

SECTION B. — MÉMOIRES
SECTION B.—PLEADINGS

1. MÉMOIRE PRÉSENTÉ AU NOM DU
GOUVERNEMENT HELLÉNIQUE

I. — EXPOSÉ DES FAITS

1. Monsieur Nicolas Eustache Ambatielos, armateur de nationalité grecque, conclut, le 17 juillet 1919, avec le Gouvernement de Sa Majesté britannique, représenté par le ministre de la Marine marchande, au nom de qui agissait sir Joseph Maclay (plus tard lord Maclay), un contrat d'achat de neuf bateaux à vapeur pour un prix total de £ 2.275.000. Ces bateaux étaient alors en construction dans les chantiers de Hong-Kong et de Changhaï. La livraison devait avoir lieu à des dates fixées par les parties. Ce fait était stipulé formellement dans le contrat « delivery of the steamers in the manner and within the time agreed » (article 7 du contrat). Annexe A

2. Au ministère de la Marine marchande britannique, le service chargé de la vente des navires était placé sous la direction de sir John Esplen. Son subordonné immédiat était le major Bryan Laing. D'avril 1919 à octobre 1920, ce dernier vendit des navires pour un montant total de £ 100.000.000. Les contrats conclus par lui furent toujours ratifiés sans aucune modification par le ministère.

3. Les dates fixées pour la livraison des neuf navires furent inscrites sur un bordereau remis à M. Ambatielos par le major Laing. Annexe B

4. En corroboration ultérieure de ce fait, on trouve le télégramme envoyé le 31 octobre 1919 par ordre de sir John Esplen aux chantiers de Hong-Kong : Annexe C

« From Esplen, Shipminder, London—To Britannia, Hong Kong. Following for Dodwell, War Trooper [l'un des neuf navires vendus à M. Ambatielos]. As the steamer was sold to buyers for delivery not later than November it is of the utmost importance that she should be completed by that date *stop* Cable immediately progress of construction. » (Signé) M. J. STRAKER (secrétaire de sir John Esplen).

Le témoignage de M. John O'Byrne, directeur adjoint à l'achat de navires au ministère de la Marine britannique, devant la Cour de première instance en 1922 est dans le même sens : « The ships were delivered to Mr. Ambatielos later than anticipated » (13 *Lloyd's List Law Reports*, p. 377). Annexe D

5. Comme à cette époque les prix du fret augmentaient sur les marchés d'Orient, M. Ambatielos pouvait espérer un profit considérable si les navires étaient livrés aux dates stipulées. Vu cette

possibilité de profit additionnel, le major Laing augmenta le prix d'achat de £ 500.000 par rapport aux prix du marché, comme condition des dates fixes de livraison. En effet, les mêmes navires avaient été offerts quelques jours auparavant à d'autres armateurs, mais sans la garantie de livraison, pour £ 500.000 de moins. Ce fait est attesté par une lettre en date du 20 juillet 1922 du major Laing à son supérieur hiérarchique sir Joseph Maclay, où il est textuellement dit : « The Eastern freight markets at that time being very high, I came to the conclusion, and laid my deductions before yourself and the Committee of the Ministry of Shipping, that provided those ships could be delivered at the time stated by our agents on behalf of the builders, that they were worth, with their position, owing to the freight they could earn, another £500,000 and this I added to what I considered an outside price for the ships. It was only by this argument that I induced Ambatielos to purchase the ships » (correspondence Maclay-Laing).

Annexe E

6. Pourtant, aucun des navires ne fut livré à la date promise. Au moment de la livraison effective, le marché du fret avait baissé considérablement par rapport aux cours en vigueur à l'époque pour laquelle les navires avaient été promis. De ce fait M. Ambatielos ne put pas réaliser le profit d'un million qu'il escomptait retirer du voyage des ports de construction en Orient aux ports européens. A vrai dire, il put réaliser un profit net de £ 100.000 par navire par voyage sur les deux premiers navires, qui ne furent livrés qu'avec un retard assez faible. Mais sur les autres il n'eut qu'un médiocre profit, et il souffrit, du fait du retard, un manque à gagner d'environ £ 1.000 par jour et par navire. On souligne que certains navires furent livrés avec six mois de retard. Ce retard, joint à la prodigieuse baisse du marché du fret, priva M. Ambatielos du profit que lui aurait apporté une livraison en temps convenu. Aussi, en novembre 1920, ne put-il faire face aux échéances prévues par le contrat. Il conclut alors un accord avec le ministère britannique, aux termes duquel, en échange de la livraison immédiate des deux derniers navires, le *Mellon* et le *Stathis*, M. Ambatielos constituerait une hypothèque sur les sept autres navires, tous déjà placés sous pavillon grec, pour garantir le paiement du solde du prix, soit environ £ 750.000. Les hypothèques furent dûment constituées

Annexe F

(par *mortgage* et *deeds of covenant*) le 4 novembre 1920. Cependant, la livraison du *Mellon* et du *Stathis* fut refusée par le contrôleur de la Marine, qui exigea que les navires hypothéqués fussent préalablement immatriculés dans un port grec et qu'un certificat fût délivré par le conservateur des hypothèques maritimes déclarant que ces navires n'étaient pas grevés d'une charge antérieure. En réalité, la possibilité d'une inscription dans un port grec n'avait été prévue dans la convention que pour le cas où le certificat susmentionné n'aurait pas pu être obtenu. Le ministère britannique persista dans ses exigences, bien que le Gouvernement grec l'eût assuré et lui donnât garantie formelle que son hypothèque serait

inscrite en premier rang. Il prétendit de plus que le *Mellon* et le *Stathis* devaient également être hypothéqués, bien que la *mortgage* et le *deed of covenant* ne l'eussent pas prévu. M. Ambatielos résista : en effet, d'une part la valeur des bâtiments hypothéqués couvrait largement le solde du prix, d'autre part il avait besoin de ces deux navires, libres de toute charge, pour pouvoir au besoin les hypothéquer ou même les vendre et rembourser ainsi sa dette auprès du ministère britannique.

7. Le ministère refusa néanmoins de livrer le *Mellon* et le *Stathis*. De ce fait, M. Ambatielos encourut une lourde perte ; il perdit notamment le bénéfice d'un avantageux contrat avec l'Argentine. De plus, pendant les deux ans durant lesquels ces deux navires furent retenus, M. Ambatielos dut payer les primes d'assurance complètes et un intérêt de 10 % par an. Enfin, le Gouvernement britannique saisit les sept autres navires. Des incidents regrettables marquèrent notamment la saisie du *Panagis* à Newcastle, à ce point que le Foreign Office dut admettre qu'il y avait eu un « malentendu ».

Annexe G

8. Dès le début de ces difficultés, M. Ambatielos tenta d'arriver à un arrangement par des discussions directes avec le ministère de la Marine britannique. On tenta de l'en empêcher en élevant contre lui une réclamation fiscale de £ 250.000 avec menace d'emprisonnement. Cette réclamation fut reconnue mal fondée en mai 1921. M. Ambatielos se rendit aussitôt en Angleterre. Après de nombreuses démarches, un arrangement aboutit entre lui et le représentant du ministère, sir Ernest Glover, qui se montra conciliant. Mais cet arrangement ne fut pas ratifié par le ministère. M. Ambatielos exigea alors l'arbitrage, conformément à l'article 12 du contrat. Le 24 juin 1921, M. Ambatielos désignait Mr. D. C. Leck, K. C., comme son arbitre, tandis que le 29 juin, le Gouvernement britannique désigna son arbitre en la personne de Mr. W. Norman Raeburn, K. C. Mais, peu après, le Gouvernement britannique changea d'attitude et engagea contre M. Ambatielos une procédure judiciaire fondée sur le défaut de paiement des hypothèques, qui venaient d'arriver à échéance. Le Gouvernement britannique disposait ainsi d'un nouveau moyen, créé par la prolongation des négociations, et qu'il n'aurait pas pu soulever si l'arbitrage eût eu lieu en juillet. M. Ambatielos opposa sa demande de dommages-intérêts par voie reconventionnelle. La Cour d'amirauté d'Angleterre, présidée par Mr. Justice Hill, rendit son jugement le 15 janvier 1923. Elle condamna M. Ambatielos à payer au Board of Trade la somme de £ 300.000 et rejeta sa demande reconventionnelle. Contre toute évidence, le juge décida qu'aucune date de livraison n'avait été fixée dans le contrat de 1919 (14 *Lloyd's List Law Reports*, p. 5).

Annexe H

Annexe I

Annexe J

Annexe K

9. Cette procédure devant la Cour d'amirauté fut viciée en deux points : tout d'abord, ni sir Joseph Maclay ni le major Laing, les deux principaux témoins, ne furent entendus. En second lieu, la

correspondance échangée entre le major Laing et sir Joseph Maclay en juillet 1922 (déjà citée en annexe E) ne fut jamais communiquée à la Cour. Aussitôt le jugement rendu, le major Laing se fit un devoir de transmettre à M. Ambatielos copie de cette correspondance, d'où il ressort à l'évidence que les navires devaient être livrés aux dates indiquées et que cette garantie avait été payée £ 500.000.

10. M. Ambatielos forma appel contre le jugement de la Cour d'amirauté. Conformément à la procédure anglaise, il requit l'autorisation de produire les documents qui venaient de parvenir entre ses mains après le jugement de première instance. La Cour d'appel, et c'est là un vice additionnel de la procédure, refusa cette autorisation le 5 mars 1923 (14 *Lloyd's List Law Reports*, p. 389). Dans ces conditions, l'appel au fond était dépourvu de toute chance de succès. Un appel ultérieur à la Chambre des Lords aurait été inutile, puisqu'il s'agissait d'une question purement de procédure (voir sentence de l'arbitre Undén sur l'interprétation de l'article 181 du Traité de Neuilly dans le différend gréco-bulgare de mars 1933 — *Une sentence arbitrale publiée par Östen Undén*, Upsala, 1933 — et de l'arbitre Bagge, du 21 mai 1934, dans le différend anglo-finlandais — affaire des navires finlandais — *Decision in respect of certain Finnish vessels used during the war*, H.M. Stationery Office, London, 1934).

11. Il résulte de ces faits que M. Ambatielos a subi un grave préjudice : les termes de livraison n'ont pas été respectés, la livraison du *Mellon* et du *Stathis* a été refusée contre tout droit. Le résultat financier de ces opérations a ruiné M. Ambatielos en le dépouillant de ses navires et de toutes ses ressources. En effet, il dut payer au Gouvernement britannique la somme de £ 1.650.000, prix d'achat des neuf navires, et en outre la somme de £ 300.000 pour le transfert des équipages de l'Angleterre en Orient, coût des améliorations des navires et autres frais indispensables. Le non-paiement des hypothèques entraîna la vente par le Gouvernement de tous les navires, à l'exception du *Yannis* ; le prix en fut retenu par le même Gouvernement. D'autre part, le *Yannis* fut vendu également, pour £ 127.500, mais cette somme fut entièrement affectée au paiement des hypothèques, primes d'assurance et autres débours du contrôleur de la Marine, entre 1920 et 1922.

II. — EXPOSÉ DE DROIT

12. Les faits ci-dessus appellent les remarques suivantes :

1) Il y a eu d'abord violation de la procédure anglaise par le ministère britannique, qui n'a pas communiqué au premier juge des documents qui avaient une importance capitale pour la solution du litige. Or, c'est un des principes de la procédure anglaise que

toutes les pièces utiles doivent être communiquées à la partie adverse. Il est incontestable que le ministère n'a pas produit les pièces en sa possession à l'ouverture du procès (voir déclaration sous serment de Mr. C. W. Evans, chef adjoint du département du Treasury Solicitor, du 1^{er} mars 1923). D'autre part, le Gouvernement anglais s'est opposé à la production des pièces qui lui étaient réclamées, en soutenant que l'obligation de produire des pièces sur ordre du juge (*discovery*) ne s'applique pas à l'État. Il avait tort. En effet, le contrat qui avait été conclu entre le ministère et M. Ambatielos était un contrat purement commercial, conclu par le ministère dans l'exercice d'une activité commerciale (*commercium*) et non pas dans l'exercice de la puissance publique (*imperium*). En d'autres termes, le ministère a traité d'égal à égal avec un particulier. Il devait par conséquent être réputé renoncer à tout privilège, même s'il en avait, ce qui n'était pas le cas. De plus, il n'a pas appelé comme témoins devant le juge Hill les deux fonctionnaires les plus importants dont le témoignage aurait été capital, c'est-à-dire sir Joseph Maclay et le major Laing.

Annexe M

2) Lorsque M. Ambatielos eut obtenu, après le jugement de première instance, la correspondance Laing-Maclay, la Cour d'appel anglaise refusa d'admettre ces nouveaux moyens de preuve. Cette décision viole une règle essentielle de la procédure britannique, qui autorise en principe la production de la « fresh evidence » en seconde instance.

13. En refusant la *discovery*, en ne produisant pas tous les documents utiles pour éclairer la justice, en ne faisant pas entendre le major Laing comme témoin, bien qu'il l'ait fait citer à cet effet, le ministère a lésé les droits de la défense. Cette lésion est d'autant plus grave que, si le procès avait été plaidé en Grèce dans des circonstances analogues, le Gouvernement grec aurait été contraint de produire toutes les pièces en sa possession. M. Ambatielos n'a pas bénéficié des garanties que la procédure accorde à la défense. De ce fait, le principe de l'égalité de traitement a été violé.

14. C'est dire que M. Ambatielos n'a pas obtenu justice. Or, justice lui est due. L'article 15, alinéa 3, du Traité de commerce et de navigation conclu entre la Grèce et la Grande-Bretagne du 10 novembre 1886 prévoit :

Annexe N

« Les sujets de chacune des parties contractantes dans les domaines et possessions de l'autre auront libre accès aux tribunaux pour la poursuite et la défense de leurs droits sans autres conditions, restrictions ou taxes que celles qu'elles imposent à leurs propres sujets. »

Ce texte garantit une égalité absolue de traitement aux ressortissants de chacun des États qui se présentent devant les tribunaux de l'autre, comme demandeur ou comme défendeur. En accordant le libre accès de ces tribunaux, chacun des États l'accorde sans limite. En premier lieu, cela va sans dire, l'étranger doit jouir des

mêmes droits et privilèges que le national. Mais il y a plus : il ne suffit pas que l'étranger bénéficie du libre accès à la justice, il faut encore que cette justice satisfasse au droit international. Ainsi que le déclare le mémoire du Gouvernement finlandais en date du 17 septembre 1931 dans l'affaire déjà citée des navires finlandais :

« La réclamation du Gouvernement est fondée sur le fait que l'État visé n'a pas satisfait à ses obligations internationales faute d'un système juridique et judiciaire qui permette aux particuliers d'obtenir réparation conformément au droit international. »

15. En effet, les principes reconnus à l'article 15 du Traité de 1886 ne sont que l'application particulière d'un principe beaucoup plus général auquel les parties ont adhéré : *le droit de libre communication*. Ce droit implique un minimum de facultés essentielles, en particulier la liberté de la défense. Si ce droit de libre communication est accordé, les lois qui l'organisent constituent une modalité interne d'application d'un devoir international. Par conséquent, une restriction imposée aux droits du défendeur, même si elle s'applique aux nationaux, ne lie pas automatiquement l'étranger. Car l'État qui s'engage à accorder le droit de libre communication s'engage à créer, en faveur des ressortissants de l'État co-contractant, une situation juridique conforme au droit international. En d'autres termes, il est tenu non pas seulement d'assimiler l'étranger aux nationaux en ce qui concerne l'administration de la justice, mais aussi et avant tout de garantir à l'étranger une justice qui satisfasse aux nécessités du commerce universel. En l'espèce, on l'a vu, le Gouvernement anglais n'a pas accordé cette justice à M. Ambatielos.

16. De plus, la conduite de l'instance elle-même donne une impression pénible. A l'audience de première instance, l'avocat du ministère britannique déclarait formellement que toutes les pièces
Annexe O avaient été produites (« the evidence is all out ... the evidence has all been given »). On sait qu'il n'en était rien : les pièces essentielles n'avaient pas été produites. De même, le major Laing avait été cité à comparaître comme témoin à la requête du ministère, dispensant ainsi le défendeur de l'assigner ; au dernier moment, le ministère renonce à le faire entendre, privant ainsi le défendeur de ses moyens de preuve.

Dans ces circonstances, il aurait été indispensable que M. Ambatielos fût autorisé à soulever ses nouveaux moyens en appel. Il devait y être autorisé en vertu des principes généraux du droit international. Ces principes exigent un double degré de juridiction et la possibilité de produire en appel les moyens de preuve qui n'avaient pu être produits en première instance. Les règles du droit interne ne dispensent pas de l'observation de ce devoir international.

17. Mais il ne suffit pas de dire qu'en l'espèce le système de la procédure anglaise n'a pas correspondu aux exigences du droit

international. On est contraint de constater que ce système a fonctionné de façon à paralyser les droits du défendeur. On a montré que toute l'attitude du ministère britannique prouve qu'il considérait M. Ambatielos avec défaveur, en tant qu'étranger. Dès avant le procès, il a tenté de l'empêcher de venir en Angleterre en élevant contre lui une réclamation fiscale qu'il a dû reconnaître non fondée. On ne reviendra pas sur l'attitude du ministère en cours de procès. On examinera maintenant le jugement de la Cour d'appel, qui fait preuve de la même partialité : dans d'autres espèces, qui concernaient cette fois des sujets britanniques, cette même Cour, et l'un des deux juges qui ont prononcé dans l'affaire Ambatielos, ont admis avec libéralité la production de nouveaux moyens de preuve en appel. Pour obtenir de la Cour d'appel l'autorisation de produire les documents qui n'étaient parvenus en sa possession qu'après la clôture de la première instance, l'avoué de M. Ambatielos, Mr. F. P. D. Gaspar, produisit une déclaration sous serment, conformément à la procédure. Il déclara que la copie de la correspondance Laing-Maclay lui avait été remise par le major Laing après le jugement ; qu'il ignorait, avant ce moment, que sir Joseph Maclay avait été mêlé à la vente des navires, qu'il n'avait pas pu par conséquent le citer comme témoin ; qu'il ressort à l'évidence de cette correspondance que les navires devaient être livrés à des dates déterminées et que cette garantie avait été payée d'une prime de £ 500.000.

Annexe P

18. Il est difficile de comprendre que la Cour d'appel n'ait pas fait usage de son pouvoir en faveur de M. Ambatielos. Dans une autre espèce, un des deux membres de cette Cour, Lord Justice Scrutton, devait déclarer qu'il convenait d'autoriser la production d'une nouvelle preuve lorsque son importance était « so material that its absence might cause a miscarriage of justice » (*Sinanide v. La Maison Kosmeo*, Law Times Reports, 1928, vol. 139, p. 365). Le même juge avait utilisé la même phrase dans l'arrêt *Guest v. Ibbotson* (1922) (Law Journal Reports, King's Bench Division, t. 91, p. 558), en ajoutant que les nouveaux documents étaient admissibles lorsque « they could not, with reasonable care and diligence, have been brought forward at the trial ». De même, dans l'affaire *Nicholson v. Inverforth*, la Cour d'appel décida : « We have clearly established that the new evidence must be of such weight as, if believed, would probably have an important influence on the result. That did not mean that the new evidence must be conclusive in the appellant's favour. But it must be of such a character as might have affected the judgment of the judge at the trial, if it had then been available. Certain letters have been discovered since the trial which were not then available to the plaintiff, and the Court has come to the conclusion that effect ought to be given to them by allowing them to be used at a new trial. » (*The Times*, 17 octobre 1936.) De même, lord Halsbury, statuant sur une requête analogue, avait déclaré :

« It would be disastrous to the administration of justice if it could be supposed that by reason of any technicality the real truth could be shut out. » (*The Neath Harbour Smelting & Rolling Works*, *The Times Law Reports*, vol. 2, 1885-1886, p. 94.)

Il convient de souligner que lord Halsbury n'était pas convaincu, dans cette espèce, que le requérant avait fait preuve de toute la diligence possible en première instance ; il a néanmoins fait droit à la requête. De même enfin, dans l'affaire *H.M.S. Hawke* (1915), *Times Law Reports*, vol. 28, p. 319 (P.) 49 (H.L.), la Cour d'appel et la Chambre des Lords admirèrent l'une et l'autre que des preuves nouvelles pouvaient être produites en seconde instance seulement, même si le plaideur avait eu l'occasion de les produire auparavant. Il s'agissait d'une collision entre deux navires. Les propriétaires du navire endommagé n'entreprirent des recherches pour en retrouver l'épave qu'après que le jugement de première instance leur eût donné tort. Ils demandèrent à la Cour d'appel l'autorisation de produire le résultat de leurs recherches. La Cour d'appel les autorisa *prima facie* à administrer ces preuves, bien qu'il eût paru douteux que les recourants aient fait preuve de la diligence nécessaire en première instance. Et tout dernièrement, la Cour d'appel décida d'accepter la preuve de deux nouveaux témoins dans le procès entre *Sir George Beaumont* et *Lady Beaumont* (10 juillet 1951).

19. La décision de la Cour d'appel est donc contraire à la jurisprudence de cette Cour. C'est à tort que, dans l'affaire *Ambatielos*, elle a insisté uniquement sur le devoir de diligence, en passant complètement sous silence l'importance capitale des nouvelles pièces pour le sort du procès.

Il convient d'ailleurs de souligner ici que, dès qu'il s'aperçut que le ministère renonçait à faire entendre le major Laing, M. *Ambatielos* fit son possible pour le faire assigner à son tour, mais en vain. Peu importe en définitive : nul ne peut reprocher en tout cas à M. *Ambatielos* de n'avoir pas fait citer sir *Joseph Maclay* en première instance en qualité de témoin, puisqu'il ignorait totalement que ce fonctionnaire pourrait éclairer le débat. Il est dès lors incompréhensible que la Cour d'appel ait également rejeté la requête tendant à l'audition de sir *Joseph Maclay*.

20. Enfin, le cas de M. *Ambatielos* a été la source d'un enrichissement indu (*unjust enrichment*) par le Gouvernement britannique. Il est constant que M. *Ambatielos* a payé £ 500.000 en échange de la garantie de livraison des navires aux dates fixées. Comme les navires n'ont été livrés qu'avec un retard considérable, la somme de £ 500.000 se trouve sans cause entre les mains du Gouvernement britannique (*failure of the consideration*). En application des principes généraux de droit, le Gouvernement britannique doit être considéré comme injustement enrichi de ce montant (*money had and received or unjust enrichment*) ; voir l'arrêt du Conseil privé dans l'affaire *Royal Bank of Canada v. Rex*, *Law Reports, Appeal Cases*,

1913, pp. 283 et 296 ; voir également l'arrêt de la Cour d'appel *Wilson v. Church*, Law Reports, Chancery Division, 1879, p. 50 ; voir enfin l'arbitrage « Lena » : « Cette société était en droit d'être indemnisée en espèces pour les bénéfices dont elle avait été injustement privée d'après les principes d'un *unjust enrichment*. » (Lena Goldfields Arbitration Award, 2 septembre 1930, *Annual Digest*, 1929-1930, p. 3.)

21. Le Gouvernement britannique n'a donc pas exécuté ses obligations internationales dans le cas de M. Ambatielos. Il a refusé de produire les pièces qui lui étaient demandées, il a soutenu qu'il avait produit tous les documents concernant le litige alors que des pièces essentielles (la correspondance Laing-Maclay) restaient secrètes. Le fonctionnement de la justice anglaise n'a pas permis à M. Ambatielos de défendre librement ses intérêts. Il lui a été notamment refusé de produire en seconde instance des documents qu'il n'avait obtenus qu'après la clôture de la première instance. Il y a eu déni de justice.

22. Il y a eu de plus inégalité de traitement. Le ministère n'a pas observé, dans la conduite du procès, les principes traditionnels qu'il applique lorsqu'il est en litige avec des sujets britanniques : il s'est retranché derrière le privilège de *non-discovery*, alors que la coutume voulait qu'il n'en fasse pas usage. Il y a eu inégalité de traitement dans ce sens encore que les règles de la procédure anglaise régissant la production des pièces en première instance et celles qui organisent la production de nouveaux moyens de preuve en seconde instance aient été interprétées de façon particulièrement stricte dans le cas de M. Ambatielos. En outre, le Gouvernement britannique n'a pas respecté les obligations engendrées par le contrat de vente de 1919. Cette inobservation est d'autant plus grave que le Traité de 1886 garantit aux ressortissants des deux nations le traitement de la nation la plus favorisée. (Article 10 du Traité de 1886 et articles 3 et 4 du Traité de 1926.) Il y a eu aussi « enrichissement injuste » de la part du Gouvernement britannique en faisant payer à M. Ambatielos un excédent de £ 500.000 comme garantie des dates de livraison des navires — dates qui ne furent pas observées par le Gouvernement britannique. Le dommage qui est résultat de ces violations est constant. Il suffit aujourd'hui de poser le principe de la réparation, quitte à en déterminer ultérieurement le montant ensemble avec tous les dommages-intérêts et frais.

23. La violation de la part de ce Gouvernement des principes ci-dessus énumérés appelle l'arbitrage prévu dans le protocole annexé au Traité de commerce et de navigation entre la Grèce et la Grande-Bretagne du 10 novembre 1886 aux termes duquel :

« *Protocole*. — Au moment de procéder, ce jour, à la signature du Traité de commerce et de navigation entre la Grande-Bretagne et la Grèce, les plénipotentiaires des deux Hautes Parties contractantes ont déclaré ce qui suit :

Toutes questions qui peuvent s'élever sur l'interprétation ou l'exécution du présent traité, ou les conséquences de toute violation de ce traité, seront soumises, quand les *moyens* de les régler directement par *accord amiable* seront épuisés, à la décision de commissions d'arbitrage, et le résultat de cet arbitrage sera obligatoire pour les deux Gouvernements.

Les membres de ces commissions seront choisis par les deux Gouvernements d'un commun accord ; à défaut, chacune des parties nommera un arbitre ou un égal nombre d'arbitres, et les arbitres ainsi nommés choisiront un sur-arbitre.

La procédure d'arbitrage devra dans chaque cas être déterminée par les parties contractantes : à défaut, la commission d'arbitrage sera en droit de la déterminer elle-même d'avance.

Les plénipotentiaires soussignés ont consenti que ce protocole sera soumis aux deux Hautes Parties contractantes en même temps que le traité, et que, lorsqu'il sera ratifié, les accords contenus au protocole seront également considérés comme approuvés, sans nécessité d'une ratification expresse ultérieure. En foi de quoi, etc.... »

Le Traité de 1886 est tout entier basé sur l'arbitrage que le Gouvernement du Royaume-Uni est convenu d'accepter

- a) pour interprétation
- b) pour exécution
- c) pour violation

de toutes questions qui peuvent s'élever sur ses termes.

24. Le traité postérieur du Traité de commerce et de navigation gréco-britannique du 16 juillet 1926 institue une procédure complémentaire, le recours à la Cour permanente de Justice internationale, qui n'existait pas en 1886, remplacée aujourd'hui par la Cour internationale de Justice. L'article 29 de ce traité stipule en effet :

« Les deux parties contractantes sont d'accord en principe que tout différend qui peut s'élever entre elles quant à la juste interprétation ou l'application d'une quelconque des stipulations du présent traité sera, à la requête de l'une des parties contractantes, soumis à l'arbitrage.

La Cour d'arbitrage à laquelle les différends seront soumis sera la Cour permanente de Justice internationale, à moins que, par une convention particulière, les deux parties n'en décident autrement. »

25. Le Traité de 1926 se complète par une déclaration finale ainsi conçue :

« Il est bien entendu que le Traité de commerce et de navigation entre la Grande Bretagne et la Grèce en date d'aujourd'hui ne porte pas préjudice aux réclamations faites au nom de particuliers, qui sont basées sur les dispositions du Traité de commerce anglo-grec de 1886 et que tous différends qui pourraient s'élever entre nos deux Gouvernements, quant à la validité de ces réclamations, doivent, à la demande de l'un des Gouvernements, être soumis à

l'arbitrage, conformément aux dispositions du protocole du 10 novembre 1886 annexé audit traité. »

26. Le Gouvernement hellénique prit fait et cause pour son ressortissant dès le 12 septembre 1925. (Note 2335/N3/25.) A cette note le Gouvernement britannique répondit par une fin de non-recevoir le 30 octobre 1925. (N° C.13509/11769/19.) Il repoussa également l'arbitrage proposé par les notes helléniques des 7 février 1933 (n° 358/L/33), 3 août 1933 (n° 2077/L/33), 30 mai 1934 (n° 1271/L/34), 2 janvier 1936 (n° 60/L/36), 21 novembre 1939, et finalement du 6 août 1940 (n° 3734/L/40). Toutes ces propositions réitérées d'un arbitrage conformément aux Traités de 1886 et de 1926 ont été repoussées par le Gouvernement britannique, qui n'a fait preuve d'aucun esprit de conciliation (notes du 29 mai 1933, n° C.4625/1172/19, du 28 décembre 1933, n° C.11030/1172/19, du 7 novembre 1934, n° R.6043/3146/19, du 1^{er} juillet 1936, n° R.3663/169/19, et du 26 décembre 1939, n° R.10658/10658/19). Les efforts du Gouvernement hellénique pour obtenir un règlement amiable par voie de négociations directes entre les deux Gouvernements n'ont donné aucun résultat.

Annexe R1
Annexe S1
Annexes R2,
R3, R4, R5,
R6 et R7
Annexes S2,
S3, S4, S5,
S6

27. Le Gouvernement hellénique s'abstint volontairement de poursuivre sa demande d'arbitrage pendant les hostilités de 1940 à 1945, années pendant lesquelles les deux nations combattirent en alliées dans un effort commun qui transcendait toutes autres divergences. Mais, dès le rétablissement des conditions normales, le Gouvernement hellénique renouvela sa requête aux fins d'obtenir que l'affaire Ambatielos fût soumise à la Commission d'arbitrage prévue par le protocole annexé au Traité de 1886 (note du 11 mai 1949, n° 2775/L/49). Cette proposition fut sommairement repoussée par le Gouvernement britannique le 1^{er} juillet 1949 (aide-mémoire n° R.5023/14811/19), qui déclara formellement qu'il considérait cette affaire comme terminée. C'est dire qu'aujourd'hui la voie des négociations diplomatiques est fermée et que le Gouvernement hellénique a épuisé tous les moyens d'accord amical de ce différend.

Annexe R8
Annexe S7

28. L'échec de ces négociations et le refus opposé par le Gouvernement britannique aux offres réitérées d'arbitrage faites par le Gouvernement hellénique mettent en fonction les dispositions du Traité de 1886, combinées avec celles de la déclaration finale du Traité de 1926 et avec l'article 29 de ce traité. Comme déjà énoncé, cet article dispose que toute divergence portant sur l'interprétation ou l'application du traité, y compris la déclaration finale, sera soumise à la Cour permanente de Justice internationale à la requête de l'une des parties contractantes.

29. Le Gouvernement hellénique invoque les motifs suivants à l'appui de son recours :

1) Les Traités de 1886 et 1926 obligent le Gouvernement du Royaume-Uni à traiter les ressortissants hellènes conformément aux

principes du droit international et selon la clause de la nation la plus favorisée.

2) Les faits exposés ci-dessus établissent que le Gouvernement du Royaume-Uni a traité un ressortissant hellène d'une manière contraire au droit international. En agissant de la sorte, le Gouvernement du Royaume-Uni a manqué non seulement à ses obligations internationales mais aussi à ses obligations conventionnelles. Cette violation engage la responsabilité du Gouvernement du Royaume-Uni d'indemniser ce ressortissant hellène pour les pertes pécuniaires subies par lui de ce chef.

3) Le Gouvernement du Royaume-Uni se trouve en outre injustement enrichi de la somme de £ 500.000 qu'il a exigée de M. Ambatielos en contre-partie d'une garantie de livraison à dates fixes, garantie qui n'a pas été observée.

4) La Cour est compétente pour connaître du différend, attendu qu'il s'agit d'un différend visé par les Traités de 1886 et 1926, et que le Gouvernement du Royaume-Uni s'est engagé à soumettre tels différends soit à une commission d'arbitrage, soit à la Cour.

5) Les conditions auxquelles est subordonné l'exercice de juridiction de la Cour se trouvent ainsi toutes réunies dans l'espèce. (Arrêt de la Cour relatif à l'affaire des *Concessions Mavrommatis en Palestine* — Série A, n° 2, 30 août 1924.)

