

"3. The instrument for the Free Port of Trieste; and its acceptance of the responsibilities devolving upon it under the same."

### THE CORFU CHANNEL QUESTION

#### INITIAL PROCEEDINGS

By letter dated 10 January 1947,<sup>173</sup> enclosing copies of an exchange of notes between the United Kingdom and the People's Republic of Albania regarding an incident in the Corfu Channel in which two British warships had been mined on 22 October 1946, the United Kingdom submitted this question as a dispute under Article 35.

At its 95th meeting on 20 January 1947, the Security Council included the question in the agenda.<sup>174</sup>

The Security Council considered the question at its 95th, 107th, 109th, 111th, 114th, 120th to 122nd, 125th and 127th meetings between 20 January and 9 April 1947.<sup>175</sup>

At the 107th meeting on 18 February 1947, the representative of the United Kingdom requested that the Council, taking into consideration the failure of attempts at settlement through diplomatic correspondence, should recommend under Article 36 a settlement of the dispute by direct negotiation between the two Governments, on the basis of a finding by the Council that an unnotified mine field had been laid in the Corfu Straits by the Albanian Government or with its connivance. He also requested that the Council should retain the dispute on its agenda until both the parties certified that it had been settled to their satisfaction, and that the Council should remind all States that it was incumbent on them to see that their territorial waters were free from mines.<sup>176</sup>

At the 109th meeting on 19 February, the representative of Albania stated that the Albanian Government had not laid, or known who had laid, the mines and that the British warships had violated Albanian sovereignty over its territorial waters with a view to provoking incidents.<sup>177</sup>

*Decision of 27 February 1947 (114th meeting): Appointment of a sub-committee*

At the 111th meeting on 24 February 1947, the representative of Australia submitted a draft resolution for the appointment of a sub-committee of three members to make a report on the facts of the case.<sup>178</sup>

At the 114th meeting on 27 February, the representative of China suggested, and the representative of Australia accepted,<sup>179</sup> an amendment to the draft resolution.

At the same meeting the draft resolution, as amended, was adopted by eight votes, with three abstentions.<sup>180</sup> The resolution, as adopted, read:

"As a preliminary step in the consideration of the incidents in the Corfu Channel which are the sub-

ject of a dispute between the United Kingdom and Albania,

"The Security Council

"Resolves:

"To appoint a sub-committee of three members to examine all the available evidence concerning the above-mentioned incidents and to make a report to the Security Council, not later than 10 March 1947, on the facts of the case as disclosed by such evidence.

"The sub-committee is empowered to request further information as it deems necessary from the parties to the dispute, and the representatives of the United Kingdom and Albania are requested to give every assistance to the sub-committee in its work."

*Decision of 25 March 1947 (122nd meeting): Rejection of draft resolution submitted by the representative of the United Kingdom*

At the 120th meeting on 20 March 1947, the Chairman of the sub-committee submitted<sup>181</sup> its report.<sup>182</sup>

At the same meeting, the representative of the United Kingdom submitted a draft resolution.<sup>183</sup> At the 121st and 122nd meetings on 21 and 25 March 1947, the representatives of the United States and France submitted amendments which the representative of the United Kingdom accepted.

The draft resolution as amended provided that the Security Council should find that an "unnotified mine field" had been laid which "could not have been laid without the knowledge of the Albanian authorities"; should recommend that the two Governments "settle the dispute on the basis of the Council's finding" and that either party might apply to the Council for further consideration in the event of failure to settle; and should resolve "to retain this dispute on its agenda until both parties certify that it has been settled to their satisfaction".

At the 122nd meeting on 25 March, the United Kingdom draft resolution, as amended, was not adopted. There were 7 votes in favour, 2 against (1 vote being that of a permanent member), 1 abstention, and 1 member not participating in the vote.<sup>184</sup>

*Decision of 9 April 1947 (127th meeting): Recommendation that the two Governments refer the dispute to the International Court of Justice*

At the 125th meeting on 3 April 1947, the representative of the United Kingdom submitted a draft resolution<sup>185</sup> to recommend that the two Governments refer the dispute to the International Court of Justice.

At the 127th meeting on 9 April 1947, the United Kingdom draft resolution was adopted by 8 votes in favour, none against, with two abstentions and 1 member not participating in the vote.<sup>186</sup> The resolution, as adopted, read:<sup>187</sup>

"The Security Council,

"Having considered statements of representatives of the United Kingdom and of Albania concerning a

<sup>173</sup> S/247, O.R., 2nd year, Suppl. No. 3.

<sup>174</sup> 95th meeting: p. 117.

<sup>175</sup> For observations on the bearing of Article 33, see chapter X, Case 3; and of Article 36 (3), see chapter X, Case 23.

<sup>176</sup> 107th meeting: pp. 306-307.

<sup>177</sup> 109th meeting: pp. 326, 334.

<sup>178</sup> 111th meeting: pp. 364-365.

<sup>179</sup> 114th meeting: p. 418 and p. 422.

<sup>180</sup> 114th meeting: p. 432. For discussion on the character of the sub-committee, see chapter V, Case 66.

<sup>181</sup> 120th meeting: p. 544.

<sup>182</sup> S/300, O.R., 2nd year, Suppl. No. 10.

<sup>183</sup> 120th meeting: p. 567. For text, see chapter X, Case 23.

<sup>184</sup> 122nd meeting: p. 609. For discussion regarding retention on the agenda, see chapter II, Case 58.

<sup>185</sup> 125th meeting: pp. 685-686.

