small-gauge rails of which the width can be regulated as required ; at Sibenik, however, the rails were not available for inspection ;

- (d) small wire winches were screwed into the deck, but were easily removable.

The above leads us to the conclusion that GY mines could be used on board "M 2".

I (j) and (k) The experts visited Keric's house to observe the view of Panikovac Cove from the terrace. They went by the same way as Kovacic said he followed from Molo Krka.

Molo Krka was reached at 16.43 on January 24th, 1949.

The walk to Kovacic's house took 12 minutes, and that from Kovacic's house to Keric's house 14 minutes.

Weather conditions on January 24th, 1949: cloudless—clear—good visibility—slight breeze.

On October 19th, 1946, sunset was at 17.15; civil twilight was at 17.41.

On January 24th, 1949, sunset was 17.01; civil twilight at 17.30.

The following observations were made: at 17.30 on January 24th, 1949, "M 2" was not visible from Keric's house; "M 2" was in the same position as during the afternoon (moored alongside the north-eastern quay).

"M 2" was then instructed by telephone to move eastward and to moor in a position as if a "built-up quay" existed.

At 17.35, when "M 2" was moored in her new position, it was still impossible to observe her from Keric's terrace. This was solely due to the configuration of the land and not to the visibility conditions.

So long as the ship was moored in the Cove, only the smoke of the funnel could be seen from Keric's terrace. As a matter of fact, this was the only proof that the ship was shifting. "M 2" was then instructed by telephone to leave Panikovac Cove, and at 17.40 her silhouette became clearly visible when she had left the Cove and reached a part of Sibenik Bay that was not shaded by the hills. (See Annex II¹.)

In this position it would have been possible to observe whether the ship was loaded with mines or not.

Assuming that the "M"-class ships were at Panikovac Cove and left the Cove after sunset, *the observations made in Sibenik lead to the following conclusions:*

A. "M"-class ships could be used for the minelaying operation. The tunnels could accommodate GY mines.

B. It is of no importance where and how the "M"-class ships were moored in Panikovac Cove, for:

(I) at 16.15 on October 19th, 1946, it was possible on any of the routes (i), (ii) or (iii) to observe the ships and the loading of mines;

¹ Not reproduced.

- (2) at 17.35 on the same day it was impossible for witness Kovacic to see anything of the ships wherever they might be moored in Panikovac Cove.

The arguments concerning :

the way the ships were moored ;
wrecks or obstructions alongside the south-western quay ;
the configuration of the land ;
jetties at Kulina Point ;
visibility at 17.35 hours while witness Kovacic was at Keric's house ;
existence of "built-up quay",
are of no material importance.

- C. The only possibility of observing the "M"-class ships from Keric's terrace would not be when they were in the Cove, but when they had left it. Witness Kovacic stated that it became too dark to see the ships leave the Cove. On the contrary, it would only be after their departure, when they had left the portion of Sibenik Bay shaded by the hills around the Cove, that they could have been observed.

II. AT SARANDA ON JANUARY 28th AND 29th, 1949.

II (a) A trip along the coast by sea, from Saranda, past Limion Hill to San Giorgio Monastery, was made on January 28th.

The route followed is shown in Annex III¹; and passed through the positions A, B, C, D, and back to Saranda.

The following were observed :

1. battery at a position just west of Saranda ;
2. fort Likurski, a very conspicuous landmark ;
3. lighthouse south of Likurski ;
4. houses at Denta Point ;
5. a landing beach near Denta Point ;
6. San Giorgio Monastery, very conspicuous against the sky.

Attention is drawn to the fact that the course followed coincides with the direction of the eastern row of mines. This course was easily checked by heading for the Monastery and keeping Limion Hill right astern, or vice versa.

II (b) After making a general survey of the coast from Saranda—Limion Hill—San Giorgio Monastery, it was decided to examine further the points noted. On January 28th, a trip was made from Saranda to San Giorgio Monastery ; the foot of the hill, on which this is situated, can be reached by car in about 25 minutes. From there, a path leads up to the Monastery. The walk to the top takes 9 minutes. Mules use this track. On reaching the actual Monastery, the party found the door closed. The Albanian authorities tried in

¹ Not reproduced.

vain to get those inside to open the door. Permission was then requested and obtained to force the door and this was done. The Monastery was occupied by six soldiers, but there was accommodation for many more; it had telephone communication. A stable for mules was seen.