30. Par conséquent, le Gouvernement hellénique demande à la Cour de dire et juger :

1) Que le Gouvernement du Royaume-Uni est tenu d'accepter la soumission à l'arbitrage du différend qui sépare actuellement ce Gouvernement et le Gouvernement hellénique et d'exécuter la sentence qui interviendra ;

2) que la procédure arbitrale organisée par le protocole du Traité de commerce et de navigation gréco-britannique de 1886 ou alternativement celle du Traité de commerce de 1926 doit recevoir application en l'espèce ;

3) que tout refus de la part du Gouvernement du Royaume-Uni d'accepter l'arbitrage prévu par lesdits traités constituerait un déni de justice (affaire de l'*Anglo-Iranian Oil Co.* — Ordonnance du 5 juillet 1951 : *C. I. J. Recueil 1951*, p. 89) ;

4) Que le Gouvernement hellénique est en droit de saisir la Cour du fond du différend existant entre les deux Gouvernements sans même être tenu d'avoir recours au préalable à l'arbitrage mentionné dans les conclusions 1 et 2 ci-dessus.

5) à titre subsidiaire, que le Gouvernement du Royaume-Uni est tenu, en sa qualité de Membre de l'Organisation des Nations Unies, de se conformer aux dispositions de l'article premier, paragraphe 1, de la Charte des Nations Unies, dont l'un des buts principaux est « de réaliser par des moyens pacifiques, conformément aux principes de la justice et du droit international,

l'ajustement ou le règlement de différends ou de situations de caractère international », et de l'article 36, paragraphe 3, de la Charte, selon lequel « les différends d'ordre juridique devraient, d'une manière générale, être soumis par les parties à la Cour internationale de Justice ». Il est incontestable que le différend qui met en opposition le Gouvernement hellénique et le Gouvernement du Royaume-Uni est « un différend d'ordre juridique » susceptible de faire l'objet d'un arrêt de la Cour.

Fait à La Haye, le 30 août 1951.

(Signé) N. G. LÉLY,

Ministre de Grèce,

Agent du Gouvernement hellénique
près la Cour internationale de Justice.

Annexe A

CONTRAT DU 17 JUILLET 1919

AN AGREEMENT made the 17th July 1919, between THE SHIPPING CONTROLLER on behalf of His Majesty the King (hereinafter called "the Vendor") of the one part, and NICHOLAS E. AMBATIELOS, of Argostoli, Cephalonia, Greece (hereinafter called "the Purchaser"), of the other part.

1. The Vendor agrees to sell and the Purchaser agrees to purchase for the total sum of £2,275,000 the nine steamers more particularly described in the schedule hereto now being built for the Vendor by the Contractors whose names are set out in the said schedule and numbered in the shipbuilding yard of the Contractors as also set out in the said schedule.

2. The purchase money for the said steamers and engines shall be paid as follows :

A deposit of ten per cent in cash payable as to £100,000 thereof upon signing this Agreement and as to the balance of the said deposit within one month thereafter and the balance in cash in London in exchange for a Legal Bill of Sale or Builders' certificate within 72 hours of written notice of the steamer's readiness for delivery being given to the Purchaser or his Agent, such delivery to be given at the Contractor's yard.

3. The steamers shall be deemed ready for delivery immediately after they have been accepted by the Vendor from the Contractors.

4. The Purchaser or any person appointed by him and approved by the Vendor shall have access to the premises of the Contractors at all times during business hours, and shall have all proper facilities afforded with a view to making inspections.

The Purchaser shall have no power of rejecting work or material but may make representations in respect thereof to the Vendor, who shall thereupon decide whether the same is or is not in accordance with the terms of the Contract between the Vendor and the Contractor and shall approve or reject the same accordingly.

5. All classifications, anchor and chain certificates relating to the steamers shall be handed to the Purchaser on delivery of the steamers and also copies of the type specifications and plan.

All the spare gear boats and outfit, provided for in the specifications of the steamers and engines and deliveries by the Contractors to the Vendor, shall be delivered to the Purchaser on delivery of the steamers. The guns fitting and ammunition on board the said steamers are not included in this contract and shall be removed by the Vendor before delivery.

6. On payment of the balance of the purchase money as aforesaid a legal bill of sale free from incumbrance for the whole of the shares in each of the steamers or the Builder's certificates for each of the steamers shall be handed to the Purchaser at the Vendor's expense and the steamers shall thereafter be at the expense and risk of the Purchaser.

The steamers with their spare gear and outfit shall be taken with all faults and errors of description without any allowance or abatement.

7. If default be made by the Purchaser in the payment of the purchase money the deposit shall be forfeited and the steamers may be re-sold by public or private sale and all loss and expense arising from the re-sale be borne by the Purchaser, who shall pay interest thereon at the rate of five pounds per cent per annum. If default be made by the Vendor in the execution of Legal Bills of Sale or in the delivery of the steamers in the manner and "*within the time agreed*", the Vendor shall return to the Purchaser the deposit paid with interest at the rate of five pounds per cent per annum.

8. If any of the steamers became an actual or constructive total loss before they are at the risk of the Purchaser, this Agreement shall be null and void as to such steamer and the deposit paid in respect thereof shall be returned by the Vendor to the Purchaser but without interest.

9. If default be made by the Contractors in the delivery of any of the steamers to the Vendor then the Vendor may at his option either cancel this Agreement in respect of such steamer or steamers and return the deposit paid in respect thereof to the Purchaser, or may substitute for the steamer or steamers hereby agreed to be purchased another steamer or steamers of the same type and expected to be ready at or about the same date, and this agreement shall apply *mutatis mutandis* to the purchase of the new steamer or steamers.

10. The steamers shall not be subject to any trading restrictions whatsoever.

11. The wireless apparatuses are not the property of the Vendor, and are not included in this contract, and the Purchaser undertakes to make his own arrangements with the Marconi Company in connection therewith and in default of such arrangements being made shall indemnify the Vendor in respect of any claim by the Marconi Company against the Vendor.

12. Any dispute arising under this Agreement shall be referred under the provisions of the Arbitration Act 1889 to the Arbitration of two persons in London, one to be nominated by the Vendor and one by the Purchaser, and in the event of their being unable to agree to an umpire to be appointed by them whose decision shall be final and binding upon both parties hereto.

13. A Commission of one and one-half pounds per cent upon the purchase price shall be paid by the Vendor to Messrs. FERGUSON & LAW upon delivery of the steamers to the Purchaser provided that in the event of this Agreement becoming void or being cancelled no commission shall be payable.

14. The Vendor undertakes to obtain the consent of the BOARD OF TRADE to the transfer of the said steamers or any steamer or steamers substituted therefor to the Greek flag upon delivery and at the expense of the Purchaser to do all that may be necessary on his part to enable the steamers to be so transferred.

THIS SCHEDULE ABOVE REFERRED TO :

Contractors	Yard No.	Price
Taikoo Dockyard Hong Kong	180	£289,166,13,4.
do	177	289,166,13,4.
do	181	289,166,13,4.
Hongkong and Wampoa Dock	564	289,166,13,4.
do	565	289,166,13,4.
do	570	289,166,13,4.
Shanghai Dock and Engineering Co.	1505	180,000, 0,0.
do	1506	180,000, 0,0.
do	1507	180,000, 0,0.
		£2,275,000, 0,0.

For and on behalf of Nicholas E. Ambatielos,
(Signed) FERGUSON & LAW.

As Agents.

17th July 1919.

Certified that this is a true copy of the original contract retained in the possession of the Ministry of Shipping.

(Signed) J. O'BYRNE,

For Accountant General Ministry of Shipping.

Annexe B

DÉCLARATION

DE M. BRYAN LAING

RELATIVE A LA VENTE PAR LE MINISTÈRE DE LA MARINE MARCHANDE,
POUR LE COMPTE DE SA MAJESTÉ, DU VAPEUR « AMBATIELOS » ET
AUTRES NAVIRES

I, BRYAN LAING, of 73, St. Stephen's House, Westminster, in the County of London, DO SOLEMNLY and SINCERELY DECLARE as follows :

1. On the 1st April 1919, I was appointed Assistant Director of Ships Purchases and Sales at His Majesty's Ministry of Shipping. The Minister of Shipping at that time was Sir Joseph Maclay and the Director of Purchases and Sales was Sir John Esplen.

2. During the time when I was negotiating the purchase and sale of ships for the Ministry, that is, from the 1st April 1919 until October 1920, although Sir Joseph Esplen was nominal head of the Department during that time, I sold on behalf of His Majesty's Government over one hundred million pounds worth of ships and in no single instance was any exception taken or alteration made to the terms which I had agreed with the purchasers on behalf of the Shipping Controller. It was my habit to report the deal which I had made and the Contract would be signed in that form embodying the terms which I alone had agreed with the purchasers. In fact on more than one occasion when other

persons in the Department had negotiated for the sale of ships, including the Minister himself, I had objected pointing out that there could not be two persons who had charge of negotiations for the sale of ships and in the cases referred to the negotiations which had been made by persons other than myself were cancelled and I subsequently re-sold the same boats at an enhanced price.

3. At the same time as I was at the Ministry of Shipping, I was also appointed on the Lord Lytton Committee of the Admiralty where my powers were of a similar nature and similar occasions arose where sales had been tentatively entered into by persons other than myself and where I objected and where they were annulled and later the same ships were sold by myself at an enhanced price.

4. I was also at this time largely consulted by the Chartering Department of the Ministry of Shipping and I was in this way able to know the position of freights in the world market because these would naturally be governed by what ships were in the district for the purpose of carrying goods which had to be moved.

5. It was while I was in this position that I first made the acquaintance of Mr. G. E. Ambatielos who approached me on behalf of his brother Mr. N. E. Ambatielos concerning the purchase of tonnage, and I offered to sell him nine ships then building to the order of His Majesty's Government at Hong Kong and Shanghai and I recommended that he should purchase these ships because I knew that at that time the Eastern freight market was very high and the owner of these ships would be able to make a very substantial profit provided a free charter-party could be obtained (which I arranged) instead of Blue Book rates. It was also advantageous if the right price could be obtained for His Majesty's Government to sell these ships for the reason that it would have been necessary to send out crews and stores to bring them home and I estimated that those would have cost at least £100,000. I therefore bargained on behalf of His Majesty's Government with Mr. G. E. Ambatielos and later confirmed the matter with his brother Mr. N. E. Ambatielos for the sale to them of these ships at an average price of £36. 0. 0 per ton dead weight. I was able to do this because I first ascertained and arranged that a free charter-party should be given and also caused cablegrams to be sent to His Majesty's representatives in Hong Kong and Shanghai and asked them to cable definite dates on which deliveries could be promised; and it was because I was able to offer to Mr. Ambatielos firstly the free charter-party and secondly the position then obtaining in the Eastern freight market, which position was made certain by my being able to offer him definite dates for delivery of the ships, that I induced him to sign the Contract dated the 17th July 1919. In my position at the Ministry of Shipping I was not able to contract with Mr. Ambatielos in such a way as would have bound him to share with His Majesty's Government the profit which I expected he would have been able to make owing to this combination of free charter-party and certain delivery dates. I estimated that the profit which he was likely to make would be about one million pounds over and above Blue Book rates and I informed him that I considered that he ought to pay to His Majesty's Government for the privilege of the open charter-party and the freights obtainable at that period which was made possible by the certain delivery dates one half of that expected profit, namely £500,000, and so I added that amount to the purchase price of the ships.

I was able to assure him from Messrs. David Pinkney & Co. whom he had telephoned whilst he was at the Ministry of Shipping that these high freights would be obtainable if the vessels were delivered by the dates agreed.

6. The Ministry of Shipping's ordinary Form of Contract was therefore prepared providing for the sale to Mr. Ambatielos of the nine vessels therein mentioned. Prior to this Contract being signed on the 17th July 1919 I had given to Mr. G. E. Ambatielos a piece of buff paper on which I had copied the agreed delivery dates which were the same dates as those which had been cabled to me as reliable dates from Hong Kong and Shanghai. When therefore Mr. Ambatielos on the signing of the Contract pointed out to me that in the written Contract these specific dates were not mentioned I informed him that if he would look at Clause 7 of the Contract he would see that delivery would have to be made "within the time agreed" and that those words meant the dates which I had already given to him and which were written on the buff slip of paper.

7. In confirmation of the fact that there were fixed delivery dates a telegram was sent, signed Straker, Secretary to Sir John Esplen, who was on the Committee of the Ministry of Shipping, which telegram was sent on his instructions after a meeting of the Committee reading as follows :

"From Esplen, Shipminder, London,
To Britannia Hongkong.

Following for Dodwell, War Trooper.

As the steamer was sold to buyers for delivery not later than November it is of utmost importance that she should be completed by that date *stop* Cable immediately progress of construction. (Signed) M. J. STRAKER."

This was sent because the Committee were becoming worried at the continual delay and they foresaw either cancellation of the Contract or a claim being made against them.

8. Prior to the case coming on in Court Sir Joseph Maclay wrote to me on the 12th July 1922, asking in so many words whether or not I had agreed to give guarantee dates for delivery thus confirming the powers that I had for the disposal of His Majesty's ships and which I have enumerated in the preceding paragraphs. On the 20th July 1922, I wrote back to Sir Joseph explaining the position as I have set out in the preceding paragraphs hereof, namely, that I was able to get Mr. Ambatielos to pay an extra £500,000 because I was able to get him to share the profit which he was to make with the Ministry of Shipping owing to the high Eastern freights then ruling and to the fact that guaranteed delivery dates could be assured, and on the 24th July 1922, Sir Joseph acknowledged my letter without comment. I take it that it was because of this that I was not asked to give evidence on behalf of His Majesty's Government at the trial, although I was subpoenaed by them and could not therefore be approached by Mr. Ambatielos.

9. This is the evidence which I would have given to the Court at the time had I been called.

And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

DECLARED at Palace Chambers, Westminster, in the County of London, this 19th day of January 1934.

(Signed) BRYAN LAING.

Before me :

(Signed) [Illegible.]

A Commissioner for Oaths

Annexe C

TÉLÉGRAMME ENVOYÉ PAR ORDRE DE SIR JOHN ESLEN
AUX CHANTIERS DE HONG-KONG

31st October 1919.

From Esplen, Shipminder, London, To Britannia, Hong Kong.—Following for Dodwell, War Trooper.—As the steamer was sold to buyers for delivery not later than November it is of the utmost importance that she should be completed by that date *stop* Cable immediately progress of construction. M. J. STRAKER.

Annexe D

EXTRAIT DU COMPTE RENDU (REPORT)
DE L'AFFAIRE AMBATEILOS

Devant M. Justice Hill — 28 novembre 1922
13 Lloyd's List Law Reports (p. 377)

Mr. John O'Byrne, of the Marine Department of the Board of Trade and Director of Ship Purchase, gave evidence in support of the Crown's case that Mr. Ambatielos had not carried out his obligations under the mortgage deeds and deeds of covenant.

In cross-examination by Mr. Bateson, WITNESS agreed that he had insisted upon the ships being insured to their full value. He also admitted that the ships were delivered to Mr. Ambatielos later than anticipated, but said that no complaint was made till March 1921, and even then no claim was made. It was true that by reason of the late delivery the purchaser could not make so much money out of the ships.

*Annexe E*CORRESPONDANCE ENTRE SIR JOSEPH MACLAY
ET LE MAJOR LAINGStation Hotel, Dornoch.
12th July 1922.*Strictly private and confidential.*

Dear Major Laing,

I am still acting as Advisor in connection with winding up the affairs of the old Ministry of Shipping, and when in London recently the question came up of the vessels which were sold to Mr Ambatielos.

At the time the sale was being negotiated you will remember you were in constant touch with me, but so far as I remember nothing was ever said about guaranteeing dates of delivery, which, of course, it was impossible to do. I presume you told purchaser that the Ministry would do anything it could to hasten delivery, and hoped-for dates might be mentioned, but nothing beyond this.

Will you kindly let me have a line to Duchal, Kilmalcolm, Renfrewshire. I am North having a few days holiday.

I trust all goes well with you and with kind remembrances.

Yours sincerely,

(Signed) J. MACLAY.*Strictly private and confidential.*

20th July 1922.

Dear Sir Joseph,

I was delighted to get your letter and to hear you were at last taking a holiday. Please accept my apologies for not writing sooner. It is due to my being away.

With regard to the sale of the ships to Ambatielos, I have, as far as I can, with the help of my secretary, refreshed my memory as to what actually took place prior to the sale of the steamers then building in Hong Kong, etc.

As you will remember, I was a pessimist as to the future of shipping, and my one idea was to reduce the liability against the Ministry of Shipping as rapidly as possible.

I was of the opinion that it was most essential to dispose of the ships building at Hong Kong, and I had cables sent to our agents who were responsible for the building and completion, and they cabled back dates which they considered quite safe, and it was on this information that I was enabled to put forward a proposition to you.

The Eastern freight market at that time being very high, I came to the conclusion, and laid my deductions before yourself and the Committee of the Ministry of Shipping, that, provided these ships could be delivered at the times stated by our agents on behalf of the builders, they were worth, with their position, owing to the freight they could earn, another £500,000, and this I added to what I considered an outside price for the ships. It was only by this argument that I induced Ambatielos

to purchase the ships. This figure worked out at £36 per ton D.W. for 8,000 tonners and over £40 per ton for 5,000 tonners.

The Ministry of Shipping got a very large sum of money on account, and in addition were relieved of the expense of sending officers and engineers out to Hong Kong.

I think I am right in saying that, in the case of all ships building and not taken by Lord Inchcape, a date of delivery was given, and in the case of the "N" boats building at Chepstow, which were sold and purchased by Farina on behalf of the Italian Government at £29 per ton, considerable difficulty arose over the late delivery. These boats were disposed of at the same time as those to Ambatielos, and full particulars as to delivery was obtained by Mr. Farina from the Shipbuilding Co. Had these boats not been sold at that time to Mr. Ambatielos, I doubt very much if the vessels would have realized an average of £25 per ton, owing to the break in the Eastern freight market, and the dislike to foreign-built ships.

Just prior to the sale of these Hong Kong ships, the contract with Lord Inchcape amounting to about £14,000,000 had been entered into on the basis of £25 per ton less depreciation and overhaul, which meant a net of about £21 per ton, and the ships building in Canada were cancelled or taken over by the builders at a heavy loss to the Ministry, so that I considered the sale to Ambatielos, on the information given me as to the delivery by our own people, an extremely advantageous one.

Yours sincerely,

(Signed) BRYAN LAING.

Strictly private and confidential.

21, Bothwell Street, Glasgow.

Dear Major Laing,

Thanks for your letter.

I arrived home on Thursday after a very good holiday, and feel much the better for it.

Your letter reached me on Friday.

I will probably be in London next week, and will therefore not take up any details meantime.

With kind remembrances.

Yours sincerely,

(Signed) J. MACLAY.

Annexe F

CONTRAT AUTHENTIQUE SYNALLAGMATIQUE ENTRE
M. AMBATIELOS ET LE CONTRÔLEUR DE LA MARINE
MARCHANDE

THIS INDENTURE made the fourth day of November one thousand nine hundred and twenty BETWEEN NICHOLAS EUSTACE AMBATIELOS,

of Argostoli, Cephalonia, in the Kingdom of Greece, but temporarily residing at 56, rue de Varenne, Paris, in the Republic of France; Shipowner (hereinafter called the Mortgagor, which expression shall include his executors, administrators and assigns where the context so admits) of the one part and HIS MAJESTY THE KING, represented by the Shipping Controller (who and whose successor or successors in office are hereinafter called the Controller) of the other part.

WHEREAS the Mortgagor is, the owner of 100/100th shares of and in all the steamships or vessels more particularly described in the Schedule hereto.

AND WHEREAS the said vessels are sailing under Greek flag but have not been registered yet at their declared port of registry.

AND WHEREAS the said declared port of registry is the port of Argostoli, Cephalonia, in the aforesaid Kingdom of Greece.

AND WHEREAS the Mortgagor has by a mortgage in the statutory form (hereinafter called "the statutory mortgage") bearing even date herewith transferred 100/100th shares of and in the steamship (hereinafter called "the said steamship") to the Controller to secure an account current with the Controller and all and every sum or sums of money now due or which shall from time to time hereafter become due to the said Controller for the payment of the balance of the purchase price of the steamship *Keramies* and the steamship *Yannis* (being two of the steamers mentioned in the Schedule hereto) and of the steamers *Stathis* and *Mellon* which said steamers have been purchased by the Mortgagor from the Controller of Shipping and of every sum now due or hereafter to become due from the Mortgagor to the Controller on any account whatsoever whether from the Mortgagor solely or from the Mortgagor jointly with any other person or persons or companies or from any firms in which the Mortgagor may be interested or any other sum which may be owing on account under or by virtue of the terms of this indenture (but not exceeding in the aggregate the sum of £1,000,000) or any part thereof that may at any time be owing with interest thereon at the rate hereinafter provided.

AND WHEREAS by way of further security the Mortgagor has agreed to execute these presents and concurrently therewith statutory mortgage and deeds of covenants in the same form as the statutory mortgage and these presents in respect of all the other vessels named in the Schedule hereto (which said statutory mortgage and deeds of covenants are hereafter together sometimes referred to as the "Concurrent Mortgages").

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and for the consideration aforesaid the Mortgagor hereby covenants and agrees with the Controller as follows :

1. All and every sum or sums of money which are now or which shall from time to time hereafter become due or owing to the Controller from the Mortgagor on any account whatsoever whether from him solely or jointly with any other person or persons, company or firms for notes or bills discounted or paid or other loans, credits or advances made to the Mortgagor or for his accommodation or at his request whether solely or jointly as aforesaid or for any money for which he may be liable as surety or for which the Controller may have become liable as surety or guarantor for him in any other way whatsoever together with all interest, commissions, discounts and all other proper legal

charges to be repayable in the manner hereinafter mentioned together with interest at the rate of *2 per cent* per annum above the Bank rate from time to time ruling, such interest being calculated from the 1st day of August 1920 and shall be payable half-yearly on the *first day of February* and on the *first day of August of each year*. In consideration of the granting of credit and of the continuing of such current account the Mortgagor hereby covenants and declares that at the date of signing of this indenture and of the statutory mortgage there are no maritime or other liens, charges or incumbrances on the said steamships and that he has full power to mortgage. If the Mortgagors shall pay the interest herein before covenanted to be paid within 14 days after the day on which the same shall fall due and shall perform and observe all the covenants and stipulations therein contained and on his part to be performed and observed, then the Controller will not take any steps whatsoever for enforcing payment of the principal sum due to the Controller from the Mortgagor at the date hereof or any part thereof for a period of two years from the date hereof. All other sums due from the Mortgagor to the Controller under these presents shall be repayable on demand.

2. The Mortgagor agrees and undertakes to keep the said steamships insured during the continuance of the mortgage against all risks, including war risks, at her full declared value and at least in the sum of by policies, certificates and entries subject to the *reasonable approval* of the Controller both as to the underwriters and as to the *risk, terms and extent* of the insurance and also to have the said steamship fully entered in a Protection and Indemnity Association approved by the Controller and immediately on receipt of same to hand such policies and all cover notes and other documents relating to the insurance to the Controller or at the Mortgagor's option a letter of undertaking by approved insurance brokers to hold the policies on behalf of and to the order of the Controller, subject to the broker's lien thereon for unpaid premiums and also to take out any renewals of the same which may be necessary during the continuance of the said mortgages and shall effect the said insurances either in the name of the Controller or in such manner by giving proper notices to the insurers or underwriters as shall create a legal right title and interest in and a right to sue upon the said policies, cover notes and other documents in the Controller.

3. In the event of the Mortgagor failing to effect or keep in force during the continuance of the said mortgage and the said insurance or any of them or to hand over the policies or the said undertaking to the Controller or failing to take any other steps necessary to vest in the Controller the legal rights, title and interest therein, it shall be lawful for but not obligatory upon the Controller to effect and keep in force policies of insurance or insurances up to the amount aforesaid.

4. In the event of default by the Mortgagor in effecting any insurance as hereinbefore provided and in handing over the policies or the said undertaking as aforesaid and in the event of the Controller in pursuance of the power hereinbefore contained himself effecting any such insurances, then the Mortgagor shall forthwith pay to the Controller in cash on demand every sum disbursed by him to effect every such policy of insurance and if any sum so disbursed shall not be paid on demand, the amount thereof shall be added to and held secured by the statutory

mortgage and these presents but not so as to make the total amount secured thereby exceed the said aggregate sum of £1,000,000 and shall bear interest at the rate of 10 per cent per annum until repaid.

5. If any claim shall arise under any policy however effected, the Controller shall be entitled if he shall so desire to collect the same from the underwriters or other parties by whom the same shall be payable and shall be entitled to apply the same in the repair of any damages sustained by the said steamship or otherwise and shall be entitled to charge and recover from the Mortgagor the usual broker's commission upon the gross amount of all moneys so collected by him.

6. It is expressly agreed that no provisions in this Indenture relating to the rights or remedies of the Controller shall in any way restrict or limit or deprive him of any rights or privileges he would otherwise be entitled to in law or equity as Mortgagee or by virtue of the statutory mortgage, but such provisions in this Indenture shall be interpreted if necessary in the interests of the Controller as giving the Controller extended rights and privileges.

7. The Mortgagor hereby expressly covenants with the Controller as follows :

(a) That upon the request from the Controller and subject and *without prejudice to the provisions of any then existing charter-parties* but so nevertheless as to strictly comply with the law of Greece, he will cause the said steamship to proceed to her declared port of registry and there at his own cost complete all necessary formalities in connection with the registration of the said steamship under Greek flag and also at his own cost register or cause to be registered the statutory mortgage and this Indenture in the Mortgage Register at the declared port of registry and produce to the Controller a formal certificate from the Registrar of Shipping or other duly constituted officer at such declared port of registry certifying that the mortgage is the first in date and priority and that no other mortgage or charge has been registered prior to or on the same day or attachment made or sale effected to a third party.

(b) Not to execute or register any mortgage or charge on the said steamship on the same day in priority to the statutory mortgage or further to mortgage the said steamship (except with the consent of the Controller in writing first had and obtained) or without such consent sell or otherwise dispose of the said steamship or any shares therein nor do or permit any act neglect or default whereby the said steamship shall or may lose her character as a Greek ship. Provided that the Mortgagor shall be at liberty to sell the said steamship on giving 4 days notice written to that effect to the Controller, provided the purchase money is made payable to the Controller and provided that same or the sum of whichever be the larger is paid over to the Controller in respect of such sale to be applied in reduction of the amount due to the Controller under the statutory mortgage or these presents and such sale shall not constitute a breach of this sub-clause.

(c) That during any voyage the said steamship shall not make any deviation not allowed by any policy and/or charter-party and that nothing shall at any time be done or omitted whereby any insurance shall become void or voidable in whole or in part.

(d) At all times upon the request to give the Controller full information regarding the said steamship, her employment, position and engage-

ments and copies of charter-parties with names of charterers and if requested so to do on the completion of every voyage to send to the Controller certified copies of the ships' and engineers' log-books covering the period of such voyage.

(e) That the Mortgagor undertakes that all freights or hires earned in respect of the said steamship will immediately upon receipt be paid to the London County Westminster and Paris Bank Limited, Lombard Street, London E.C., to the credit of the Controller or his duly nominated agents, less the ordinary steamship disbursements, commissions and necessaries, and will if the charterers fail or refuse to give a letter undertaking to pay such freights or hire moneys to the said bank on request execute all such assignments, instruments, acts and things as shall be necessary for effecting this purpose or for further assurance. Provided that as freights and hire moneys are placed to the credit of the Controller under these presents so much thereof as shall be required for the purpose shall be applied in payment of all commission, disbursements, repairs, accounts for necessaries and insurance premiums due and owing by the Mortgagor in connection with the employment and insurance of the said steamship and the balance thereof shall be applied in reduction of the amount due from the Mortgagor to the Controller under or by virtue of the statutory mortgage and these presents.

(f) The Mortgagor undertakes to reduce the amount owing to the Shipping Controller by at least the sum of £75,000 each six months.

8. IT IS HEREBY AGREED notwithstanding anything to the contrary herein contained that the Controller shall be entitled to take immediate possession of and to sell the said steamship without the necessity of applying to the Court on the happening of any or either of the following events, viz. :

(a) If any amount to the said Controller by the Mortgagor on any account whatever shall not be repaid at the times and in the manner provided herein.

(b) If the said steamship and her machinery shall not be kept in a seaworthy and seagoing condition and her classification maintained.

(c) If the said steamship shall be arrested by or under any order of any court or tribunal in Great Britain or Ireland or any other country and shall not be freed from arrest within 21 days from the date of such arrest.

(d) If the Mortgagor at any time upon request by the Controller shall fail to satisfy the Controller within a reasonable time that the masters, officers and crew of the said steamship have no claim or claims for wages in respect of a *period exceeding three months*.

(e) If the Mortgagor neglects to insure or protect the said steamship by insurance as hereinbefore provided or neglects to pay the premiums or calls when due or fails to hand over the policies, cover notes or broker's undertaking to the Controller as aforesaid or to give proper notice or to make such assignment as or omit any other act that may be necessary to vest in the Controller the legal interest in the said policies or any of them.

(f) If the said steamship be sold and the net proceeds of sale or sum of £.... whichever shall be the larger be not paid to the Controller as aforesaid, or transferred to any new management without the consent in writing of the Controller.

(g) If the Mortgagor or the captain for the time being of the said steamship shall enter into or execute any bottomry bond or respondentia or if the said steamship shall become subject to any maritime or other lien charge or incumbrance (of which notice shall be immediately given to the Controller) and is not freed thereon by the Mortgagor within 21 days from the time the said lien is enforced.

(h) If the Mortgagor shall become insolvent or a bankruptcy notice or a bankruptcy petition be presented against him or equivalent proceedings be taken in any foreign country or if he shall enter into any deed of arrangement or composition with his creditors or any distress or execution shall be levied against his goods.

(i) If the Mortgagor shall commit any breach of or make any default in the observance or performance of any of the stipulations set out in this Indenture, including those in this clause otherwise than a breach which shall have been made good before the exercise of any such power by the Controller.

(j) If the aforesaid Mortgagor shall employ or permit the said steamship to be employed in any manner in carrying contraband goods or other goods that shall be declared to be contraband of war.

(k) If the Mortgagor shall let the said steamship upon time charter whereby more than on a calendar month's hire shall be payable in advance to the Mortgagor and such moneys so paid in advance shall not be paid into the said bank to the credit of the Controller or if he shall create any charge or lien upon such hire money other than for usual ship's disbursements and necessaries.

(l) If the said steamship shall be lost or destroyed or captured and the policy moneys shall not be paid to the Controller.

(m) If the said steamship shall be allowed to remain idle in any foreign port for more than 25 days, except when under repair or through stress of weather or in the reasonable course of her employment or through strikes or lock-outs.

(n) If the Mortgagor shall allow the said steamship to proceed to her declared port of registry without first giving the Controller 21 days' notice of such intention. Provided that if under the provisions of any charter-party of the said steamship to proceed to Greece such direction shall not constitute a breach of this sub-clause unless the statutory mortgage shall not be registered concurrently with the registration of the said steamship. The Mortgagor shall give immediate notice to the Controller in writing of such direction.

(o) If the Mortgagor shall create any other mortgage or charge on the said steamship capable of being registered at the declared port of registry prior to or contemporaneously with the statutory mortgage to the Controller.

(p) If the Mortgagor shall make default under or commit a breach of any of the covenants, stipulations and conditions of all or any of the concurrent mortgages.

(q) If any freight or hire money in respect of the said steamships shall not be provided by Clause 7 (2) hereof be forthwith paid to the account of the Controller at the London County Westminster and Paris Bank Ltd., Lombard St., London E.C.

9. If the Mortgagor shall make any default in any payment hereunder or commit any breach (other than a breach or default which has been made good by the Mortgagor before the exercise of any power given

to the Controller by the proceeding clause) of any of the covenants, conditions or stipulations herein contained or upon the happening of any of the events mentioned in paragraph 8 hereof, the Controller shall be at liberty to take possession of the said steamship in any part of the world and to trade with her in such trade or trades as he may elect and at the current market rates or in his opinion at such rates as after taking all the circumstances connected with the said trading into consideration he may consider equivalent to current market rates and to charge a reasonable management fee therefor (the Controller not being liable for any acts or omissions as manager nor for the negligence of his servants or agents) or to lay her up and in either event for a period or periods as to him may seem expedient, giving credit for all profits and debiting all losses to the Mortgagor in their net amount and accordingly deducting or adding same from or to the moneys already owing to the intent that the whole be secured by the said statutory mortgage, or he may take possession of the said steamship in the United Kingdom or elsewhere in any part of the world and in his discretion sell her without applying to the Court for an order for sale by public auction or private contract, and in case of a sale they shall be entitled to charge or pay *£1 per centum* brokerage and all other usual and proper sale charges and expenses which may be incurred and also to satisfy any liens or claims, maritime or otherwise, which may be proved to be outstanding against the said steamship and all moneys expended by the Controller and all proper brokerage and outgoings and all losses (if any) sustained by him in or about the proper exercise of any of the powers herein contained or vested in him by virtue of the statutory mortgage or otherwise by operation of law shall be paid to him by the Mortgagor on demand and shall be deemed to be secured by the said statutory mortgage.

