

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU DÉTROIT
DE CORFOU

VOLUME II

Pièces de la procédure écrite (suite)

1950

INTERNATIONAL COURT OF JUSTICE

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THE CORFU
CHANNEL CASE

VOLUME II

Documents of the written proceedings (cont.)



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AFFAIRE DU DÉTROIT DE CORFOU

THE CORFU CHANNEL CASE

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AFFAIRE DU DÉTROT
DE CORFOU

ARRÊTS DES 25 MARS, 9 AVRIL ET 15 DÉCEMBRE 1949

VOLUME II



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JUDGMENTS OF MARCH 25th, APRIL 9th AND DECEMBER 15th, 1949

VOLUME II



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CORFU CHANNEL CASE

(Amount of Compensation)

7.—OBSERVATIONS SUBMITTED UNDER THE ORDER OF THE COURT OF 9th APRIL, 1949, BY THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

The Order of the Court of 9th April, 1949, fixed certain time-limits for the submission by the Parties of observations regarding the amount of compensation due from the People's Republic of Albania, and by a further Order of 24th June, 1949, these time-limits were extended to 1st July, in the case of the Albanian Government, and to 1st August, in the case of the Government of the United Kingdom, which accordingly now submits the following observations.

2. The Government of the United Kingdom observes that the Court in its Judgment of 9th April, 1949 (at p. 26), declared that it had "arrived at the conclusion that it has jurisdiction to assess the amount of compensation" due from the Government of the People's Republic of Albania. Notwithstanding this decision that Government, in its observations filed on 1st July, 1949, does not, in accordance with the Order of the Court, "submit observations on the amount demanded from it", but confines itself to repeating that the *compromis* of 25th March, 1948, did not provide that the Court should have the right to fix the amount of compensation.

3. The question whether or not the Court has jurisdiction to assess compensation has been decided affirmatively by the Court and is now *res judicata*. Article 36 (6) of the Statute of the Court provides: "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." Further, Article 60 of the Statute provides that "the judgment is final and without appeal". The Government of the People's Republic of Albania is accordingly bound by the decisions contained in the Judgment of 9th April, 1949, including the decision on the question whether or not the Court has jurisdiction to assess the amount of compensation. It is not, therefore, within its rights in now raising this question. Moreover, as the Court declared in its Judgment of 26th March, 1948 (*Corfu Channel Case, Preliminary Objection*, p. 28), "the method of submitting the case to the Court is regulated by the texts governing the working of the Court as was pointed out by the Security Council

in its recommendation". The Albanian Government has frequently stated that it fully accepted that recommendation (see, for instance, paragraph 4 of its letter of 2nd July, 1947), which provided that the Parties should refer the dispute to the Court "in accordance with the provisions of the Statute of the Court".

4. Having regard to the complete absence in the observations of the Albanian Government of any attempt to defend its case on the question of the amount of compensation, the Government of the United Kingdom invokes Article 53 (1) of the Statute of the Court, which provides as follows:—

"Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim."

The Government of the United Kingdom accordingly calls upon the Court, without further proceedings, to decide in favour of its claim.

5. Article 53 (2) of the Statute, however, provides as follows:—

"The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law."

The Court has already decided that it has jurisdiction as required by this provision and is in possession of a considerable body of evidence which was filed with the Memorial dated 30th September, 1947. This evidence is contained in Annexes 10, 11, 12, 13 and 14 of the Memorial (the footnote at the end of Annex 12 contains a misprint in that it refers to Annex 15 instead of Annex 13; similarly the footnote to Annex 13 wrongly refers to "Annex XIV" whereas Annex 12 is meant). The Government of the United Kingdom desires to make certain modifications and amendments to these Annexes in the light of more recent information which has enabled it to formulate its claim with greater precision. These modifications and amendments are explained in the following paragraphs of these observations, and the total of the claim which, as formulated in paragraph 96 (11) of the Memorial, amounted to £875,000, is now £843,947.