During a general survey around the Monastery, the following were observed:

- (a) Infantry defences just outside the building.
- (b) If the look-out posts were stationed outside the Monastery, they would be able to watch only part of the Bay of Saranda, as a number of trees partly obstructed the line of sight. It was therefore obvious that another place would be used to watch the sea traffic close to the Monastery. This place was a look-out tower inside the Monastery; it was equipped with benches and this higher spot afforded a much clearer view over the Corfu Strait and Bay of Saranda, and was not obstructed by trees to the same extent.

The Albanian authorities said that the men in the Monastery slept there during the night and only watched the sea during the day-time. This statement, however, does not seem quite to coincide with the difficulties experienced in obtaining entrance at the door of the Monastery earlier in the day.

II (c) and (e) On the way back from the Monastery, the experts desired to test the observation off the houses that had been noticed on Denta Point. As far as could be seen, no suitable path existed, leading to the houses observed from the sea.

It was therefore decided to approach Denta Point from the sea side. On January 29th, a trip was made by motor ship with a rowing-boat in tow. A landing was made near Denta Point on a small beach (see Annex III¹). From here, two paths, which are used by mules, lead over the slopes of Denta Point to the houses. It only took a couple of minutes from the shore to the lowest situated house. Here were seen:

- (i) infantry defence line and machine-gun posts;
- (ii) an old house with a roof, capable of accommodating men and mules;
- (iii) places where a fire could be lighted;
- (iv) a newspaper *Bashkimi* dated September 11th, 1948, was found in the trenches.

At this place one has a clear view over the whole of the Corfu Strait, as well as the Bay of Saranda.

The above facts point to the conclusion that guards or look-out posts were kept at Denta Point until September 11th, 1948.

Attention is drawn to the fact that the Experts' Report of January 8th, 1949, called this spot an "obvious place" to keep a look-out, as it commanded the Corfu Strait as well as Saranda Bay.

¹ Not reproduced.

Note.—A second house which was much bigger than the former and could be used as quarters, was situated higher up the slope. This house was not visited by the experts.

II (d) In the evening of January 28th, a test of visibility by night from San Giorgio Monastery was carried out.

Weather conditions: cloudless; slight breeze; no moon.

The ship mentioned above was again used. All lights were extinguished. One of the experts, and the Parties' experts, went to San Giorgio Monastery to test the degree of visibility, while the other expert travelled on the ship along a line identical with that on which the eastern row of mines had been laid (see Annex 9 of the United Kingdom Memorial).

The party for the Monastery left Saranda about three quarters of an hour before the ship sailed. On arriving at the ship in Saranda, the other party received a telephone message from the Monastery confirming that the first party had arrived.

On their way up the hill to the Monastery, the first party was halted by two soldiers with rifles. This occurrence did not seem to tally with the statement made that afternoon that the men slept during the night.

The course of the ship along the eastern line of mines was easily checked with the aid of:

the background of Limion Hill;
Saranda lighthouse;
Cape Kiephali;
San Giorgio Monastery;
Denta Point;
Tignoso lighthouse.

The ship was completely blacked out.

Note.—This is the most favourable condition for the avoidance of detection. For usually a minelayer, like all oil- and coal-burning vessels, would emit some smoke from its funnels; and, as a rule, some sort of light would be used on a small ship during the actual minelaying operation.

While the ship was following a course towards the Monastery, the line of sight from that observation post was partly obstructed by trees (see Annex IV¹).

The noise of the motor was already heard from the Monastery at 22.20 hours (distance 1,800 metres). The ship was sighted for a very short while at 22.26 hours (distance 670 metres). It was not possible on this occasion to observe the ship for long, as it disappeared behind the trees (see Annex IV¹).

After altering course, it was sighted clearly again from the Monastery at 22.30 hours (approximate distance 800 metres).

A northerly course was then set and, at 22.47 hours, a signal was received on board from the Monastery, stating that the ship was out

¹ Not reproduced.

of sight. The distance was then calculated from a cross-bearing, taken at 22.50, from Saranda light and a promontory south of the Monastery, and the distance at 22.47 hours was found to be approximately 1,900 metres.