10. It is hereby agreed and declared that any neglect, delay or forbearance of the Controller to require or enforce payment of any money hereby secured or any other covenants, conditions or stipulations of this Indenture and any time which may be given to the Mortgagor shall not amount to a waiver of any of the powers vested in the Controller by virtue of the statutory mortgage of these presents or by operation of law and shall not in any way whatsoever prejudice or affect the right of the Controller to afterwards act strictly in accordance with the powers conferred upon the Controller by this Indenture.

11. Notwithstanding anything to the contrary herein contained, the statutory mortgage and these presents shall be construed according to English law and the Mortgagor agrees that the Controller shall be at liberty to take any proceedings in the English courts to protect or enforce the security provided by the statutory mortgage or to enforce any of the provisions of these presents or to recover payment of any sums due. For the purpose of any proceedings in the English courts the mortgagor shall be considered as ordinarily resident or *carrying on his business* at the offices at 46, St. Mary Axe in the City of London of Mr. G. E. Ambatielos, and if such offices shall be closed then at the office of his solicitors, Messrs. William A. Crump & Son, wherever they may be situated and the Mortgagor agrees that service of any writ issued against him by delivering the same to some person at the said office shall be deemed good service and no objection shall be taken by or on behalf of the Mortgagor to such service and for the purpose of any

proceedings the statutory mortgage and these presents shall be construed and enforced according to English law. The Mortgagor further agrees that if the said steamship is at any time in any port or place in England or Wales the said steamship may be *arrested in any action* instituted in the Probate Divorce and Admiralty Division of the High Court of Justice to enforce the statutory mortgage or these presents or protect the security, and no objection shall be taken by or on behalf of the Mortgagor to set aside or prevent the enforcement of any judgment in such action on the ground that the Court had no jurisdiction. For the purpose of any such action the Mortgagor hereby agrees that he shall be deemed to have entered unconditional appearance and consented to the jurisdiction of the Probate Divorce and Admiralty Division of the High Court of Justice.

12. The Mortgagor for the purpose of giving effect to the carrying out of the provisions of this Indenture hereby constitutes and appoints the Controller to be his true lawful and irrevocable attorney for him and in his name to ask, demand, receive, sue for and recover all insurance freight passage and other moneys of the said steamship which may become due and owing under the security of the statutory mortgage and these presents and to do all such acts and things in the name of the Mortgagor or otherwise as may be necessary for the due enforcement of the said security and on receipt of any such moneys to give proper receipts and discharges for the same and whatever the said attorney shall do in the premises the Mortgagor hereby ratifies and confirms.

13. As the amount due to the Controller is from time to time reduced by the amounts hereinafter mentioned, the Controller will absolutely release from the statutory mortgage relating thereto and accompanying deed of covenant the steamships hereinafter named, viz.

When the amount due is reduced by	£150,000	the s.s. <i>Panagis</i> .
" " " " " " "	a further £150,000	the s.s. <i>Nicolis</i> .
" " " " " " "	£130,000	the s.s. <i>Trialos</i> .
" " " " " " "	£130,000	the s.s. <i>Cephalonia</i> .
" " " " " " "	£130,000	the s.s. <i>Ambatielos</i> .
" " " " " " "	£85,000	the s.s. <i>Yannis</i> .
" " balance is repaid,		the s.s. <i>Keramies</i> .

14. The Mortgagor undertakes to pay the reasonable and proper costs, charges and expenses of the Controller and of his solicitors in and about the preparation and execution of this Indenture and of the statutory mortgage.

IN WITNESS whereof the Mortgagor hath hereunto set his hand and seal and the Controller has caused the Common Seal to be hereunto affixed the day and year first above written.

THE SCHEDULE hereinbefore referred to :

Name	Former name	Deadweight
s.s. <i>Keramies</i>	s.s. <i>War Coronet</i>	8,250 tons
s.s. <i>Trialos</i>	s.s. <i>War Sceptre</i>	8,250 tons
s.s. <i>Nicolis</i>	s.s. <i>War Bugler</i>	8,250 tons
s.s. <i>Ambatielos</i>	s.s. <i>War Trooper</i>	8,250 tons

Name	Former name	Deadweight.
s.s. <i>Cephalonia</i>	s.s. <i>War Miner</i>	8,250 tons
s.s. <i>Panagis</i>	s.s. <i>War Diadem</i>	5,150 tons
s.s. <i>Yannis</i>	s.s. <i>War Tiara</i>	5,150 tons

Signed, sealed and delivered by
the said Nicholas Eustace
Ambatielos in the presence of:

(Signed) N. E. AMBATIELOS.

[Signature of Greek Consul in Paris.]

Annexe G

Newcastle-on-Tyne,
13th January 1922.

CORRESPONDANCE CONCERNANT LA SAISIE
DU "PANAGIS" A NEWCASTLE

The Greek Consul,
Pilgrim Street,
Newcastle-on-Tyne.

Dear Sir,

s.s. "*Panagis*"

The above steamer of which I am master was seized by Messrs. Hall Bros. on the 3rd inst., acting on behalf of Messrs. Glover Bros., of London.

The British flag was hoisted on the steamer on the 9th inst. after the Customs authorities had handed over the steamer to Messrs. Hall Bros.

I am forced to leave the steamer but do so under protest and here-with protest against my being paid off, and I reserve the right to claim my own and the owners' interests in this steamer.

Yours faithfully,

(Signed) G. CAMBITZIS.

LÉGATION DE GRÈCE,
51, Upper Brook Street,
London W. 1.

17th January 1922.

My Lord Marquess,

Messrs. N. E. Ambatielos & Co., of 46, St. Mary Axe, London, inform me that agents of the Board of Trade have hauled down the Greek flag and hoisted the British flag on the s.s. *Panagis* lying at Newcastle-on-Tyne.

As I understand that no judicial decision had previously been issued to that effect, I shall be obliged if Your Lordship will be good enough to cause enquiries to be made and to inform me of the result.

I have the honour to be, etc.

(Signed) A. RIZO RANGABE.

The Most Honourable,
The Marquess Curzon of Kedleston,
H.M. Secretary of State for Foreign Affairs, etc.

FOREIGN OFFICE, S.W. 1.

February 2nd, 1922.

Sir,

With reference to your note No. 15/N/22 of January 17th, I have the honour to inform you that on investigating it appears that the British flag was hoisted on the s.s. *Panagis* as a result of a misunderstanding by the local authorities. Instructions have now been given that the British flag should be removed and the Greek flag replaced.

I have the honour to be, etc.

For the Secretary of State,
(Signed) J. P. WATERLOW.

Monsieur A. Rizo Rangabe, etc.

Annexe H

16th June 1921.

LETTRE DE M. AMBATIELOS
AU SERVICE DE LA MARINE MARCHANDE

J. O'Byrne, Esq.,
Room 24,
Mercantile Marine Department,
Board of Trade,
St. James Park,
S.W.I.

Sir,

Sir Ernest Glover, with whom I have been in communication and of which you are no doubt aware, requests me by his letter of 17th inst. to communicate with you as he was leaving for a fortnight.

No doubt you are acquainted with his letter of 16th June, in which certain suggestions are put forward for settlement of the whole case outstanding with your good Ministry.

I regret very much that the basis of negotiations should be altered, and that suggestions should be made on quite a different basis on which I had not had the opportunity of developing my views.

From Sir Ernest Glover's letter of the 30th May, and on his own figures, a suggestion was put forward that the amount of about £352,000 be paid by me to the Ministry of Shipping in settlement, but without prejudice to my claim for the delay in delivery of the steamers and the non-delivery of the two.

In arriving at this figure, only the amount of £40,000 was taken into consideration for the s.s. *Yannis* expenses at Hong Kong and the equipment, outfit, etc., of the nine steamers.

On that basis, and desirous of coming to a settlement, I made an offer in writing to Sir Ernest on the 6th June, which was not accepted by the Ministry, as they wish now that an offer should be made on my part in full settlement of everything.

I understand also my last offer of yesterday, namely, £350,000 to be taken as a basis due to the Ministry, from which amount to be deducted any sums awarded me for the delay of the steamers or in excess of the £40,000 taken as basis for equipment, outfit, etc., and s.s. *Yannis* from the £350,000, and any balance to be paid in a way to be arranged to the satisfaction of the Ministry of Shipping, or £200,000 by me, relinquishing all claims, except delay of the nine steamers, have neither been accepted.

It is very difficult for me to make an offer on the lines you suggest, as, if I base myself on the letter of Sir Ernest Glover of the 30th May, by which we arrived at the sum of £350,000 without prejudice to delay, non-delivery of the steamers, etc., as payable to the Ministry of Shipping, decidedly the question of delay and non-delivery of the steamers have caused me much more loss than £350,000.

I therefore offer you £50,000 by six months' bill guaranteed to your satisfaction	£50,000
the balance of the s.s. <i>Yannis</i> to be released to your order,	
about	£39,000
Claims and premiums recoverable from underwriters, over	£30,000

Making a total of about £120,000

in full settlement of all claims and counter-claims, and the eight steamers to be delivered to me, free of all mortgages and encumbrances, and s.s. *Mellon* and s.s. *Stathis* free from all debts to the date of delivery.

Naturally, permission should be given to me for these two steamers, as well as for any others that may be necessary, to be out under foreign flag at any time required, as per my letter of the 6th June.

I should like to mention that since negotiations for a settlement have begun, apart from the original delay occasioned to the steamers, that most of the steamers have been on the point of starting to trade at good profits, and through steps of the Ministry of Shipping they have been prevented from doing so, which means a considerable loss to me, as, had all the steamers started as I intended them to do with the s.s. *Cephalonia*, I reckon a minimum profit of about £10,000 per steamer. Of course, in my above offer I relinquish all claims in this respect.

As I telephoned this morning, requesting that an appointment should be made for me to see the Shipping Controller, I await to hear the earliest time it will be convenient for this appointment to be made.

(Signed) N. E. AMBATIELOS.

*Annexe I*LETTRE DE M. AMBATIOLOS
AU SERVICE DE LA MARINE MARCHANDE
CONCERNANT LA NOMINATION D'UN ARBITRE

St. Michael's Rectory, Cornhill, E.C.

Sir,

24th June 1921.

We have been instructed by our client, Mr. N. E. Ambatielos, to communicate with you with regard to the disputes which have arisen between him and your Department under his contract with the Shipping Controller of the 17th July 1919, and the supplemental agreement afterwards made by him with Major Laing on behalf of the Controller, in Paris, as to the dates of delivery of the nine ships which were the subject of the principal contract. We need not here recapitulate the disputes, as they have been the subject of a long correspondence and negotiations between your Department and Mr. Ambatielos. It suffices to say that Mr. Ambatielos holds your Department responsible for their recent actions in *seizing the steamers* for alleged breach of the provision of the mortgage which you hold upon them, to secure the account current between your Department and him, as he maintains that if the account were properly taken the unpaid balance of the purchase money would be more than wiped out by his counter-claim. He has made several attempts to arrive at a friendly settlement of his claims, but it appears from the correspondence which we have seen that it has been found impossible to arrive at a settlement. In these circumstances he is willing and anxious to have his claim adjudicated upon and to have the account taken at the earliest possible minute. For that purpose he instructs us to call for arbitration upon the matters in dispute under *clause 12 of the contract*. He nominates as his arbitrator Mr. D. C. Leck, K.C., and he begs that you will nominate an arbitrator for your Department within seven clear days after the receipt of this letter.

It will be necessary to have a submission defining the points to be decided by the arbitrators. On receiving the nomination of your arbitrator, we will prepare and send you the draft of the submission.

It will be very desirable to minimize the damages, on whomsoever they may ultimately fall, caused by the detention of the ships, and our clients would be willing to make any reasonable arrangement for the employment of the ships, without prejudice, pending the arbitration, and for placing the net earnings *in medio* to be disposed of as the arbitrators may direct.

Be kind enough to let us know whether you are prepared to consider such an arrangement. If so, we will formulate it in detail for your consideration.

We are, Sir, etc.

(Signed) PARKER GARRETT & Co.

The Director of Ship Purchase,
Mercantile Marine Department,
Board of Trade,
St. James Park, S.W.1.

*Annexe J.*RÉPONSE DU SERVICE DE LA MARINE MARCHANDE
A M. AMBATIELOS

T/30380/21.

29th June 1921.

Gentlemen,

Re Mr. N. Ambatielos without prejudice.

I am directed by the Board of Trade to acknowledge your letter of the 24th instant.

In reply I am to state that the Board is not at all clear that any disputes exist, as alleged in your letter, which fall to be determined by arbitration in accordance with clause 12 of the sale contract. If, however, such disputes do exist, *the Board* will, if need be, deal with these matters accordingly, and should it be necessary Mr. W. Norman Raeburn, K.C., will act as arbitrator on behalf of the Board.

As no doubt your client has instructed you, the position of the Board is that it has been compelled to take the necessary steps to obtain possession of the vessels in question in accordance with the deed of covenant and in view of breaches thereof by your client.

Three of the vessels in question are, the Board is informed, under arrest at the suit of third parties as follows :

- s.s. *Panagis* at Newcastle
- s.s. *Trialos* at Bremerhaven
- s.s. *Nicolis* at Palermo.

Proceedings are being commenced by the Board forthwith against your client to recover the sums due from him in respect of the vessels concerned, and in these circumstances you will no doubt wish to consider whether, having regard to the fact that the claim of the Board is for a very large sum of money in comparison with which any claim by your client would appear to be relatively small, the claim of your client may not be one which can more suitably be disposed of by counter-claim, rather than by arbitration.

Meanwhile the Board will be glad to be informed that you are prepared to accept service of the proceedings now being commenced against your client under the deed of covenant.

(Signed) W. P. HOLFORD,
For Solicitor Board of Trade.

*Annexe K*JUGEMENT DE LA DIVISION DE L'AMIRAUTÉ
DU 15 JANVIER 1923*[Non reproduit ¹.]**Annexe L*

ARRÊT DE LA COUR D'APPEL DU 5 MARS 1923

*[Non reproduit ².]**Annexe M*DÉCLARATION SOUS SERMENT DE M. EVANS, CHEF DE
SERVICE ADJOINT DU SERVICE DE L'AVOUÉ (SOLICITOR)
DU TRÉSORFolio 653.
1921 B. No. 5531.IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT OF JUSTICE
PROBATE DIVORCE AND ADMIRALTY DIVISION
(ADMIRALTY)*Between* : THE OWNERS OF THE STEAMSHIP "AMBATIELOS"
APPELLANTS (DEFENDANTS)

and

THE BOARD OF TRADE ON BEHALF OF HIS MAJESTY
RESPONDENTS (PLAINTIFFS)

I, CORRIS WILLIAM EVANS make oath and say as follows :

1. I am an Assistant Chief Clerk in the Department of the Treasury Solicitor (Law Courts Branch) and have the conduct of the action on behalf of the Plaintiffs, the Board of Trade.

2. I have read what purports to be copies of affidavits sworn in this action by Frederick Paul Dwight Gaspar on the 20th day of February 1923, and by Nicholas Eustace Ambatielos on the 23rd day of February 1923.

3. The writ in this action was issued on the 21st day of October 1921 and after the Defendant had allowed judgment to go by default through non-appearance, he subsequently obtained an order dated

¹ Extrait du *Lloyd's List Law Reports*, vol. 14, 1 fév. 1923, pp. 5-15.² Extrait du *Lloyd's List Law Reports*, vol. 14, 11 mars 1923, pp. 389-390.

December 22nd, 1921, giving him leave to enter an appearance and to defend. In his defence, which was delivered on the 19th day of January 1922, the Defendant referred to certain letters dated the 2nd May 1921 and the 11th May 1921, exchanged between himself and a Major Bryan Laing, which confirmed, it was alleged, the verbal agreement which the Defendant was seeking to set up and referred to in paragraph 3 of the affidavit of Frederick Paul Dwight Gaspar. Copies of the said letters of the 2nd May 1921 and the 11th May 1921 are now produced to me and marked "C.W.E. 1 and 2" and are exhibited thereto.

4. The said Major Laing was at one time an official of the Ministry of Shipping, but ceased to serve in the said Ministry on the 30th September 1920.

5. The letter of the 12th July 1922 referred to in the affidavits of Frederick Paul Dwight Gaspar and Nicholas Eustace Ambatielos was written by Lord Maclay (then Sir Joseph Maclay) on the suggestion of my Department to assist it in the preparation of the case, the evidence in which was then being collected. Although there was no order for discovery, the Board of Trade disclosed and the Appellants had copies of all relevant documents except those which were brought into existence and for the purpose and conduct of the action.

6. I was present at the trial of the action before the Honourable Mr. Justice Hill which lasted eight days and saw Major Bryan Laing in court from time to time, but I am unaware whether he was subpoenaed by the Appellants.

SWORN at the Royal Courts of
Justice, Strand, London,
this 1st day of March 1923,
before me, F. HULLAH, First Clerk
in the filing and record
Department, Central Office.

(Signed) CORRIS W. EVANS.

Annexe N

TRAITÉ DE COMMERCE ET DE NAVIGATION ENTRE
SA MAJESTÉ BRITANNIQUE ET LE ROI DES HELLÈNES

Signé à Athènes en anglais et en grec, le 10 novembre 1886.

(Ratifications échangées à Athènes, le 21 avril 1887.)

[Texte anglais.]

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Majesty the King of the Hellenes, being desirous to extend and facilitate the relations of commerce between their respective subjects and dominions, have determined to conclude a new treaty with this object, and they have appointed their respective Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, Sir Horace Rumbold, a Baronet of Great

Britain, Knight, Commander of the Most Distinguished Order of Saint Michael and Saint George, and Her Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Hellenes ;

And His Majesty the King of the Hellenes, M. Stephen Dragoumi, Minister for Foreign Affairs ;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles :

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 II

No other or higher duties shall be imposed on the importation into the dominions and possessions of Her Britannic Majesty of any article, the produce or manufacture of the dominions and possessions of His Majesty the King of the Hellenes, from whatever place arriving, and no other or higher duties shall be imposed on the importation into the dominions and possessions of His Majesty the King of the Hellenes of any article, the produce or manufacture of Her Britannic Majesty's dominions and possessions, from whatever place arriving, than on articles produced and manufactured in any other foreign country ; nor shall any prohibition be maintained or imposed on the importation of any article, the produce or manufacture of the dominions and possessions of either of the Contracting Parties, into the dominions and possessions of the other, from whatever place arriving, which shall not equally extend to the importation of the like articles being the produce or manufacture of any other country. This last provision is not applicable to the sanitary and other prohibitions occasioned by the necessity of protecting the safety of persons or of cattle, or of plants useful to agriculture.

Article III

No other or higher duties or charges shall be imposed in the dominions and possessions of either of the Contracting Parties on the exportation of any article to the dominions and possessions of the other than such as are or may be payable on the exportation of the like article to any other foreign country ; nor shall any prohibition be imposed on the exportation of any article from the dominions and possessions of either of the two Contracting Parties to the dominions and possessions of the other which shall not equally extend to the exportation of the like article to any other country.

Article IV

The subjects of each of the Contracting Parties shall enjoy, in the dominions and possessions of the other, exemption from all transit duties, and a perfect equality of treatment with native subjects in all that relates to warehousing, bounties, facilities, and drawbacks.

Article V

All articles which are or may be legally imported into the ports of the dominions and possessions of Her Britannic Majesty in British vessels may likewise be imported into those ports in Hellenic vessels, without being liable to any other or higher duties or charges of whatever denomination than if such articles were imported in British vessels; and reciprocally all articles which are or may be legally imported into the ports of the dominions and possessions of His Majesty the King of the Hellenes in Hellenic vessels may likewise be imported into those ports in British vessels, without being liable to any other or higher duties or charges of whatever denomination than if such articles were imported in Hellenic vessels. Such reciprocal equality of treatment shall take effect without distinction, whether such articles come directly from the place of origin or from any other place.

In the same manner, there shall be perfect equality of treatment in regard to exportation, so that the same export duties shall be paid, and the same bounties and drawbacks allowed, in the dominions and possessions of either of the Contracting Parties on the exportation of any article which is or may be legally exported therefrom, whether exportation shall take place in Hellenic or in British vessels, and whatever may be the place of destination, whether a port of either of the Contracting Parties or of any third Power.

Article VI

No duties of tonnage, harbour, pilotage, lighthouse, quarantine, or other similar or corresponding duties of whatever nature, or under whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations, or establishments of any kind, shall be imposed in the ports of the dominions and possessions of either country which shall not equally and under the same conditions be imposed in the like cases on national vessels in general. Such equality of treatment shall apply reciprocally to the respective vessels, from whatever port or place they may arrive, and whatever may be their place of destination.

Article VII

In all that regards the coasting trade, the stationing, loading and unloading of the vessels in the ports, basins, docks, roadsteads, harbours or rivers of the dominions and possessions of the two countries, no privilege shall be granted to national vessels which shall not be equally granted to vessels of the other country; the intention of the Contracting Parties being that in these respects also the respective vessels shall be treated on the footing of perfect equality.

Article VIII

Any ship of war or merchant-vessel of either of the Contracting Parties which may be compelled by stress of weather, or by accident, to take shelter in a port of the other, shall be at liberty to refit therein, to procure all necessary stores and to put to sea again, without paying any dues other than such as would be payable in a similar case by a national vessel. In case, however, the master of a merchant-vessel should be under the necessity of disposing of a part of his merchandise in order to defray his expenses, he shall be bound to conform to the regulations and tariff of the place to which he may have come.

If any ship of war or merchant-vessel of one of the Contracting Parties should run aground or be wrecked upon the coasts of the other, such ship or vessel, and all parts thereof, and all furniture and appurtenances thereunto, and all goods and merchandise saved therefrom, including any which may have been cast into the sea, or the proceeds thereof if sold, as well as all papers found on board such stranded or wrecked ship or vessel, shall be given up to the owners when claimed by them. If there are no such owners or their agents on the spot, then the same shall be delivered to the British or Hellenic Consul-General, Consul, Vice-Consul, or Consular Agent in whose district the wreck or stranding may have taken place, upon being claimed by him within the period fixed by the laws of the country ; and such Consuls, owners, or agents shall pay only the expenses incurred in the preservation of the property, together with the salvage or other expenses which would have been payable in the like case of a wreck of a national vessel.

The goods and merchandise saved from the wreck shall be exempt from all duties of Customs, unless cleared for consumption, in which case they shall pay the same rate of duty as if they had been imported in a national vessel.

In the case either of a vessel being driven in by stress of weather, run aground, or wrecked, the respective Consuls-General, Consuls, Vice-Consuls, and Consular Agents, shall, if the owner or master or other agent of the owner is not present, or is present and requires it, be authorized to interpose in order to afford the necessary assistance to their fellow-countrymen.

Article IX

All vessels which, according to British law, are to be deemed British vessels, and all vessels which, according to Hellenic law, are to be deemed Hellenic vessels, shall for the purposes of this Treaty, be deemed British and Hellenic vessels respectively.

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 XI

It shall be free to each of the Contracting Parties to appoint Consuls-General, Consuls, Vice-Consuls, and Consular Agents to reside in the towns and ports of the dominions and possessions of the other. Such Consuls-General, Consuls, Vice-Consuls, and Consular Agents, however, shall not enter upon their functions until after they shall have been approved and admitted in the usual form by the government to which they are sent. They shall enjoy all the faculties, privileges, exemptions and immunities of every kind which are or shall be granted to Consuls of the most-favoured nation.

Article XII

The subjects of each of the Contracting Parties who shall conform themselves to the laws of the country :

1. Shall have full liberty, with their families, to enter, travel or reside in any part of the dominions or possessions of the Contracting Party.
2. They shall be permitted to hire or possess the houses, manufactories, warehouses, shops and premises which may be necessary for them.
3. They may carry on their commerce either in person or by any agents they may think fit to employ.
4. They shall not be subject in respect of their persons or property, or in respect of passports, nor in respect of their commerce or industry, to any taxes, whether general or local, or to imposts or obligations of any kind whatsoever other or greater than those which are or may be imposed upon native subjects.

Article XIII

The subjects of each of the Contracting Parties in the dominions and possessions of the other shall be exempted from all compulsory military service whatever, whether in the army, navy, or national guard or militia. They shall be equally exempted from all judicial and municipal functions whatever other than those imposed by the laws relating to juries, as well as from all contributions, whether pecuniary or in kind, imposed as a compensation for personal service, and finally from every species of function or military requisition, as well as from forced loans and other charges which may be imposed for purposes of war, or as a result of other extraordinary circumstances. The duties and charges connected with the ownership or leasing of lands and other real property are, however, excepted, as well as all exactions or military requisitions to which all subjects of the country may be liable as owners or lessees of real property.

Article XIV

The subjects of each of the Contracting Parties in the dominions and possessions of the other shall be at full liberty to exercise civil rights, and therefore to acquire, possess, and dispose of every description of property, movable and immovable. They may acquire and transmit the same to others whether by purchase, sale, donation, exchange, marriage, testament, succession *ab intestato*, and in any other manner, under the same conditions as national subjects. Their heirs may succeed

to and take possession of it, either in person or by procurators, in the same manner and in the same legal forms as subjects of the country ; and in the case of subjects of either of the Contracting Parties dying intestate, their property shall be administered to by their respective Consuls or Vice-Consuls as far as is consistent with the laws of both countries.

In none of these respects shall they pay upon the value of such property any other or higher impost, duty or charge than is payable by subjects of the country. In every case the subjects of the Contracting Parties shall be permitted to export their property, or the proceeds thereof if sold, on the same conditions as subjects of the country.

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.

Article XVI

The Consuls-General, Consuls, Vice-Consuls, and Consular Agents of each of the Contracting Parties, residing in the dominions and possessions of the other, shall receive from the local authorities such assistance as can by law be given to them for the recovery of deserters from the vessels of their respective countries.

Article XVII

The stipulations of the present Treaty shall be applicable, as far as the laws permit, to all the colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to :

India,
The Dominion of Canada,
Newfoundland,
The Cape,
New South Wales,
Natal,
Victoria,
Queensland,
Tasmania,
South Australia,
Western Australia,
New Zealand.

Provided always that the stipulations of the present Treaty shall be made applicable to any of the above-named colonies or foreign possessions on whose behalf notice to that effect shall have been given by Her Britannic Majesty's Representative at the Court of Greece to the Hellenic Minister for Foreign Affairs, within one year from the date of the exchange of the ratifications of the present Treaty.

Article XVIII

The present Treaty shall apply to any countries or territories which may hereafter unite in a Customs union with one or other of the High Contracting Parties.

Article XIX

The present Treaty shall come into force on the exchange of the ratifications, and shall remain in force for ten years, and thereafter until the expiration of a year from the day in which one or other of the Contracting Parties shall have repudiated it.

Each of the Contracting Parties reserves, however, the right of causing it to terminate upon 12 months notice being given previously.

It is understood that the Treaty of Commerce and Navigation concluded between Great Britain and Greece on the 4th October 1837 is abrogated by the present Treaty.

Article XX

The present Treaty shall be ratified by the two Contracting Parties, and the ratifications thereof shall be exchanged at Athens as soon as possible.

In faith whereof the Plenipotentiaries of the Contracting Parties have signed the present Treaty in duplicate, in the English and Greek languages, and thereto affixed their respective seals.

Done in Athens this 10th day of November, in the year 1886.

[L.S.] HORACE RUMBOLD.

[L.S.] S. DRAGOUMI.

Protocol

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.

In faith whereof, the two Plenipotentiaries have signed the present Protocol, and thereto affixed their respective seals.

Done at Athens, this 10th day of November, in the year 1886.

[L.S.] HORACE RUMBOLD.

[L.S.] S. DRAGOUMI.

Annexe O

EXTRAIT DU COMPTE-RENDU OFFICIEL DU
5 DÉCEMBRE 1922 (PAGE 33)

Before Mr. Justice Hill.

Mr. W. Norman Raeburn, Counsel for the Crown :

"The evidence has all been given. We have had all the evidence, and I should just like to say now what my submission to Your Lordship is now that the evidence is all out. My submission is that if there is one thing clear in this case above all others it is that no agreement for fixed dates was ever entered into at all by the Ministry."

Annexe P

DÉCLARATION SOUS SERMENT DE M. GASPAR,
AVOUÉ DE M. AMBATIELOS

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE

PROBATE DIVORCE AND ADMIRALTY DIVISION

(ADMIRALTY)

Folio 653.

1921. B. No. 5531.

Between : THE OWNERS OF THE STEAMSHIP "AMBATIELOS"
APPELLANTS (DEFENDANTS)

and

THE BOARD OF TRADE ON BEHALF OF HIS MAJESTY
RESPONDENTS (PLAINTIFFS)

I, FREDERICK PAUL DWIGHT GASPAR, make oath and say as follows :

1. I am a member of the firm of William A. Crump & Son, of 27 Leadenhall Street in the City of London, the solicitors for the defendant in this action, and have had the conduct of this action on behalf of the defendant.

2. At the trial of this action before the Honourable Mr. Justice Hill, one of the main questions in issue concerned a contract for the purchase by the defendant from the Ministry of Shipping of nine steamships for the sum of £2,275,000. A copy of the said contract is now produced to me marked "A" and is exhibited hereto.

3. The said contract was negotiated on behalf of the Ministry by a Major Bryan Laing. The defendant contended that in addition to the written terms embodied in the said contract it was verbally agreed by the said Major Laing at the time at which the said contract was entered into that the said steamships should be delivered to the defendant on dates certain.

4. Major Laing was not called as a witness by the plaintiffs, but instead Mr. O'Byrne, who at the time the contract was made held the position as finance Officer to the Director of Ship Purchase at the Ministry of Shipping, gave evidence that no dates certain were agreed. In spite of the fact that Mr. O'Byrne had taken no part in the negotiations, the Honourable Mr. Justice Hill accepted the evidence of Mr. O'Byrne and found in favour of the plaintiffs upon this issue. No other witness was called by the plaintiffs upon this issue.

5. I am informed and verily believe that since the trial copies of certain letters passing between Lord Maclay (then Sir Joseph Maclay) who was Shipping Controller at the material time and Major Laing in the month of July 1922 have been furnished to the defendant by Major Laing. These letters concerned primarily the question as to whether dates certain for delivery of the said steamships had been agreed and were therefore in my opinion material to the action. The said letters were not disclosed by the plaintiffs, although the Treasury Solicitor or his representatives gave repeated assurances that all letters material to the action had been disclosed.

6. Before the hearing of this action I was unaware that Lord Maclay was in any way personally concerned with the sale of the said vessels to the Defendant and until I saw copies of the said letters at a date subsequent to the judgment given in this action on the 15th day of January 1923 I was not aware that he was able to give any evidence upon the matters dealt with in the said letters.

7. Lord Maclay was not called as a witness.

8. In addition to confirming the evidence on behalf of the defendant on the question of delivery dates, the said letters also confirm the evidence given by the defendant relating to the increase in price charged by the Ministry of Shipping in respect of the said steamships on account of the high rates of freight prevailing in the Far East where the ships were being built. The learned judge did not accept the evidence given by the defendant at the trial in this regard.

9. Major Laing refused to give me any statement or proof at any time either before or during the trial.

SWORN at No. 8 Whittington Avenue,
In the City of London, this 20th day
of February, 1923.
Before me,
John A. DENNISON,
A Commissioner for oaths.

(Signed) F. P. D. GASPAR.

*Annexe Q*TRAITÉ DE COMMERCE ENTRE LE ROYAUME-UNI
ET LA GRÈCE*Signé à Londres le 16 juillet 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 2

The subjects or citizens of either of the two Contracting Parties shall be entitled to enter, travel and reside in the territories of the other so long as they satisfy and observe the conditions and regulations applicable to the entry, travelling and residence of all foreigners.

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 interests, 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 5

The subjects of each of the two Contracting Parties in the territories of the other shall be at full liberty to acquire, inherit and possess

every description of property, movable and immovable, which the laws of the other Contracting Party permit, or shall permit, the subjects or citizens of any other foreign country to possess or acquire. They may, under the same conditions as are, or shall be established with regard to subjects or citizens of the other Contracting Party, dispose of the same by sale, exchange, gift, marriage, testament, or in any other manner, or in the case of movable property acquire the same by inheritance.

