

The Corfu Channel Case and the Limits of Self-Defense

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Abstract

The Corfu Channel case which was a landmark case decided by the International Court of Justice in 1949. The case involved the setup of mines in the Corfu Channel by Albania in 1946, which claimed the lives of 44 British soldiers and destroyed several war vessels. The UK brought a case against Albania alleging that they violated international law by not informing soldiers about possible hazards as well as not clearing the minefields. Albania argued that it was at liberty to mine its territorial waters and therefore not liable for mining on the channel. However, ICJ found that Albania was not reasonable enough in protecting vessels in the Corfu Channel and did not conduct itself in accordance to international law. The mining proved Albania liable for damages. There are many lasting significances in the Corfu Channel case viz this case enunciated the principle that asserts states responsibility to protect foreign ships within their territorial waters, confirmed the right to pass through international straits, and accentuated broader aspect on recourse to armed force in self-defense. State responsibility was also observed in this case. In a notable departure from the actual events, the ICJ held Albania accountable for damages caused by the mines, emphasizing their failure to inform ships about potential dangers and their inability to prevent the mining of the channel. The Corfu Channel case remains a compelling study in international law with profound implications.

Keywords: ICJ, Corfu Channel Case, International Law, Law of the sea, United Nations

INTRODUCTION

The Corfu Channel case is a fundamental and historic case in the development of international law which was decided by the ICJ in 1949. The case has its background from mining the Corfu channel by Albania in 1946. The mining resulted in the destruction of two British ships naming HMS Saumarez and HMS Volage and the death of 44 sailors (Jones, 1949). This channel is a narrow strait which is located between the Albanian mainland and the Greek island of Corfu. It is an international strait, which means that it links two parts of the high seas and is used for international navigation the Corfu channel was mined by Albania in 1949 without warning and when the British ships were sailing they got hit by the mines

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causing damages to the ships and loss of precious lives as well. Albania, however, argued that it cannot be held responsible for mining its own territorial water because they have the right to mine it. ICJ on the other hand found that Albania violated international law for failing to take appropriate measures for protecting shipping in Corfu channel (STEIN, 1960). Court also contended that Albania was liable to United Kingdom for damages caused by the mining of the channel. The Corfu Channel case is important in many ways such as it established the concept of states liability in protecting ships in a state's territorial water. This principle is now known as "due diligence" obligation. Additionally this case confirmed the right of a state to innocent passage through international strait. The passing of ships through international straits without being interrupted or interfered by the coastal state is known as "innocent passage". Lastly this case highlighted and clarified the principles of international law governing the use of force in a self-defense. The ICJ contended that the United Kingdom did not use the force in their self-defense because Albania was not an immediate threat to the United Kingdom. This case is a landmark in the development of international law on state responsibility. As the ICJ held that Albania was guilty for the damages caused to British ships by the mines in the channel, though Albania did not mine the channel itself. ICJ further held that under international law Albania was liable for failing to take appropriate actions in preventing ships from damage caused by mines this principle however is known as "omission liability" under international law. The Corfu channel case has been cited in various cases and established itself as one of the most important authorities on state responsibility. This is because the case developed fundamental concepts on some of the important topics such as omission liability rule, role of states in environmental harm, and the use of force in self-defense.

Furthermore, the Corfu channel case has been used in several subsequent cases such as *Nicaragua v. United States* (1986), *The Oil Platform case* (2003) and *Gabčíkovo-Nagymaros Project* (1997).

The case also assisted in the development of the establishment of the principle that the ICJ is the primary forum for the resolution of international disputes (Oda & 2022, n.d.). The case also accentuated the importance of international law in maintaining peace and security.

RESULT AND DISCUSSION

Facts of the Case:

Under the leadership of Enver Hoxha in 1946 Albania was a communist state. The United Kingdom was a capitalist state and a NATO's member. So it was a tense situation between the two states. Two British cruisers HMS Orion and HMS superb

on May 15, 1946, passed through the Corfu channel without informing the Albanian government (Hossain, 2005). Coastal guards of Albania government fired at the cruisers but they did not get hit. Two British ships HMS Saumarez and HMS Volage entered the Corfu channel on October 22, 1946. The Albanian government warned the British ships to not enter the channel but the British claimed that they had the right of innocent passage through the Strait. The mines struck the British ships when they were passing through the channel. HMS Saumarez suffered to infinity while HMS volage suffered less. The mines took the lives of 44 sailors while injuring 42.