6. The Government of the United Kingdom contends that the revised claim, supported as it is by further evidence submitted herewith, in addition to that furnished with its Memorial, is well founded in fact and in law, as required by Article 53 (2), and, therefore, in accordance with Article 53 (1), requests the Court to give judgment for this amount. If, however, the Court should desire further information the Government of the United Kingdom is at its disposal. It desires, further, to invite the attention of the Court to the fact that, in calculating the various items of compensation, it has confined its claim to actual expenditure

incurred, or estimated to be payable (repairs to H.M.S. *Volage*, and pensions and allowances), and to the cost or replacement value of material lost (H.M.S. *Saumarez* and stores from both ships). No claim is made, though His Majesty's Government believe that it is strictly entitled to make it, in respect of sailors who were killed but had no dependants. Further, the claim does not include any sum in respect of the cost of training other sailors to replace those killed, or for loss of clothing and personal effects. Nor is any claim made for the loss of use of H.M.S. *Volage* during repairs, or for the loss of the use of a destroyer during the period which would necessarily elapse before a new destroyer could be put into commission to take the place of H.M.S. *Saumarez*. The Government of the United Kingdom therefore requests the Court to take due note of the moderation shown by it in the amount of compensation claimed.

7. The claim of the Government of the United Kingdom falls under two heads, namely (A) the cost of the pensions and awards granted by the Government of the United Kingdom in respect of the personnel of the Royal Navy killed or injured in H.M.S. *Volage* and H.M.S. *Saumarez* as a result of the explosions in the Corfu Channel; (B) material damage suffered by the Government of the United Kingdom in respect of the two vessels themselves.

8. Appendices I to III to these observations relate to Head (A) of the claim. Appendix I is a memorandum by the Ministry of Pensions setting out certain amendments to statements in Annex 12 (B) of the United Kingdom Memorial made necessary by changes in the circumstances of the persons concerned which have occurred since those statements were drawn up. This Appendix also gives further information about the original figures and explains, in paragraph 6, the additions made to the total sum, which the Government Actuary calculates the Government of the United Kingdom will have to pay, by way of pensions and allowances, to cover the following items, which, though not included in the Government Actuary's calculations, will, in fact, be a charge on His Majesty's Government in this connexion:—

- (a) Cost of administration of the pensions and awards.
- (b) Cost of medical and surgical treatment in the case of disabled seamen.
- (c) Allowance to cover the probability of future increases of individual pensions.

The Government Actuary's calculation remains unchanged, but the amount now claimed in respect of these additions is £5,848, whereas, in the note to Annex 12 (B) of the Memorial—it was estimated at £5,800.

9. Appendix II is an affidavit by an officer of the Ministry of Pensions showing that the pensions and other grants as shown in Annex 12 (B) of the Memorial were in fact awarded. Appendix III is an affidavit by an officer of the Government Actuary's Department supporting the figure of £44,200, as set forth in the note to Annex 13, as the capitalized value of the pensions and the other awards.

10. On the basis of this evidence, together with that already filed with the Court, the Government of the United Kingdom submits a claim for compensation of £50,048 in respect of deaths and injuries of personnel of the Royal Navy.

11. Appendices IV to VI relate to Head (B) of the claim as specified in paragraph 7 above, which sub-divides into (a) H.M.S. *Volage* and (b) H.M.S. *Saumarez*. As regards (a), Appendix IV is an affidavit by the Civil Assistant to the Director of Dockyards at the Admiralty, from which it will be seen that the actual cost of repairing H.M.S. *Volage* was £65,830 as compared with the provisional estimate of £75,000 given in Annex 14 of the United Kingdom Memorial. Appendix V shows that stores and equipment to the value of £27,982, which was not included in the provisional estimate set out in Annex 14 of the Memorial, were lost in H.M.S. *Volage*. The total amount claimed by the Government of the United Kingdom in respect of H.M.S. *Volage* is accordingly £93,812, instead of £75,000 as claimed in the Memorial.

