

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

AMBATIELOS CASE

(GREECE *v.* UNITED KINGDOM)

PRELIMINARY OBJECTION

JUDGMENT OF JULY 1st, 1952

1952

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE AMBATIELOS

(GRÈCE *c.* ROYAUME-UNI)

EXCEPTION PRÉLIMINAIRE

ARRÊT DU 1^{er} JUILLET 1952

This Judgment should be cited as follows :

*“Ambatielos case (jurisdiction), Judgment of July 1st, 1952 :
I.C.J. Reports 1952, p. 28.”*

Le présent arrêt doit être cité comme suit :

*« Affaire Ambatielos (compétence), Arrêt du
1^{er} juillet 1952 : C.I. J. Recueil 1952, p. 28. »*

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JULY 1st, 1952

JUDGMENT

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1^{er} JUILLET 1952

ARRÊT

INTERNATIONAL COURT OF JUSTICE

1952
 July 1st
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YEAR 1952

July 1st, 1952

AMBATIELOS CASE

(GREECE *v.* UNITED KINGDOM)

PRELIMINARY OBJECTION

Analysis of the Submissions of the Parties. to define the issues before the Court.—Conditions proposed for the conferring of jurisdiction on the Court as Commission of Arbitration: unequivocal agreement of the Parties.—No retroactive operation of a treaty where no provision to this effect and no special reason.—Relation between the Declaration of July 16th, 1926, and the Treaty of the same date; external and internal evidence of the will of the contracting Parties in this connection: same signatories, ratification of the whole by each of the parties, registration of the whole with the League of Nations, character of the Declaration as interpretative provision.—No possibility of conflict between the decision of the Court and that of the Commission of Arbitration.—Distinction between claims formulated before, and those not formulated before a certain date not warranted by the terms of the Declaration.—Interpretation of treaty provisions resulting in certain categories of disputes remaining without means of solution: contrary desire of the Parties.

JUDGMENT

Present: Vice-President GUERRERO, Acting President; President Sir Arnold McNAIR; Judges ALVAREZ, BASDEVANT, HACKWORTH, WINIARSKI, ZORIČIĆ, KLAESTAD, BADAWI PASHA, READ, HSU MO, LEVI CARNEIRO, Sir Benegal RAU, ARMAND-UGON; M. SPIROPOULOS, Judge ad hoc; Registrar HAMBRO.

In the *Ambatielos* case,

between

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

Mr. V. J. Evans, Assistant Legal Adviser of the Foreign Office,

as Agent,

assisted by :

Sir Eric Beckett, K.C.M.G., Q.C., Legal Adviser of the Foreign
Office,

Mr. D. H. N. Johnson, Assistant Legal Adviser of the Foreign
Office,

Mr. J. E. S. Fawcett, D.S.C., Member of the English Bar,

as Counsel,

and

the Kingdom of Greece,
represented by :

M. N. G. Lély, Envoy Extraordinary and Minister Plenipoten-
tiary of H.M. the King of the Hellenes in the Netherlands,

as Agent,

assisted by :

The Right Honourable Sir Hartley Shawcross, Q.C., M.P., former
Attorney-General of the United Kingdom,

Mr. C. J. Colombos, Q.C., LL.D., Member of the English Bar,

M. Henri Rolin, Professor of International Law at Brussels
University, former President of the Belgian Senate,

M. Jason Stavropoulos, Legal Adviser of the Ministry for Foreign
Affairs,

as Counsel,

THE COURT,

composed as above,

adjudicating on the Preliminary Objection of the Government of
the United Kingdom,

delivers the following Judgment :

On April 9th, 1951, the Greek Minister in the Netherlands, duly authorized by his Government, filed in the Registry an Application instituting proceedings before the Court against the United Kingdom of Great Britain and Northern Ireland concerning the claim relating to the rights of a Greek shipowner, Nicolas Eustache Ambatielos, alleged to have suffered considerable loss in consequence of a contract which he concluded in 1919 with the Government of the United Kingdom (represented by the Ministry of Shipping) for the purchase of nine steamships which were then under construction, and in consequence of certain adverse judicial decisions in the English Courts in connection therewith.

The Hellenic Application refers to the Treaty of Commerce and Navigation between Greece and Great Britain, signed at Athens on November 10th, 1886, and to the Treaty of Commerce and Navigation between the same Contracting Parties signed at London on July 16th, 1926, including the Declaration. The Application requests the Court :

“To declare that it has jurisdiction :

To adjudge and declare....

1. That the arbitral procedure referred to in the Final Protocol of the Treaty of 1886 must receive application in the present case ;
2. That the Commission of Arbitration provided for in the said Protocol shall be constituted within a reasonable period, to be fixed by the Court”.

Pursuant to Article 40, paragraphs 2 and 3, of the Statute, the Application was notified to the Government of the United Kingdom and to the States entitled to appear before the Court. It was also transmitted to the Secretary-General of the United Nations.