Summary :

Noise of motor was heard at 1,800 metres distance ;
 Ship was observed for the first time at 670 metres distance ;
 Ship was again clearly seen at 800 metres distance ;
 Ship was followed for a distance of 1,900 metres.

Note.—This motor ship was only 80 feet long, had no bridge, wheelhouse or funnel, and was very low on the water.

II (f) On January 29th, a general survey was made of the coast between Saranda and Cape Kiephali. Nothing extraordinary was observed. Here and there were look-out posts which seemed to be deserted. Pill-boxes were also noticed.

At Cape Kiephali, a house was sighted which would be an ideal place for a look-out, commanding the whole Medri channel.

II (g) On January 29th, a visit was paid to Limion Hill, where an old Italian battery was situated.

II (h) In the Experts' Report of January 8th, 1949, it was stated that only one light existed to guide navigation in Corfu Strait. In fact, only one light is indicated on the Admiralty chart.

But Saranda lighthouse was found to be working on January 28th, 1949; it could not, however, be used for a cross-bearing if the minelaying began from the South, owing to the configuration of the land at Denta Point.

This lighthouse would have been of service if the mines were laid from the North.

But as no log-book or other documentary information was available, according to the Albanian authorities, it was not possible to state whether the Saranda light was in working order in October 1946.

The following conclusions can be drawn :

- A. A minelaying operation could be carried out in Corfu Channel, starting :
 - (a) from the North ;
 - (b) from the South.
- B. On a clear night, on either course, there would have been sufficient landmarks to take a fix.
- C. Provided a look-out was kept at Cape Kiephali, Denta Point and San Giorgio Monastery, and under normal weather conditions for this area, and if the mines were laid from the North towards the South :
 - (i) the operation might not be seen by the look-out post at the foot of San Giorgio Monastery, because "position 22.47

- hours" coincides with the most southerly mine which was cut (see Annex III¹);
- (ii) the minelayers would, however, be seen from Cape Kiephali; and
 - (iii) *must have been noticed from Denta Point*, as the distances while passing it are within the limits of visibility shown in summary under II (d).

D. If the minelaying were done from the South (which is most feasible, as the ships would not have to cross their own mine-fields if returning to the North), the minelayers would have been observed from Cape Kiephali, Denta Point and San Giorgio Monastery. It must be borne in mind that in this case the ships would have passed the above-mentioned points twice.

The experts consider it to be indisputable that if a normal look-out was kept at Cape Kiephali, Denta Point, and San Giorgio Monastery, and if the look-outs were equipped with binoculars as has been stated, under normal weather conditions for this area, the minelaying operations shown in Annex 9 to the United Kingdom Memorial must have been noticed by these coast-guards.

On the occasion of the experts' visit to San Giorgio Monastery, the Albanian authorities stated that no binoculars were now available at that post.

GENERAL.

During the general survey of the coast from Limion Hill to San Giorgio Monastery on January 28th and from Limion Hill to Cape Kiephali on January 29th, the experts noticed that Barchetta Rock was not so easy a point to distinguish as Tignoso lighthouse. But it happens that in the Reports on Operation Retail (United Kingdom Memorial, p. 117), the positions of all the mines swept on November 13th, 1946, are given by bearing and distance from Barchetta Rock. The experts therefore consulted the Reports on Operation Retail in order to check the positions in question.

They reached the conclusion that :

1. individual ships taking part in the Operation may have selected any obvious landmark in plotting the position of a swept mine;
2. these positions would then be plotted later on a chart of the whole area of the sweep;
3. Barchetta Rock, as being the closest landmark to the most westerly lap of the sweep, was then selected as a *datum dan* (reference point) for tabulating all the positions shown on page 117 of the United Kingdom Memorial;

¹ Not reproduced.

4. but any other reference point could just as well have been used, e.g., Tignoso lighthouse or San Giorgio Monastery.
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This Report was drawn up in English in one copy, at the Peace Palace, The Hague, this eighth day of February, one thousand nine hundred and forty-nine.

(Signed) AND. FORSHELL.

(Signed) S. ELFFERICH.