They shall not be subjected in any of the cases mentioned to any taxes, imposts or charges of whatever denomination other or higher than those which are, or shall be, applicable to subjects or citizens of the other Contracting Party.

The subjects or citizens of each of the two Contracting Parties shall also be permitted, on compliance with the laws of the other Contracting Party, freely to export the proceeds of the sale of their property and their goods in general without being subjected as foreigners to other or higher duties than those to which subjects or citizens of such Party would be liable under similar circumstances.

Article 6

The subjects or citizens of each of the two Contracting Parties in the territories of the other shall be exempted from all compulsory military service whatsoever, whether in the army, navy, air force, national guard or militia. They shall similarly be exempted from all judicial, administrative and municipal functions whatever, other than those imposed by the laws relating to juries, as well as from all contributions, whether pecuniary or in kind, imposed as an equivalent for personal service, and finally from any military exaction or requisition. The charges connected with possession by any title of landed property are, however, excepted, as compulsory billeting and other special military exactions or requisitions to which all subjects or citizens of the other Contracting Party may be liable as owners or occupiers of buildings or land.

In so far as either of the two Contracting Parties may levy any military exaction or requisitions on the subjects or citizens of the other, it shall accord the same compensation in respect thereof as is accorded in similar circumstances to its own subjects or citizens.

In the above respects the subjects or citizens of one of the two Contracting Parties shall not be accorded in the territories of the other less favourable treatment than that which is, or may be, accorded to subjects or citizens of the most-favoured country.

Article 7

Articles produced or manufactured in the territories of one of the two Contracting Parties, imported into the territories of the other, from whatever place arriving, shall not be subjected to other or higher duties or charges than those paid on the like articles produced or manufactured in any other foreign country. Nor shall any prohibition or restriction be maintained or imposed on the importation of any article, produced or manufactured in the territories of either of the two Contracting Parties, into the territories of the other, from whatever

place arriving, which shall not equally extend to the importation of the like articles produced or manufactured in any other foreign country.

The only exception to this general rule shall be in the case of the sanitary or other prohibitions occasioned by the necessity of securing the safety of persons, or for the protection of animals and plants against diseases and pests.

Article 8

Currants, the produce of Greece, shall not on the importation into Great Britain and Northern Ireland be subject to Customs duty in excess of two shillings per cwt.

On the other hand, the Greek Government undertake that any measures involving the retention or purchase of currants with a view to the protection of growers should leave available for export a quantity to be determined yearly on the basis of the average of the three preceding years' export, plus a margin of 5 per cent for the probable increase of consumption.

It is understood that this quantity will be available for export through the usual commercial channels or co-operative organizations, without any interference on the part of the Greek Government in the shape of legalization fixing a minimum export price.

The articles enumerated in the schedule to this treaty, produced or manufactured in Great Britain and Northern Ireland, shall not on importation into Greece be subjected to higher duties than those specified in the schedule.

It is agreed that the additional duties levied by the State for the benefit of the national, provincial or municipal revenues upon any article produced or manufactured in Great Britain and Northern Ireland upon importation into Greece, such as, for example, the control or municipal duty under Article 5 of the Tariff Law of 22nd December 1923, the tax for the service of the forced loan of 1922; statistical, orphanage and refugee taxes, shall not exceed in the aggregate the limit of 75 per cent of the corresponding Customs duty. It is further agreed that the octroi or municipal duty shall not exceed 30 per cent of the corresponding Customs duty, and that the tax for the service of the forced loan of 1922 shall not exceed 39 per cent of the corresponding Customs duty.

Articles produced or manufactured in Great Britain and Northern Ireland shall be exempt from the international octroi levied upon like articles when transported from one township to another.

Article 9

Articles produced or manufactured in the territories of either of the two Contracting Parties, exported to the territories of the other, shall not be subjected to other or higher duties or charges than those paid on the like articles exported to any other foreign country. Nor shall any prohibition or restriction be imposed on the exportation of any article from the territories of either of the two Contracting Parties to the territories of the other which shall not equally extend to the exportation of the like articles to any other foreign country.

Article 10

Both Contracting Parties agree to avoid as far as possible in their trade with each other prohibitions or restrictions on the importation or exportation of any goods, but in so far as such prohibitions or restrictions may be enforced they undertake as regards import and export licences to do everything in their power to ensure :

(a) That the conditions to be fulfilled and the formalities to be observed in order to obtain such licences should be brought immediately in the clearest and the most definite form to the notice of the public ;

(b) That the method of issue of the certificates of licences should be as simple and stable as possible ;

(c) That the examinations of applications and the issue of licences to the applicants should be carried out with the least possible delay ;

(d) That the system of issuing licences should be such as to prevent the traffic in licences. With this object licences, when issued to individuals, should state the name of the holder and should not be capable of being used by any other person.

(e) That in the event of the fixing of rations, the formalities required by the importing country should not be such as to prevent an equitable allocation of the quantities of goods of which the importation is authorized.

Article 11

In the event of the Greek Government introducing any system of exchange control, the conditions under which foreign currency shall be made available to pay for the import of goods, the produce or manufacture of His Britannic Majesty's territories shall not be less favourable in any respect than the corresponding conditions under which foreign currency may be made available to pay for imports the produce or manufacture of any other foreign country.

Article 12

The two Contracting Parties agree to take the most appropriate measures by their national legislation and administration both to prevent the arbitrary or unjust application of their laws and regulations with regard to Customs and other similar matters, and to ensure redress by administrative, judicial or arbitral procedure for those who have been prejudiced by such abuses. The mode of procedure shall be regulated by the two Contracting Parties in their respective territories.

Article 13

Without prejudice to the provisions of Article 8, all goods, the produce or manufacture of the territories of the one Contracting Party, shall not, after their importation into the territories of the other Party, be subjected to a consumption duty or any other internal tax or duty, levied for the benefit of the State, or local authorities or corporations, other or greater than the duties levied in similar circumstances on the like goods of national origin, provided that in no

case shall such duties be more burdensome than the duties levied in similar circumstances on the like goods of any other foreign country.

Article 14

The stipulation of the present Treaty with regard to the mutual grant of the treatment of the most-favoured nation apply unconditionally to the treatment of commercial travellers and their samples. In this matter the two Contracting Parties agree to carry out the provisions of the International Convention relating to the Simplification of Customs Formalities signed at Geneva on the 3rd November 1923.

Article 15

Limited liability and other companies, partnerships and associations formed for the purpose of commerce, insurance, finance, industry, transport or any other business and established in the territories of either Party shall, provided that they have been duly constituted in accordance with the laws in force in such territories, be entitled, in the territories of the other, to exercise their rights and appear in the courts either as plaintiffs or defendants subject to the laws of such other Party.

Limited liability and other companies, partnerships and associations of either Party, which shall have been admitted in accordance with the laws and regulations in force in the territories of the other Party with regard to foreign companies, shall enjoy in those territories treatment in regard to taxation no less favourable than that accorded to the limited liability and other companies, partnerships and associations of that Party.

Furthermore, each of the two Contracting Parties undertakes to place no obstacle in the way of such companies, partnerships and associations which may desire to carry on in its territories whether through the establishment of branches or otherwise, any description of business which the companies, partnerships, and associations or subjects or citizens of any other foreign country are, or may be, permitted to carry on.

In no case shall the treatment accorded by either of the two Contracting Parties to companies, partnerships and associations of the other be less favourable in respect of any matter whatever than that accorded to companies, partnerships and associations of the most-favoured foreign country.

Article 16

Each of the two Contracting Parties shall permit the importation of all merchandise which may be legally imported or exported, and also the carriage of passengers from or to their respective territories, upon the vessels of the other, and such vessels, their cargoes and passengers shall enjoy the same privileges as, and shall not be subjected to, any other or higher duties or charges than national vessels and their cargoes and passengers, or the vessels of any other foreign country and their cargoes and passengers.

Article 17

In all that regards the stationing, loading and unloading of vessels in the ports, docks, roadsteads and harbours of the territories of the two Contracting Parties, no privilege or facility shall be granted by either Party to vessels of any other foreign country or to national vessels which is not equally granted to vessels of the other Party from whatsoever place they may arrive and whatever may be their place of destination.

Article 18

In regard to duties of tonnage, harbour, pilotage, lighthouse, quarantine or other analogous duties or charges of whatever denomination levied in the name or for the profit of the Government, public functionaries, private individuals, corporations, or establishments of any kind, the vessels of each of the two Contracting Parties shall enjoy in the ports of the territories of the other treatment at least as favourable as that accorded to national vessels or the vessels of any other foreign country.

All dues and charges levied for the use of maritime ports shall be duly published before coming into force. The same shall apply to by-laws and regulations of the ports. In each maritime port the port authority shall keep open for inspection by all persons concerned a table of the dues and charges in force as well as a copy of the by-laws and regulations.

Article 19

The provisions of this Treaty relating to the mutual concession of national treatment in matters of navigation do not apply to the coasting trade, in respect of which the subjects or citizens and vessels of each of the Contracting Parties shall enjoy most-favoured-nation treatment in the territories of the other, provided that reciprocity be assured.

The vessels of either Contracting Party may, nevertheless, proceed from one port to another, either for the purpose of landing the whole or part of their cargoes or passengers brought from abroad, or of taking on board the whole or part of their cargoes or passengers for a foreign destination.

It is also understood that in the event of the coasting trade of either Party being exclusively reserved to national vessels, the vessels of the other Party, if engaged in trade to or from places not within the limits of the coasting trade so reserved, shall not be prohibited from the carriage between two ports of the territories of the former Party of passengers holding through tickets or merchandise consigned on through bills of lading to or from places not within the above-mentioned limits, and while engaged in such carriage these vessels and their passengers and cargoes shall enjoy the full privileges of the Treaty.

Article 20

Any vessel of either of the two Contracting Parties which may be compelled by stress of weather or by accident to take shelter in a port of the territories of the other, shall be at liberty to refit therein, to

procure all the necessary stores and put to sea again without paying any dues other than such as would be payable in a similar case by a national vessel. In case, however, the master of a merchant vessel should be under the necessity of disposing of a part of his merchandise in order to defray his expenses he shall be bound to conform to the regulations and tariffs of the place to which he may have come.

If any vessel of one of the two Contracting Parties shall run aground or be wrecked upon the coasts of the territories of the other, such vessel and all parts thereof and all furniture and appurtenances belonging thereto, and all goods and merchandise saved therefrom, including any which may have been cast into the sea, or the proceeds therefrom, if sold, as well as all papers found on board such stranded or wrecked vessel, shall be given up to the owners of such vessel, goods, merchandise, etc., or to their agents, when claimed by them. If there are no such owners or agents on the spot, then the vessel, goods, merchandise, etc., referred to shall, in so far as they are the property of a subject or citizen of the second Contracting Party in whose district the wreck or stranding may have taken place, upon being claimed by him within the period fixed by the laws of the Contracting Party and such Consular Officer, owners, or agents, pay only the expenses incurred in the preservation of the property, together with the salvage or other expenses which would have been payable in the like case or wreck or stranding of a national vessel.

The two Contracting Parties agree, however, that merchandise saved shall not be subjected to the payment of any Customs duty unless cleared for internal consumption.

In case of a vessel being driven in by stress of weather, run aground or wrecked, the respective Consular Officer shall, if the owner or master or other agent of the owner is not present or is present and requires it, be authorized to interpose, in order to afford the necessary assistance to his fellow countrymen.

Article 21

All vessels which, according to British law, are to be deemed British vessels, and all vessels which, according to Hellenic law, are to be deemed Hellenic vessels shall, for the purpose of this Treaty, be deemed British and Hellenic vessels respectively.

Article 22

It shall be free to each of the two Contracting Parties to appoint Consuls-General, Consuls, Vice-Consuls and Consular Agents to reside in the towns and ports of the territories of the other to which such representatives of any other nation may be admitted by the respective Governments. Such Consuls-General, Consuls, Vice-Consuls and Consular Agents, however, shall not enter upon their functions until after they shall have been approved and admitted in the usual form by the Government to which they are sent.

The Consular Officers of one of the two Contracting Parties shall enjoy in the territories of the other the same official rights and privileges and exemptions, provided reciprocity be granted, as are, or may be, accorded to similar officers of any other foreign country.

Article 23

In the case of a death of a subject or citizen of one of the two Contracting Parties in the territories of the other, leaving kin but without leaving at the place of his decease any person entitled by the laws of his country to take charge of and administer the estate, the competent Consular Officer of the country to which the deceased belonged shall, upon fulfilment of the necessary formalities, be empowered to take custody of and administer the estate in the manner and under the limitations prescribed by the law of the country in which the property of the deceased is situated.

It is understood that in all that concerns the administration of the estates of deceased persons, any right, privilege, favour or immunity which either Contracting Party has actually granted, or may hereafter grant, to the Consular Officers of any other foreign country, shall be extended immediately and unconditionally to the Consular Officers of the other Contracting Party.

Article 24

The Consular Officers of one of the two Contracting Parties residing in the territories of the other shall receive from the local authorities such assistance as can, by law, be given to them for the recovery of deserters other than subjects or citizens of the latter Contracting Party from the vessels of the former Contracting Party.

Article 25

The provisions of the present treaty with regard to the grant of the treatment of the most-favoured nation do not extend to :

- (1) Favours granted by one of the two Contracting Parties to an adjoining State to facilitate traffic for certain frontier districts, as a rule not extending beyond 15 kilometres on each side of the frontier, and for residents in such districts ;
- (2) Favours which Greece has granted, directly or indirectly, by virtue of treaties to which His Britannic Majesty is a party, concluding the world war, unless those favours have been extended to a State which has no right to claim them by reason of such treaties.

Article 26

The subjects or citizens of each of the two Contracting Parties shall have in the territories of the other the same rights as subjects or citizens of that Contracting Party in regard to patents for inventions, trade marks and designs, and copyright in literary and artistic works, upon fulfilment of the formalities prescribed by law.

Article 27

Each of the two Contracting Parties agrees to provide suitable civil remedies, and in case of fraud, suitable penal remedies, in respect of the use of words, devises or descriptions or any other indications which state or manifestly suggest that the goods, in connection with

which they are used, have been produced or manufactured in the territories of the other Party, if such statement or suggestion be false. Proceedings may be taken in such cases by any person or company aggrieved, and in the case of an injunction or of criminal proceedings by or on behalf of any association or person representing the special industry affected.

Each of the Contracting Parties undertakes to prohibit the importation into and to provide measures for the seizure on importation into the territories of that Party of any goods bearing words, devices, descriptions or other indications, which state or manifestly suggest that the goods have been produced or manufactured in the territories of the other Party, if such statement or suggestion be false.

It is understood that the provisions of this article do not impose any obligation to seize goods in transit.

In respect of goods which are imported into, or to which a mark or description has been applied within, the territories of one of the two Contracting Parties, the competent authorities of that Party shall decide what descriptions, on account of their generic character, do not fall within the provision of this article.

Article 28

The two Contracting Parties agree in their relations with each other to give effect to the provisions of :

- (1) The conventions and statutes concluded at Barcelona in 1921 respecting freedom of transit and navigable waterways of international concern.
- (2) The conventions and statutes concluded at Geneva in 1923 respecting Customs formalities, maritime ports and railways.
- (3) The protocol on arbitration clauses drawn up in Geneva in 1923 ; whether or not they have ratified these instruments.

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.

Article 30

The stipulations of the present Treaty shall not be applicable to India, or to any of His Majesty's self-governing dominions, colonies, possessions or protectorates, unless notice is given by His Britannic Majesty's representatives at Athens of the desire of His Britannic Majesty that the said stipulations shall apply to any such territory.

Article 31

The terms of the preceding article relating to India and to His Britannic Majesty's self-governing dominions, colonies, possessions and

protectorates shall apply also to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty.

Article 32

The present Treaty shall be ratified and the ratifications shall be exchanged at London as soon as possible. It shall come into force immediately upon ratification and shall be binding during three years from the date of its coming into force.

In case neither of the two Contracting Parties shall have given notice to the other twelve months before the expiration of the said period of three years of its intention to terminate the present Treaty, it shall remain in force until the expiration of one year from the date on which either of the two Contracting Parties shall have denounced it.

As regards, however, India or any of His Britannic Majesty's self-governing dominions, colonies, possessions, or protectorates or any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, to which the stipulations of the present Treaty shall have been made applicable under Articles 30 and 31, either of the two Contracting Parties shall have the right to terminate it separately at any time on giving twelve months notice to that effect.

In the event of doubt hereafter as to the proper interpretation of the English or Greek text, the English text shall be considered authoritative.

In witness whereof the respective plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in duplicate at London in the English and Greek languages this 16th day of July 1926.

(Signed) AUSTEN CHAMBERLAIN.

(Signed) D. CACLAMANOS.

(Signed) A. VOUROS.

Déclaration à la fin du Traité de 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."

*Annexe R 1*NOTE DE LA LÉGATION DE GRÈCE A LONDRES AU
SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES DE GRANDE-
BRETAGNE

No. 2335/N3/25.

LÉGATION DE GRÈCE
51, Upper Brook Street,
London, W.1

12 September 1925.

Sir,

I have the honour to enclose herewith a memorandum received at this Legation from the Greek subject, Mr. N. E. Ambatielos, on a matter which has arisen from the purchase by him in 1919 of a number of merchant steamers which were under course of construction at Hong Kong and Shanghai for the British Government.

Although this case has been before the British Law Courts where judgment was brought against Mr. Ambatielos, the enclosed memorandum lays particular stress on certain new facts which have arisen after that date and which seem to throw a new light on the case.

I should therefore feel deeply indebted to you if you would be good enough to cause a careful examination of the case by the competent Department of His Majesty's Government in order that, bearing in mind the facts mentioned in this memorandum, they might, if possible, see their way to revise the case with a view to Mr. N. E. Ambatielos, who has been subjected to the most serious losses, obtaining some satisfaction.

I have the honour to be, etc.

(Signed) GEORGES MELAS.

The Right Honourable

Austen Chamberlain, M.P.,

H.M. Principal Secretary of State for Foreign Affairs, etc.

Certified true copy.

London, 14th July 1951.

(Signed) G. St. SEFERIADES,

Counsellor.

MÉMORANDUM DE N. E. AMBATELOS A LA LÉGATION DE GRÈCE A LONDRES

In July 1919 Mr. N. E. Ambatielos was negotiating with representatives of the British Ministry of Shipping, for the purchase by him of a number of ships—nine in all—then in the course of construction at Hong Kong and Shanghai for the British Government. A Major Laing represented the Shipping Controller in these negotiations, Mr. N. E. Ambatielos was represented by his brother Mr. G. Ambatielos. According to Mr. G. Ambatielos's version of these negotiations, Major Laing, in the days immediately preceding the signing of a written contract, undertook on behalf of the Ministry of Shipping that these ships should be delivered without fail on certain specific dates and later on Major Laing visited Mr. N. Ambatielos in Paris and personally assured him that the specific dates of delivery given to Mr. G. Ambatielos in London could

absolutely be relied upon. The price which Mr. G. Ambatielos offered on behalf of his brother was based on this plain stipulation, and he was induced to offer so high a price solely by this consideration. When, however, on 17th July 1919, the written contract was executed, it contained no specific provision for delivery on these dates, but merely reference to "an agreed time" of delivery. The ships (with the exception of two which were not delivered at all) were delivered late, and the loss of their use during a period when freights were very high involved Mr. N. E. Ambatielos in a loss of over £1,000,000. The stipulated and the actual dates were as follows :

Name of ship	Due date for delivery	Date actually delivered by builders
<i>Cephalonia</i>	31st August, 1919	27th Oct., 1919
<i>Ambatielos</i>	30th Sept., 1919	15th Dec., 1919
<i>Nicholas</i>	31st Oct., 1919	19th Dec., 1919
<i>Trialos</i>	30th Novemb., 1919	3rd March, 1920
<i>Keramies</i>	31st Dec., 1919	16th May, 1920
<i>Stathis</i> *	29th Feb., 1920	5th August, 1920
<i>Yannis</i>	31st January, 1920	1st June, 1920
<i>Mellon</i> *	15th March, 1920	17th July, 1920

Note: * These two vessels were never delivered to Mr. Ambatielos.

Mr. N. E. Ambatielos nevertheless paid to the Shipping Controller (under protest and reserving his rights) £1,609,250 on account of the agreed purchase price of £2,275,000. He estimates his loss of profit resulting from their late delivery at £1,250,000. This sum, if he had received it, would have enabled him easily to pay the balance. As it was, he was forced to mortgage the ships to the British Government to secure repayment of that balance. He was unable to repay it. All the ships with one exception were seized and sold by His Majesty's Government for £230,000. The net result is that Mr. N. Ambatielos has paid the British Government £1,609,250 and is not to-day in possession of one of the ships sold to him ; while the British Government has had £1,609,250 while retaining and realizing for its own benefit the ships for which this large sum was paid. Not only so, but Mr. Ambatielos has had judgment given against him in the proceedings referred to below for some £350,000—the balance of the purchase price, etc. The fact that Mr. Ambatielos was being subjected to what can be termed an altogether exaggerated price for the purchase of the aforesaid ships and that the competent Shipping Department of H.M. Government realized this fact is clearly established, when the following is borne in mind. Prior to the opening of legal proceedings against him for the payment of the outstanding balance of some £800,000 (after the actual payment of £1,609,000 made by him against the value of the ships), the Shipping Ministry itself has made an offer to Mr. Ambatielos to reduce the above outstanding balance to just over £200,000. This of course goes far to prove that the competent authorities themselves were convinced of the injustice done to Mr. Ambatielos. The Board of Trade, which had succeeded to the rights of the Shipping Controller in October 1921, sued Mr. N. Ambatielos for the balance due under the contract and he in his defence claimed to set off *inter alia* the damage he had sustained by reason of the late delivery of the ships. The action was heard in the Admiralty Division

in November and December 1922. The Court ruled as a matter of law that it could not receive evidence of the oral agreement as to specific dates of delivery, that the written contract provided for none, and that the claim could not therefore be sustained. The Court also questioned the good faith of Mr. G. Ambatielos in so far as he asserted that this oral agreement was made at all.

However, it appears that Major Laing had had in July 1922 certain correspondence with his official superior, the Shipping Controller. This correspondence came into the hands of Mr. N. Ambatielos after the trial. It vindicates Mr. G. Ambatielos's accuracy. It shows beyond doubt that that oral agreement was in fact made, that it was only by making it that Major Laing had induced Mr. N. Ambatielos to consent to the contract price, and that the doubt cast upon Mr. G. Ambatielos's accuracy by the Court was wholly undeserved.

The letters in question run as follows :

(*Maclay-Laing correspondence July 1922.*)

The important words in this letter are underlined: "IT WAS BY THIS ARGUMENT THAT I INDUCED AMBATIELOS TO PURCHASE THE SHIPS."

The argument that induced him to pay a price which was, according to Major Laing, 50 % higher than that of similar contemporary sales, was clearly a definite guarantee on the part of Major Laing that they should be punctually delivered. A business man would hardly pay an additional £500,000 for a hope, an aspiration or even an expectation of punctual delivery. The effect of the correspondence is that Sir J. Maclay is asking: "Surely you did not guarantee dates", and Major Laing is replying: "Yes, I did, it is not an unusual thing for the Department to do—witness Lord Inchcape's £14,000,000 agreement, and it turned out an extremely advantageous sale."

This letter was not disclosed, the Crown being in this case the plaintiff, and having made use of the Crown's prerogative to refuse discovery. Mr. N. Ambatielos applied to the Court of Appeal for leave to adduce the new evidence which had thus come to light, but under the English law of procedure was not permitted to do so. The evidence thus excluded would have afforded Mr. Ambatielos every prospect of success in an appeal. Having regard to its exclusion, he could not hope to succeed, and he did not feel justified in incurring the expense of pursuing the matter further.

Mr. Ambatielos is thus precluded from legal relief. He cannot, for the reasons given, appeal with any hope of success. He cannot, as it seems, bring a new action, for it would be met with a plea of *res judicata*. The moral title, however, to some substantial redress at the hands of the British authorities would appear, on the facts outlined above, difficult to resist. Being a foreigner, unversed in the niceties of English law as to the construction of written contracts, and English legal procedure, he was therefore at a disadvantage. But he knew he was dealing with a department of the British Government, and of course relied implicitly on that Government's well-deserved reputation for fair dealing. In dealing with any other contracting party, he would be at pains to clothe his agreement with every technical formality. Such was the attitude of Mr. Ambatielos, and he appears to have a well-grounded grievance if, as the information available strongly suggests, the competent department have not only relied upon a defect in the form of an agreement to disregard its plain substance, but having further relied upon a technical privilege (open to

no other litigant) to withhold evidence which would have established the case of their opponent. The final judgment of a British court, unappealed against, closes the transaction from a legal point of view. Such a judgment would, in normal circumstances, be equally conclusive from a moral standpoint. But the circumstances outlined above change the aspect of this case. In consequence of all the foregoing considerations, Mr. Ambatielos has the honour to request the Greek Minister in London that he may be good enough to see his way to take up the matter with His Britannic Majesty's Government, with a view to obtaining from them a reconsideration of the whole case in the light of the new situation and considerably altered conditions of the case since the new conclusive evidence, which was excluded before the Courts, has come to light. He feels confident that in their deep sense of equity and justice His Majesty's Government will not fail to realize the crushing prejudice which he has had to sustain through the most unsatisfactory issue given to this case.

Annexe R 2

NOTE DE LA LÉGATION DE GRÈCE A LONDRES AU
SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES DE GRANDE-
BRETAGNE

No. 358/L/33.

LÉGATION DE GRÈCE,
51, Upper Brook Street, London, W.1.
7th February 1933.

Sir,

By order of my Government I have the honour to bring to your notice the following communication :

The Greek shipowner, M. Nicholas Ambatielos, on the basis of an Agreement signed on the 17th July 1919 between himself and His Majesty's Government, represented by the Director of the British Mercantile Marine, has purchased from them nine steamers, built at that time at Hong Kong and Shanghai, which should be delivered to him within the time agreed, against a sum of £2,375,000, the purchaser having paid immediately £100,000.

2. The Purchaser is claiming that the steamers sold to him have not been delivered by the Vendor within the time agreed in the convention, two of them not having been delivered at all. Owing to those circumstances, the Agreement has been considered as broken and the Purchaser contends consequently that he has sustained very important damages. Instead His Majesty's Government maintain that the breach of the Agreement has been caused by the non-payment of the agreed amount in time and, in order to recover the amount convened, they have sold by auction the steamers mortgaged to them, and, in accounting in the amount claimed the price of the two non-delivered steamers, have brought an action against M. Ambatielos before the British Courts, putting forth a claim for the whole amount. They have obtained in this way a decision enforcing upon the defendant the payment of the balance of the whole amount, i.e. £300,000.

3. Independently of the substance of the contested point, i.e. on which of the two parties the responsibility for the breach of the Agreement lays, the question arising between His Britannic Majesty's

Government and the Hellenic Government presents itself, from the point of view of international law, as follows:

The Greek Government, by a note under No. 2355/N(3)/25 of their Legation in London, addressed to the Foreign Office since 1925, ascribed to the dispute an international aspect, giving to it the character of a question between two Governments. Considering furthermore that they have the duty to grant protection to one of their citizens, deem it now necessary to take cognizance of the question and secure the defence of the interests of the claimant, on the ground of international law, as that is recognized not only by the Permanent Court of International Justice and by its decisions Nos. 2, 13, and 14, but also by His Britannic Majesty's Government, at the sitting of the Council of the League of Nations of the 30th January 1932, in the question connected with a claim in respect of certain Finnish vessels used during the war. As a matter of fact and in connection with the private interests engaged in the question, the general interest of the Greek State in the case is obvious, the interests of the Greek Mercantile Marine and the general economy of Greece being involved in it by retroaction.

4. On the other hand it is generally agreed that every dispute of international order must be settled by an international instrument and the parties in the Agreement of the 17th July 1919, inspired by this principle, have inserted in it the following clause, setting out a procedure of arbitration in the case of any contest:

Any dispute arising under this Agreement shall be referred under the provisions of the Arbitration Act 1889 to the arbitration of two persons in London, one to be nominated by the Vendor and one by the Purchaser and, in the event of their being unable to agree, to an umpire to be appointed by them, whose decision shall be final and binding upon both parties hereto.

5. In spite of the great respect always felt for the British courts and their decisions, it is obvious, moreover, that international justice, in contests of this kind, responds to more general aspirations and this principle has been repeatedly confirmed by the Permanent Court of International Justice, particularly by its decision under No. 13, in the question of the Factory of Chorzów.

6. The Hellenic Government, aware as they are of the sincere attachment of His Britannic Majesty's Government to the principle of international justice and of their favour to its full development, is sure that they will appreciate the above-mentioned consideration and will accept to refer the contest between themselves and M. Nicholas Ambatielos to arbitration, exercised through the Permanent Court of International Justice or through any other international arbitral tribunal, which should be set out by mutual agreement for the occasion.

I have the honour to be, etc.

(Signed) D. CACLAMANOS.

The Right Honourable

Sir John Simon G.C.S.I., K.C.V.O., M.P.,
H.M. Principal Secretary of State
for Foreign Affairs, etc.

Certified true copy.

London, 14th July 1951.

(Signed) G. ST. SEFERIADES,
Counsellor.

*Annexe R 3*NOTE DE LA LÉGATION DE GRÈCE A LONDRES AU
SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES DE GRANDE-
BRETAGNE

No. 2077/L/33.

LÉGATION DE GRÈCE.

51, Upper Brook Street, London, W.1.
3rd August 1933.

Sir,

I have the honour to inform you that the note under No. C. 4625/1172/19 of the 29th May which you were good enough to address to me in reply to my note No. 358/L/33 of the 7th February, transmitted to the Ministry of Foreign Affairs, has been the subject of careful consideration by my Government, which has now instructed me to present the following remarks on its contents :

2. It is common ground that the present controversy arises out of the agreement made in July 1919, between His Majesty's Government in the United Kingdom and M. N. E. Ambatielos, a Greek national. Emphasis is laid in your note upon the fact that this agreement was what you describe as an "ordinary commercial contract". In fact, the agreement was for the supply of ships destined for the Greek Mercantile Marine. Whether or not the contract was "commercial", whatever the precise significance of that term may be, in the opinion of my Government does not appear to have any bearing upon the questions involved. The contract was one between the State and a foreign national, with the result that, according to admitted principles of international law, the government of the State incurs a direct responsibility on breach of the contract, for which the government of the foreign national thereby injured is entitled to seek redress.

The claim of M. Ambatielos against H.M. Government rests primarily upon the ground of breach of contract. The Greek Government has taken up the case in exercise of its rights and duty of protection, and they think that a matter of this kind is to be considered of an international character.

3. As the Greek Government is unable to agree with the description of the legal position as set out in the note of May 29th, it seems necessary to refer in outline to the basic facts out of which the present claim arises :

In the early part of 1919, M. N. E. Ambatielos, who was living in Paris, was in negotiation through his brother, M. G. E. Ambatielos, with the Ministry of Shipping for the purchase of those ships. The Ministry were represented throughout the negotiations by Major Laing. Numerous conversations took place between M. G. E. Ambatielos and Major Laing, and M. N. E. Ambatielos's case is, and always has been, that Major Laing definitely agreed on behalf of H.M. Government that the nine ships were to be delivered on dates certain. When the contract was drawn up delivery dates were not inserted but, according to M. G. E. Ambatielos, whose evidence on this point is confirmed by Mr. William Law, when M. G. E. Ambatielos drew attention to this and asked that the delivery dates should be specified in the contract itself, Major Laing pointed to clause 7 which contains words referring to delivery "within the time agreed" and said that that

referred to the dates verbally agreed upon. The contract was thereupon signed as it stood.

A large mass of evidence, written and oral, was adduced on one side and the other at the trial before Mr. Justice Hill for the purpose of confirming, on the one hand, and disproving, on the other, the facts stated above. Major Laing was not called as a witness, but another official of the Ministry, Mr. O'Byrne, who was present at the signing of the contract, but not at the negotiations, gave evidence denying the whole of what M. Ambatielos's witnesses stated had taken place. The learned judge believed Mr. O'Byrne and disbelieved M. G. E. Ambatielos and Mr. Law.

Now, after the trial was over Major Laing handed to M. N. E. Ambatielos the letters that had passed between him and Sir J. Maclay, formerly Shipping Controller, in July 1922. These letters show conclusively that the case put forward by the Crown at the trial was not in accordance with the facts, and in the view of the Greek Government they demonstrate that M. N. E. Ambatielos was right in considering that delivery dates had been agreed upon as part of the bargain between himself and H.M. Government. It is not desired to elaborate the point here, but the Greek Government feels that if you will be good enough to read the two letters in question, comparing the question put to Major Laing by Sir Joseph Maclay with the reply and further noting what Major Laing says as to the addition of £500,000 to the price, and the rest of his explanation, you will reach the same conclusion as the Greek Government has done.