The Memorial of the Hellenic Government was filed within the time-limit prescribed by Order of May 18th, 1951, and later extended by Order of July 30th, 1951. It sets out the following Submissions :

“.... the Hellenic Government requests the Court to adjudge and declare :

(1) That the United Kingdom Government is under an obligation to agree to refer its present dispute with the Hellenic Government to arbitration, and to carry out the Judgment which will be delivered ;

(2) that the arbitral procedure instituted by the Protocol of the Greco-British Treaty of Commerce and Navigation of 1886, or alternatively, that of the Treaty of Commerce of 1926, must be applied in this case ;

(3) that any refusal by the United Kingdom Government to accept the arbitration provided for in those Treaties would constitute a denial of justice (*Anglo-Iranian Oil Company* case, Order of July 5th, 1951 : I.C.J. Reports, 1951, p. 89) ;

(4) that the Hellenic Government is entitled to seize the Court of the merits of the dispute between the two Governments without

even being bound to resort beforehand to the arbitration mentioned under submissions 1 and 2 above ;

(5) alternatively, that the United Kingdom Government is under an obligation, as a Member of the United Nations, to conform to the provisions of Article 1, paragraph 1, of the Charter of the United Nations, one of whose principal purposes is: 'to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations', and to those of Article 36, paragraph 3, of the Charter, according to which 'legal disputes should, as a general rule, be referred by the Parties to the International Court of Justice'. There is no doubt that the dispute between the Hellenic Government and the United Kingdom Government is a legal dispute susceptible of adjudication by the Court."

On February 9th, 1952, within the time-limit prescribed by Order of July 30th, and later extended by Orders of November 9th, 1951, and January 16th, 1952, the Government of the United Kingdom filed a Counter-Memorial in which, whilst setting out its arguments and submissions on the merits of the case, it contended that the Court lacked jurisdiction, expressly presenting this contention as a Preliminary Objection under Article 62 of the Rules of Court. As regards jurisdiction, the Counter-Memorial requests the Court to adjudge and declare that it has no jurisdiction :

"(a) to entertain a request by the Hellenic Government that it should order the United Kingdom Government to submit to arbitration a claim by the Hellenic Government based on Article XV or any other Article of the Treaty of 1886 ;

or

(b) itself to decide on the merits of such a claim",

and that, likewise, it has no jurisdiction :

"(a) to entertain a request by the Hellenic Government that it should order the United Kingdom Government to submit to arbitration a claim by the Hellenic Government for denial of justice based on the general principles of international law or for unjust enrichment, or

(b) itself to decide upon the merits of such a claim."

The filing of the Preliminary Objection having suspended proceedings on the merits, a time-limit was prescribed by Order of February 14th, 1952, for the presentation by the Hellenic Government of a written statement of its Observations and Submissions on the Objection. Furthermore, the States entitled to appear before the Court were informed of the deposit of the Objection.

The Observations and Submissions of the Hellenic Government were filed on April 4th, 1952. They contain the following Submissions :

".... the Hellenic Government asks that it may please the Court to dismiss the Objection to the jurisdiction lodged by the British Government and, adjudicating upon the Submissions relating to the competence of the Court, formulated in the Application instituting proceedings and hereinafter clarified :

1. *in the first place*, to hold that the United Kingdom Government is bound to accept the submission to the International Court of Justice, sitting as an arbitral tribunal, of the dispute now existing between that Government and the Hellenic Government, and accordingly to fix time-limits for the filing by the Parties of the Reply and the Rejoinder dealing with the merits of the dispute ;
2. *alternatively*, to authorize the British Government to notify to the Greek Government, within the time-limit of one month, its preference, if any, for the submission of the dispute to the decision of a Commission of Arbitration as provided for in the Protocol of 1886, it being understood that in the event of a failure by the British Government to exercise this option within the time-limit laid down, the proceedings on the merits will be resumed before the Court, the President of which, upon the Application of the Hellenic Government, shall fix time-limits for the filing of the Reply and the Rejoinder ;
3. *in the further alternative*, to direct the Parties to put into execution the procedure for a Commission of Arbitration as provided for by the Protocol of 1886 ;
4. *in the final alternative*, if the Court should hold that it cannot decide as to its competence without further information as to the merits, by application of Article 62 of the Rules, to join the Objection to the merits."

After the deposit of the Hellenic Government's Observations and Submissions, the case was ready for hearing, in so far as the Preliminary Objection was concerned. As the Court included upon the Bench a judge of the nationality of one of the Parties, the other Party—the Hellenic Government—availed itself of the right conferred on it by Article 31, paragraph 2, of the Statute of the Court and appointed Professor Jean Spiropoulos to sit as judge *ad hoc*. As the President of the Court was the national of one of the Parties, he transferred the Presidency for the present case to the Vice-President, in accordance with Article 13, paragraph 1, of the Rules of Court. Public hearings were held on May 15th, 16th and 17th, in the course of which the Court heard Sir Eric Beckett, Counsel, on behalf of the Government of the United Kingdom ; and M. Lély, Agent, Sir Hartley Shawcross and M. Henri Rolin, Counsel, on behalf of the Hellenic Government.