QUESTIONS PUT BY THREE MEMBERS OF THE COURT
ON FEBRUARY 10th, 1949.

(a) *By Judge Zoričić.*

I.—On page 15¹ of the French text (page 14¹ of the English text) the Report arrives at certain conclusions. Under heading C it is stated that, subject to certain conditions:

1. the *operation* might not be seen by the look-out post at the foot of San Giorgio Monastery;
2. the *minelayers* would however be seen from Cape Kiephali; and
3. *they* must have been noticed from Denta Point.

In paragraph D mention is also made of the *minelayers* which would have been observed.

From this text it would appear that what the guards might have, or should have, observed was the minelayers, i.e., the ships themselves, and it seems that the word "*operation*" in sub-paragraph 1 refers to the movements and manoeuvres of the ships.

At the end of the page² (and top of next page² in English text) it is stated that if a normal look-out was kept at Cape Kiephali, Denta Point, and San Giorgio Monastery, and if certain other conditions were fulfilled: "the *minelaying operations* must have been noticed by the coast-guards".

These passages mention "*minelaying operations*", and it is therefore important to know what meaning the Experts attach to these words; in other words:

- (1) Does the conclusion mean that the minelaying ships themselves must have been observed by the coast-guards, or
- (2) Do the words "*minelaying operations*" mean that the coast-guards must have seen not only the ships and the manoeuvres which they carried out, but also the actual minelaying, i.e., the launching of the mines into the sea?

II.—Does the view which is obtainable from Cape Denta enable one to see certain parts of the Strait, or of Saranda Bay, which would not be visible either from Cape Kiephali, or from Saranda, or again from the tower of the old Monastery of San Giorgio? In other words, is it not possible to see, from these look-out posts, everything which would be visible from Cape Denta?

(b) *By Judge Krylov.*

- I. Were the houses at Denta Point inhabited? Why was the big house not visited? Had these houses been recently built?

¹ See pp. 160-161.

² „ p. 161.

Please give a fuller description of the old house which was visited (page 11¹ of the Report).

2. Were the infantry line and the machine-gun posts at Denta Point of recent construction (page 10¹, English text)?
3. What was the direction of the wind during the observations on January 28th? Mention is made of a slight breeze (page 11², English text).
4. Had the house that was seen at Cape Kiephali been recently constructed? Had it been used as a look-out post? (Page 13³, English text.)
5. On page 14⁴ (English text) the Experts twice make use of the term "normal" with reference to weather conditions. What is the definition of "normal" conditions?
6. Why did the Experts think it necessary to submit observations to the Court relating to the fixing of the positions of mines by bearing and distance from Barchetta Rock (page 15⁵, English text)?
7. Why would the ships which laid the mines have had to pass the Albanian coast *twice* (page 14⁵, English text)?

(c) *By M. Ečer.*

What reply can the Experts give to M. Cot's objection to their Report of January 8th, 1949 (Distr. 49/5), as regards *the audibility of the operation*? (Page IIII of Distr. 435 *ter.*)

¹ See p. 158.

² " " 159.

³ " " 160.

⁴ " pp. 160 and 161.

⁵ " p. 161.

EXPERTS' REPLIES, DATED FEBRUARY 12th, 1949,
TO QUESTIONS PUT BY THREE MEMBERS OF THE COURT.

THE NAVAL EXPERTS

who were appointed by the Court's Order of December 17th, 1948, and who visited Sibenik and Saranda in pursuance of the Court's decision of January 17th, 1949, have the honour to reply as follows to the questions which were put to them in the Registrar's letter of February 10th, 1949.

I. Questions put by Judge Krylov.

Ad 1.

(a) *The houses at Denta Point.*

The experts did not see any advantage in visiting the bigger of these houses, or in asking if it was inhabited, or for what use it is intended. In truth, the facts they had ascertained in regard to the existence of the look-out post appeared to them sufficient for the purposes of their enquiry. The only reason why they referred, incidentally, to this house in their report was in order to confirm the fact that Denta Point is not inaccessible.

(b) *Date of construction.*

By the term "old house" (building situated at the look-out post) the experts meant that it was certainly built earlier than 1946. It seemed to them unnecessary to seek for greater accuracy.