The observation which it is desired to make upon the foregoing facts is that, in the Greek Government's opinion, they constitute in themselves the basis and justification for the present claim. Assuming that the agreement between H.M. Government and M. Ambatielos is governed by English law it is impossible to suppose that in the above circumstances that law would not recognize H.M. Government's obligation to deliver the ships purchased by M. Ambatielos on the dates fixed, which it is common ground was not done. If English law did not recognize the obligation (which the Greek Government does not believe can be the case) the contention would be justified that English law was, in this respect, so contrary to equity that it could not be set up as an answer to the Greek Government's claim under international law.

4. Your note under reply refers to the rule as to exhaustion of local remedies and suggests that the Greek Government is not entitled to put forward a claim on behalf of M. Ambatielos on the ground that the rule has not been complied with in the present instance. The Greek Government regrets not to be able to agree with this view. It is obvious that in order that the merits of M. Ambatielos's case should be effectively adjudicated by the English courts it was essential that the new evidence which he desired to bring forward should be considered. The Court of Appeal, as already observed, refused his application to this effect, and the Greek Government would observe in passing that the statement in your note that M. Ambatielos could have called the further evidence at the hearing before Mr. Justice Hill if he had seen fit to do so cannot be considered as representing the actual position. What actually occurred is set out in the affidavits of M. Ambatielos and his solicitor in support of the application to

the Court of Appeal, and there are among the correspondence letters showing further that definite efforts were made without success to subpoena Major Laing on M. Ambatielos's behalf before the trial. But this is by the way. The point that the Greek Government desires to make clear is that, as it understands the situation, M. Ambatielos could not, under English law and practice, have taken any appeal from the refusal of the Court of Appeal to admit the new evidence. This being so, it results that there was no local remedy to exhaust upon this particular matter. It is true that M. Ambatielos could still have appealed to the Court of Appeal from Mr. Justice Hill's judgment in itself, although debarred from using the new evidence, and the notice of appeal he had given did, in fact, remain in being for some considerable time. When, however, the necessity for deciding whether the appeal should be effectively prosecuted arose, M. Ambatielos was a ruined man. His solicitors demanded immediate payment of at least £1000 for printing costs alone, failing which they said that they could not proceed, and M. Ambatielos was unable to provide the money. But even if he had been, it is submitted that an appeal on which any consideration of the vital evidence referred to above was excluded would have been little better than a sham. In effect only one point would have been open; namely, the question of the construction of the written contract of July the 17th, 1919. The Greek Government is of the opinion that the decision of Mr. Justice Hill upon this point proceeds from a strained interpretation of the language of the contract, but even if the Court of Appeal had differed from him what practical advantage could M. Ambatielos have obtained? The Court of Appeal would certainly not have overruled Mr. Justice Hill's conclusions on the evidence before him and any decision in M. Ambatielos's favour as to the interpretation of the contract would, therefore, have had only a theoretical interest.

For these reasons, the Greek Government submits that the plea that local remedies were not exhausted within the meaning of international law cannot be justified.

5. Before leaving the proceedings before the English courts the Greek Government would wish to invite special attention to another aspect of that subject. It is not intended to make here any charge against any particular individual, except possibly Mr. O'Byrne who it is understood is no longer in the service of H.M. Government, but without expressing an opinion as to who was responsible, it is necessary to expound the facts themselves as they stand. There can be no doubt, and it is indeed obvious, from the affidavit of Mr. Evans, of the Treasury Solicitor's Department, before the Court of Appeal, that the letters of July 1922 between Sir Joseph Maclay and Major Laing were known to, and in the possession of, the Treasury Solicitor's Department which was conducting the proceedings on behalf of the Crown, but it seems impossible to reconcile the case put forward before Mr. Justice Hill with the contents of these letters. The Greek Government appreciates the rule of procedure which protected these letters from disclosure, but surely this has nothing to do with the issue involved, namely, whether a case should be presented which is known to be, or which there is strong ground for thinking is untrue. Again, it was admitted at the trial that files were kept at the Ministry of Shipping in which particulars of the contracts discussed by the Shipping Control

Committee were entered, but when M. Ambatielos called for these files the privilege of the Crown was claimed and they were not produced. It is quite obvious from what precedes that these documents may have contained vital evidence in M. Ambatielos's favour, and it is equally plain that it could not be against the public interest to produce the particular papers here in question. Nevertheless, the privilege of the Crown was set up, and the judge upheld the objection, as he was bound, according to the understanding of the Greek Government, to do. By this procedure, however, the defendant was placed in a position of manifest inequality by the action of the Crown itself.

It is hoped that the reasoning in the earlier part of this note has made it clear that it is not necessary in this case to allege a denial of justice in the sense of international law, but the Greek Government venture to suggest that M. Ambatielos did not, in fact, have a fair trial. If, as it is hoped, H.M. Government on reconsideration should come to the same conclusion, the Greek Government is confident that on this ground alone they would desire to offer redress in the case.

6. The foregoing sets out briefly the main lines upon which the present claim of the Greek Government is being based. There are further points such as, for example, the refusal of the competent department of H.M. Government to deliver to M. Ambatielos the *Stellon* and *Stathis* after he had executed a mortgage in favour of the Crown on his other seven vessels for the express purpose of securing, *inter alia*, the purchase price of those two ships; and the incident of the hauling down of the Greek flag on the *Panagis*, of which the Greek Government has only recently learned the details. Whilst reserving its opinion and right as regards these and other matters, the Greek Government does not desire to complicate the issue by elaborating arguments upon them at the present stage.

7. In conclusion, the Greek Government expresses earnestly the hope that His Britannic Majesty's Government will be good enough in their well-known respect for equity to take steps for reconsidering the whole case, and if they still entertain doubts as to the soundness of the Greek Government's claim that they will consent to some procedure whereby disputed questions can be resolved. In conclusion it may be said that the Greek Government is prepared to agree to any method offering a prospect of obtaining an objective and impartial decision, and would suggest as a suitable expedient arbitration by a single jurist, to be agreed upon, well versed in both English and international law, or some other procedure of a like character, which should be admitted by His Majesty's Government.

I have the honour to be, etc.

(Signed) D. CACLAMANOS.

The Right Honourable

Sir John Simon, G.C.S.I., K.V.C.O., M.P.,

H.M. Principal Secretary of State
for Foreign Affairs, etc.

Certified true copy.

London, 14th July 1951.

(Signed) G. ST. SEFERIADES,
Counsellor.

*Annexe R 4*NOTE DE LA LÉGATION DE GRÈCE A LONDRES AU
SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES DE GRANDE-
BRETAGNE

No.1271/L/34.

LÉGATION DE GRÈCE,
51, Upper Brook Street.
London, W.1.

30th May 1934.

Sir,

With reference to your note No.C.11030/1172/19 of the 28th December, 1933, I have the honour to inform you that I have been instructed by my Government to proceed to the following communication :

The Greek Government have considered the mentioned note which you were good enough to address to me with the most careful attention.

2. My Government whilst noting with regret that His Majesty's Government in the United Kingdom maintain their refusal to submit the case of M. Ambatielos to international arbitration observes that the *British Government* does not appear to dispute the interest of the Greek Government in this matter or the principle that it is entitled under international law to intervene on behalf of a national whom it conceives to have suffered an injury by reason of breach by another government of a contract between them. It is said, however, in the above note that any questions arising in connection with the *contract now in question* fall to be decided not by any form of international procedure, but by the competent tribunals in the U.K. My Government does not dissent from the general proposition that where an agreement is entered into between a government and a foreigner, the competent tribunals of the former, be it an arbitral tribunal under an arbitration clause in the contract or the ordinary courts, are in the first instance the proper forum for the adjudication of disputes. This is equally the case whether the agreement is for a public concession or for the supply of goods, or for any other purpose, commercial or otherwise. But it is none the less true, in the opinion of my Government, that the State concerned incurs a direct responsibility towards the State of the foreigner for a wrongful breach of the agreement, and if the competent municipal tribunals do not in fact right the wrong because the true facts were either deliberately or *accidentally withheld from them* then the matter becomes properly the subject of an international reclamation. This, in the view of my Government, is the situation in the present case.

3. The Greek Government agree with the statement in paragraph 3 of the note under reply that the substantial issue is whether by the agreement here in question the Ministry of Shipping had undertaken to deliver these ships to M. Ambatielos on certain fixed dates, but the Greek Government regret to be unable to accept the view that the fact that a final decision upon this question was given by the competent municipal English court is necessarily conclusive of the issue in the international field, or that the only ground upon which the Greek Government might be entitled to intervene diplomatically would be that the decision constituted a denial of justice, in the technical sense. The submission of my Government is that it is also entitled to intervene if upon the true facts as now known it is clear that the Ministry of Shipping did undertake to

deliver the ships on dates certain, and that accordingly there was a breach of contract as a result of which M. Ambatielos suffered heavy loss and damage, and in respect of which he has obtained no redress in the English courts. The Greek Government observes with pleasure that it is said in the note of December 28th (paragraph 4) that :

“... if it had been found that His Majesty's Government were under an obligation to deliver the ships on dates fixed that obligation would certainly be recognized and enforced by English law”.

4. My Government considers that if it can now be proved that in fact there was a contract to deliver the ships on dates certain then there has been a substantial miscarriage of justice which justifies the present claim not only as a matter of international law, but also on grounds of natural justice and equity. If the real facts are, and it can now be proved, that fixed dates were given to M. Ambatielos as a matter of contract, that he bought the ships at the price named because of that undertaking and would not have so bought them without it, then surely, he has suffered a wrong which ought to be righted and for which his Government, injured in his person, is both entitled and bound to obtain redress. It is necessary for me to add, however, that if the failure to obtain redress in the municipal court was due (as we submit it was) to the true facts not having been brought before the Court as a result of the conduct of the case on behalf of His Majesty's Government, my Government is of opinion that this must be regarded as a denial of justice in the sense which international law recognizes as involving the responsibility of the State concerned.

5. My Government appreciates, of course, that its claim depends upon establishing what were the true facts as to the question of delivery dates. In my previous note attention was drawn to the correspondence between Sir J. Maclay and Major Laing in July 1922 which, in the opinion of my Government, shows that delivery dates were agreed. This subject is dealt with in paragraphs 6 to 11 of your note, from which it appears not only that His Majesty's Government disagree with the meaning and effect of the correspondence, but also, and this my Government has noted with particular regret, that certain comments in my note relating to these letters have been misunderstood. With regard to the last-mentioned point I am instructed to say that the Greek Government never intended to suggest that the Attorney-General or other superior representatives conducting the case for the Crown deliberately withheld information from the Court or put forward a case which was, to their personal knowledge, not in accordance with the facts. On the contrary, my Government feel convinced that the Attorney-General and other Crown counsel were unaware of the correspondence in question, which, being privileged from production under the English law of procedure, would presumably not be before them in ordinary course. What it was intended to convey in my note of August 3rd was that as someone in the Treasury Solicitor's Department knew of these letters before the trial he should have put them before counsel because in the contention of my Government the letters show that there was a doubt in the mind of the late Shipping Controller as to whether or not fixed delivery dates had been agreed and the letter of Major Laing under reply makes it clear that they had, and that unless these letters were placed before counsel and through them before the Court the true facts could not be ascertained.

6. As mentioned above, the note under reply indicates that His Majesty's Government does not accept my Government's interpretation of these letters. My Government says that it is difficult for them to understand this point of view because upon the face of it the meaning of the correspondence appears to be plain and obvious. Sir J. Maclay, in his letter of July 12th, 1922, was saying in effect : "Of course, you (Laing) never gave guaranteed dates of delivery. Just write and confirm this." And instead of the hoped-for answer : "Naturally you are quite right. I, Laing, never guaranteed delivery dates", there comes Major Laing's reply of July 20 which says : "I made sure that the dates were safe ; I calculated that provided the ships could be delivered on these dates they were worth £500,000 more. I added this to the price and induced Ambatielos to give the sum named by guaranteeing the dates. If I had not given contractual dates he would not have accepted the deal." This seems to be the only meaning of the words : "It was only by this argument that I induced Ambatielos to purchase the ships." The "argument" was that the ships were worth the enhanced price "provided they could be delivered at the time stated". In other words Major Laing is not saying in answer to the leading question put to him : "You are right in supposing that I did not guarantee dates, I merely told Ambatielos that I had made enquiries and felt confident that the ships would be ready for delivery on such and such dates." What he does reply is, in substance : "Yes, I did contract with Ambatielos for dates certain and by doing so obtained a very handsome price."

In this connection I beg to suggest that if Major Laing's letter meant anything else, then having been (as in fact he was) subpoenaed by the Crown at the trial he would have been called to give evidence.

I would also refer here to the citation, in paragraph 7 of your note, of Mr. Justice Hill's observations as to the balance of probabilities. If the facts alleged by M. Ambatielos are accepted it is not necessary to have recourse to inferences of this kind, but I cannot refrain from remarking that if the matter is envisaged from the point of view of probabilities there is another side to the picture drawn by the learned judge. If it was improbable that the Shipping Controller should take the risk (in return, be it noted, for a specially high price) of giving fixed dates to a buyer without a corresponding right in the contracts with the ship-builders, is it not still more improbable that the buyer should agree to pay £500,000 for a mere expectation of delivery dates, carrying no right of remedy in the event of disappointment ? It appears difficult to conceive that any business man, or indeed any person of ordinary intelligence, would enter into such a transaction. Although it is hardly necessary to labour the point, I may add that much of the "improbability" imputed to the Shipping Controller's action disappears when it is remembered that these ships were being built in the East to meet war conditions which had ceased to be operative, so that the overriding consideration on the British Government's side was to dispose of the ships on the best terms obtainable.

7. In order to refute the arguments based upon the Maclay-Laing correspondence, the note of December 28th calls attention to the letters exchanged between M. Ambatielos and Major Laing in May 1921. His Majesty's Government point out that these, unlike the Maclay-Laing correspondence, were before the Admiralty Court and were considered and dealt with by it, and your note contends that their effect was in

substance the same as that of the later correspondence, so that the view that the Court was misled falls to the ground. The Greek Government is unable to agree with your observations on this point, being of opinion that the two sets of letters are materially different in their terms. The letters of May 1921 are, at any rate, capable of the meaning that all Major Laing did was to give M. Ambatielos assurances as to delivery dates, although this was certainly not the meaning M. Ambatielos intended to convey by his enquiry to Major Laing. Writing as a layman, M. Ambatielos used expressions in the first paragraph of his letter of May 2nd, 1921, which lent some colour to the contention that the dates were not given as a matter of contract, although the second paragraph is more in accordance with his real case. Thus taken together it is, we repeat, at least possible to construe these letters as not inconsistent with the *Crown's* case, but the possible ambiguities disappear in the Maclay-Laing correspondence. There Major Laing does not speak of "assurances" given to M. Ambatielos, but of what can only be a definite contract. At the risk of repetition I venture to refer once more to what he writes. It is not merely a question in this instance of what passed between him and M. Ambatielos. Major Laing describes what he did within the Ministry itself. Sir J. Maclay in his letter himself points out that Major Laing was in constant touch with him and Major Laing says in his reply that he "laid his deductions" before the Minister and the Committee that "provided these ships could be delivered at the time stated they were worth another £500,000". This can only mean that he put before the Minister and Committee a contract involving liability in respect of delivery dates. If all Major Laing was doing was to sell the ships for a certain price without entering into any binding obligations with regard to delivery dates what reason was there to justify and defend his bargain before his superiors? For that is, it is submitted, the meaning of this passage. As it is to be truly interpreted Major Laing is saying, in effect, "I managed to obtain this very high price—£500,000 more than the ordinary market value—but in return for this advantage the Ministry has incurred a liability as regards delivery dates."

8. For the foregoing reasons the Greek Government remains convinced that the decision of the Admiralty Court would have been different if the facts referred to in the Maclay-Laing correspondence had been before the Court, not only because my Government considers that the letters can only have the one meaning which I have ascribed to them but also because the judge's outlook on the case would have been different if he had been in possession of these facts. Instead of conceiving that M. Ambatielos's case was so fantastic as not to be worthy of credence so that he (the judge) disbelieved the evidence of M. Gerassimos Ambatielos and thought that M. N. E. Ambatielos's memory had failed him, he would, my Government feels, have accepted what they said with the result of a decision in M. Ambatielos's favour. But as your note shows that His Majesty's Government not only attach a different meaning to this correspondence than does the Greek Government, but maintain that in truth and in fact there was no contract for fixed delivery dates, my Government has thought it advisable to seek further confirmation for the view it had formed. Major Laing, who it is not disputed was the person who negotiated the contract on behalf of the Ministry of Shipping, has therefore been approached and he confirms in every particular M. Ambatielos's assertions in this matter. Major Laing has

firstly informed the solicitors advising my Government in London that during the period from the 1st April, 1919, until the time when he left the Ministry of Shipping in October, 1920, he was in fact in control of the Ships Purchases and Sales Section of this Ministry. In confirmation of this Major Laing gave them details in connection with the sale of ships to Lord Inchcape, Sir T. Royden, Mr. Robert Dollar and others, from which it seems clear that Major Laing was the person effectively responsible for making the terms upon which ships were sold by the Ministry. Major Laing has further stated that in regard to this particular case he was able, through being consulted by the Chartering Department of the Ministry of Shipping, to know the position of freights in the world market, and it was while he was in this position that he first made the acquaintance of M. G. E. Ambatielos, who approached him on behalf of his brother, M. N. E. Ambatielos, concerning the purchase of tonnage. Major Laing offered to sell to M. Ambatielos nine ships then building to the order of His Majesty's Government at Hong Kong and Shanghai and recommended that M. Ambatielos should purchase these ships because he (Major Laing) knew that at that time the Eastern freight market was very high and the owner of these ships would be able to make a very substantial profit provided a free charter-party could be obtained (which Major Laing arranged instead of Blue book rates). It was also advantageous, if the right price could be obtained, for His Majesty's Government to sell these ships for the reason that it would have been necessary to send out crews and stores to bring them home and Major Laing estimated that these would have cost at least £100,000. He therefore bargained on behalf of His Majesty's Government with M. G. E. Ambatielos and later confirmed the matter with his brother M. N. E. Ambatielos in Paris for the sale to them of these ships at an average price of £36.0.0. per ton deadweight. He was able to do this because he first ascertained and arranged that a free charter-party should be given and also caused cablegrams to be sent to His Majesty's representatives at Hong Kong and Shanghai and asked them to cable definite dates on which deliveries could be promised, and it was because he was able to offer to M. Ambatielos firstly the free charter-party and secondly the position then obtaining in the Eastern freight market, which position was made certain by Major Laing being able to offer him definite dates for delivery of the ships, that Major Laing induced M. G. E. Ambatielos to conclude the contract dated the 17th July 1919. In his position at the Ministry of Shipping Major Laing was not able to contract with M. Ambatielos in such a way as would have bound him (M. Ambatielos) to share with His Majesty's Government the profit which he expected he would have been able to make owing to this combination of free charter-party and certain delivery dates. Major Laing estimated that the profit which M. Ambatielos was likely to make would be about £1,000,000 over and above Blue book rates and Major Laing informed M. G. E. Ambatielos that he (Major Laing) considered that M. Ambatielos ought to pay to His Majesty's Government for the privilege of the open charter-party and the freights obtainable at that period, made possible by the certain delivery dates, one half of that expected profit, namely £500,000, and so he (Major Laing) added that amount to the purchase price of the ships. He was able to assure M. G. E. Ambatielos from Messrs David Pinkney & Co., to whom Major Laing telephoned whilst M. Ambatielos was at the Ministry of Shipping, that these high

freights would be obtainable if the vessels were delivered by the dates agreed. The Ministry of Shipping's ordinary form of contract was therefore prepared providing for the sale to M. N. E. Ambatielos of the nine vessels therein mentioned. Prior to this contract being signed on the 17th July 1919, Major Laing had given to M. G. E. Ambatielos a piece of buff paper on which Major Laing had copied the agreed delivery dates which were the same dates as those which had been cabled to him (Major Laing) as reliable dates from Hong Kong and Shanghai. When, therefore, M. G. E. Ambatielos on the signing of the contract pointed out to Major Laing that in the written contract these specific dates were not mentioned Major Laing informed him that if he (M. Ambatielos) would look at Clause 7 of the contract he would see that delivery would have to be made within the "time agreed" and that those words meant the dates which Major Laing had already given to him and which were written on the buff slip of paper. In confirmation of the fact that fixed delivery dates were given Major Laing states that the telegram dated 31/10/19 and signed Straker, the personal secretary to Sir John Esplen, which is referred to in the proceedings and in Mr. Justice Hill's judgment, was sent on Sir John Esplen's instructions after a meeting of the Committee. This telegram reads as follows :

"From Esplen, Shipminder, London.
To Britannia, Hong Kong.
Following for Dodwell, War Trooper.

As the steamer was sold to buyers for delivery not later than November it is of utmost importance that she should be completed by that date *stop* cable immediately progress of construction.
(Signed) M. J. STRAKER."

Major Laing says that this telegram was sent because the Committee were becoming worried at the continual delay and they foresaw either cancellation of the contract or a claim being made against them. Finally, Major Laing has stated that he, on receiving Sir Joseph Maclay's letter of the 12th July 1922, replied on the 20th of that month explaining the position as is set out above, namely, that he was able to get M. Ambatielos to agree to pay an extra £500,000 because he was able to arrange for M. Ambatielos to share the profit which the latter was to make with the Ministry of Shipping owing to the high Eastern freights which were then ruling and to the fact that guaranteed delivery dates were assured. Major Laing drew attention in this connection to the fact that Sir Joseph Maclay acknowledged his letter without making any comment on it.

9. The foregoing testimony of Major Laing appears to my Government to confirm beyond doubt the merits of M. Ambatielos's claim. There remains the question : Why did not M. Ambatielos call Major Laing to give evidence on his behalf at the trial of the action ? The reason is plain. Although, as stated in his affidavit of February 19, 1923, M. Ambatielos had a conversation with Major Laing before the trial, it is obvious that the latter did not convey to him what the nature of his evidence, if called at the trial, would be. Major Laing was subpoenaed as a witness by the Crown and, as stated in Mr. Gaspar's affidavit of February 20, 1923, he refused to give M. Ambatielos's solicitors any statement or proof at any time, either before or during the trial. His position was difficult and delicate and the attitude he

adopted, which seems to have been a proper one in the circumstances, was this : Having been a servant of the Crown he did not want to come forward as a witness against the Crown unless and until this was absolutely necessary in the interests of fair play. He was confident that the facts being what they were the Court's decision would be in favour of M. Ambatielos even without his (Laing's) evidence, although having been subpoenaed he, no doubt, expected to be called upon to give evidence. When, however, the decision was given against M. Ambatielos he handed the Maclay-Laing correspondence to the latter in order, as he thought, to enable the miscarriage of justice which had taken place to be remedied.

In these circumstances, it is submitted that M. Ambatielos and his legal advisors (for of course the conduct of his case was in their hands) were justified in not having called Major Laing as a witness and that no negligence or blame, legal or moral, can be imputed to them for having acted as they did. It may be that, as a matter of technical legal procedure, it would have been possible for them to call him, but it is difficult to see what moral justification there can be for the failure to do so being invoked as a final bar to M. Ambatielos obtaining reparation for the loss which he has sustained.

10. Having regard to the evidence referred to above, which shows conclusively, in my Government's opinion, that delivery dates were part of the contract, it may be unnecessary to deal with the points raised in paragraphs 12 and 13 of the note under discussion. Nevertheless they would observe that there is in reality no inconsistency with M. Ambatielos's case in his having from time to time made, or caused to be made, inquiries as to the precise position of the ships or urged that delivery should be expedited. Every day was of importance and M. Ambatielos was desirous of getting delivery in advance, if possible, of the latest contractual dates. Moreover, it was essential for the purpose of arranging charters to know precisely the day of delivery. Even when deliveries were already in arrear it does not follow that the inevitable course of a person who, like M. Ambatielos, has contractual rights is immediately to protest and stand upon those rights. As a matter of fact in the present case M. G. E. Ambatielos, who was acting in London for his brother who was abroad, was a young man rather timid in dealing with the British Government and who, from his conversation with the Ministry of Shipping, was convinced that compensation for delay would be arranged. This conviction was shown to have been not without foundation as the Ministry of Shipping did negotiate and make a substantial offer for settlement through Sir Ernest Glover on M. N. E. Ambatielos's arrival in London in May 1921. M. G. E. Ambatielos was acting contrary to his brother's order in not making protestations on the matter before and was severely dealt with by his brother when he found out what had transpired (and as a matter of fact he—M. N. E. Ambatielos—was prevented for 18 months from coming to this country by reason of a tax claim for £250,000 which was ultimately entirely withdrawn), but apart from this the Greek Government does not consider that adverse conclusions should be drawn from the fact that a party to a contract adopts a conciliatory attitude and endeavours as far as possible to minimize the loss resulting from a breach, instead of immediately asserting and insisting upon his strict legal rights.

11. With regard to paragraph 16 of your note it is precisely the minutes on the official files written by officials of the Government departments concerned to which reference was made in paragraph 5 of my note of 3rd August 1933 (No. 2077/L/33). It is these files which it would seem probable, or at least possible, contain evidence material to the issue whether contractual delivery dates were given, and my Government, whilst appreciating that it is not the practice in England to disclose documents of this nature, does not see any reason to modify the comments upon this point in my note.

12. Before concluding these observations, my Government would earnestly request His Majesty's Government once more to consider, in the light of the foregoing facts, the substance of this case, leaving aside technicalities. The Greek Government submits that it is clear that M. Ambatielos entered into this contract upon the express assurances that the Ministry of Shipping undertook to deliver the ships on dates certain, that this was part of the bargain between the parties and that he consented to buy the ships at the price named only because this was so. M. Ambatielos actually paid to H.M. Government £1,609,250 of the purchase price on account, and in addition he expended no less a sum than £260,000 on extras for bringing the vessels up to Lloyd's highest class, stores, sending out crews, etc., not to mention a considerable sum of money for interest to his bank. But by reason of the delay in delivery he was unable to find the balance, and the ships were mortgaged to and sold by H.M. Government, the result being that he has lost the whole of those large sums as well as the profits he would have earned if the ships had been delivered in time. This has meant financial ruin. H.M. Government, on the other hand, have had both the money and the ships, as against which must be set their liability towards the shipbuilders in China. The Greek Government is not aware of the amount of this liability, but the evidence suggests that it was materially less than the sum paid by M. Ambatielos in cash.

The facts being as stated it is impossible to deny that M. Ambatielos has suffered a great injustice. Should there be any doubt on the part of His Majesty's Government as to the accuracy of Major Laing's statements, the Greek Government would gladly consent to any appropriate steps being taken to test them. It appears to be suggested in passing in paragraph 14 of your note that the authority of Major Laing might possibly be challenged, but my Government does not think it need discuss this point in detail here. It seems clear that Major Laing was in effective control of the purchase and sale of ships for the British Ministry of Shipping. Moreover, it appears that in fact he reported the terms of the present contract to the Shipping Controller and the appropriate committee before it was concluded. But even apart from this, the Greek Government does not think that H.M. Government would repudiate responsibility for the acts of an official who was obviously held out as having their authority to do what he was doing.

13. For the reasons which I have endeavoured to summarize in this note on behalf of my Government, in addition to those set out in my note of August 3rd, the Greek Government regret to be unable to regard as well founded the conclusion stated in your note of December 28th, 1933, and venture to urge that H.M. Government should reconsider the matter and give effect to their previous request. They feel the more justified in again urging sympathetic consideration of the case by reason

of M. Ambatielos's conduct during the war. In this connection is to be reminded here the following incident : Very early in 1915 this Greek citizen bought two steamers, the *Tunstall* (6,500 tons) and the *North Pacific* (7,800 tons) from their English owners, whereupon the Foreign Office requested him to allow the vessels to remain under the British flag instead of transferring them to the Greek flag, as he had intended to do. M. Ambatielos immediately acceded to this request although it involved running the steamers at Blue book rates instead of neutral rates of freight and the payment of British taxes, and the two vessels continued to sail under the British flag throughout the war, with the result that M. Ambatielos lost the difference between these rates, which amounted to well over £1,000,000. No claim or complaint of any kind has been or is made in this respect, but I have been requested to refer to the matter as showing that M. Ambatielos has made substantial sacrifice in the Allied cause.

14. In conclusion, I have the honour to observe that in declaring the proposal of my Government to be "totally inadmissible" paragraph 19 of your note under reply contains the statement that diplomatic representations are barred by the fact that no appeal was made from the decision of Mr. Justice Hill. This amounts to a reaffirmation of what is stated in paragraph 18 of your note, namely, that M. Ambatielos has not exhausted his local remedies. In the opinion of my Government it has been demonstrated in my previous notes that the legal remedies available to M. Ambatielos in England have in reality been completely exhausted. If His Majesty's Government still think that this was not the case and that the claim made on behalf of M. Ambatielos is rendered inadmissible on this ground, my Government would be prepared to agree that this preliminary question should be examined separately. Consequently, I have the honour to propose in the name of my Government, in case H.M. Government maintain their view that M. Ambatielos has not exhausted his local remedies, that this question should be submitted as a preliminary point for decision by an arbitral tribunal.

I have the honour to be, etc.,

(Signed) D. CACLAMANOS.

The Right Honourable

Sir John Simon, G.C.S.I., K.C.V.O., K.C., M.P.,
H.M. Principal Secretary of State
for Foreign Affairs, etc.

Certified true copy.

London, 14th July 1951.

(Signed) G. ST. SEFERIADES,
Counsellor.

*Annexe R 5*NOTE DE LA LÉGATION DE GRÈCE A LONDRES AU
SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES DE GRANDE-
BRETAGNE

No. 60/L/36.

LÉGATION DE GRÈCE,
51, Upper Brook Street,
London, W.1.

2nd January 1936.

Sir,

With reference to your note No. R.6043/3146/19 of the 7th November 1934, I have the honour to inform you that I have been instructed by my Government to proceed to the following communication:

The Greek Government have considered the note which I have previously referred to, and which you were good enough to address to me, with the most careful attention.

2. In the opinion of my Government the crux of the dispute is, beyond question, to ascertain whether everything has been done which was required by virtue of international law to assure the correct execution of the contract entered into by His Majesty's Government and M. N. E. Ambatielos. In the words of Professor Borchard, in his capacity as Rapporteur of the Plan in connection with the responsibility established by the Harvard Research Committee of the Hague Conference for Codification 1930 (p. 168): "it is a rule, which it is believed has been accepted generally, that the contracts entered into by a State with foreigners, create obligations which the State must fulfil. With reservations as to the exhaustion of local remedies it will be responsible for the non-execution towards the foreign State".

This vital question of the non-execution of the contract raises the question of determining what the exact implication of this contract was and whether it contained on the part of the British Government the pledge to deliver at the fixed dates the vessels purchased.

On this question of determining whether the arrangements entered into by the British Government and by M. N. E. Ambatielos included the pledge by the British Government to deliver at the dates mentioned, there is a fundamental disagreement between the latter and my Government.

The British Government maintain that the British authorities did not engage themselves to effect delivery at any fixed dates. The only obligation which they incurred, according to the British Government, was to deliver the vessels to the purchaser from the moment these vessels were put at their disposal by the shipyards after completion.

The case for the Greek Government is that delivery dates were indicated to M. Ambatielos as dates upon which he could rely and that these indications as to dates alone induced M. Ambatielos to purchase the ships, and that indeed the dates thus mentioned have not been respected, whence a definite and considerable prejudice has been caused my Government in his person.

It is an indisputable fact that, before concluding the contract of July 17, 1919, agents of His Majesty's Government delivered to M. G. E. Ambatielos, acting as attorney for his brother, a paper bearing

determined dates for delivery of the vessels, the purchase of which was under contemplation. This paper was unable to be placed before the Admiralty Court (before Mr. Justice Hill) but its existence cannot be doubted, either in July 1919, at which date it was drawn up and delivered to M. Ambatielos, or in the spring of 1921, at which time, according to the declarations of Mr. O'Byrne, it still existed. This paper formed part of the contract entered into between M. Ambatielos and the Admiralty. In the opinion of my Government it is this paper containing the delivery dates mentioned by the agents of the British Government to which the formula contained in the standard contract signed by M. Ambatielos referred namely "within the time agreed". In the opinion of my Government the expression "within the time agreed" did not, as the British Government contends, refer to clause 3 of the standard contract. Clause 3 is concerned exclusively with delays in payment and in taking possession on the part of the purchaser and not with the delay in completion of the vessel. The delay in payment was a fixed rule, general, invariable and capable of taking the form of a permanent clause in the standard contract. The delay in delivery was, on the contrary, a variable rule according to circumstances and conditions of the building; the delay in delivery was, in addition, as the case of M. Ambatielos clearly indicates, of a nature to influence the price paid by the purchaser to the British Government. It was therefore natural that this delay in completion of the vessels, to which the standard contract referred, should be expressly indicated in another document, in each case to be placed side by side with the standard contract. For these reasons my Government would suggest that the argument put forward by the British Government cannot be deemed a sound answer to the requirements of the contract, inasmuch as the terms of the said argument imply that the standard formula sufficed as regards the dates of delivery of the vessels purchased. It would seem, on the contrary, manifest that the standard formula of purchase contract required a complementary document to be annexed to it—a document of a given form indicating the dates of completion and, through them, the dates of delivery according to the mechanism indicated in clause 3.