12. As regards the damage to H.M.S. *Saumarez*, the Government of the United Kingdom observes that Annex 10 of its Memorial, which contains a report of the damage, was not signed, and an affidavit by the Fleet Constructor Officer on the staff of the Commander-in-Chief, Mediterranean Fleet, who drew up the report, is now therefore filed as Appendix VI to these observations.

13. The figure of £750,000 for H.M.S. *Saumarez* given in Annex 14 of the Memorial represented the actual cost of building an identical ship at 1946 prices plus an estimated sum of £50,000 for consumable stores lost on 22nd October, 1946. From Appendix V to these observations it will be seen that, on closer investigation at a later date, the value of the stores actually lost is now assessed at £23,887. Some allowance could be made for the scrap value of the ship itself, which is estimated at £3,800. Also, although H.M.S. *Saumarez* is a total loss, it may be possible to use some of her equipment for other purposes. The value of the equipment which might be so used is estimated at about £20,000.

14. The figure of £750,000 given in Annex 14 of the Memorial might therefore be reduced by £49,913 made up as follows: A reduction of £26,113 in respect of the claim for stores, an

allowance of £3,800 for scrap, and an allowance of £20,000 for equipment from H.M.S. *Saumarez*, which may still be usable. The Government of the United Kingdom accordingly submits a revised claim in respect of H.M.S. *Saumarez* for £700,087.

15. The Government of the United Kingdom under Article 53 (1) of the Statute calls upon the Court to adjudge and declare that the amount of compensation due from the People's Republic of Albania is as follows:—

In respect of H.M.S. <i>Saumarez</i>	£ 700,087
In respect of H.M.S. <i>Volage</i>	93,812
In respect of deaths and injuries of naval personnel	50,048
Total	843,947

Dated this 28th day of July, 1949.

(Signed) W. E. BECKETT,
Agent of the Government of
the United Kingdom.

Appendix I to No. 7.

MEMORANDUM BY THE MINISTRY OF PENSIONS

1. The following amendments should be made in Annex 12 (B) of the Memorial.

Debattista,

Anthony—widow Carmelo.
Pension ceased 18th September, 1948.
Awarded gratuity £58 6s. 8d.
(Remarried 19th September, 1948).

Hales,

Gordon Henry—widow Patricia.
Widow's pension and rent allowance ceased 10th March, 1949.
Awarded gratuity £91.
(Widow remarried 11th March, 1949).

Lock,

Samuel Frederick—widow Marguerite Jessie.
Widow's pension and rent allowances ceased 16th April, 1949.
Awarded gratuity £96 4s.
(Remarried 17th April, 1949).

Scholes,

Frank Mallalieu—widow Winifred.
Pension ceased 12th December, 1947.
Gratuity £65.
(Remarried 13th December, 1947).

Broome,

Harry George—widow Gladys Mary.
Pension ceased 28th November, 1947.
Awarded gratuity £56 6s. 8d.
(Remarried 29th November, 1947).

2. The reason for these amendments is that the widow's personal pension ceases on remarriage, but she receives a gratuity equal to one year's pension. Any pension for a child continues after the mother's remarriage. Pensions for the children, Michael Gordon Hales, Robert Michael Lock and John Kenneth Lock, therefore continue. Rent allowance cannot be paid if no widow's pension is being paid, and consequently the rent allowance awarded to the widows of Hales and Lock ceased when they remarried. In arriving at the capitalized value of death pensions due regard was had to the probabilities of remarriage.

3. The explanation of the dates of cessation of certain payments to widows and children shown in Annex 12 (B) is as follows:—

(a) While a sailor is on service, his wife receives a certain portion of his pay and certain allowances from the Admiralty. When the sailor dies on service these are continued for a period of about three months from the date of his death. Thereafter, the Service payments to the widow cease and payment of pension begins. The dates in 1947 in the right-hand column of Annex 12 (B) are the dates when this change took place.