In regard to the bigger house, the experts thought it unnecessary to estimate or to make enquiries in regard to the date of its construction, for the reasons given above in paragraph (a). They are, however, able to state that, as seen from the sea, it seemed to be of more recent construction than the building situated at the look-out post.

(c) *Description of the "old house".*

The dimensions of the "old house" were approximately as follows: Length: 10 m.; width: 2.50 m.; height: 2.50 m. It is used as a stable. In front of the door, which is situated in the narrow face of the house looking towards the South-West, there is a place used for fires.

The experts considered it useless to spend time in examining the "old house" in closer detail.

Ad 2.

The infantry trenches and the machine-gun posts at Denta Point are in an excellent state, though that does not mean that they are of recent construction. In truth, the same poor vegetation which

one finds everywhere on this rocky coast grows also on the parapet of the trench, made of the excavated soil.

Moreover, the experts were informed that these defence lines had been constructed by the Italian troops.

Ad 3.

The very slight breeze was blowing from the N.-E.

Ad 4.

The experts saw no purpose in prolonging their investigations by asking to go on shore at Cape Kiephali. The observations they had made at Denta Point, together with the remarks given in their report under No. II (f), seemed to them sufficient for the needs of their enquiry.

Ad 5.

According to the *Mediterranean Pilot*, Volume III, one can consider the following weather conditions as being normal.

(a) *Wind.*

During summer, north-westerly winds are most prevalent, but in winter those from the South-East. In settled summer weather, when the barometer is high, and often in winter, land and sea breezes prevail. The land wind is light and, near the Corfu Channel, it blows from North to North-East. It begins to blow two or three hours after sunset, and increases in force until after midnight, when it decreases, falls calm at sunrise, freshens again as the sun gets higher, veering some points eastward until about 9 a.m., after which it dies away and is succeeded by the sea breeze.

(b) *Clouds.*

When land and sea breezes prevail, there is little cloud.

South-east wind may be accompanied by rainfall, and an overcast sky may be expected, the average for October being 40 % covered with clouds.

(c) *Visibility.*

Visibility is usually good in the Adriatic, except when the Bora blows and causes rainfall. Exceptionally good visibility often occurs on the Dalmatian coast.

Note.—The Bora is a local wind which can blow very strongly from the North-East for about 15 or 20 hours, with heavy squalls, thunder, lightning and rain at intervals. It generally dispels any hovering clouds or fog, and when it blows with great force the weather is very clear.

(d) *Conclusions.*

The experts when mentioning "normal" weather conditions under paragraph D of their conclusions on page 15¹ (English text) have

¹ See p. 161.

therefore in mind the following weather: clouds 3-4/10th—visibility good (20 miles)—no fog or rainfall—slight easterly breeze.

Ad 6.

From the position of the mines indicated in the United Kingdom Memorial, Barchetta Rock is not sufficiently visible to be used for taking fixes. Why, then, it may be asked, does the Memorial calculate the positions of the mines with reference to that rock?

The experts thought they should seek an answer to that question. They found it, and gave it in their report, in order to forestall any question about it.

Ad 7.

As stated in the Experts' Report of January 8th, 1949, under (8) (i), there are four operational possibilities for laying mines in the Corfu Strait. They are:

- I. Approach from the North and leaving towards the North;
- II. Approach from the North and leaving towards the South;
- III. Approach from the South and leaving towards the South;
- IV. Approach from the South and leaving towards the North.

In order to carry out the operations mentioned under I and III the ships would have had to pass the area of vigilance twice. If the operations under II and IV were carried out, the ships would pass the area of vigilance only once.

If the area of operations is approached from either North or South and the ships carrying out the operations leave again either to the North or South, they can adopt two methods of laying the mines:

- (a) from the North;
- (b) from the South.

Operation I is discussed as regards method (a) and as regards method (b) in the Experts' Report of February 8th, 1949, A to D of Section II. If operation III was carried out by method (a) or by method (b) the conclusions contained in the Experts' Report of February 8th would have been as follows:

Conclusions A and B.—No change.