3. My Government feels that the British Government will not deny that these delivery dates were the subject of great anxiety to both parties, both before and after the conclusion of the contract, and agree that the letter dated 3rd July 1919, written by M. Nicholas Ambatielos, the letter dated 10th July 1919, written by M. G. E. Ambatielos, and the paper written by Mr. Bamber, an officer of the Shipping Ministry, and delivered by Major Laing, an officer of the same Ministry, to M. G. E. Ambatielos, are all concerned with the dates of delivery. The question of these dates of delivery was also dealt with in the steps taken verbally by Major Laing when he approached M. N. E. Ambatielos shortly after the signature of the standard contract on July 17, 1919. The question of delivery dates was therefore of sufficient importance for Major Laing not to hesitate to make a trip to Paris to formally reassure M. N. E. Ambatielos in this connection. M. Ambatielos was at the time detained in Paris due to an operation he had just undergone. It is possible that the delivery dates mentioned in these various documents do not tally absolutely and that a certain margin may have been accepted by the purchaser in respect of the delivery dates

mentioned in the various documents. Nevertheless, it is true that these delivery dates, outside the formula or standard contract for the purchase of vessels, were the necessary complement to the contract in question and that it is only in consideration of these delivery dates that the contract was entered into by M. Ambatielos.

My Government appreciates that the British Government may perhaps object that the dates mentioned by it and upon which M. Ambatielos based his acceptance of the prices asked by the British Government, were the probable dates and not the guaranteed dates. This objection, although it appears to have impressed such an eminent judge of the Admiralty Division as Sir Maurice Hill, cannot in the opinion of my Government be substantiated if all the facts are considered.

It is, of course, certain that, at the time, the British Government could not reasonably guarantee within a day and in an absolute and firm manner the dates of delivery. It is none the less true that when the British Government, acting through its Ministry of Shipping, declared to a purchaser that it would effect delivery on certain dates, the same purchaser was obviously to base himself upon the information given by the British Government. The contract for purchase having been entered into in consideration of the delivery dates indicated by the British Government and these dates having been totally disregarded, it is, my Government suggests, clear that the contract has not been carried out under the conditions stipulated for by the parties and that its incomplete execution involves the responsibility of the British Government.

4. My Government feels that His Majesty's Government is endeavouring to minimize the import of the obligations contracted in its name by its agents when it maintained in paragraph 8 of the note under reply that Major Laing, with whom the matter was negotiated and who informed the purchaser of the dates of completion, had not the authority either to conclude definitely or to sign the contracts. It has, however, not been possible to dispute the fact that purchasers of vessels from the British Government negotiated their deals with Major Laing, that he prepared the decisions of the Committee and that the Committee as a matter of form decided the affair and gave it its juridical tenor.

With reference to paragraph 4 of the note under reply, my Government much regrets the remarks there made relating to Major Laing's recent history. In their opinion, whatever Major Laing's recent history may be, there is little in such history to justify the suggestions made and this cannot in any way jeopardize or cause an adverse conclusion to be drawn from Laing's statement of facts on the case. There is nothing new in Laing's affidavit, the statements made therein are entirely consistent with Major Laing's letter to Sir Joseph Maclay of the 20th July 1922, the contents of which were in no way contradicted or denied at the time.

Referring to paragraph 14 of your note, I am instructed to point out that at no time have business relations existed between M. Ambatielos and Major Laing.

5. My Government suggest that the statement of His Majesty's Government in paragraph 11 of the note under reply that no trace can be found in the minutes of the Committee of the Ministry of

Shipping of the telegram despatched to the shipbuilders in charge of the construction of the ships, urging them to enable the British Government to effect delivery at the agreed dates, does not prove that this telegram was not sent or that the Committee had not decided to send it.

6. Referring to paragraph 15 of your note, the Greek Government is quite prepared to admit that M. Nicholas Ambatielos could have acted in a more useful way to protect his interests by formally and energetically protesting to the British Government as soon as the dates of delivery mentioned to him had not been observed. But the Greek Government must also record that the attitude adopted by him can easily be explained. Engaged in several important deals with the British Government, M. Ambatielos could hardly adopt an energetic attitude towards this Government as a result of the non-execution of the obligations incurred towards him ; it would have been very imprudent on M. Ambatielos's part not to endeavour to maintain in his relations with the British Government an atmosphere favourable to a general settlement of matters pending. My Government is therefore in no way surprised that M. Ambatielos should have considered it possible to regain his liberty of action only when he became aware that he could not obtain satisfaction, on a friendly basis, of his legitimate claims.

The Greek Government must finally again emphasize the conditions under which M. Ambatielos entered into the contract for the purchase of vessels from the British Government. These conditions completely excluded any possibility of M. Ambatielos seeing this matter through, unless he was able to rely upon these vessels being delivered at fixed dates.

M. Ambatielos bought ships from the British Government solely through pressure being brought to bear by the Greek Government and to satisfy the conditions which were imposed upon him by the Government of which he was a national. It is contrary to all psychological probability that a man as experienced in questions of shipping as was M. Ambatielos would have accepted, as he did, the payment to the British Government of a price greatly superior to the prices current at the time if he had not been assured of recovering the considerable sums mentioned by him. That is why he stipulated for a double condition in his purchase of ships at such an unusual price as the figure asked (1) that he would not have to be subject to the official freighting rates (Blue book rates) and (2) that the ships would be delivered to him at a time when the market for freights in the Near East made it possible for him to recover the abnormal price demanded of him by the British Government.

My Government must therefore maintain their argument to the effect that the British Government had undertaken, both by the document sent to M. Ambatielos by two officials of the Shipping Ministry (Messrs. Laing & Bamber) and by verbal assurances given by the said Major Laing and by other persons at the Ministry, to deliver the ships at fixed dates and that these dates formed part of the purchase contract. It was solely in consideration of these dates agreed to by the British Government that M. Ambatielos bought the ships ; the non-delivery of the ships at the dates in question therefore constitutes an incomplete execution of the contract for which His Majesty's Government is in the opinion of my Government liable to make reparation to it.

7. The British Government maintains in the argument that it is released of all responsibility towards the Greek Government in respect of the harm suffered by its national, M. Ambatielos, for the reason that the matter had already been settled by various legal decisions in Great Britain and that, in addition, as M. Ambatielos has not yet completely exhausted the local legal means of remedy at his disposal, the Greek Government is prevented from formulating a claim against the British Government.

The Greek Government wishes to enlarge upon these two questions to some extent. It will first define the attitude taken by it with regard to the responsibility that it claims is imputable to the British Government. The Greek Government will then examine the question whether the British Government is entitled to raise the question of what is known as the rule of local remedies to its claim in favour of M. Ambatielos.

8. The British Government has on various occasions and in particular in its notes of the 28th December 1933 and the 7th November 1934, maintained that the only basis on which the Greek Government could address a diplomatic complaint to the British Government would be that the decision given by the British courts on the application of M. Ambatielos constituted a miscarriage of justice in the sense that international law recognizes that the responsibility of the State in question is implicated. The Greek Government must maintain once again what it has said, namely, that the failure of M. Ambatielos to obtain damages in the British courts has been due to the fact that the real facts were not placed before the Court, this being the result of the way in which the case was presented on behalf of the British Government. The attitude adopted by the Greek Government is that the act involving liability to pay damages which gives rise to the international responsibility of the British Government does not consist of faulty operation of justice assimilable to a miscarriage of justice in the sense admitted in international law, but consists of acts or omissions emanating from the British Government which resulted in the judge not having complete access to the relevant facts when deciding between the parties.

The responsibility of the British Government is, in the opinion of the Greek Government, engaged by reason of the conditions under which the details of the matter were submitted to the British courts, notably by reason of the fact that the Laing-Maclay correspondence of July 1922 was not produced, this correspondence, of which the British Government had of necessity been aware since that time, not having come to the notice of M. N. Ambatielos until after the decision given by the judge, Mr. Hill. Without doubt no State is able to guarantee "the infallibility of its courts" as Pomeroy says (*Lectures on international law*, Woolsey edition 1886, page 249); but a State engages its responsibility if, being before a court, its agents do not submit to that court all of the documents in their possession which are by their nature able to place the judge in a position to make a decision with full knowledge of the circumstances. The responsibility of the British Government does not therefore arise from the action of its courts but from the action or oversight of the British Government when before the judge.

From the documents exchanged between my Government and His Majesty's Government it is seen that the discussion between the two Governments on this point has passed through several stages. It is clear from the statements contained in their last note that His Majesty's Government recognizes that all the relevant documents in their possession were not in fact produced to the judge.

In the opinion of my Government they have not only the right but also the obligation to maintain, under the circumstances, their point of view that certain of the documents not produced and being of essential character should have been brought to the notice of the judge in order that the latter might be able to appreciate the importance of them. It follows therefore that the responsibility of the British Government is engaged by reason of the fact that the judge was not put in a position to take cognizance of all of the pertinent documents in their possession or power.

In the opinion of my Government the Laing-Maclay correspondence of July 1922 is of essential importance. In order to refute this, the British Government in paragraph 9 of its note of the 7th November 1934 relies on more or less precise conversations between Major Laing and Mr. O'Byrne in March to April 1921, but my Government feels bound to observe that these conversations do not correspond with the contents of the letters from Major Laing in July 1922. The Greek Government regrets it is unable to adopt these conversations as being accurate. The result of this would appear to be that the agents of the British Government concerned in presenting the matter before the judge based themselves on these conversations and did not consider the documents exchanged in 1922 as important and so did not bring them to the notice of the judge. My Government regrets it must suggest that justice required the British Government in any case, and more so in the case of differences between the conversations and these documents appearing, to provide the judge with the means of clearing up the matter by producing the documents to him. The Greek Government must put on record that this obligation was not fulfilled. There is therefore, in the opinion of the Greek Government, a matter there which beyond all doubt engages the responsibility of the British Government.

The Maclay-Laing correspondence presents several considerably interesting features. In the first place it shows that in the mind of the Shipping Controller there was a doubt on the point of knowing whether the delivery dates had been agreed by contract. The truth regarding such facts in respect of a point so essential could only be established if these letters were placed before the Court. In addition the Ministry of Shipping was able to see from this correspondence that Major Laing, if he were summoned to the discussions, would testify in a way supporting the claims of M. Ambatielos against the British Government. It is noteworthy under these circumstances to record that Major Laing, who carried out all the negotiations on behalf of the British Government and was in Court at the trial and who alleges he was subpoenaed, was not put in the witness box, nor at any time did he appear before the Court. It is no less noteworthy to stress the fact that M. Ambatielos, having attempted to call Major Laing on his own behalf, found it impossible to have his wish carried out; on several occasions attempts were made to serve the subpoena on him and each of these repeated attempts was without success, it not being possible to reach Major Laing.

In the opinion of my Government the non-production of the Laing-Maclay correspondence in the suit before Mr. Justice Hill is the more serious in view of the fact that neither was Major Laing called to give verbal testimony, because he would undoubtedly have reproduced the declarations contained in his correspondence with Sir Joseph Maclay. Sir Joseph Maclay having written to Major Laing to ask him whether he had guaranteed delivery dates (12th July 1922), Major Laing replied to him on the 20th July 1922 to the effect that he had only obtained the high price paid by M. N. Ambatielos in consideration of fixed dates.

The Greek Government regrets it must also observe that the Maclay-Laing correspondence of July 1922 is not the only document in the possession or power of His Majesty's Government affecting the suit that was not brought before the judge. In this connection it would draw the attention of the British Government to the following considerations.

It is indisputable that Major Laing sent to M. G. E. Ambatielos in July 1919 a paper mentioning delivery dates in connection with the ships bought and in any case, even in accordance with the argument of the British Government, completion dates. These dates written down by an official of the Shipping Ministry, Mr. Bamber, could only have been copied from some document, either a contract between the Ministry and the shipbuilders, or a telegram received from the shipbuilders or some other quite different document. It is evident that in the files of the Ministry there are some indications capable of showing :

1. The origin of the dates appearing on the document written by Mr. Bamber.
2. The scope and the binding or approximate nature of these dates.

The Greek Government is obliged to enquire why these documents were not produced in the suit.

Furthermore, His Majesty's Government in paragraph 16 of the note under reply stated that a complaint of this kind could only properly be made if my Government could show that it was the regular practice of the Greek Government when engaged in litigation to produce the minutes written in Government departments, and while not agreeing with this contention, I beg to state that my Government are under obligation to disclose all relevant documents when engaged in litigation.

In the opinion of my Government it is clear that the British Government was not able to invoke, as a reason for the non-production of these documents, motives of "public policy" which under certain circumstances can absolve the Government from the production of certain documents. There was no question of "public policy" at stake. The peace had actually been re-established long since and no reference to the building of merchantmen in the shipyards of Asia could have been harmful to public interests. It is also certain that it would not be possible to consider the mere fact that it was a question of pecuniary interests of the British nation, sued for damages, as a motive of "public policy". The non-production by the British Government of the documents that were capable of throwing complete light on the essential point of the suit therefore engages the responsibility of the British Government. It is in the opinion of my Government a question of acts or omissions that, from the legal point of view, constitute acts or omissions of the executive organ and it is indisputable that the international responsibility of the State is invoked when an illegal act or omission for which national

law has not in fact provided reparation can be imputed to the State itself in respect of a foreigner.

The Greek Government does not doubt that the British Government, after a further examination of the question, will share this point of view. This point of view is, as a matter of fact, the one that the British Government itself has had occasion to express officially on several occasions and in particular on the occasion of the preparatory work of the Conference for the Codification of International Law held at The Hague in March-April 1930 (Bases for discussion t. III, C. 75 M. 69, 1929. V). Under the heading IV, No. 5, the Preparatory Committee put the following questions :

“Under what other hypothesis (than those listed under Nos. 1 to 4 of the same heading) is it possible to admit the responsibility of the State whose courts have given an unjust judgment ?”

The British Government replied as follows (p. 49) :

“The responsibility of the State is not engaged simply by reason of the fact that a legal decision is wrong. Nevertheless an erroneous legal decision can engage the responsibility of the State :

(a) If it is erroneous to a point such that no properly constituted court could honestly have arrived at a decision of that kind.

(b) If it is due to corruption.

(c) If it is due to the pressure exercised by the executive organs of the Government.

(d) If it is provoked by a procedure so deficient as to exclude all reasonable hope of fair decisions.”

It is due to the last hypothesis provided for under letter “d” that the facts enunciated here must come.

In the opinion of my Government it is certain that the procedure in the wide sense, that is to say, the enquiry into the matter as a whole not only by the judge but also by the British Government as a party to the actions was deficient by the fact of the non-production of fundamental evidence.

The fault engendering the international responsibility of the British Government is not in any way to be attributed to the judge, who could only make a decision on the strength of the evidence that was submitted to him, apart from the risk of erring on the value of this evidence, while however such errors could not constitute a source of responsibility in respect of the functioning of the judicial organ.

The responsibility of the British Government in this matter is engendered by the action of its officials or agents. Now in this respect Great Britain, on the occasion of the Conference of Codification, replied as follows —

The Point V, No. 2 (a), of the questionnaire, made provision in the following terms for the act or omission of a competent official (*doc. cit.*, p. 70) :

“Is the responsibility of the State engaged in the following cases and, in the affirmative, what is the foundation of the obligation ;

(a) Acts or omissions of officials acting within the bounds of their competence.

To what extent must consideration be paid to the fact that these acts or omissions are either contrary to the international

obligations of the State or marked by illegality in accordance with national law, or *characterized by error* ? (Underlining added.)

Is it necessary in order to fix international responsibility of the State, to take other considerations into account ? Do the same rules apply to damage done at sea, for example collision imputable to a warship ?”

It is seen that the case in question comes within the scope of this hypothesis, particularly under the heading of an act characterized by error of an executive official who did not enable the judge to make his decision with full cognizance of the facts. To the question raised Great Britain replies as follows (p. 72) :

“The State is responsible from the international point of view for the acts or the omissions of its officials acting within the bounds of their competence. If a foreigner suffers a loss or damage by reason of acts or omissions of this nature which are contrary to international obligations of the State or to its national legislature, or which can be considered as negligence resulting from the said legislature, the State is liable for reparation. If he has access to efficacious means of obtaining reparation before the Courts, these means must first be exhausted (see reply to point XII).

The same rules apply to losses or damage caused on sea or on land.”

If, moreover, it is considered that the act of which the Greek Government is complaining and which it claims has engaged the international responsibility of Great Britain was committed by the official out of the bounds of his competency the situation is not changed. The responsibility of Great Britain would still have to be considered as engaged in this case. That is what results from the reply of the British Government to the questionnaire of the Preparatory Committee under Point V. No. 2b (vol. mentioned above, p. 76).

The question was worded as follows (p. 74) :

“Is the responsibility of the State engaged in the following case and, in the affirmative, what is the foundation of the obligation :

Acts or omissions of officials :

(b) Acts performed by officials in the national territory and authorized by the official capacity of the said officials (functional acts) but out of the bounds of their competence ?”

Great Britain replies as follows :

“The State is also responsible, from the international point of view, for acts that may be performed by its officials, in the national territory, in their official capacity, but out of the bounds of their competence.” (P. 76.)

My Government's opinion is therefore that they are here right in expecting that the British Government, discovering the erroneous attitude of its officials or agents who did not, owing to the incomplete production of documents, enable the judge to make his decision with full cognizance of the case on the facts submitted to him, will consider its international responsibility engaged by the fault of the said officials or agents.

The Greek Government now turns to the question of the exhaustion of local means of remedy.

The Greek Government does not call in question, in principle, the fact that the practice of diplomatic representations admits, to a certain extent which will be specified hereunder, the argument brought forward by the British Government, that claimants must have exhausted the local means of remedy in order that their case can be the object of a diplomatic claim on the part of their Government. But the Greek Government does dispute the fact that this rule can be applied to the Greek Government in the present case. As a matter of fact the attitude of M. Ambatielos has fully complied with the requirements stipulated by the rule to which the British Government refers.

It must first be determined what is the scope of the rule and it is not possible to do better than to refer in this regard to the opinion formulated since 1916 by the British Government itself, and which the Government reiterated on the occasion of the preparatory work of the Conference of Codification of 1930 (reply to the questionnaire *sub* point XII Bases, III p. 137) as expressing its viewpoint on the question raised :

“His Majesty’s Government attaches the greatest importance to the observation of the following rule : when private individuals have access to efficacious means of reparation before the courts of a civilized country thanks to which they are able to obtain satisfaction to an adequate extent in the case of a violation of their rights, it is necessary to use the means of remedy thus provided before diplomatic action is taken.” (*American Journal of International Law*, 1916, special supplement, page 139.)

The state of international law, as revealed by most recent practice (decision of Mr. Algot Bagge in the dispute regarding Finnish ships) is exactly that described by Great Britain itself in the aforesaid passage. In order that the rule of local remedies can be invoked, it is necessary that the means of obtaining redress that have been exhausted should have been *efficacious* means and capable of producing *adequate* satisfaction. As is shown by various incidents and in particular by the above-mentioned decision, the right of lodging an appeal in the form and of making claims with regard to the right of appeal in question is not sufficient to comply with the rule of local remedies. It is a certainty that the remedy must be effective and adequate (pp. 15 and 16).

What was the attitude adopted by M. N. E. Ambatielos with regard to the local remedies ?

Amongst the local remedies placed at the disposal of M. Ambatielos there are certain forms that he exhausted completely and absolutely in the strictest and most formal sense of the expression, without taking into consideration whether these remedies offered M. Ambatielos a means of obtaining redress efficaciously and to an adequate extent for harm suffered. There are other means that he has not exhausted in the formal and obvious sense of the word, but nevertheless M. Ambatielos cannot be reproached for not having proceeded to exhaust the said means ; actually these local means of remedy did not possess the character of efficaciousness required by international law, before the State against which an international complaint is made can charge a foreign plaintiff with not having complied with what is called the rule of local remedies.

The local remedies that M. Ambatielos has exhausted completely are those that were accessible to him with a view to endeavouring to obtain the production at law of the documents not produced at the hearing by the British Government, when the existence of these documents was known to him after the decision of the Admiralty Court had been given. Having applied to the Court of Appeal for the production of the new evidence that had come to light, M. Ambatielos did not receive permission for this production to be effected. The Court refused to give authority to this effect because in its opinion M. Ambatielos should have produced these documents earlier. The Greek Government does not wish to discuss whether or not such an argument adopted by the Court of Appeal is justified. It would only remark that M. Ambatielos, not having these letters at his disposal and not knowing of their existence at the time of the hearing before Mr. Justice Hill, was quite unable to produce them. In addition, the Greek Government puts on record that, as there was no means of appeal against the decision of that Court, M. Ambatielos has exhausted in this regard all of the possible local means of remedy and that in consequence no reproach can be made on this score to M. Ambatielos and no exception can be taken to the attitude of the Greek Government.

In the opinion of my Government M. Ambatielos cannot in addition be reproached with not having carried to its conclusion the appeal that he had lodged in respect of the main issue of the suit against the decision of Mr. Justice Hill. As a matter of fact the local remedies constituted by such a procedure of appeal must of necessity be inefficacious. The reason for this is that M. Ambatielos, not having received from the Court of Appeal the authority to introduce at the hearing the new documents that had come to his cognizance after the first hearing, would have found the Appeal Court judges themselves also deprived, like the judge of the Court of first instance, of the elements necessary for the formation of a complete picture of the justification for M. Ambatielos's application. There was no doubt a theoretical possibility that the Court of Appeal might find differently from the judge of the Court of the first instance, but it is certain that this possibility does not extend beyond the realms of mere theory and that therefore it would not be possible to consider as effective the legal means that were at the disposal of M. Ambatielos and which he has not completely utilized.

In conclusion I have the honour to observe that, in the opinion of my Government, M. Ambatielos has fully complied with the requirements required by the rule of local remedies in accordance with international practice of the most positive character and the opinion of His Majesty's Government itself as reported above.

Therefore it appears the British Government should not raise objection to the claims of the Greek Government in any way whatever on the grounds of the rule of local remedies.

In addition the Greek Government has declared itself willing to submit to judicial or arbitrary procedure as a preliminary basis the question of whether its national subject had or had not exhausted the local remedies in Great Britain.

My Government regrets to see that the British Government did not think fit to accept this reasonable proposal made by the Greek Government which, in the opinion of the Greek Government, constituted the

best means of keeping entirely intact points of view of the two Governments.

The financial result of this sale by the British Government to M. N. E. Ambatielos is that after the British Government offered to cancel the sale of the *Mellon* and *Stathis* at contract price in 1922, which offer was accepted, the British Government only sold M. N. E. Ambatielos seven vessels at a *pro rata* contract price of £1,806,000 against this the Ministry of Shipping received :

In cash	£1,650,000	
Proceeds sale of 6 vessels (7th sold previously)	230,000	
Value of bunkers and stores (supplied and paid for by Ambatielos in Oct. 1920) on board the <i>Mellon</i> and <i>Stathis</i>	17,000	
	<hr/>	
Making a total of		£1,897,000
Excess received by the Ministry of Shipping over and above contract price		£91,000

The anomaly that the British Government received more than the contract price is explained by the fact that the British Government paid certain sums for insurance and other expenses on the vessels while they were lying idle, but none of these expenses would have been incurred if the Ministry of Shipping had not seized and caused the vessels to be idle. On the contrary they could have been traded at good profits.

In addition the 7 vessels sold to M. Ambatielos by the Ministry of Shipping for £1,806,000—and for which the Ministry received £1,897,000—were offered by the Ministry, just prior to the sale to M. Ambatielos, to British buyers for £1,390,000 (*pro rata* for the nine vessels at £1,755,000). It will be seen that the Ministry of Shipping received for the 7 vessels £507,000 more from M. Ambatielos than that which they were asking from British buyers.

In the result M. N. E. Ambatielos lost all his money that is :

Cash paid to the Ministry	£1,650,000
Expenditure incurred by him for extras and money spent on improve- ments and bringing the vessels to Lloyd's highest class, sending crews out East, etc., etc.	<hr/> 270,000
a total of	<hr/> £1,920,000

together with a very considerable sum paid in interest to his bank, and is left without any ships, whilst the British Government obtained through this transaction £507,000 more than they were willing to accept from British buyers.

In conclusion my Government is still hoping that His Majesty's Government, after further consideration of the foregoing discourses and estimations, will feel inclined to reconsider the matter in order that

an equitable settlement may be reached, the details and basis of which my Government is ready to discuss. In case of such a solution not being possible my Government confidently appeals to the friendly sentiments and sense of justice of His Majesty's Government to examine with them the means of submitting the case to the appreciation of a mixed arbitral commission in accordance with a practice which His Majesty's Government has followed for more than a century in relation to several foreign countries.

I have the honour to be, etc.

(Signed) CH. SIMOPOULOS.

The Right Honourable
Anthony Eden, M.C., M.P.,
His Majesty's Principal Secretary of State
for Foreign Affairs, etc.

Certified true copy.

London, 14th July 1951.

(Signed) G. ST. SEFERIADES,
Counsellor.

Annexe R 6

NOTE DE LA LÉGATION DE GRÈCE A LONDRES AU
SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES DE GRANDE-
BRETAGNE

LÉGATION ROYALE DE GRÈCE,
51, Upper Brook Street,
London, W.1.

21 novembre 1939.

Excellence,

Me référant aux communications échangées dans ces dernières années entre le Foreign Office et la légation royale de Grèce, en cette résidence, au sujet de l'affaire de l'armateur hellène N. E. Ambatielos, j'ai l'honneur de vous présenter, d'ordre de mon Gouvernement, les considérations finales ci-après :

Les positions respectivement prises par chacune des parties dans cette affaire ont été nettement définies et précisées dans la correspondance précitée. Il n'y a pas lieu d'y revenir.

Pour en tirer une conclusion d'ensemble, il suffira de rappeler que le Gouvernement hellénique a cru pouvoir relever dans cette affaire des infractions au Traité de Commerce et de Navigation entre la Grèce et la Grande-Bretagne du 10 novembre 1886, qui constituent, à son avis, des violations de droit international. C'est dans cette conviction qu'il a cru devoir prendre fait et cause pour son ressortissant, ce qui donne à ce différend le caractère d'un litige international.

Ces violations consistent notamment :

a) En ce que les autorités britanniques ont omis de produire devant la juridiction de première instance, saisie de l'affaire N. Ambatielos, des documents essentiels pour la défense de ses droits, notamment la correspondance Maclay-Laing, fonctionnaires qualifiés pour agir

dans cette affaire, correspondance dont il ressortait de toute évidence que des dates avaient été fixées pour la livraison des navires ce que, d'ailleurs, ne rendait point douteux le contrat de vente du 17 juillet 1919 par la mention « within the time agreed ».

b) En ce que les autorités britanniques ont refusé à M. Ambatielos de produire de nouvelles preuves, qui n'étaient parvenues en sa possession qu'après le jugement de première instance, devant les juges d'appel, ce que la pratique antérieure autorisait en pareille occurrence.

La méconnaissance des deux règles de la procédure britannique du « full discovery » alors que l'ordre public « public policy » n'était point en jeu s'agissant d'une affaire commerciale, et du « fresh evidence », ou du refus d'autoriser des preuves nouvelles, constituées des actes contraires au droit international, en tant que portant atteinte aux droits de la défense dont l'article 15, para. 3, du Traité précité de 1886 prescrit le respect.

L'application de la règle « full discovery » n'a pas été mise en doute par le Gouvernement de Sa Majesté britannique. Elle n'a été subordonnée par ce Gouvernement qu'à la condition de réciprocité (note du 7 novembre 1934), dont le Gouvernement hellénique a affirmé l'existence.

Le Gouvernement royal se permet de rappeler à cette occasion que le refus d'autoriser une partie à produire ses preuves constitue une atteinte aux droits de la défense. (Précédent de l'affaire Cotesworth and Powell—Moore, *International Arbitrations*, 1898, v. II, p. 2083.)

Le Gouvernement de Sa Majesté britannique a repoussé, par ses diverses notes, l'arbitrage proposé par le Gouvernement royal hellénique, l'ayant jugé complètement inadmissible, « totally inadmissible ». (Notes des 28 décembre 1933 et 1^{er} juillet 1936.)

Cependant le Protocole annexé au Traité de 1886 prévoit la solution du conflit par voie de Commissions arbitrales, pour tous différends portant « sur l'interprétation et l'application de ce traité ».

Il résulte également de la correspondance échangée entre le Foreign Office et la Légation royale hellénique, qu'une divergence de vues s'est élevée au sujet de l'épuisement par M. Ambatielos des voies de recours interne (local remedies). Le Foreign Office soutenait que ces moyens n'ont pas été épuisés, la légation s'en tenant au point de vue opposé.

En effet, le Gouvernement hellénique a tout lieu de considérer, sur la foi des décisions de l'arbitre Undén dans l'affaire des forêts du Rhodope central et de l'arbitre Bagge dans l'affaire des navires finlandais, qu'en l'occurrence, les voies de recours interne doivent être considérées comme ayant été épuisées, les juges d'appel n'ayant plus le pouvoir de réexaminer les faits de la cause pour en tirer d'autres déductions, faits tenus pour définitivement établis devant le tribunal de première instance.

Même sur ce point préjudiciel le Gouvernement de Sa Majesté britannique a cru devoir décliner l'arbitrage proposé par la légation par sa note du 30 mai 1934 (n° 1271/L/34). Ce point pourrait être tranché par la juridiction internationale éventuellement saisie de l'affaire.

Dans l'impérieux devoir qu'il a de protéger son ressortissant, dont des intérêts considérables sont en jeu, le Gouvernement royal hellénique, convaincu lui-même du bien-fondé de la réclamation de

M. Ambatielos, a le légitime souci d'avoir en cette affaire l'appréciation objective et impartiale d'une juridiction internationale.

Il serait heureux de connaître, à ce sujet, le sentiment du Gouvernement de Sa Majesté britannique et, le cas échéant, son point de vue sur le mode de procédure arbitrale à instituer, qui est normalement la procédure des Commissions arbitrales prévue par le Protocole du Traité de Commerce et de Navigation de 1886 confirmé et précisé par le Traité de Commerce de 1926, faute de solution possible du différend par la voie des négociations jusqu'à ce jour.

Aussi, le Gouvernement royal hellénique, sur la foi des précisions qui précèdent, et qui placent l'affaire actuelle sur son véritable terrain juridique et juridictionnel, a tout lieu d'espérer, fort du sentiment d'équité et du respect des traités qui animent en toute circonstance le Gouvernement de Sa Majesté britannique, que le Gouvernement de Sa Majesté voudra bien donner une suite favorable à la présente note.

C'est dans cet espoir que j'ai l'honneur de prier Votre Excellence de bien vouloir agréer, etc.

(Signé) CH. SIMOPOULOS.

The Right Honourable
Viscount Halifax, K.G., G.C.S.I., G.C.I.E.,
H.M. Principal Secretary of State
for Foreign Affairs, etc.

Certified true copy.
London, 14th July 1951.
(Signed) G. ST. SEFERIADES,
Counsellor.

Annexe R 7

NOTE DE LA LÉGATION DE GRÈCE A LONDRES AU
SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES DE GRANDE-
BRETAGNE

No.3734/L/40.

The Greek Minister presents his compliments to His Britannic Majesty's Principal Secretary of State for Foreign Affairs and with reference to the note addressed to him under No. R 10658/10658/19 of the 26th December 1939, under instructions from his Government has the honour to forward herewith enclosed a Memorandum on the case of M. N. E. Ambatielos.

The Royal Hellenic Government venture to hope that His Britannic Majesty's Government, in their high sense of justice and their strict adherence to the treaties on which their policy has always been based, will not refuse to settle this preliminary question of competence.