Damage Caused to the British Warships and the Loss of Life:

HMS Saumarez was badly hit by the mines. The hull of the ship was breached and it started to sink. Before the ship sank, the crew was able to abandon the ship but the explosion took 44 precious lives. On the other hand HMS Volage was not that badly hit. The ship was capable of floating and hence returning to the port. However, the explosion injured 42 sailors, and the incident of the Corfu Channel raised many important legal issues. United Kingdom brought the case before ICJ, alleging Albania to have had breached international law for not informing the ships about the possible danger and upon the failure of not take appropriate measures in cleaning the mines from the channel (Bennett, 1953). ICJ argued that Albania had violated the international law for not taking appropriate measures in protecting the ships in the channel. ICJ also found that Albania is liable to the United Kingdom for damages caused by mining the channel.

Arguments of the Parties: United Kingdom

1. United Kingdom claimed that it had the right to innocent passage across the channel, even though the strait was within the Albanian territorial water (Carty, 2004).
2. United Kingdom claimed, the Albania was responsible for the damages caused to the ships and the precious lives taken by the mines (Finch, 1949).
3. United Kingdom argued that Albania has breached the international law for failing to inform about the possible threat and for failing to clean the channel from mines (Seify, 2021).

Albania:

1. Albania defended itself by saying that it did not lay mines in the channel. The mines were laid down by Yugoslavia without the consent and knowledge of Albania.
2. Additionally, Albania argued that it was their own territorial water and hence they have the right to mine their own territorial water.
3. Albania also argued that they were not responsible for not informing about the threat.

ICJ's Decision and Reasoning:

The ICJ decided in the favor of the United Kingdom on all the main legal issues raised by the case. It was decision of the ICJ that Albania had violated the international law on the grounds that Albania did not take appropriate measures to protect shipping in the channel and for neglecting to inform ships about danger. ICJ also made Albania liable for damages caused to the British ships.

ICJ's Findings on the Legal Issues:

1. Right of innocent passage:

As per the judgment of ICJ the United Kingdom had the right of innocent passage through the Corfu channel even though the strait was in territorial water of Albania. It was stated by ICJ that Corfu was an international Strait because it linked two parts of high seas and was used for international navigation.

2. State Responsibility:

ICJ enshrined state responsibility through this case. It ruled that Albania was responsible for mining Corfu channel. It further made Albania responsible for damages it caused thereto and for not taking appropriate steps in informing the British ships of the immediate threat and for failing to clean the channel from mines.

3. Use of force in self-defense:

United Kingdom contended that it was justified to use force in cleaning mines from the channel in self-defense. But the ICJ stated that the UK did not use force in self-defense because Albania was not an imminent threat to UK.

ICJ's Reasoning:

Reasoning of ICJ is based on the following principles of international law:

- a) It is duty of a state to protect foreign ships in their territorial water. The principle is known as "due diligence obligation"
- b) Innocent passage is right of States. Innocent passage is that right off state that it can pass through international straits without coastal guard's interference. When a state causes damages, they are responsible for their actions. This principle is known as "Omission liability rule"(Latty et al., 2010).
- c) ICJ recommended that the principle of "Due Diligence" was violated by Albania by failing to take adequate measures in protecting ships and for cleaning the channel from the mines. ICJ argued that the right of innocent passage of United Kingdom was infringed by Albania. Lastly ICJ found that though Albania did not mine the channel by itself but it is responsible for the damages caused to the United Kingdom.

1. Analysis on the significance of the Corfu channel case for international law:

The Corfu Channel case is a notable milestone in the field of international law. It is significant because of how it may have an impact on a state's responsibility, the law of the sea, and the use of force in self-defense.

Law of the sea:

Ships are allowed to navigate freely on international waters without interruption from the coastal authorities. This rule is referred as the “right of innocent passage” (Bianco et al., 2023). UNCLOS III, Article 17, establishes this right for innocent passage which is not prejudicial to the peace, tranquility, and security of the coastal state. It was this case which introduced the idea that international straits are also covered by the right or ‘freedom of innocent passage’ even if they lie within the territorial water of a coastal State. According to the court; the protection of international peace and security is anchored in the right of innocent passage, which is an essential right of navigation. This obligation extends also from the Corfu Channel case, which showed that coastal States have a duty to protect vessels in their territorial waters. It comprises the obligation to clear out all mines and other dangers. The Courts have held that countries falling short of this responsibility are liable for damage caused to vessels within their territorial seas.