Conclusion C.—Provided that a look-out was kept at Cape Kiephali, Denta Point and San Giorgio Monastery, and under normal weather conditions for this area, and if the mines were laid from the North towards the South

- (i) the operation might not be seen by the look-out post at the foot of San Giorgio Monastery;
- (ii) the operation would not be seen from Cape Kiephali;
- (iii) the minelayers must have been noticed from Denta Point.

Conclusion D.—If minelaying was carried out from the South towards the North, the minelayers would have to take a fix and plot this fix south of a point at which the actual minelaying operation would start.

As this fix was the reference point for this particular minelaying operation, it had to be in line with the row of mines and consequently much closer to the San Giorgio Monastery than the position of the most southerly mine, as indicated in Annex 9 of the United Kingdom Memorial.

In this case :

- (i) the ships must have been observed by look-out posts from San Giorgio Monastery and from Denta Point ;
- (ii) the operation would not be observed from Cape Kiephali.

It must be borne in mind that in this case the ships would have passed the above-mentioned points twice, with the exception of Cape Kiephali.

A comparison of operations I and III :

<i>Operation I.</i>	<i>Operation III.</i>
<p>(a) <i>Minelaying from the North :</i></p> <ol style="list-style-type: none"> 1. Operation might not be seen by the look-out at San Giorgio Monastery. 2. Minelayers would be seen from Cape Kiephali. 3. Minelayer must have been seen from Denta Point. <p>(b) <i>Minelaying from the South :</i></p> <ol style="list-style-type: none"> 1. Minelayers would be seen by the look-out at San Giorgio Monastery. 2. Minelayer must have been seen from Denta Point. 3. Minelayers would have been seen from Cape Kiephali. 	<p>(a) <i>Minelaying from the North :</i></p> <ol style="list-style-type: none"> 1. Operation might not be seen by the look-out at San Giorgio Monastery. 2. Operation would not be seen from Cape Kiephali. 3. Minelayer must have been seen from Denta Point. <p>(b) <i>Minelaying from the South :</i></p> <ol style="list-style-type: none"> 1. Minelayers must have been seen by the look-out at San Giorgio Monastery. 2. Minelayer must have been seen by the look-out from Denta Point. 3. Operation would not have been seen from Cape Kiephali.

The difference between operation I and operation III is that when a ship approached the area from the South, she would not be observed by a look-out post situated at Cape Kiephali. In both cases, the look-out posts at Denta Point must have seen the minelayers ; in other words, the minelayers could not have escaped the notice of the look-out posts at Denta Point, and if the minelaying were started from the South, it must in both cases have been seen from the San Giorgio Monastery.

II. Questions put by Judge Zoričić.*Ad 1.*

By the term "the operation" in conclusion C (i) the experts meant the whole of the minelaying operation (i.e., both the manoeuvres of the ships and the actual launching of the mines).

By employing the term "minelayers" in paragraphs C (ii) and C (iii), the experts intended to indicate that the ships which were used for the minelaying operation would in case C (ii), or must in case C (iii) have drawn the attention of the look-out posts.

Ad 2.

From Cape Kiephali the view extends over the whole of the Strait, but not over Saranda Bay. From Saranda the view extends over the bay, but not over the whole of the Strait. From the San Giorgio Monastery the view extends over the whole of the Strait and over the greater part of the bay.

But Denta Point, which projects further than the other promontories, commands both the whole of the Strait and the whole of the bay. The investigation has confirmed the conclusion which was derived from a study of the map: this spot is very suitable for a look-out post.

III. Question put by Judge Eßer.

In their Report of January 8th, 1949, the experts concluded that, having regard to the insufficiency of the information available as to the conditions under which the mines were laid, it was not possible to give a precise opinion concerning the possibility of hearing the minelaying operations.

After their visit to Saranda, the experts added nothing further on this subject. They confirm that they have nothing to add. The conclusions which they have drawn in regard to the possibility of seeing the operation appear to them to deprive the question whether the operation could be heard of any further importance.

In these circumstances, they think it unnecessary to reply to the objections on this subject that have been made in regard to their report of January 8th, 1949; at the same time, they do not for a moment admit that these objections are justified.

Done in English, in one copy, at the Peace Palace, The Hague, this twelfth day of February, one thousand nine hundred and forty-nine.

(Signed) AND. FORSHELL.

(Signed) S. ELFFERICH.