From the enclosed Memorandum it clearly appears, in the opinion of the Royal Hellenic Government, that the arbitral committee provided for by the final Protocol of the Greco-British Commercial Treaty of 1886 is the only competent authority in the matter, and it is their sincere hope that His Britannic Majesty's Government will see their way to inform

them of the appointment of their arbitrator or arbitrators for a final settlement of this question.

ROYAL GREEK LEGATION
London, 6th August 1940.

Certified true copy.

London, 14th July 1951.

(Signed) G. ST. SEFERIADES,
Counsellor.

MÉMORANDUM

1. Il ressort de la communication adressée le 26 décembre au ministre de Grèce à Londres que le Gouvernement de Sa Majesté britannique maintient son point de vue, selon lequel le cas de M. N. E. Ambatielos n'est pas susceptible d'être soumis à un arbitrage international. Comme les raisons juridiques de ce refus, s'il en existe, ne sont pas données, le Gouvernement hellénique se trouve dans l'impossibilité d'en apprécier la valeur.

2. Après mûr examen de l'affaire, le Gouvernement hellénique a le vif regret de marquer sur ce point son dissentiment. Il a tout lieu de considérer que cette affaire réunit, selon les usages, les principes du droit des gens, et particulièrement les traités en vigueur, les conditions voulues pour être déferée à un arbitrage international.

3. Il ne s'agit pas d'une proposition d'arbitrage extracontractuel, comme ce fut le cas des propositions d'arbitrage formulées par le Gouvernement hellénique dans le passé, mais d'un arbitrage formellement prévu en l'espèce par le Protocole du Traité de Commerce et de Navigation gréco-britannique du 10 novembre 1886 et de la déclaration finale du Traité gréco-britannique de Commerce et de Navigation du 11 juillet 1926, qui prévoient, à pareille fin, l'institution d'une commission arbitrale.

4. Les considérations qui militent, au sens du Gouvernement hellénique, en faveur de l'application de ces dispositions ont été exposées en substance dans la note précédente de la légation royale. Il n'est pas nécessaire d'en reprendre l'exposé.

Ces considérations portent sur des faits contraires au traité précité de 1886, qui régit cette affaire, et notamment à l'article 15 de ce traité, faits préjudiciables à M. Ambatielos, générateurs d'un droit à réparation en sa faveur.

5. La proposition d'arbitrage du Gouvernement hellénique, comme elle est spécifiée dans sa note précédente, constituerait, au sens du Gouvernement de Sa Majesté britannique, un facteur nouveau dans l'ordre des considérations présentées par le Gouvernement royal. Cependant, aucun principe de droit international ne s'oppose à la présentation d'éléments de défense nouveaux *en tout état de cause*.

6. D'une façon générale la présente réclamation ne saurait encourir aucun reproche de tardiveté. On ne saurait la considérer de ce chef comme entachée de forclusion ou de prescription. Le fait qu'un élément d'ordre juridictionnel d'une façon précise la clause compromissoire du traité de 1886, a été invoqué en dernier lieu, ne saurait influer sur la validité de la réclamation.

7. C'est à tort que le Gouvernement de Sa Majesté britannique paraît attacher de l'importance (n° 3 de sa communication précitée) à cette

considération, que les faits constitutifs de la présente affaire s'étant déroulés en 1919-1922, ce ne serait qu'en 1933 qu'ils ont fait l'objet de représentations formelles de la part du Gouvernement hellénique. Cependant il y a lieu de rappeler, dans cet ordre d'idées, que le Gouvernement hellénique a pris fait et cause pour son ressortissant dès le 12 septembre 1925, puisque c'est à cette date que la légation de Grèce à Londres a cru devoir attirer l'attention du Gouvernement de Sa Majesté britannique sur le cas de M. Ambatielos. (Lettre de M. Georges Mélas à Sir Austen Chamberlain en date du 12 septembre 1925 *sub* nos 2335/13/25 et réponse du Foreign Office du 30 octobre 1925 *sub* nos 13509/11769/19.)

8. Mais lors même qu'il se serait agi en l'espèce d'une demande tardive ou tardivement renouvelée, une exception de prescription ou de forclusion n'en devrait pas moins être écartée, si l'on tient compte de l'opinion qui prévaut dans la doctrine et la juridiction internationales.

a) Dans l'affaire de David J. Adams, dans laquelle la Grande-Bretagne était partie (affaire rapportée *sub* n° 18 dans l'*American Journal of International Law*, vol. 16, 1922, pp. 315-325), la sentence a été rendue le 9 décembre 1921 et elle porte sur des points de fait et de droit qui sont situés en l'année 1886, soit 35 ans auparavant.

b) Dans une sentence arbitrale du 14 octobre 1902 rendue par la Cour permanente d'Arbitrage de La Haye, entre les États-Unis et le Mexique, il est affirmé « que les règles de la prescription étant exclusivement du domaine du droit civil, ne sauraient être appliquées au présent conflit entre les États en litige ». (*Revue générale de Droit international public*, 1902, Doc. p. 25.)

c) Dans une sentence arbitrale rendue dans l'affaire George W. Cook par la « General Claims Commission » présidée par l'éminent juriste hollandais Van Vollenhoven, le 3 juin 1927, toujours entre les États-Unis et le Mexique, il est également affirmé qu'« il n'existe pas de règle de droit international imposant une limitation de délai pour l'exercice d'une action diplomatique ou l'introduction d'une réclamation internationale devant une juridiction internationale ». (*Annual Digest of Public International Law Cases*, 1927-1928, Cas n° 174, p. 264.)

9. La même règle s'applique aux affaires où l'action diplomatique, engagée à temps, a été suspendue pendant un certain nombre d'années. Dans l'affaire du baleinier *Canada*, après le refus du Brésil de faire droit à la réclamation des États-Unis, ceux-ci ont laissé dormir l'action pendant dix ans. La fin de non-recevoir tirée de la prescription n'en a pas moins été écartée. (Sentence du 11 juillet 1870 dans le *Recueil des Arbitrages internationaux*, de MM. de Lapradelle et Politis, t. II, pp. 630 et 633.) Et ces auteurs de faire remarquer : « Le droit international, droit d'honneur et d'équité, éprouve pour la perte d'une action par le temps, expédient suspect de procédure, une telle antipathie, que l'arbitre ici l'écarte après avoir constaté que la partie qui pouvait invoquer l'argument n'avait pas osé catégoriquement y recourir. » La sentence en l'espèce avait été rendue par l'arbitre britannique M. Edward Thornton.

« Vingt ou trente ans passés dans l'abstention, disent encore MM. de Lapradelle et Politis, ne permettent pas d'écarter la demande. » (*Recueil des Arbitrages internationaux* déjà cité, t. II, p. 270.)

10. Quelle que soit l'autorité qui s'attache aux points de vue exposés par le Gouvernement de Sa Majesté britannique et à la considération sans réserve dont ils sont l'objet de la part du Gouvernement royal, celui-ci a le regret de ne pouvoir se rallier à la thèse selon laquelle le

cas de M. Ambatielos ne saurait faire l'objet d'un arbitrage dans le cadre des dispositions précitées. Une telle interprétation ne saurait lier le Gouvernement royal pour des raisons qui sont excellemment mises en relief dans la sentence déjà citée, rendue par l'éminent juriste M. Fromageot dans un différend entre la Grande-Bretagne et les États-Unis. Il y est précisé :

« The fundamental principle of the juridical equality of States is opposed to placing one State under the jurisdiction of another State. It is opposed to the subjection of one State to a interpretation of a treaty asserted by another State. There is no reason why one more than the other should impose such a unilateral interpretation of a contract which is essentially bilateral. The fact that this interpretation is given by the legislative, or judicial or any other authority of one of the parties does not make that interpretation binding upon the other party. Far from contesting that principle the British Government did not fail to recognize it. »
(United States Memorial, p. 119.)

11. En conclusion de ce qui précède, le Gouvernement hellénique est amené à constater qu'il se trouve en présence d'une divergence de vues qui porte, quant à présent, sur un point de compétence préalable, *celui de savoir si le cas de M. Ambatielos rentre ou non dans le cadre du Protocole annexé au Traité de 1886, complété et précisé par la déclaration finale du Traité de 1926*, de façon à pouvoir être déféré à la commission prévue par ledit Protocole. En effet, la seule solution logique et équitable de la controverse qui n'a pu être résolue, en dépit de longues négociations, est d'avoir recours, à toutes fins utiles, à un corps arbitral impartial, ce qui est le mode de règlement normal des différends internationaux. Cela rentre rigoureusement d'ailleurs dans les termes de la déclaration finale du Traité de 1926, d'une limpidité décisive, selon lesquels

« any difference which may arise between our two Governments as to the validity of the claims on behalf of private persons based on the provisions of the Anglo-Greek Commercial Treaty of 1886 shall, at the request of either Government, be referred to arbitration, in accordance with the provisions of the Protocol of November 10, 1886, annexed to the said treaty ».

12. Sur la foi de ce qui précède, le Gouvernement royal hellénique, mû par l'impérieux devoir de protéger son ressortissant, et usant du droit qui lui est conféré par les dispositions combinées du Traité de 1886 et de la déclaration finale du Traité de 1926, a l'honneur de demander au Gouvernement de Sa Majesté de bien vouloir désigner aux fins précises *sub n° II* son ou ses arbitres, ainsi qu'il est prévu par le Protocole final du Traité de 1886, le Gouvernement royal se réservant de procéder à une désignation analogue.

Londres, le 6 août 1940.

Certified true copy.

London, 14th July 1951.

(Signed) G. St. SEFERIADES,
Counsellor.

*Annexe R 8*NOTE DE L'AMBASSADE DE GRÈCE A LONDRES AU
SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES DE GRANDE-
BRETAGNE

No. 2775/L/49.

GREEK EMBASSY.

The Greek Ambassador presents his compliments to His Majesty's Principal Secretary of State for Foreign Affairs and acting under instructions of his Government has the honour to revert to a note No. 3734/L/40 of the 6th August 1940, with regard to the case of M. N. E. Ambatielos, to which no formal reply from the British Government has up to this day been received.

2. The Greek Government has purposely refrained from pressing this claim during the state of emergency arising out of the last war, in which both countries were engaged as Allies and during which the war effort overrode all outstanding matters. Now that normal conditions have been restored and that pending questions can be investigated, the Greek Government consider that they would be failing in their duty to protect the interests of their nationals if they were to postpone any longer the request for the settlement of M. Ambatielos's case.

3. The Greek Government, therefore, reiterate their request to the effect that the British Government accept that the dispute be referred to a Commission of Arbitration as provided by the Protocol annexed to the Treaty of Commerce and Navigation between Great Britain and Greece of the 10th November 1886, so that this Commission may decide whether, in the course of the procedure followed in this matter before the British courts, the reciprocal obligations undertaken under article 15, paragraph 3, of the aforesaid Treaty of 1886, had been disregarded.

4. If, contrary to all expectation, the British Government should be unwilling to accept this proposal, the Greek Government would reluctantly find itself compelled to proceed in accordance with the dispositions of the final Declaration of the Treaty of Commerce and Navigation of 1926, taken in conjunction with article 29 of the same Treaty, and to refer the matter to the International Court of Justice, placing under the Court's consideration the preliminary question as to whether or not the British Government are under the obligation to accept the procedure stated above in paragraph 3.

5. Considering that this question is entirely of a legal nature, the Greek Government feel that the above procedure would in no way entail a deviation from the course prescribed by the very close ties of friendship that have always existed between the two countries, and that it would be in accordance with the desire recently expressed by His Britannic Majesty's Government that any legal dispute arising with another Government be submitted to the International Court of Justice.

London, 11th May 1940.

Certified true copy.

London, 14th July 1951.

(Signed) G. St. SEFERIADES,
Counsellor.

*Annexe S 1*NOTE DU SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES
DE GRANDE-BRETAGNE A LA LÉGATION DE GRÈCE
A LONDRES

No. C 13509/11769/19.

FOREIGN OFFICE, S.W.I.
30th October 1925.

Sir,

I have the honour to refer to Monsieur Mélas's note No. 2335/N3/25 of 12th ultimo, in which he enclosed a memorandum prepared by M. N. E. Ambatielos in regard to the purchase in 1919 of certain ships then under course of construction for His Majesty's Government at Hong Kong and Shanghai.

2. I have the honour to inform you that M. Ambatielos presented a memorial in the early part of this year to the President of the Board of Trade in which the case was explained on lines similar to those of the enclosure in Monsieur Mélas's note under reference. It was then personally reviewed by the President who, after full and careful examination, found that neither on legal nor on moral grounds was there any justification for granting any relief on the lines desired. It is regretted, therefore, that, as there are no fresh facts in the memorandum to justify a reopening of the case, His Majesty's Government are unable to reconsider their previous decision.

I have the honour to be, etc.

(For the Secretary of State)
(Signed) C. HOWARSMITH.

Monsieur D. Caclamano, etc.

*Annex S 2*NOTE DU SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES
DE GRANDE-BRETAGNE A LA LÉGATION DE GRÈCE
A LONDRES

No. C 4625/1172/19.

FOREIGN OFFICE, S.W.I.
29th May 1933.

Sir,

I have had under careful consideration the note which you were good enough to address to me on February 7th last (No. 358/L/33), in which, on the instructions of your Government, you suggested that a dispute which was alleged to exist between His Majesty's Government in the United Kingdom and Monsieur Nicholas Ambatielos, a Greek citizen, should be referred to arbitration before an international tribunal. The material facts of the case are briefly as follows.

2. By a contract dated July 17th, 1919, made between Monsieur Ambatielos and the then Shipping Controller, the former agreed to

purchase certain ships which were then in course of construction at Hong Kong and Shanghai. Although one of the parties to the contract was a department of His Majesty's Government, the contract was an ordinary commercial contract, and any questions which might arise under it would accordingly have to be decided by the competent municipal tribunals. The contract contained a provision, quoted in paragraph 4 of your note, under which any dispute arising under it was to be referred, under the provisions of the Arbitration Act 1889, to arbitration in London. This provision is apparently quoted in your note in order to show that any dispute arising under the contract was a "dispute of international order" which was to be settled "by an international instrument". In fact its effect is the opposite. The provision in question was an ordinary commercial arbitration clause, and the fact of its insertion shows that the parties intended any disputes arising under the contract to be settled by the appropriate municipal procedure in England.

3. Owing to Monsieur Ambatielos having failed to make the payments provided for in the contract, the Board of Trade, who had succeeded to the position of the Shipping Controller, found it necessary to institute proceedings against him in the Admiralty Division of the High Court of Justice in order to enforce their rights under the contract. Monsieur Ambatielos considered that he had a claim against the vendor of the ships on the ground that they had not been delivered at the dates agreed upon ; this was disputed by the Board of Trade. This claim could have been submitted to arbitration under the provision to which I have just referred, but it was agreed between Monsieur Ambatielos and the Board of Trade, in order to save time and expense, that all the questions between the parties, including this claim of Monsieur Ambatielos, should be raised upon the pleadings and tried in the action in the Admiralty Division. Accordingly, Monsieur Ambatielos's claim was heard in these proceedings by Mr. Justice Hill, and the verdict went against him. Monsieur Ambatielos gave notice of appeal against the decision of Mr. Justice Hill, but, having failed in an application to the Court of Appeal for leave to adduce further evidence (which, as the Court of Appeal found, he could have called at the hearing before Mr. Justice Hill if he had seen fit to do so), he withdrew the notice and abandoned his appeal. All these events took place more than ten years ago.

4. In these circumstances it is plain that the questions which arose between Monsieur Ambatielos and the Board of Trade were questions arising out of an ordinary commercial contract ; that under the contract any such questions were to be decided by the competent tribunals in England ; that by entering into the contract Monsieur Ambatielos submitted to the jurisdiction of those tribunals, and that in fact he expressly agreed that all questions which had arisen between himself and the Board of Trade should be decided by the Admiralty Division of the High Court. It is also plain that, having abandoned the appeal which he had entered against the decision of Mr. Justice Hill, Monsieur Ambatielos has failed to exhaust the municipal remedies which were open to him under the law of England.

5. This being so, I do not altogether understand the grounds on which the Greek Government contend that the case is one which can properly be submitted to some form of international arbitration. I observe that the Greek Government state that by their note No. 2335/N/325, which

was addressed to Sir Austen Chamberlain by the Greek Chargé d'Affaires on September 12th, 1925, they ascribed to the dispute an international aspect giving to it the character of a question between two Governments. I do not so interpret the correspondence which then passed. The note in question merely asked that a careful examination of the case might be made by the competent department of His Majesty's Government in order that "they might, if possible, see their way to revise the case with a view to M. N. E. Ambatielos, who has been subjected to the most serious losses, obtaining some satisfaction". The reply sent on October 30th, 1925, was to the effect that such an examination had already taken place, since a memorial presented by Monsieur Ambatielos in the early part of that year had been considered by the President of the Board of Trade personally, who, after full and careful examination, found that neither on legal nor on moral grounds was there any justification for granting any relief on the lines desired, and that, as no fresh facts to justify the reopening of the case had been adduced, His Majesty's Government were unable to reconsider their previous decision. No further communication was received at that time from the Greek Government, and it is not clear to me how it can be maintained that a dispute with an international aspect has arisen between the two Governments. But, however this may be, and assuming that the case is now to be regarded as one in which the Greek Government are making an international claim on behalf of one of their nationals, such a claim could only fall within the principles laid down by the Permanent Court of International Justice in the decisions referred to in your note, if it is based upon some act of His Majesty's Government which is alleged to be in violation of international law. The facts of the case being as stated above, no question of international law arises; it is a case of a dispute arising out of a commercial contract which had to be decided, and has been decided, by the municipal tribunals to whose jurisdiction the parties had agreed to submit. The only way in which a question of international law could possibly arise in this case would be if the Greek Government were to contend that the decisions given by the English courts in this case constituted a denial of justice in the sense which international law recognizes as justifying action on the part of the Government of the individual concerned. No suggestion that the decisions in question constituted such a denial of justice is made in your note, and therefore it is unnecessary for me to make any answer to it. I will only say that any such suggestion would be received by His Majesty's Government with some surprise, especially in view of the fact that no such suggestion has been made during the ten years which have elapsed since the decisions in question were given. I should perhaps add, however, that the fact of Monsieur Ambatielos not having made use of the facilities for appeal provided by English law would in itself constitute a bar to any claim based on such a suggestion.

6. In these circumstances His Majesty's Government do not consider that the Greek Government are entitled to put forward any claim on behalf of Monsieur Ambatielos, and they are unable to agree that any such claim should be submitted to international arbitration.

I have the honour to be, etc.

(For the Secretary of State)
(Signed) R. I. WIGRAM.

Monsieur Demetrius Caclamanos, etc.

*Annexe S 3*NOTE D'U SECRETARE DES AFFAIRES ÉTRANGÈRES
DE GRANDE-BRETAGNE A LA LÉGATION DE GRÈCE
A LONDRES

No. C 11030/1172/19.

FOREIGN OFFICE, S.W.I.
28th December 1933.

Sir,

I have had under careful consideration the note which you were good enough to address to me on 3rd August last (No. 2077/L/33) relating to the case of Monsieur Nicholas Ambatielos.

2. It is unnecessary for me to repeat the statement of the facts of the case contained in paragraphs 2 and 3 of the note which I had the honour to address to you on 29th May last. I gather that this statement of the facts is not disputed by the Greek Government. Your Government appear, however, to question my statement that the contract dated 17th July 1919, made between Monsieur Ambatielos and the then Shipping Controller, was an ordinary commercial contract, though the only ground for disputing this statement which is suggested in your note is that "the agreement was for the supply of ships destined for the Greek Mercantile Marine". Every contract for the sale of a ship is an agreement for the supply of a ship for the Mercantile Marine of the country whose flag the vessel is intended to fly, and the fact that in this case the vessels which formed the subject of the contract were intended to form part of the Greek Mercantile Marine in no way affects the fact that the contract in question was properly described in my note as an ordinary commercial contract. I observe that in paragraph 2 of your note of 3rd August it is stated that the question whether or not the contract was a commercial one does not, in the opinion of your Government, appear to have any bearing on the questions involved. I am unable to agree with this view. The materiality of this consideration is that, as was explained in my note of 29th May, the case is, despite the fact that one of the parties to the contract was a Greek national and the other a department of His Majesty's Government, an ordinary matter of purchase and sale, and that any questions arising in connection therewith fell to be decided, not by any form of international procedure, but by the competent tribunals of this country.

3. For present purposes it may be assumed that the substantial issue which arose between Monsieur Ambatielos and the Board of Trade was whether, by the agreement in question, the Ministry of Shipping had undertaken to deliver the ships at certain fixed dates. This question, together with all the other questions which had arisen, was, by agreement between the parties, submitted to the decision of the Admiralty Division of the High Court of Justice in this country. After a hearing which extended over eight days, Mr. Justice Hill decided in favour of the contention of the Board of Trade and found "that there was no contract to deliver by times certain". Monsieur Ambatielos entered an appeal against this decision, but subsequently withdrew it, and the decision accordingly became final. In these circumstances it is plain that, according to the well-settled principles of international law, the fact

that one party to the contract was a Greek national and the other a department of His Majesty's Government in the United Kingdom, does not entitle the Greek Government, as is suggested in your note, to seek redress on behalf of its national on the ground of breach of contract. This question whether there was a breach of contract has been finally decided by the tribunal to which the parties agreed to refer it, and the only ground on which the Greek Government might be entitled to make diplomatic representations to His Majesty's Government would (subject always to the consideration that Monsieur Ambatielos did not make use of his right of appeal and had therefore not exhausted his legal remedies) be that the decision in question constituted a denial of justice in the sense which international law recognizes as involving the responsibility of the State concerned.

4. I observe that at the end of paragraph 3 of your note it is stated that if English law "would not recognize His Majesty's Government's obligation to deliver the ships purchased by Monsieur Ambatielos on the dates fixed", the law would be "in this respect so contrary to equity that it could not be set up as an answer to the Greek Government's claim under international law". If it had been found that His Majesty's Government were under an obligation to deliver the ships on the dates fixed, that obligation would certainly be recognized and enforced by English law, but in this case the Court, after full investigation, found that no such obligation existed and that the contract did not provide for delivery at fixed dates. Any suggestion, therefore, that on this ground the decision could be held to constitute a denial of justice cannot be sustained.

5. This being so, I am still not clear whether, and if so on what grounds, your Government contend that the decision of Mr. Justice Hill amounted to a denial of justice, but it may be that the statements made in paragraphs 3 and 5 of your note constitute the grounds on which such a suggestion is made, and I therefore proceed to deal with them.

6. The effect of these statements is that information was deliberately withheld from the Court by the Attorney-General and the other representatives of the Crown, and that the case which they put before Mr. Justice Hill was, to their knowledge, not in accordance with the facts. It is apparently suggested that at the time of the trial the representatives of the Crown were aware that the Shipping Controller had agreed, as part of the contract between himself and Monsieur Ambatielos, to deliver the ships on certain fixed dates, and that notwithstanding that knowledge on their part, they put forward the opposite contention before Mr. Justice Hill and succeeded in persuading the Court that it was correct. I cannot conceal my surprise and regret that the Greek Government should have seen fit to make so serious an allegation against the representatives of the Crown, and my surprise is not diminished by the fact that the suggestion is made for the first time more than ten years after the proceedings in question took place. Although the Greek Government were aware of the contents of the letters on which this allegation is based at the time when the Greek Chargé d'Affaires addressed to my predecessor his note No. 2335/N/3/25 of 21st September 1925, which enclosed a memorandum by Monsieur Ambatielos in which these letters were quoted in full, no suggestion was then made that they justified the very serious allegations that your Government are now

putting forward. But as the suggestion has been made, I will show that it is totally unfounded.

7. The contention of the Departments of His Majesty's Government concerned has throughout been that no agreement was ever made that the ships should be delivered on certain fixed dates, and that the only agreement as to dates of delivery was the provision in the contract under which each steamer was to be delivered immediately after it had been accepted by the vendor from the contractor, the buyer having seventy-two hours from the notice of readiness for delivery within which to take delivery. His Majesty's Government do not dispute that, as would naturally have been expected, Monsieur Ambatielos was informed of the dates on which it was anticipated that the ships would be ready for delivery, and evidence was in fact given before Mr. Justice Hill to the effect that the dates mentioned in a letter from Monsieur Ambatielos of 3rd July 1919, to which I shall subsequently refer, were taken from a buff slip upon which Mr. Bamber of the Ministry of Shipping had written the best estimate he was able to make of the dates for the delivery of each vessel. But the contention of the departments concerned has throughout been that no undertaking to deliver on those dates was ever given, and that it would have been impossible for such an undertaking to be given, since, as regards the dates when the vessels would actually be completed, the Shipping Controller was entirely in the hands of the builders, and was, therefore, not in a position (especially where, as in this case, the builders were foreign contractors) to ensure that he would be able to carry out any such undertaking. For this reason it was never the practice of the Ministry of Shipping, when contracting for the sale of vessels under construction, to agree upon fixed dates for delivery. This view of the case was accepted by Mr. Justice Hill, who said in his judgment: "The ships were being built under contracts which did not carry fixed dates, but times depending upon conditions, and each building contract contained a wide exception clause. It is far from improbable that the Shipping Controller should undertake to deliver as and when delivery was made by the builders. It is most improbable that he should agree to fixed dates without any clause of exception at all." The judge added that "It is clear from the evidence that M. G. E. Ambatielos did all he could to induce the Shipping Controller's representatives to insert fixed times in the written contract, and that this was definitely and absolutely refused."

8. Such being the contention which the departments concerned have consistently maintained, the only ground suggested for the very serious allegation that this contention was, to their knowledge, not in accordance with the facts, consists of certain correspondence which passed between Major Laing and the former Shipping Controller in July 1922, and which, accordingly, took place, and came to the knowledge of the representatives of the Crown, some nine months after the proceedings in the Admiralty Division had been instituted. About this correspondence there are two observations to be made, which completely refute the allegations which the Greek Government have seen fit to base upon it.

9. The first is that even assuming that the statements made in the correspondence by Major Laing constituted an accurate account of what had passed between him and Monsieur Ambatielos (an admission which I am not to be taken as making), there is nothing in that account which amounts to a statement that Major Laing had, on behalf of the

Shipping Controller, given a definite undertaking that the ships would be delivered on the dates mentioned, an undertaking which, incidentally, Major Laing had no authority to give. In particular, there is nothing in these letters which in any way supports Monsieur Ambatielos's account, as given in paragraph 3 of your note, of what took place during the interview at which the contract was signed. There is, in fact, nothing in Major Laing's account which is inconsistent with the contention of the Shipping Controller as described above, according to which Monsieur Ambatielos was informed of the dates on which it was anticipated that delivery would be given, but that no agreement was made that the ships would, in fact, be delivered at those dates.

10. The second observation which I have to make is that the letters in question contain nothing which was not before the Court at the hearing and which was not taken into account by Mr. Justice Hill in reaching his decision. In May 1921, two letters were exchanged between Monsieur Ambatielos and Major Laing. These letters were before the Court in the proceedings before Mr. Justice Hill; in the course of those proceedings they were referred to on at least three occasions by Monsieur Ambatielos's leading counsel, and they were specifically mentioned by Mr. Justice Hill in his judgment. I do not think that the Greek Government can be acquainted with these letters, for if they were, I am convinced that they would not have made the very serious allegations against the Crown's representatives contained in your note, and I therefore enclose copies of them herewith, together with a copy of a letter dated 3rd July 1919, from Monsieur Ambatielos to his brother, Monsieur G. E. Ambatielos, which is referred to in the letter of 2nd May 1921. If the Greek Government will compare this correspondence with the letters which passed in July 1922, between Major Laing and the former Shipping Controller, they will see that there is no material information contained in the latter which does not appear in the former, with the exception that the sum of £500,000 mentioned in Major Laing's letter of 20th July 1922, as being the additional amount which the ships could be expected to earn if they were delivered at the dates stated, is not specifically mentioned in the 1921 correspondence. This figure was, however, mentioned in the oral evidence given in the Court by Monsieur Ambatielos. Accordingly all the material contained in the 1922 correspondence was, in fact, before Mr. Justice Hill and taken into consideration by him in his judgment, and the suggestion that the representatives of the Crown, in the light of their knowledge of the later correspondence, are to be regarded as having withheld material information from the Court is destitute of the slightest foundation.

11. In the course of his judgment, Mr. Justice Hill made the following observation about the letters of May 1921: "The letters in May 1921 do not help the defendant. Major Laing had ceased to be on the staff of the Ministry on 30th September 1920, and was not the plaintiff's agent to make admissions. But in any case, the assurance stated to have been given by Major Laing was not that the dates were contractual, but that he was satisfied that the dates mentioned in the defendant's letter of 3rd July 1919, could be relied on. It all points to the expression by Major Laing of an expectation of delivery within certain months. But that is a very different thing from a contract that they shall be so delivered." These observations would be equally applicable to the letters of July 1922.

12. Moreover, the correspondence shows that when the contract was concluded, and for some time afterwards, the parties were still uncertain as to the dates on which the ships were expected to be completed. On 16th July 1919, the day before the contract was signed, Monsieur G. E. Ambatielos, who was acting for his brother, wrote a letter to Major Laing which reads :

“Confirming our conversation of this afternoon, we beg to thank you for promising to cable builders at both Hong Kong and Shanghai to ascertain the exact position and deliveries of the six B and three C type steamers which have been purchased by Monsieur N. E. Ambatielos.”

Again on 5th August 1919, Monsieur G. E. Ambatielos wrote a letter to Major Laing in which the following passage occurs :

“When Messrs. Fergusson and Law concluded the purchase and signed the agreement on account of Monsieur N. E. Ambatielos for the above boats, we understood that you have sent a wire to the builders asking them to let you know what was the exact position of each of these nine steamers and when same would be ready for delivery.

Monsieur Ambatielos keeps on asking us for this information and you can readily appreciate of what vital importance it is to him, and we will therefore thank you to let us know what reply you have received from the builders. Should you, however, not have heard from them, we will feel much obliged if you will be good enough to despatch another urgent cablegram asking them for full information regarding the actual position and expected delivery, and instructing the builders to do all in their power to accelerate and expedite matters in connection with the building of the steamers so that the same may be delivered to Monsieur Ambatielos at the soonest (only) possible.”

About the middle of August Monsieur Ambatielos received two cables from his Hong Kong agents giving certain dates, but stating expressly that they were approximate. It being the position that even after the signature of the contract the dates when the ships were expected to be completed were not definitely known, it is inconceivable that the Shipping Controller could have agreed to deliver them on certain fixed dates.

13. Moreover, the subsequent conduct of Monsieur Ambatielos and his representatives is quite inconsistent with his having believed at the time when the contract was made that the Ministry of Shipping had accepted an obligation to deliver the ships on certain fixed dates. Were it true in fact that such an obligation had been accepted, it is obvious that when delivery was not made at these dates, Monsieur Ambatielos would have protested against the breach of contract and reserved the right to make a claim for damages. No such protest was made, and no suggestion of breach of contract was put forward by Monsieur Ambatielos until April 1921, nearly two years after the signing of the contract and at a time when he was already in difficulties as to meeting the payments due under it. During the intervening period a number of letters passed which are impossible to reconcile with any contention that there was a contract to deliver the ships on fixed dates. I do not wish to overburden this note with quotations from the correspondence, which is at the

disposal of your Government if desired, but it will be found throughout that, while Monsieur Ambatielos or his representatives were continually urging that completion should be accelerated in the case of vessels that were not ready for delivery on the dates which had been mentioned, there is not a single suggestion that the failure to deliver on those dates constituted a breach of the contract made by the Ministry of Shipping, or that Monsieur Ambatielos was entitled to claim damages on account of the failure to deliver on these dates. In particular, on 3rd February 1921, Monsieur G. E. Ambatielos wrote a letter to the Shipping Controller, on behalf of his brother, in which he explained the financial difficulty in which Monsieur N. E. Ambatielos found himself by reason of loss of charters and the slump in shipping, and asked for release from his obligations to take two other ships, but he made no suggestion that the loss was due to a breach of contract on the part of the Shipping Controller in failing to deliver the ships at certain dates. In fact, the whole of this correspondence is only consistent with the contention put forward throughout by the Ministry of Shipping that there was never any undertaking on their part to deliver the ships on certain fixed dates, but merely an intimation of the dates on which the completion of the ships and their consequent delivery might be expected. The conclusion is inevitable that the contrary suggestion was an afterthought, put forward by Monsieur Ambatielos for the first time when he found himself in difficulties as to the fulfilment of his obligations.