In the course of the argument before the Court, the following Submissions were presented :

On behalf of the United Kingdom Government :

“The formal conclusion of the United Kingdom is that the International Court of Justice has no jurisdiction to deal with the claim brought against the Government of the United Kingdom by the Hellenic Government in respect of the treatment of M. Ambatielos.”

On behalf of the Hellenic Government :

“In the light of the Submissions of the Parties :

Having regard to Article 29 of the Treaty of Commerce between the United Kingdom and Greece, signed in London on July 16th, 1926, and, in so far as it may be necessary, to the Declaration of the same date,

May it please the Court : to record a finding for the Hellenic Government :

1. that the complaints formulated by that Government in its Memorial, relating to the breach of the contract of sale of the ships, to the unjust enrichment, to the non-production at the trial of certain documents of which M. Ambatielos was unaware and to the improper administration of justice (denial of justice *stricto sensu*), all have, in the opinion of that Government, a legal foundation in Articles I, X, XV, paragraph 3, of the Treaty of Commerce and Navigation of November 10th, 1886, and likewise in Articles 1, 3 and 4 of the Treaty of July 16th, 1926, which are in identical or equivalent terms to the first two provisions referred to above ;
2. that the British Government has, through its Counsel, Sir Eric Beckett, expressed its willingness that the Court should undertake the function of arbitration in the event of its holding that it has jurisdiction to decide the question whether the Greek claim should be submitted to arbitration, as provided for by the Protocol annexed to the Treaty of 1886, and in the event of the Court's giving an affirmative decision on this question.

This having been done, for the reasons indicated in the Hellenic Observations and enlarged upon by Counsel ;

to hold that it has jurisdiction to deal with the merits of the Hellenic claim, and accordingly to fix time-limits for the filing by the Parties of the Reply and the Rejoinder on the merits ;

in the alternative, if the Court should hold that it cannot reach a decision as to its jurisdiction without going into the merits, by application of Article 62 of its Rules, to join the Objection to the merits.”

The Treaty provisions herein before mentioned are as follows :
Treaty of Commerce and Navigation of November 10th, 1886

“Article I

There shall be between the dominions and possessions of the two High Contracting Parties reciprocal freedom of commerce and navigation. The subjects of each of the two Parties shall have liberty freely to come, with their ships and cargoes, to all places, ports and rivers in the dominions and possessions of the other to which native subjects generally are or may be permitted to come, and shall enjoy respectively the same rights, privileges, liberties, favours, immunities and exemptions in matters of commerce and navigation which are or may be enjoyed by native subjects without having to pay any tax or impost greater than those paid by the same, and they shall be subject to the laws and regulations in force.

Article X

The Contracting Parties agree that, in all matters relating to commerce and navigation, any privilege, favour, or immunity whatever which either Contracting Party has actually granted or may hereafter grant to the subjects or citizens of any other State shall be extended immediately and unconditionally to the subjects or citizens of the other Contracting Party ; it being their intention that the trade and navigation of each country shall be placed, in all respects, by the other on the footing of the most-favoured nation.

Article XV

The dwellings, manufactories, warehouses and shops of the subjects of each of the Contracting Parties in the dominions and possessions of the other, and all premises appertaining thereto destined for purposes of residence or commerce shall be respected.

It shall not be allowable to proceed to make a search of, or a domiciliary visit to, such dwellings and premises, or to examine and inspect books, papers, or accounts, except under the conditions and with the form prescribed by the laws for subjects of the country.

The subjects of each of the two Contracting Parties in the dominions and possessions of the other shall have free access to the Courts of Justice for the prosecution and defence of their rights, without other conditions, restrictions, or taxes beyond those imposed on native subjects, and shall, like them, be at liberty to employ, in all causes, their advocates, attorneys or agents, from among the persons admitted to the exercise of those professions according to the laws of the country.”

Protocol of November 10th, 1886

“At the moment of proceeding this day to the signature of the Treaty of Commerce and Navigation between Great Britain

and Greece, the Plenipotentiaries of the two High Contracting Parties have declared as follows :

Any controversies which may arise respecting the interpretation or the execution of the present Treaty, or the consequences of any violation thereof, shall be submitted, when the means of settling them directly by amicable agreement are exhausted, to the decision of Commissions of Arbitration, and the result of such arbitration shall be binding upon both Governments.

The members of such Commissions shall be selected by the two Governments by common consent, failing which each of the Parties shall nominate an Arbitrator, or an equal number of Arbitrators, and the Arbitrators thus appointed shall select an Umpire.