State Responsibility:

Corfu Channel Case is significant in terms of its impact on the development of international responsibility doctrine since it has introduced the principle of omission liability. The principle suggests that a state, can be held responsible for damages resulting from failing to act, although it is not the direct culprit. In the Corfu Channel case, the ICJ found that Albania was responsible for the damages caused by the mining of the Corfu Channel although Albania had not mined the channel itself. The Court found Albania liable for non-performance of its obligation to adopt appropriate measures to remove mine from the channel and failure to warn the vessels of the risk.

Several subsequent cases, including *Nicaragua v. United States* and *Gabčíkovo-Nagymaros Project*, have also seen the omission liability rule invoked. Even though the United States did not directly participate in the Contras’ armed actions, the ICJ found in *Nicaragua v. United States* that the United States was responsible for the damage resulting from its financial and military support to the Contras (Wigwe, 2015). Regarding the *Gabčíkovo-Nagymaros Project*, the ICJ found that Hungary has to pay damages for the cessation of the construction of a joint hydro power plant with Slovakia, even if in this case, Slovakia was not harmed by Hungary. The duty to act in the case of omission is a major principle of international law because it makes states liable for their failures. This idea could help stop states from doing harm to other states through their inactions. But the principle of non-

use of force or intervention in other countries' issues which has its roots in Article 2(4) of the UN Charter is the most important as it embodies the growing realization that countries must work together to maintain international peace and security. Including the exercising 'due diligence' to prevent damages to other states (Lanovoy, 2017).

Use of Force in Self-Defense:

By the Corfu Channel case, international law highlighted the application of force in self-defense. By the ICJ's ruling, the United Kingdom did not employ the right of self-defense when they forcibly removed the mines laid at the Corfu Channel as Albania was not perceived as an immediate threat to the United Kingdom. The ICJ established the right to exercise the right of self-defense in response to a real or imminent armed attack. As enunciated in Article 51 of the UN Charter, the right of self-defense is lawful. The ICJ considered that the mining of the Corfu Channel was unlawful action, but it was not an armed attack on the United Kingdom (Schmidt, 2021)(Schmitt, 2013). The Court concluded that the mines were not positioned so as, in the circumstances, to constitute an actual and imminent threat to the United Kingdom. The Court also highlighted that the UK had several non-military options available to it, including seeking the assistance of the UN Security Council. The ICJ's landmark judgment on the doctrine of self-defense in the Corfu Channel case has been a significant one. Referenced by the ICJ subsequently, and acknowledged by most countries as a genuine statement of the law. The Corfu Channel case is important because it established standards for the international law on the use of force in self-defense (Adriani, 2018). This ICJ decision has now prevented governments from using force to solve disputes which are not of an armed attack.

Application of the Case in Subsequent Cases:

It has since been cited in various cases and established itself as one of the most important authorities on state responsibility. This is because the case developed fundamental concepts on some of the following topics:

Omission liability: Although Albania did not actually mine the Corfu Channel, the ICJ found that Albania was responsible for any harm caused by such mining (Ahmedi & Shehu, 2016). In its judgment, the court found that Albania was in breach of international law through its insufficiency in protecting itself from mining the channel and for failing to inform passing ships about the threat. In the years since then, the doctrine is referred as "the omission liability" rule.

State responsibility for environmental harm: In its decision on the Nuclear Tests case (1974), the ICJ referred to the Corfu Channel case and held that France was responsible for damages caused to the environment by its nuclear tests carried out

in the South Pacific. Thus, the Corfu channel incident also had some role in forming the law of state liability for environment damages (Bannelier et al., 2012).

The use of force in self-defense: By judgement of 9 April 1949 in the case concerning the Armed Merchant cruiser "St. Louis" (France v. Belgium), the ICJ decided that no self-defense existed when the UK took unilateral measures to remove mines from the channel. The Court's judgment in this case has been cited by the ICJ in subsequent cases and has been recognized by the majority of states as a true representation of international law.

In addition to the cases listed above, the Corfu Channel case was cited in the following cases:

The Corfu case was cited in numerous subsequent cases (Bannelier et al., 2012). Some of the cases are mentioned here:

Nicaragua v. United States (1986): The ICJ held that the United States was liable for damages resulting from its support to the Contras despite the United States' non-belligerent involvement with the actions of the Contras (Harry, 1986). Referring to the Corfu Channel case the Court held that states may be responsible for neglecting their duties.

Gabčíkovo-Nagymaros Project (1997): However, although Hungary itself did not materially damage the property in question, the ICJ held it responsible for having caused harm in deteriorating the joint project of a hydropower plant with Slovakia. Citing the Corfu Channel case, the Court explained that States may be held liable for their unlawful or wrong activities (Roscini, 2015).