<sup>186</sup> 127th meeting: p. 727.

<sup>187</sup> 127th meeting: pp. 726-727.

dispute between the United Kingdom and Albania, arising out of an incident on 22 October 1946 in the Straits of Corfu, in which two British ships were damaged by mines with resulting loss of life and injury to their crews,

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

#### APPOINTMENT OF A GOVERNOR FOR THE FREE TERRITORY OF TRIESTE

##### (a) Letter dated 13 June 1947 from the representative of the United Kingdom to the President of the Security Council (document S/374)<sup>188</sup>

#### INITIAL PROCEEDINGS

By letter dated 13 June 1947 addressed to the President of the Security Council the representative of the United Kingdom requested the fixing of a date “during the coming week for the discussion by the Security Council of the question of the appointment of a governor of the Free Territory of Trieste”, in accordance with Article 11, paragraph 7, of the Statute approved by the Council on 10 January 1947.

At the 143rd meeting on 20 June 1947, the Council included the question in the agenda.<sup>189</sup>

The Council considered the question in private at its 144th, 155th, 203rd, 223rd, 233rd and 265th meetings between 20 June 1947 and 9 March 1948.

At the 265th meeting on 9 March 1948, the Council agreed to postpone consideration and to take up the question at the request of any member of the Council.<sup>190</sup>

The Security Council resumed consideration of the question at its 411th, 412th, 422nd and 424th meetings between 17 February and 10 May 1949.

*Decision of 10 May 1949 (424th meeting): Rejection of draft resolution submitted by the representative of the USSR*

At the 411th meeting on 17 February 1949, the representative of the USSR submitted a draft resolution to appoint Colonel Fluckiger as Governor of the Free Territory of Trieste.<sup>191</sup>

At the 424th meeting on 10 May 1949, the draft resolution submitted by the representative of the USSR was rejected, by 2 votes in favour, none against, with 9 abstentions.<sup>192</sup>

#### THE EGYPTIAN QUESTION

#### INITIAL PROCEEDINGS

By letter dated 8 July 1947,<sup>193</sup> Egypt stated that British troops were maintained on Egyptian territory against the will of the people, contrary to the principle of sovereign equality of the Members of the United Nations and the General Assembly resolution 41 (I)

of 14 December 1946. Egypt also complained that the United Kingdom had occupied the Sudan and had endeavoured to impair the unity of the Nile Valley. A dispute had consequently arisen between the two countries, the continuance of which was likely to endanger the maintenance of international peace and security. Attempts at reaching a fair settlement in conformity with Article 33 of the Charter had failed since the United Kingdom had striven to avail itself of the Anglo-Egyptian Treaty of 1936 “that cannot bind Egypt any longer, having outlived its purposes, besides being inconsistent with the Charter”. Consequently, Egypt was bringing the dispute before the Council under Articles 35 and 37 of the Charter, and requested the Council to direct:

1. The total and immediate evacuation of British troops from Egypt, including the Sudan;
2. The termination of the present administrative régime in the Sudan.

At its 159th meeting on 17 July 1947, the Council included the question in the agenda.

The Council considered the Egyptian question at its 175th, 176th, 179th, 182nd, 189th, 193rd, 196th and 198th to 201st meetings between 5 August and 10 September 1947.<sup>194</sup>

In his statements to the Council at the 175th and 179th meetings on 5 and 11 August, the representative of Egypt submitted that the actions of the United Kingdom had created a conflict between the Governments of Egypt and the United Kingdom, and a constant state of friction between the population and the occupying forces. With its repercussions beyond the frontiers of Egypt, the prevailing tension between the two countries was a potential threat to peace and security. He held that Egypt had not been a free agent in concluding the Treaty of 1936, which violated the principle of sovereign equality of the Members of the United Nations, and was an obstacle to Egypt's discharge of its obligations under the Charter to cooperate in suppressing aggression. It was a perpetual alliance, and such alliances were precluded by the Charter. In choosing to abide by the obligations of the Charter rather than by the obligations of the Treaty, Egypt was merely living up to her commitment under Article 103 of the Charter. He added that the Council was not called upon to adjudicate on the legal rights of the parties to the Treaty of 1936, nor to pronounce upon the Treaty, but to take account of the “bald political facts” with a view to the maintenance of international peace and security.<sup>195</sup>

The representative of the United Kingdom replied at the 176th, 179th and 182nd meetings on 5, 11 and 13 August, that no proof had been offered that international peace and security had been under any threat, unless the Egyptian Government contemplated creating it. Since both the Egyptian demands concerned the Treaty of 1936, the “one real issue” before the Council was the legal issue of the validity of the Treaty. He observed that the argument based on the doctrine of *rebus sic stantibus* was lacking in legal validity, that the Treaty had been freely concluded, that it was in no way inconsistent with the Charter, that the question of sovereignty was not involved, and that the main-

<sup>188</sup> 143rd meeting: p. 1043.

<sup>189</sup> 143rd meeting: p. 1052.

<sup>190</sup> 265th meeting: p. 65.

<sup>191</sup> S/1260, 411th meeting: pp. 14-15.

<sup>192</sup> 424th meeting: p. 10.

<sup>193</sup> S/410, 159th meeting: pp. 1343-1345.

<sup>194</sup> For statements regarding recourse to Article 33, see chapter X, Case 4.

<sup>195</sup> 175th meeting: pp. 1746, 1753-1757; 179th meeting: pp. 1861-1863, 1866-1868, 1873.