The procedure of the Arbitration shall in each case be determined by the Contracting Parties, failing which the Commission of Arbitration shall be itself entitled to determine it beforehand.

The undersigned Plenipotentiaries have agreed that this Protocol shall be submitted to the two High Contracting Parties at the same time as the Treaty, and that when the Treaty is ratified, the agreements contained in the Protocol shall also equally be considered as approved, without the necessity of a further formal ratification."

Treaty of Commerce and Navigation of July 16th, 1926

Article 1

There shall be between the territories of the two Contracting Parties reciprocal freedom of commerce and navigation.

The subjects or citizens of each of the two Contracting Parties shall have liberty freely to come, with their ships and cargoes, to all places and ports in the territories of the other to which subjects or citizens of that Contracting Party are, or may be, permitted to come, and shall enjoy the same rights, privileges, liberties, favours, immunities and exemptions in matters of commerce and navigation as are, or may be, enjoyed by subjects or citizens of that Contracting Party.

Article 3

The subjects or citizens of each of the two Contracting Parties in the territories of the other shall enjoy, in respect of their persons, their property, rights and interest, and in respect of their commerce, industry, profession, occupation, or any other matter, in every way the same treatment and legal protection as the subjects or citizens of that Party or of the most-favoured foreign country, in as far as taxes, rates, customs, imposts, fees which are substantially taxes, and other similar charges are concerned.

Article 4

The two Contracting Parties agree that in all matters relating to commerce, navigation and industry and the exercise of professions or occupations, any privileges, favour or immunity which either of the two Contracting Parties has actually granted, or may

hereafter grant, to the ships and subjects or citizens of any other foreign country shall be extended, simultaneously and unconditionally, without request and without compensation, to the ships and subjects or citizens of the other, it being their intention that the commerce, navigation and industry of each of the two Contracting Parties shall be placed in all respects on the footing of the most-favoured nation.

Article 29

The two Contracting Parties agree in principle that any dispute that may arise between them as to the proper interpretation or application of any of the provisions of the present Treaty shall, at the request of either Party, be referred to arbitration.

The court of arbitration to which disputes shall be referred shall be the Permanent Court of International Justice at The Hague, unless in any particular case the two Contracting Parties agree otherwise."

Declaration of July 16th, 1926

"It is well understood that the Treaty of Commerce and Navigation between Great Britain and Greece of to-day's date does not prejudice claims on behalf of private persons based on the provisions of the Anglo-Greek Commercial Treaty of 1886, and that any differences which may arise between our two Governments as to the validity of such claims shall, at the request of either Government, be referred to arbitration in accordance with the provisions of the Protocol of November 10th, 1886, annexed to the said Treaty."

The Agents of the Parties have informed the Court that the commercial relations between the United Kingdom and Greece were regulated in accordance with the provisions of the Treaty of 1886 until the Treaty of 1926 came into force.

Although the Treaty of 1886 was denounced by Greece in 1919 and 1924, nevertheless, by successive agreements and exchanges of notes, it was continued in force from time to time ; in the final exchange of notes, it was agreed that the provisional *modus vivendi* by which the Treaty was continued until August 31st, 1926, would lapse on the date on which the Treaty of 1926 came into force.

It is necessary for the Court at the outset to review briefly the Submissions of the Parties as they were developed during the proceedings.

In the Application of the Hellenic Government there were three requests, the first of which was that the Court should declare that it had jurisdiction ; the second that the Court should declare and adjudge that the arbitral procedure referred to in the Final Protocol of the Treaty of 1886 must receive application in the present case ; and the

third related to the constitution of the Arbitration Commission. In the Memorial which followed the Application, the request, *inter alia*, was that the Court should declare and adjudge that the arbitral procedure aforesaid should receive application, which implies a previous decision that the Court had jurisdiction so to do. In the Hellenic Government's Observations and Submissions on the United Kingdom Government's Counter-Memorial, the Court was asked to dismiss the United Kingdom Government's Objection to the jurisdiction, and, adjudicating upon the competence of the Court as requested in the Application, to direct the Parties to put into execution the procedure for a Commission of Arbitration as provided for by the Protocol of 1886 (this latter Submission being an alternative to the Submission asking the Court to hold that the United Kingdom Government is bound to accept the submission of the difference to this Court acting as an arbitral tribunal). Finally, at the conclusion of the oral arguments, the Hellenic Government, after reciting *inter alia* that the United Kingdom Government had, through its Counsel, expressed its willingness that the Court should undertake the function of arbitration upon certain conditions, asked that the Court should hold that it had jurisdiction to deal with the merits, or, in the alternative, that it should join the Objection to the merits. These conditions, as stated by the Hellenic Government in its final Submissions, were, first, that the Court should hold that it had jurisdiction to decide the question whether the claim should be submitted to arbitration under the Protocol of 1886, and secondly, that the Court should actually decide this question in the affirmative.