Oil Platforms case (2003): The United States accused Iran of having bombed one of its oil platforms and sought compensation from Iran, in spite of the fact that Iran had not conducted a direct attack on the oil platform (Cooper, 2012). The ICJ found that Iran was liable for damages to the US-operated oil platform. In reaching its conclusion, the Court cited the Corfu Channel judgment, and stated that governments could be held accountable for their actions.

In addition to the specific implications highlighted above, the Corfu Channel case also has a number of other implications for international law. For example, the case assisted in the development of the establishment of the principle that the ICJ is the primary forum for the resolution of international disputes. The case also accentuated the importance of international law in maintaining peace and security.

CONCLUSION

The case of Corfu Channel was a landmark case in the development of international law. The lawsuit was triggered by Albanian mining of the Corfu Channel in 1946 which sank two British ships and killed 44 British sailors. The ICJ

concluded that Albania had breached the international law for failing to take adequate measures for the security of navigation in the Corfu Channel and for not informing ships of the threat. The ICJ likewise held that Albania was liable to the British for damages arising from the mining of the channel. The Corfu Channel case, indeed, has important implications with regard to the law of the sea, the state's responsibility, and the right to use force (in self-defense). The ruling endorsed States right of innocent passage through international straits and held that it was the obligation of coastal States to protect vessels in their territorial sea. The decision also gave rise to the precedent that state actors are liable for harms they fail to prevent, not just what they do. It remains an important case in present world politics," says Stavros Lambrinidis. For instance, the decision has been cited in later cases about innocent passage in international waters, such as the South China Sea. The decision has also been cited in cases about government liability for environmental damage.

REFERENCE

- Adriani, N. (2018). The ICJ and the Use of Force. *Grou*, 23529(2), 1–45. <https://doi.org/https://dx.doi.org/10.2139/ssrn.2311217>
- Ahmedi, B., & Shehu, S. (2016). Resolution Of International Conflicts Through The United Nations: The Corfu Channel Case. *European Scientific Journal*, 12(13).
- Bannelier, K., Christakis, T., & Heathcote, S. (2012). *The ICJ and the Evolution of International Law: The enduring impact of the Corfu Channel case*.
- Bennett, J. (1953). *The Corfu Channel*. 1.
- Bianco, C., Garcia, Z., & Chand, B. (2023). What Is Innocent? Freedom of Navigation Versus Coastal States' Rights in the Law of the Sea. *Ocean Development & International Law*, 54(3), 349–374.
- Carty, A. (2004). The Corfu Channel Case - and the Missing Admiralty Orders. *Law and Practice of International Courts and Tribunals*, 3.
- Cooper, A. S. (2012). *The oil kings: how the US, Iran, and Saudi Arabia changed the balance of power in the Middle East*. Simon and Schuster.
- Finch, G. A. (1949). *Editorial comment* 491. 42(1948), 13–15.
- Harry, M. A. (1986). International Law - The Right of Self-Defense and the Use of Armed Force against States Aiding Insurgency - Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14 (Judgment of June 27). *Southern Illinois University Law Journal*, 11.
- Hossain, K. (2005). *Ree aw ournal*. 1(1).
- Lanovoy, V. (2017). The use of force by non-state actors and the limits of attribution of conduct. *European Journal of International Law*, 28(2), 563–585.
- Latty, F., Latty Actions, F., James CRAWFORD, O., Pellet, A., & Ole-son, S. (2010).

- Actions and omissions. *Shs.Hal.Science*, 9780199296972–04188904.
- Roscini, M. (2015). Evidentiary issues in international disputes related to state responsibility for cyber operations. *Tex. Int'l LJ*, 50, 233.
- Schmidt, L. (2021). Battling it out with memes: Contesting Islamic “Radicalism” on Indonesian social media. In *Mediated Terrorism in the 21st Century* (pp. 107–125). https://doi.org/10.1007/978-3-030-73511-1_6
- Schmitt, M. N. (2013). Below the threshold cyber operations: The countermeasures response option and international law. *Va. J. Int'l L.*, 54, 697.
- Seify, B. (2021). The Legitimacy of Using Naval Mines Technology during Peacetime in the Light of Developments in International Law of the Seas. *International Journal of Maritime Policy*, 1(4), 19–49.
- Wigwe, C. (2015). *The Doctrine of Non-Intervention and the Use of Force in International Law*. January 2008.



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