(b) Allowances in respect of children normally cease when they attain the age of 16, but may be continued beyond that age if the child is under full-time education, or is an apprentice earning only nominal wages, or is an invalid (in the last-named case, an allowance might continue for the whole of the child's life, if he remains an invalid incapable of self-support).

(c) Rent allowances to the widow are continued as long as a child's allowance is payable.

4. The following amendments are required in that part of Annex 12 (B) dealing with other dependants:—

Beckett,

Lauriston Bernard—mother Louisa.
Pension ceased 23rd September, 1947.
(Income above need level.)

Francis,

Vernon—mother Lottie.
Pension increased to 20s. a week from 29th March, 1949.

Ross,

W. P. J.—mother Mary Edith.

Pension ceased 1st September, 1947.

(Income above need level.)

5. The explanation of the changes recorded in the last paragraph is that pensions to dependants other than wives and children are based on need. In the cases of Beckett and Ross they ceased because there is no longer need, and the pension in the case of Francis was increased because her need increased.

6. The capitalized value of the pensions given by the Government Actuary does not take into account the cost of administration, which is approximately 5 per cent. of the value of pensions (£2,210). Further, it does not take into account the cost of the medical and surgical treatment which experience shows to be necessary for pensioners who have received injuries. The addition made to cover this is based on Ministry of Pensions experience of the ratio of such cost to disablement pension, namely, 8 per cent. Eight per cent. of the total of the pensions for disablement is £1,360. A further 5 per cent. of the total pensions liability (£2,278) is added to cover the probability of future increases of individual pensions, together with allowances additional to pension which are not taken into account by the Government Actuary, *e.g.*, allowances for unemployability, lowered standard of occupation, constant attendance, education of children, wear and tear on clothing.

The following detailed statement includes the calculation of the necessary addition of £5,848 to cover these contingencies:—

	£	£
Capitalized value of death pensions . . .	27,200	
Capitalized value of disablement pensions	17,000	
		44,200
Medical and Surgical Treatment—		
= 8 per cent. on disablement pensions		
= 8 per cent. of £17,000	1,360	
Future increase of individual pensions and allowances additional to pension—		
= 5 per cent. of £44,200 + £1,360		
= 5 per cent. of £45,560	2,278	
Cost of administration—		
= 5 per cent. of cost of pensions		
= 5 per cent. of £44,200	2,210	
		5,848
		50,048

Ministry of Pensions,
16th July, 1949.

Appendix II to No. 7.

In the matter of the Corfu Channel case before the International Court of Justice.

I, William Charles Letts, of 18, Great Smith Street, London, S.W. 1, the Accountant-General of His Majesty's Ministry of Pensions, make oath and say as follows:—

The pensions and other grants (for which claims have been duly made) have been awarded to the persons and, where appropriate, for the periods set out in Annex 12 (B) of the Memorial of 13th September, 1947, as amended by the Memorandum¹ dated 16th July, 1949, and made by His Majesty's Ministry of Pensions, being in every case pensions and other grants awarded in accordance with the provisions of the Order in Council, for the time being in force, made under section 3 of the Naval and Marine Pay and Payments Act, 1865.

Witness my hand this 22nd day of July, 1949.

(Signed) W. C. LETTS.

Sworn the 22nd day of July, 1949, before me at 17, Old Queen Street in the City of Westminster.

(Signed) FRANCIS E. CARPENTER,
A Commissioner for Oaths.

Appendix III to No. 7.

In the matter of the Corfu Channel case before the International Court of Justice.

I, George Donovan Stockman, of Churchfelles, Horley, in the County of Surrey, a Principal Actuary of the Department of the Government Actuary, make oath and say as follows:—

It is part of my duty to assess the capitalized value of pensions and other recurrent awards made by His Majesty's Government to its employees or their dependants.

I was shewn the list of awards given in Annex 12 of the United Kingdom Memorial and I calculated that the capitalized value of these awards was £44,200 as at 22nd October, 1946.