The United Kingdom Government's final Submission is that the Court "has no jurisdiction to deal with the claim brought against the Government of the United Kingdom by the Hellenic Government in respect of the treatment of M. Ambatielos". The Submissions in the Counter-Memorial of the United Kingdom were more detailed. So far as they related to jurisdiction, with which alone the Court is now concerned, they were :

- (i) That for certain reasons the Court has no jurisdiction
 - "(a) to entertain a request by the Hellenic Government that it should order the United Kingdom Government to submit to arbitration a claim by the Hellenic Government based on Article XV or any other article of the Treaty of 1886, or,
 - (b) itself to decide on the merits of such a claim."
- (ii) That for certain reasons, the Court has no jurisdiction
 - "(a) to entertain a request by the Hellenic Government that it should order the United Kingdom Government to submit to arbitration a claim by the Hellenic Govern-

ment for denial of justice based on the general principles of international law or for unjust enrichment, or

(b) itself to decide upon the merits of such a claim.”

The brief but comprehensive final Submission obviously includes the jurisdictional objections more particularly set out in the Counter-Memorial.

It is evident from the above summary that, apart from the jurisdiction of the Court on the merits; the question of its jurisdiction to decide upon the obligation to submit the difference to arbitration is implicit in the final Submissions of both Parties.

The Hellenic Government's final Submissions refer to an offer of the United Kingdom Government (through its Counsel), upon certain conditions, that the Court itself should undertake the function of arbitration. It is true that the United Kingdom Government has made some such offer, but the conditions attached to it are not very clear. In paragraph III of the Submissions at the end of the Counter-Memorial, the United Kingdom Government stated that if, contrary to its contentions, the Court should hold that it had “jurisdiction to order arbitration of a claim by the Hellenic Government based on the Treaty of 1886 and that the Hellenic Government is not precluded by lapse of time from submitting any such claim”, then the Court should substitute itself for the Commission of Arbitration under the Protocol of 1886 and itself decide all relevant issues. This condition does not appear to involve the necessity of examining whether the Ambatielos claim is in truth based on the Treaty of 1886. It implies that the United Kingdom Government's contention is that the Court has no jurisdiction even where a claim is based on the Treaty. But, during the oral arguments, Counsel said at one stage that the Court would have jurisdiction to decide whether the United Kingdom had committed a breach of the Declaration of 1926 in regard to the Ambatielos claim if (1) the Declaration was a provision of the Treaty of 1926 and (2) the Hellenic Government's claim in respect of M. Ambatielos was both a claim based on the Treaty of 1886 and a claim which that Declaration covers. A little later Counsel said :

“Before I go further, I wish to repeat what we have said in the Counter-Memorial, that if, contrary to our contentions, the Court should hold (1) that the Declaration is a provision of the Treaty of 1926, and as such is covered by Article 29, and (2) that the claim in this case is a claim to which the Declaration applies, and (3) that the claim is one which the United Kingdom is legally obliged to arbitrate, then the United Kingdom is, at any rate to

this extent, in accord with its opponents, that it will, in that event, agree that this Court should itself replace the arbitral tribunal provided for in the 1886 Treaty, and should deal with the merits of the case in the same manner and to the same extent that the arbitral tribunal would have had to deal with them if it had been constituted."

These conditions seem to go beyond those in the Counter-Memorial ; for they require, in effect, that the Court should not only find in favour of jurisdiction but should also actually decide that the Ambatielos claim is in fact a claim based on the Treaty of 1886 and that the United Kingdom is legally obliged to submit it to arbitration. This discrepancy throws some doubt on the existence of any unequivocal agreement between the Parties upon this matter. The Court has, however, no doubt that in the absence of a clear agreement between the Parties in this respect, the Court has no jurisdiction to go into all the merits of the present case as a commission of arbitration could do.

As regards the reference in the Counter-Memorial to the Hellenic Government being precluded by lapse of time from submitting the present claim, the Court holds that this is a point to be considered with the merits and not at the present stage.

The Court can now proceed to deal with the various arguments put forward by the United Kingdom Government in support of its Preliminary Objection to the Court's jurisdiction. Seven main points have been raised, the first two of which are :

- "(1) The jurisdiction of the Court, if it exists at all, must be derived from Article 29 of the Treaty of 1926.
- (2) Article 29 of the Treaty of 1926 only confers jurisdiction on the Court to deal with disputes relating to the interpretation or application of the provisions of the Treaty of 1926 itself."

Greece has not accepted the compulsory jurisdiction of the Court under Article 36 (2) of its Statute and therefore can invoke the jurisdiction of the Court only under Article 36 (1), by virtue of a special agreement or the provisions of a treaty. The Hellenic Government relies, in the present case, on Article 29 of the Treaty of 1926, read in the light of Article 37 of the Statute of the Court, which in effect provides that all references in treaties to the Permanent Court of International Justice must now be construed as references to the International Court of Justice. Article 29 of the Treaty of 1926 between Great Britain and Greece is in the following terms :

"The two Contracting Parties agree in principle that any dispute that may arise between them as to the proper interpretation or

application of any of the provisions of the present Treaty shall, at the request of either Party, be referred to arbitration.

The court of arbitration to which disputes shall be referred shall be the Permanent Court of International Justice at The Hague, unless in any particular case the two Contracting Parties agree otherwise."

It follows, therefore, that any dispute as to the interpretation or application of any of the provisions of the Treaty of 1926 is referable by either Party to this Court.

The third and fourth points raised on behalf of the United Kingdom Government are that :

- "(3) The Treaty of 1926 only came into force in July 1926, and none of its provisions are applicable to events which took place or acts which were committed before that date. This is so whether or not the 1886 Treaty, which the Treaty of 1926 replaced, contained provisions similar to those of the Treaty of 1926.
- (4) The acts on which the Greek Government's claim is based took place in 1922 and 1923, and therefore the provisions of the Treaty of 1926 are not applicable to them."

These points raise the question of the retroactive operation of the Treaty of 1926 and are intended to meet what was described during the hearings as "the similar clauses theory", advanced on behalf of the Hellenic Government. The theory is that where in the 1926 Treaty there are substantive provisions similar to substantive provisions of the 1886 Treaty, then under Article 29 of the 1926 Treaty this Court can adjudicate upon the validity of a claim based on an alleged breach of any of these similar provisions, even if the alleged breach took place wholly before the new treaty came into force. The Court cannot accept this theory for the following reasons :

- (i) To accept this theory would mean giving retroactive effect to Article 29 of the Treaty of 1926, whereas Article 32 of this Treaty states that the Treaty, which must mean all the provisions of the Treaty, shall come into force immediately upon ratification. Such a conclusion might have been rebutted if there had been any special clause or any special object necessitating retroactive interpretation. There is no such clause or object in the present case. It is therefore impossible to hold that any of its provisions must be deemed to have been in force earlier.

It was contended on behalf of the Hellenic Government that the arbitral procedure stipulated in Article 29 of the Treaty of 1926 differed from that in the Protocol of 1886 only in respect of the tribunal provided for arbitration : under the Treaty of 1926 the arbitral tribunal was to be the Permanent Court of International

Justice, while under the Protocol of 1886 the tribunal was to be an *ad hoc* commission of arbitration. This, it was argued, was a procedural variation and in matters of procedure, at least in English law, the presumption as to procedural statutes is in favour of retroactive application. Now, whatever may be the position in national law in various countries of the world—a matter which the Court has not thought it necessary to investigate—and without examining whether questions of procedure cover questions of jurisdiction, the Court observes that, in any event, the language of Article 32 of the Treaty of 1926 precludes any retroactive effect being given to selected provisions of that Treaty.

(ii) Accompanying the Treaty of 1926—whether as a part thereof or not is a question which will be dealt with later—was a Declaration which provided, in effect, that any differences which might arise as to the validity of claims based on the Treaty of 1886 should be referred, at the request of either Government, to arbitration under the Protocol annexed to the Treaty of 1886. That was the understanding between the Parties. The language of the Declaration makes no distinction between claims based on one class of provisions of the 1886 Treaty and those based on another class; they are all placed on the same footing and differences relating to their validity are referable to arbitration under the Protocol of 1886. To argue that differences relating to claims based on those of the provisions of the earlier Treaty, which were similar to provisions of the later Treaty, were intended to be referred to arbitration in accordance with Article 29 of the later Treaty, while differences relating to other claims based on the earlier Treaty were meant to be arbitrated under the Protocol of the earlier Treaty, introduces a distinction for which the Court sees no justification in the plain language of the Declaration.

The fifth point raised on behalf of the United Kingdom Government is that :

“The Declaration which was signed at the same time as the Treaty of 1926 was not a part of that Treaty and the provisions of that Declaration are not provisions of that Treaty within the meaning of Article 29.”

Both Parties agree that this is the most important issue in the case. In support of the contention that the Declaration is not a part of the Treaty, it is said that the Declaration was signed separately from the Treaty proper, though by the same signatories and on the same day. It is also pointed out that the Declaration refers to the Treaty not as “this Treaty” or “the present Treaty”—which would have been the proper mode of reference if the Declaration had been regarded as part of the Treaty—but as “the Treaty

.... of to-day's date", thereby indicating that the Treaty had already been completed and signed. Moreover, it is urged, the Declaration does not say that it is to be regarded as a part of the Treaty, presenting in this respect a marked contrast to one of the Declarations annexed to the Greco-Italian Commercial Treaty of November 24th, 1926, which is followed by two Declarations, one expressed to be an integral part of the Treaty and the other not so expressed, the latter being almost identical in form and purpose with the 1926 Anglo-Greek Declaration with which the Court is now concerned.