I have since been shewn the Memorandum¹ by the Ministry of Pensions dated 16th July, 1949, setting out certain amendments which have been made in the pensions and awards payable. The eventualities set forth in that memorandum were allowed for in my original calculation and no alteration is necessary in the figure of £44,200.

Witness my hand this 25th day of July, 1949.

(Signed) G. D. STOCKMAN.

Sworn the 25th day of July, 1949, at 30, Old Queen Street, before me.

(Signed) CHARLES PEMBERTON,
A Commissioner for Oaths.

¹ See Appendix I.

Appendix IV to No. 7.

In the matter of the Corfu Channel case before the International Court of Justice.

I, Herbert Leslie Webb, of "Stoneleigh", Lansdown Road, Bath, Civil Assistant to the Director of Dockyards at the Admiralty, make oath and say as follows:—

Annex 14 to the United Kingdom Memorial of 30th September, 1947, contained an estimate of £75,000 as the cost of repairs to H.M.S. *Volage* made necessary by the damage which she suffered in the Corfu Channel on 22nd October, 1946.

The ship was in hand at Malta for refit and damage repairs from 1st November, 1946, to 11th August, 1947, and again from 20th August, 1947, until 16th September, 1947, for tilt test¹ and repairs after trials. The ship was in dock from 5th November, 1946, until 29th May, 1947.

From records in my possession I am now able to state that the actual (as distinct from the estimated) cost of making good the damage referred to in Annex 11 of the United Kingdom Memorial was as follows:—

Labour	£ 35,462
Materials	10,102
Contract supplies	6,210
Plant, etc., charges	14,056
	<hr/> 65,830

Material charges include the cost of anchors, cables, hawse pipes and stern castings. The sum of £6,210 for contract supplies includes the cost of a 4 7" gun mounting (modified by the assessed value on return to store of the damaged mounting), the cost of the capstan engine (in repairable condition) ex H.M.S. *Saumarez* and of a fresh water pump sent from the United Kingdom. Plant, etc., charges cover the cost of dock charges and rental, tug assistance, motor transport, craneage and the use of Dockyard plant and equipment.

(Signed) H. L. WEBB.

Sworn at Bath in the County of Somerset, this 23rd day of July, 1949, before me,

(Signed) G. A. BURNINGHAM,
A Commissioner for Oaths.

Appendix V to No. 7.

In the matter of the Corfu Channel case before the International Court of Justice.

I, Frank Severs, of "Seawinds", Beach Road, Shoreham-by-Sea, Sussex, now serving in the Material Finance Branch of the Admiralty, make oath and say as follows:—

¹ This tests the stability of the vessel.

From records in my custody the assessed value of stores and equipment lost in H.M.S. *Volage* and *Saumarez* on 22nd October, 1946, was as follows:—

<i>Volage</i>	£
Naval stores	6,225
Anti-submarine equipment	3,260
Armament stores	18,433
Medical stores	50
Victualling stores	14
	<hr/> 27,982

<i>Saumarez</i>	
Naval stores	9,000
Armament stores	13,516
Medical stores	260
Victualling stores	924
Charts	187
	<hr/> 23,887

(Signed) FRANK SEVERS.

Sworn this 22nd day of July, 1949, before me,

(Signed) JOHN NEWTON,
A Commissioner for Oaths.

Appendix VI to No. 7.

In the matter of the Corfu Channel case before the International Court of Justice.

I, Donald William Smithers, of 4, Princes Buildings, George St., Bath, now serving in the Naval Construction Department at the Admiralty, make oath and say as follows:—

I was Fleet Constructor Officer on the staff of the Commander-in-Chief, Mediterranean, in 1946.

I drew up the report on the damage to His Majesty's Ship *Saumarez* which appears as Annex 10 to the United Kingdom Memorial, dated 30th September, 1947.

(Signed) D. W. SMITHERS.

Sworn this 23rd day of July, 1949, before me,

(Signed) L. D. WARDLE,
A Commissioner for Oaths.