On the other hand, it is to be noted that the Plenipotentiaries included the Treaty and the Customs Schedule (which is unquestionably a part of the Treaty) and the Declaration in a single document of 44 pages, the Declaration being on page 44. Again, shortly after the exchange of ratifications, the Government of the United Kingdom issued *Treaty Series No. 2* (1927), a single document entitled "Treaty of Commerce and Navigation between the United Kingdom and Greece and accompanying Declaration", and presented it to Parliament. Furthermore, the British Foreign Office and the Chargé d'Affaires of the Hellenic Republic at Berne communicated official texts to the League of Nations at Geneva for registration, which led to their inclusion in the *League of Nations Treaty Series* under a single number, as "No. 1425. Treaty of Commerce and Navigation between the United Kingdom and Greece and accompanying Declaration signed at London, July 16th, 1926."

Cogent evidence as to what both Parties intended is furnished by the instruments of ratification exchanged between the United Kingdom and Greece. The instrument of ratification by Greece was in the following terms: "We declare that the Treaty of Commerce and Navigation having been signed in London on the 16th July of this year between Greece and Great Britain with annexed Customs Schedule and Declaration, the texts of which follow: [Here follow the Greek and English texts of the Treaty, Schedule and Declaration.] We accept, approve and ratify the Treaty, the Customs Schedule and the Declaration in all their provisions, promising to faithfully observe and not to violate the same, or to permit their violation by any other person whatsoever", etc.

Thus, this instrument made no distinction between the Treaty, on the one hand, and the Customs Schedule which is indisputably a part of the Treaty, and the Declaration annexed to the Treaty, on the other. It is clear, therefore, that Greece treated the Declaration as a part of the Treaty.

The United Kingdom's instrument of ratification is even more explicit. It reads: "GEORGE, by the Grace of God greeting. Whereas a Treaty between Us and Our good friend the President of the Hellenic Republic, relative to commerce and navigation, was concluded and signed at London on the sixteenth day of July in the year of Our Lord one thousand nine hundred and twenty-six by the Plenipotentiaries of Us and of Our said good friend duly and respectively authorized for that purpose, which Treaty is, word for word, as follows: [here follow the English and Greek texts of the Treaty, Schedule and Declaration.]

"We, having seen and considered the Treaty aforesaid, have approved, accepted and confirmed the same in all and every one of its articles and clauses", etc.

From the words "which Treaty is, word for word, as follows" and the text that follows the words, it is clear that the United Kingdom also regarded the Declaration, as well as the Customs Schedule, as included in the Treaty. The ratification of a treaty which provides for ratification, as does the Treaty of 1926, is an indispensable condition for bringing it into operation. It is not, therefore, a mere formal act, but an act of vital importance. When the Government of the United Kingdom speaks of the Treaty in its own instrument of ratification, as being "word for word as follows" and includes the Declaration in the text that follows, it is not possible for the Court to hold that the Declaration is not included in the Treaty.

The nature of the Declaration also points to the same conclusion. It records an understanding arrived at by the Parties before the Treaty of 1926 was signed as to what the Treaty, or as Counsel for the Government of the United Kingdom preferred to put it, the replacement of the Treaty of 1886 by the Treaty of 1926, would not prejudice. This is clear from the opening words "It is well understood that the Treaty of to-day's date, does not prejudice claims on behalf of private persons based on the provisions of the Anglo-Greek Commercial Treaty of 1886." From the series of instruments which from time to time continued the Treaty of 1886 in force after its initial denunciation by Greece, it is evident that ultimately it was the coming into force of the Treaty of 1926 that finally terminated the operation of the Treaty of 1886. But for the Declaration, Article 32 of the Treaty of 1926, which brought that Treaty into force upon ratification, might, in the absence of any saving clause, have been regarded as putting the Treaty into full operation so as completely to wipe out the Treaty of 1886 and all its provisions, including its remedial provisions, and any claims based thereon. Indeed, the United Kingdom Government, before proceeding to the signature of the Treaty of 1926, asked for an assurance that the Hellenic Government would not regard "the conclusion of the Treaty" as prejudicing certain claims of British subjects based on the older Treaty.

The intention of the Declaration was to prevent the new Treaty from being interpreted as coming into full force in this sweeping manner and thus prejudicing claims based on the older Treaty or the remedies provided for them. It follows that, for the proper interpretation or application of the provisions of the Treaty of 1926, some such words as "Save as provided in the Declaration annexed to this Treaty" have to be read into Article 32 before the words "It shall come into force". Thus, the provisions of the Declaration are in the nature of an interpretation clause, and, as such, should be regarded as an integral part of the Treaty, even if this was not stated in terms.

For these reasons, the Court holds that either expressly (by virtue of the United Kingdom's own instrument of ratification) or by necessary implication (from the very nature of the Declaration) the provisions of the Declaration are provisions of the Treaty within the meaning of Article 29. Consequently, this Court has jurisdiction to decide any dispute as to the interpretation or application of the Declaration and, in a proper case, to adjudge that there should be a reference to a Commission of Arbitration. Any differences as to the validity of the claims involved will, however, have to be arbitrated, as provided in the Declaration itself, by the Commission.

It may seem at first sight that there is here a possibility of a conflict between a decision of the Court finding that there is an obligation to submit a difference to a Commission of Arbitration and an eventual decision by the Commission. There is in reality no such possibility.

The Court would decide whether there is a difference between the Parties within the meaning of the Declaration of 1926. Should the Court find that there is such a difference, the Commission of Arbitration would decide on the merits of the difference.

It may be contended that because a special provision overrides a general provision, the Declaration should override Article 29 of the Treaty of 1926 and, as it lays down a special arbitral procedure, it excludes the jurisdiction of the Court under Article 29. While it is true that the Declaration excludes the Court from functioning as the Commission of Arbitration, it is equally true that it lies with the Court to decide precisely whether there should be a reference to a Commission of Arbitration.

The sixth argument of the United Kingdom Government is that :

"The claim which the Greek Government is making on behalf of M. Ambatielos in so far as it is based on any provision of the Treaty of 1886, is not a claim covered by the Declaration of 1926,

because that Declaration only covered claims which had been formulated under that Treaty before the Declaration was signed, and the Greek Government did not formulate any legal claim in respect of M. Ambatielos until 1933, nor indeed any legal claim under the Treaty of 1886 until 1939."

The phrase used in the Declaration is "claims based on the provisions of the Anglo-Greek Commercial Treaty of 1886". There is no reference whatever in the Declaration to the date of formulation of the claims; the only requirement is that they should be based on the Treaty of 1886. Counsel for the United Kingdom attempted to support his contention by referring to the negotiations which led to the signature of the Declaration. The records of the negotiations, however, do not support the contention. They show that although the Hellenic Government originally suggested a draft of the Declaration referring to "anterior claims eventually deriving from the Anglo-Greek Commercial Treaty of 1886", this draft was ultimately not accepted, and both Parties adopted, instead, the text of the Declaration as it now appears, omitting the word *anterior*. In any case where, as here, the text to be interpreted is clear, there is no occasion to resort to preparatory work.

If the United Kingdom Government's interpretation were accepted, claims based on the Treaty of 1886, but brought after the conclusion of the Treaty of 1926 would be left without solution. They would not be subject to arbitration under either Treaty, although the provision on whose breach the claim was based might appear in both and might thus have been in force without a break since 1886. The Court cannot accept an interpretation which would have a result obviously contrary to the language of the Declaration and to the continuous will of both Parties to submit all differences to arbitration of one kind or another.

There now remains the final argument that "the Treaty of 1886 contains no provisions incorporating in the Treaty the general principles of international law with regard to the treatment of foreigners in courts of justice or otherwise and in consequence it cannot be said that the alleged denial of justice in breach of the general principles of international law is a breach of the Treaty of 1886, merely because it is a breach of the general principles of international law".

The point raised here has not yet been fully argued by the Parties, and cannot, therefore, be decided at this stage.

For these reasons,

THE COURT,

adjudicating on the Preliminary Objection filed by the Government of the United Kingdom of Great Britain and Northern Ireland to the Application of the Royal Hellenic Government,

by thirteen votes to two,

finds that it is without jurisdiction to decide on the merits of the Ambatielos claim ;

by ten votes to five,

finds that it has jurisdiction to decide whether the United Kingdom is under an obligation to submit to arbitration, in accordance with the Declaration of 1926, the difference as to the validity of the Ambatielos claim, in so far as this claim is based on the Treaty of 1886 ;

decides that the time-limits for the filing of a Reply and a Rejoinder shall be fixed by subsequent Order.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this first day of July, one thousand nine hundred and fifty-two, in three copies, one of which will be placed in the archives of the Court and the others will be transmitted to the Royal Hellenic Government and to the Government of the United Kingdom of Great Britain and Northern Ireland, respectively.

(Signed) J. G. GUERRERO,
Vice-President.

(Signed) E. HAMBRO,
Registrar.

Judge LEVI CARNEIRO and M. SPIROPOULOS, Judge *ad hoc*, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment of the Court statements of their individual opinions.

Judge ALVAREZ declares that there are in the present case sufficient grounds for holding that the Court has jurisdiction to deal with the merits of the Ambatielos claim.

The President Sir Arnold McNAIR, Judges BASDEVANT, ZORIČIĆ, KLAESTAD and HSU MO, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment statements of their dissenting opinions.

(Initialed) J. G. G.

(Initialed) E. H.