14. Before leaving this part of the case, I desire to point out that the person who, according to Monsieur Ambatielos, had undertaken on behalf of the Shipping Controller the obligation to deliver the ships at certain fixed dates, was Major Laing (although, as Mr. Justice Hill pointed out in his judgment, Major Laing had no authority to finally agree the terms of the sale, which was a matter for the Shipping Controller and certain of his assistants), and if Major Laing had really undertaken that obligation Monsieur Ambatielos's obvious course was to call him as a witness to prove it. He did not, in fact, do so. I see that it is stated in paragraph 4 of your note that "efforts were made without success to subpoena Major Laing on Monsieur Ambatielos's behalf before the trial", but if this means that there was any difficulty in Major Laing being called as a witness on behalf of Monsieur Ambatielos, this is not in accordance with the facts. The correspondence of May 1921 referred to above shows that, at that date, Monsieur Ambatielos was in touch with Major Laing, who had ceased to be in the employment of His Majesty's Government for some time; in an affidavit by Monsieur Ambatielos which was read by his counsel to the Court of Appeal on the application for leave to call further evidence, it was stated that before the trial of the action Monsieur Ambatielos had a conversation with Major Laing about it, in the course of which Major Laing mentioned the existence of the letters of July 1922, and even read him a part of the contents of the letters; and finally Major Laing was in Court during the proceedings before Mr. Justice Hill, and there would not have been the slightest difficulty in calling him as a witness if Monsieur Ambatielos and his advisers had considered this desirable. In fact, Monsieur Ambatielos abstained from calling the one witness whom, if his contention was well-founded, it was essential for him to call, and this although he was at the time aware of the existence, and at any rate part of the contents, of the letters of July 1922.

15. It results from the above considerations that there is not the slightest foundation for the suggestion that the case put forward at the trial by the representatives of the Crown was to their knowledge not in accordance with the facts, and any contention, based on this suggestion, that Mr. Justice Hill's decision constituted a denial of justice, falls to the ground. On the contrary, it is plain that all the material considerations were before Mr. Justice Hill, and, while it is not necessary for my purpose to demonstrate that his view of the agreement made between Monsieur Ambatielos and the Shipping Controller was correct, everything goes to show that in fact it was so, and that no agreement was ever made for the delivery of the vessels on certain fixed dates.

16. There are certain other matters mentioned in your note with which I desire to deal briefly. In paragraph 5 a complaint is made that certain files "kept at the Ministry of Shipping in which particulars of the contracts discussed by the Shipping Control Committee were entered" had not been produced on the ground of the privilege of the Crown. This complaint is not understood. The whole of the correspondence between the Ministry of Shipping and the builders of the vessels in question in the Far East was disclosed to the solicitors representing Monsieur Ambatielos. The files containing the correspondence were so numerous that the solicitors in question inspected them at the Board of Trade Office, and copies of certain of these documents for which they asked were supplied to them, and were included in the bundles of correspondence which were before Mr. Justice Hill at the hearing. The only documents which were not disclosed were the minutes on the official files written by officials of the Government Departments concerned, and it is well-known that in this country, and, so far as His Majesty's Government are aware, in all other countries as well, documents of this nature are never made public, whether in the course of litigation or otherwise.

17. In paragraph 5 of your note the name of Mr. O'Byrne is mentioned as that of an individual against whom your Government may intend to make some charge. It is not clear what the nature of the charge is, but there are letters in existence written by Monsieur G. E. Ambatielos in the year 1920 in which he speaks in warm terms of the manner in which Mr. O'Byrne had treated him, and says, in particular: "We feel it incumbent upon us to herein express as well our most appreciative thanks for the fair spirit in which you have always dealt with us, and in this case in particular."

18. In paragraph 4 of your note it is argued that Monsieur Ambatielos is not to be regarded as having failed to exhaust his legal remedies in this case. I am unable to accept this argument. Even assuming that no appeal lay from the refusal of the Court of Appeal to admit new evidence in the shape of the correspondence of July 1922, I have shown above that the correspondence in question contained no material which had not been fully dealt with in the proceedings before Mr. Justice Hill, and consequently the decision of the Court of Appeal on this point made no difference whatever as regards the prospects of a successful appeal from Mr. Justice Hill's decision. There was, in fact, no question of "new evidence" which was not before Mr. Justice Hill. As to the prospects of an appeal from the judge's decision, it is to be observed that, while the Court of Appeal might well have been slow to upset such parts of Mr. Justice Hill's judgment as depended exclusively on the view which he took as to the reliability of the oral evidence given before him, this

consideration by no means covers the whole of the ground. All appeals to the Court of Appeal are by way of re-hearings and the Court has full powers as to drawing inferences of fact from the evidence ; in this case there was a vast amount of documentary evidence as well as oral evidence, and the Court of Appeal would certainly have been entitled to draw inferences of fact from the documentary evidence if it had thought right to do so. In point of fact, it is admitted that notice of appeal was given on behalf of Monsieur Ambatielos and subsequently withdrawn, and in these circumstances it cannot be denied that he has failed to exhaust the remedy by way of appeal which was open to him. The alleged fact that he was not then financially in a position to prosecute his appeal is immaterial in considering whether he had, in fact, exhausted his legal remedies. Accordingly his failure to do so is, in itself, a bar to any diplomatic action on his behalf by the Greek Government.

19. I have now dealt with all the considerations put forward in your note of 23rd August and have shown that they in no way affect the attitude adopted in my note of 29th May, which I must therefore maintain in its entirety. The questions which arose between Monsieur Ambatielos and the Ministry of Shipping were matters which, in accordance with the contract between them, were to be decided by the appropriate tribunals in this country, and they were, in fact, finally disposed of more than ten years ago by the judgment of the Admiralty Division, to which Monsieur Ambatielos had agreed to refer them. No appeal has been taken from this judgment. In these circumstances the only ground on which the Greek Government could possibly be entitled to make the matter the subject of diplomatic representations on behalf of their national would be a contention that Mr. Justice Hill's decision constituted a denial of justice, and to any such representations the fact that no appeal was made from that decision would in itself constitute a bar. Moreover, if the Greek Government rely on certain allegations put forward in your note as showing that a denial of justice did, in fact, occur (and no other grounds for such a contention have been suggested), I have shown that these allegations are entirely unfounded. In these circumstances I must regard the proposal of the Greek Government that these matters should, more than ten years after they occurred, be reopened and made the subject of some form of international arbitration, as being one which is totally inadmissible, and I must make it plain that His Majesty's Government in the United Kingdom can agree to no such proposal.

I have the honour to be, etc.

(For the Secretary of State),
(Signed) [illegible.]

(No. C 10189/1172/19.)

EXTRAIT D'UNE LETTRE DE M. E. J. FOLEY, MINISTÈRE
DU COMMERCE, AU SOUS-SECRÉTAIRE D'ÉTAT, AFFAIRES
ÉTRANGÈRES, DU 20 NOVEMBRE 1933 (Voir Annexe S 3)

Paris, 3rd July 1919.

G. E. Ambatielos, Esq.,
Grand Hotel,
Bd. des Capucines,
Paris.

Dear Sir,

I hereby authorize you to buy for my account the seven B type boats now in course of construction at Hong Kong on the following terms and conditions :

Delivery. Two August/September, two October/November, one in December and the remaining two not later than February 1920.

Price. At not exceeding two hundred and eighty five thousand pounds sterling per each including all commissions.

Trading clause. A clause to be inserted in the contract guaranteeing me the right to trade the steamers anywhere I like and all facilities to be accorded to me by the British authorities for bunkers repairs, etc., etc., for such trade.

Transfer. It is naturally understood that the steamers would be allowed to be transferred to any foreign flag, and that I have the right of selling part or all such steamers to foreigners.

Deposit. A sum of one hundred thousand pounds sterling to be paid on signing the contract against the ten per cent deposit (which deposit I can in case of need increase up to fifteen per cent) and the balance to make up such a deposit within a month from the signing of the contract.

Every ship to be paid respectively in cash on delivery less the agreed deposit.

If M. A. Francjopoulo has purchased any of these boats for my account same are to be included in this contract at the same price and conditions.

Yours faithfully,
(Signed) N. E. AMBATIELOS.

2nd May 1921.

Dear Major Laing,

You may remember calling on me in Paris about the end of August 1919 regarding the purchase of nine boats, negotiated by my brother from the Ministry of Shipping. In the course of conversation we had, I remember emphasizing to you that I attached the utmost importance to the dates of delivery which you had given to my brother and which appear in my letter to him of the 3rd July, and those dates you assured me you were satisfied could be relied upon.

You explained to me that I was justified in paying the apparently high figures I had paid because you were selling and I was buying the then position, deliveries and freights in connection with the steamers rather than the steamers alone.

I should be much obliged if you would let me know whether your recollection of our interview coincides with mine.

Yours very truly,
(Signed) N. E. AMBATIELOS.

73, St. James Street
London, S.W.

11th May 1921.

Dear Mr. Ambatielos,

I am in receipt of your letter of the 2nd May. I understand you have been away for some little time, otherwise I would have replied earlier.

I have read your letter through very carefully and so far as I can recollect your letter states what took place at the interview to which you refer.

Yours faithfully,
(Signed) BRYAN LAING.

Nicolas Ambatielos, Esq.,
18, Cavendish Square, London, W.

Annexe S 4

NOTE DU SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES
DE GRANDE-BRETAGNE A LA LÉGATION DE GRÈCE
A LONDRES

No. R 6043/3146/19.

FOREIGN OFFICE, S.W.I.
7th November 1934.

Sir,

In the note which I had the honour to address to you on December 28th about the case of M. Nicholas Ambatielos I dealt fully with your communication of August 3rd 1933, and explained in detail the attitude adopted by His Majesty's Government in the United Kingdom. I desire to say at once that I find nothing in your further note dated May 30th (No. 1271/L/34) which in any way modifies the views then expressed which I must maintain in their entirety; but as your Government have thought it necessary to revert to the matter, I desire to make the following observations on it.

2. In paragraph 2 you say that my Government "does not appear to dispute the interest of the Greek Government in this matter or the

principle that it is entitled under international law to intervene on behalf of a national whom it conceives to have suffered an injury by reason of breach by another government of a contract between them". If I am to understand that in the view of the Greek Government the mere fact that they consider that M. Ambatielos has suffered injury by reason of a breach by His Majesty's Government of a contract made between them entitles them to intervene in the matter, this statement is one from which I must emphatically dissent. The views of His Majesty's Government on this point were set out in paragraph 3 of my note of December 28th last, and have not altered in any way. The matters at issue between M. Ambatielos and His Majesty's Government, which related to an ordinary commercial contract of sale, having been decided by the tribunal to which M. Ambatielos had agreed they should be referred, the only possible case (and that subject always to the point that M. Ambatielos did not exhaust his right of appeal) in which in international law the Greek Government would be entitled to take up the case would be if they were prepared to allege and demonstrate that the decisions of the English courts constituted a denial of justice in the sense which international law recognizes as involving the responsibility of the State concerned.

3. Despite the proportions which this correspondence has now assumed, I am still not altogether clear whether the Greek Government contend that such a denial of justice has occurred in the present case, or if so, on what grounds they rely as justifying such a contention. In my last note I dealt fully with what I then conceived to be the contention of your Government on this point, i.e. "that information was deliberately withheld from the Court by the Attorney-General and other representatives of the Crown, and that the case as stated before Mr. Justice Hill was to their knowledge not in accordance with the facts". In paragraph 5 of your note under reply you inform me that your Government never intended to make such a suggestion as regards "the Attorney-General or other superior representatives contending the case for the Crown", and that your Government "feel convinced that the Attorney-General and other Crown Counsel were unaware of the correspondence in question, which being privileged from production under English law of procedure would presumably not be before them in the ordinary course". The allegation apparently now is that some unnamed person in the Treasury Solicitor's Department, who was aware of the correspondence before the hearing, *deliberately abstained from putting it before counsel*. This suggestion is unfounded. The correspondence in question was before counsel representing the Crown and was carefully considered by them before the hearing before Mr. Justice Hill took place, and the case for the Crown was prepared in the full knowledge of the contents of those letters. I explained fully in paragraph 7 and the following paragraphs of my note of December 28th the attitude which the representatives of the Crown have adopted throughout on this point and the reasons which satisfied them that there was nothing in the correspondence in question to lead them to modify that view. I need not repeat what was there said, but may add that in an interview which the Treasury Solicitor had with Major Laing at the time, the latter stated that he had pointed out to M. Ambatielos that in making an offer for the ships he would be able to take into consideration the very large freights which he would be able to earn with them on the voyages homewards to the United Kingdom

or the Continent. The Treasury Solicitor then put to Major Laing the question whether he had supported this argument by any undertaking or guarantee that the ships would be delivered on dates certain. Major Laing's reply was to the effect that at the time of the negotiations he was dealing with a vast number of other sales and could not really remember what he had said or what he had not said to M. Ambatielos or his agents. I shall show later that at an earlier date Major Laing had stated most definitely that he had never given any such undertaking or guarantee. In these circumstances I venture to hope that no more will be heard of the suggestion which I regret to find made in your note that "the true facts were either deliberately or accidentally withheld" from the English courts (paragraph 2), or that "the failure to obtain redress in a municipal court was due to the true facts not having been brought before the Court as a result of the conduct of the case on behalf of His Majesty's Government". Any such suggestion is totally unfounded and I repudiate it in the most definite terms possible. In these circumstances I should be justified in not dealing further with the contents of your note, but out of courtesy to your Government I will make the following observations.

4. In paragraph 4 of your note you appear to suggest that if it can now be proved "that fixed dates were given to M. Ambatielos as a matter of contract, that he bought the ships at the price named because of that undertaking, and would not have so bought them without it", then that your Government is entitled and bound to endeavour to obtain redress. For the reasons stated above, I am unable to accept this proposition. Even if it could now be proved that Mr. Justice Hill's decision was wrong, that would not be sufficient to justify the Greek Government in making the matter the subject of an international claim. It would be necessary to show that the decision constituted a denial of justice. But inasmuch as the greater part of your note is apparently devoted to an attempt to show that the contract did, in fact, provide for fixed dates of delivery, I desire, while maintaining the attitude explained above, to state that I am unable to regard its contents as establishing anything of the sort.

5. Although the events in this case took place between the years 1919 and 1922, it was not until more than ten years later that the Greek Government took any steps resembling the presentation of a claim against His Majesty's Government. While the material now at the disposal of His Majesty's Government is sufficient to enable them to deal with the contentions raised in your note so far as they contain anything new, two results of this delay are that the records in their possession are less complete than they would have been if the matter had been raised within a reasonable time after the events in question, and that some of the persons possessing first-hand knowledge of the facts are no longer alive. Such results are in such circumstances inevitable, and it is because this is so that international law and practice regard avoidable delay in presenting claims as constituting a bar to their successful presentation.

6. It is not proposed to deal again with the argument contained in paragraphs 5 to 7 of your note, which cannot be regarded as containing anything not answered in my note of December 28th. The only new point produced by your Government consists in the statement which

your Government have now obtained from Major Laing, and on this I desire to make the following observations.

7. Major Laing's statement takes the form of a Statutory Declaration made on January 19th last, a copy of which has been forwarded to me by Mr. G. Locker Lampson M.P. at the request, as I understand, of M. Ambatielos's solicitors. In a general way His Majesty's Government would not be disposed to attach much importance to statements now made for the first time by Major Laing. If it were desired to rely on statements by Major Laing in support of M. Ambatielos's contentions, the proper time for this to have been done was at the trial, when anything that Major Laing said could have been tested by cross-examination. But in addition to this general consideration, I regret to have to say that Major Laing's recent history has not been such as to dispose His Majesty's Government to attach weight to statements now made by him, more especially when such statements are inconsistent with the evidence of other persons and with previous statements made by Major Laing himself.

8. It is stated in paragraph 8 of your note that according to Major Laing he was, during the period in question, "in fact in control of the Ships Purchases and Sales Section" of the Ministry of Shipping. This statement is quite inaccurate; it is in contradiction with the facts as found by Mr. Justice Hill, and is not supported by Major Laing's Statutory Declaration. His position was, as he states in paragraph 1, that of "Assistant Director of Ships Purchases and Sales" under the director, Sir John Esplen. Major Laing does not state (and it would not be the fact if he did) that he had any authority to agree finally to terms of sale, nor does he suggest that he was held out by the Ministry of Shipping as having any such authority. According to the evidence given before Mr. Justice Hill and accepted by him, before a ship could be sold the question had to go before the Shipping Control Committee, which was composed of the Shipping Controller (Sir Joseph Maclay), Sir John Esplen and the Accountant-General; and while an intending purchaser would interview Major Laing in the first instance, the question of the sale would be decided by Sir Joseph Maclay and Sir John Esplen, Major Laing having no power to make agreements by himself. A letter from M. G. E. Ambatielos to his brother exists which makes it plain that both gentlemen were fully informed of this position. As Mr. Justice Hill said in his judgment :

"In fact, Major Laing had no authority to finally agree the terms of the sale. That was for the Committee composed of the Shipping Controller, Sir John Esplen, the Accountant-General, and the Secretary of the Ministry. M. G. E. Ambatielos, and through him the defendant, if he read M. G. E. Ambatielos's letters, knew that Major Laing had not final authority and so did Mr. Law."

9. In paragraph 5 of his Statutory Declaration, Major Laing says that he was "able to offer him [i.e. M. Ambatielos] definite dates for delivery of the ships". As has already been explained, Major Laing had no authority to do anything of the sort, but in any case His Majesty's Government are entirely unable to accept the statement, which is now made for the first time and even now is not made in any very definite form. It is entirely inconsistent with previous statements made by

Major Laing himself. When the question was put to him by the Treasury Solicitor before the hearing in 1922 (see paragraph 4 above), Major Laing professed himself entirely unable to remember what he might have said or not have said to M. Ambatielos. But, as the following circumstances show, his memory was far more clear at an earlier date. As the Greek Government are aware, the suggestion that the Ministry of Shipping had accepted an obligation to deliver the ships on certain fixed dates was not put forward by M. Ambatielos until the early months of 1921. The suggestion was made by M. Ambatielos to Mr. O'Byrne in an interview which they had in Paris in or about March of that year. On Mr. O'Byrne's return to London, according to a statement made by him when the case of the Crown was being prepared for the proceedings before Mr. Justice Hill, he spoke to Major Laing and specifically asked him whether he had given M. Ambatielos any definite assurance or guarantee that the ships would be delivered on certain dates. Major Laing absolutely denied that he had ever given such an assurance or guarantee, and pointed out that at the time the sale was arranged nobody could tell positively when the ships would be delivered by the builders, having regard to the terms of the contract existing between the builders and the Ministry. This fact, incidentally, is in itself sufficient to dispose of any suggestion that the case put forward at the trial by the representatives of the Crown was, to their knowledge, not in accordance with the facts.

10. Major Laing states in paragraph 6 of his Statutory Declaration that before the contract was signed he had given M. G. E. Ambatielos "a piece of buff paper on which I had copied the agreed delivery dates which were the same as those which had been cabled to me as reliable dates from Hong Kong and Shanghai". In point of fact the buff slip was prepared and handed to Major Laing by Mr. Bamber, and Mr. Bamber (who was a witness called by M. Ambatielos at the hearing before Mr. Justice Hill) stated on oath that the dates written on the buff slip were estimated dates and that in the presence of M. G. E. Ambatielos he told Major Laing that they were the estimated dates on which the ships would be delivered.

11. In paragraph 7, Major Laing states that a certain telegram was sent on the instructions of Sir John Esplen after a meeting of the Committee of the Ministry of Shipping, and was sent "because the Committee were becoming worried at the continual delay and they foresaw either cancellation of the contract or a claim being made against them". This statement is quite unfounded. According to the evidence given by Mr. Bamber all telegrams from the Ministry were sent from "Esplen, Shipminder, London", they were all signed by Miss Straker, who was Sir John Esplen's secretary, and the telegram in question was sent on the instructions either of Mr. Bamber or of Major Laing. The statement that the telegram was sent on Sir John Esplen's instructions after a meeting of the Shipping Control Committee is false. The records of the Committee have been examined, and contain no reference to this telegram.

12. In paragraph 8 Major Laing says that in his letter of July 20th, 1922, to Sir Joseph Maclay he stated that one of the reasons why he was able to get M. Ambatielos to pay an extra £500,000 was "the fact that guaranteed delivery dates could be assured". This statement is untrue. The letter in question contains no reference to guaranteed

delivery dates. What it said was that "provided these ships could be delivered at the times stated by our agents on behalf of the builders" they were worth, owing to the freight they could earn, another £500,000. The statement that he had guaranteed dates of delivery is now made by Major Laing for the first time. I am entirely unable, for the reasons stated in my last note, to accept the interpretation of Major Laing's letter put forward in paragraphs 6 and 7 of your note. There is nothing in that letter which is inconsistent with the view, accepted by Mr. Justice Hill, that while M. Ambatielos was informed of the dates on which it was anticipated that delivery would be given, there was no guarantee that the ships would in fact be delivered on those dates.

13. I have shown that the statement now made by Major Laing is full of inaccuracies and is inconsistent with previous statements made by him. I am unable therefore to attach any weight to it.

14. While I am on the subject of Major Laing, I should perhaps refer to the attempt made in paragraph 9 of your note to explain the fact that Major Laing was not called as a witness by M. Ambatielos, although at least one other person who was or had been in the service of the Ministry of Shipping (Mr. Bamber) was so called. The statement is made both in that paragraph and in paragraph 5 of your note that Major Laing had been subpoenaed as a witness by the Crown. The records of the Treasury Solicitor have been examined, and there is no entry of a fee for the issue of a subpoena to Major Laing, nor is there any entry of conduct money having been paid to him. It is observed that Major Laing makes the same statement in paragraph 8 of his Statutory Declaration, adding that "he could not therefore be approached by M. Ambatielos". Even if, which is not the case, Major Laing had been subpoenaed by the Crown, this would not have prevented his having been called as a witness by M. Ambatielos, while as regards the statement that "he could not be approached" by M. Ambatielos, there is no doubt that, as was pointed out in paragraph 14 of my note of December 28th, M. Ambatielos was in touch with Major Laing before the hearing, and His Majesty's Government are in fact aware that business relations then existed between them.

15. In paragraph 10 of your note an attempt is made to explain the remarkable fact, to which I had previously called attention, that it was not until the early months of 1921 that any suggestion was made that there was a contract to deliver on fixed dates, or any protest against any such breach of contract. I can only regard this explanation as entirely unconvincing, and I would add that during a considerable part of the year 1920 M. Ambatielos was in negotiation with the Ministry with a view first to their allowing him a large loan to enable him to complete his purchases under the contract, and subsequently to their accepting a mortgage on the ships which had already been delivered as security for the payment of the amounts due. During this time no suggestion was ever made that M. Ambatielos had a claim on account of a failure to deliver the ships on guaranteed dates, although in December of that year his solicitors did intimate that a claim would be put forward for not delivering two of the ships, which according to him were to be handed over on the execution of the mortgages in question.

16. In paragraph 16 of my previous note I dealt with the complaint that certain files kept at the Ministry of Shipping had not been produced

during the proceedings on the ground of the privilege of the Crown, and I explained that the only documents which were not disclosed were the minutes on those files written by officials in the Government Departments concerned. I observe with some surprise the statement in paragraph 11 of your note that it is precisely the fact that these minutes were not produced of which you complain. Such a complaint could only properly be made if the Greek Government were in a position to show that there is an obligation on governments, when engaged in litigation before their own Courts, to produce the minutes written in the Government Departments concerned, and in particular that such is the regular practice of the Greek Government itself.

17. The suggestion in paragraph 14 of your note that the question whether M. Ambatielos had completely exhausted his legal remedies in England should be submitted as a preliminary point to an arbitral tribunal appears to show that your Government do not fully appreciate the position adopted by His Majesty's Government on this point. The fact that M. Ambatielos did not make use of his right of appeal (a point which was fully dealt with in paragraph 18 of my note of December 28th) constitutes a bar to diplomatic action on his behalf by the Greek Government. But even were it shown that he had in fact exhausted his legal remedies, the position would still be that the case is not one in which the Greek Government are entitled to make diplomatic representations unless they are in a position to show that the decisions of the English courts constituted a denial of justice. The answer to any such suggestion, if I am to understand it as having been made, has been fully given in this correspondence.

18. In these circumstances, I must say that I find nothing in your note which in any way affects the view taken of this case by His Majesty's Government, and I can only maintain the attitude adopted in my note of December 28th. His Majesty's Government must continue to regard the matter in question as having been finally disposed of by the decision of Mr. Justice Hill, against which M. Ambatielos did not appeal; they deny that the Greek Government are entitled to take up this case as one proper for diplomatic representations; and they are not prepared to submit it to any form of international arbitration, or accept the suggestion that the question whether M. Ambatielos had exhausted his legal remedies should be submitted to arbitration as a preliminary point.

19. I desire to add one final word in explanation of the attitude which His Majesty's Government adopt in this case. His Majesty's Government have given the best possible proof of their acceptance of the principle of international arbitration in proper cases by signing the Optional Clause of the Statute of the Permanent Court of International Justice; but when they did so, they, like many other governments, excluded past disputes from their acceptance of the compulsory jurisdiction of the Court. This exclusion was one which His Majesty's Government had an undisputed right to make, and they have frequently made it plain that the exclusion was largely due to the fact that they were not prepared to open the door to a possible revival of old pecuniary claims arising out of the late war, particularly in relation to matters which had already been the subject of a decision in the courts of this country. This has been the consistent attitude of His Majesty's Government and they are not prepared to depart from it. If an instance were needed to

show the essential reasonableness of this attitude, it is provided by the present case, where the decision of the English courts was given in the year 1922, but where it was not until more than ten years later that the case was for the first time taken up by the Greek Government as being one in which a diplomatic claim could properly be presented, and a request made for its submission to international arbitration.

I have the honour to be, etc.,

(For the Secretary of State),
(Signed) [illegible.]

Monsieur Demetrius Caclamano, etc.

Annexe S 5

NOTE DU SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES
DE GRANDE-BRETAGNE A LA LÉGATION DE GRÈCE
A LONDRES

No. R 3663/169/19.

FOREIGN OFFICE, S.W.I.

1st July 1936.

Sir,

In your note No. 60/L/36 of January 2nd last you reverted once more, on the instructions of your Government, to the case of M. Ambatielos. The notes which have been addressed to your predecessor on this subject dealt fully with the contentions advanced by the Greek Government and stated clearly the attitude adopted by His Majesty's Government in the United Kingdom. I must say frankly that I do not consider that your note under reply contains any material considerations which have not been fully dealt with in those previous notes, and, to avoid repetition of what has been already said, I desire to state that His Majesty's Government maintain the attitude which they have advanced in the previous correspondence, in which a complete answer to the contentions advanced in your present note is, in their opinion, to be found. I propose accordingly to *confine myself to the following observations.*

2. Paragraphs 2 to 6 of your note constitute yet another attempt on the part of the Greek Government to argue that by the contract made with M. Ambatielos the Ministry of Shipping had agreed to effect delivery at fixed dates. There is no argument in this part of your note which has not been fully dealt with in the previous correspondence, and I do not desire to repeat what I have already said on these points. But I wish to emphasize that this contention (apart from which there was no possible basis for any claim by M. Ambatielos against the Ministry of Shipping) is precisely that which was put by M. Ambatielos before Mr. Justice Hill and was decided by his judgment. The arguments now advanced in this passage of your note were put before Mr. Justice Hill at great length and failed to convince him. The answer to them is to be found in the judgment of the Court by which M. Ambatielos had agreed that the question should be decided. In these circumstances I

cannot admit the materiality of a repetition of arguments which have been fully considered and rejected by the competent tribunal.

3. I will give one instance, simply by way of illustration. In paragraph 6 of your note another attempt is made to explain away the fact that no suggestion that the Ministry of Shipping had broken their contract by failing to deliver the ships on fixed dates was ever made by or on behalf of M. Ambatielos until April 1921, nearly two years after the signing of the contract, and that the letters which passed during that period are impossible to reconcile with any contention that there was a contract to deliver the ships on fixed dates. This consideration naturally figured prominently at the trial, since it is in itself destructive of M. Ambatielos's contention, and his representatives said all that there was to be said in this connexion, on his behalf. The matter was dealt with by Mr. Justice Hill in his judgment in the following terms :

"It is foolish to suppose that the defendant had claims for late delivery running into many hundreds of thousands of pounds and kept silent about them if they had any foundation in law. It is true that there are many complaints by the defendant as to delay, and requests to the Ministry to hurry on the builders. But that is quite consistent with the expectation of deliveries within certain times. It does not prove a contractual obligation. Had there been a contract, the letters would have been very different. I find that there was no contract to deliver by times certain."

4. I do not therefore propose to comment further upon the first part of our note. But at the passage which begins at paragraph 8 a contention is put forward with which I desire to deal in the most explicit terms. It is summarized in the sentences which say that "The failure of M. Ambatielos to obtain damages in the British courts has been due to the fact that the real facts were not placed before the Court, this being the result of the way in which the case was presented on behalf of the British Government", and refer to acts and omissions emanating from the British Government which resulted in the judge not having complete access to the relevant facts when deciding between the parties. It is on the basis of this contention that the Greek Government have thought it proper to quote, as being applicable to the present case, certain statements made in connection with The Hague Conference for the Codification of International Law, and in particular the following, that "an erroneous legal decision can engage the responsibility of the State if it is provoked by a procedure so deficient as to exclude all reasonable hope of fair decisions". In fact the suggestion of the Greek Government now apparently is that the Attorney-General and the other representatives of the Crown deliberately suppressed material evidence in the course of the proceedings before Mr. Justice Hill and put forward a case which to their knowledge was not in accordance with the facts.

5. The feeling of astonishment with which I have read these passages in your note is not diminished by the course of the previous correspondence. Any suggestion that "the case put forward by the Crown at the trial was not in accordance with the facts", and that "it seems impossible to reconcile the case put forward before Mr. Justice Hill with the contents" of the letters of July 1922, was first made (ten years after the trial, and at least eight years after the Greek Government were

aware of the letters in question) in your predecessor's note of August 3rd, 1933. In paragraph 6 of his reply of December 28th, 1933, the then Secretary of State pointed out that it was apparently suggested "that information was deliberately withheld from the Court by the Attorney-General and the other representatives of the Crown and that the case which they put before Mr. Justice Hill was to their knowledge not in accordance with the facts", and the following passages of that note dealt very fully and faithfully with that suggestion. In his note in reply of May 30th, 1934, M. Caclamanos stated that "the Greek Government never intended to suggest that the Attorney-General or other superior representatives conducting the case for the Crown deliberately withheld information from the Court or put forward a case which was to their knowledge not in accordance with the facts". It was explained that what it was intended to convey in the note of August 3rd was that someone in the Treasury Solicitor's Department who knew of these letters before the trial had refrained from putting them before counsel. In paragraph 3 of his note of November 7th, 1934, Sir John Simon dealt with this revised version of the suggestion; he stated that the correspondence in question was before counsel representing the Crown and that the case for the Crown was prepared in a full knowledge of the contents of these letters; he referred to the explanation previously given in his note of December 20th of the attitude which the representatives of the Crown have adopted throughout on this point, and the reasons which satisfied them that there was nothing in the correspondence in question to lead them to modify their views, and he added:

"In these circumstances I venture to hope that no more will be heard of the suggestion which I regret to find made in your note that 'the true facts were either deliberately or accidentally withheld' from the English courts (paragraph 2), or that 'the failure to obtain redress in a municipal court was due to the true facts not having been brought before the Court as a result of the conduct of the case on behalf of His Majesty's Government'. Any such suggestion is totally unfounded and I repudiate it in the most definite terms possible."

6. Such having been the course of the previous correspondence, I will not attempt to conceal the surprise with which I now find that in your note under reply the suggestion, which on May 30th, 1934, M. Caclamanos stated that the Greek Government never intended to make, is apparently put forward as the basis for the contention now advanced by your Government. The suggestion that the Attorney-General and the other representatives of the Crown deliberately suppressed material facts or put before the Court a case which to their knowledge was not in accordance with the real facts is one which I should not have expected to be made by any foreign Government, and particularly by the Government of a country with which the relations of His Majesty's Government are, I am happy to think, of the best. Once more I repudiate any such suggestion in the most definite terms possible, and I must decline to discuss the case on the basis of any such suggestion.

7. I would, however, emphasize with regard to the letters of July 1922, that (apart from the question as to whether these letters could in any case have been regarded as material or admissible evidence) it cannot be disputed (the statement to the contrary twice made in your note is

in plain contradiction with what M. Ambatielos swore in his affidavit which was read before the Court of Appeal) that at a date prior to the hearing before Mr. Justice Hill, M. Ambatielos was aware of the existence of these letters, since they had been shown to him by Major Laing, who had even read him part of the contents. Notwithstanding this fact, not only was no suggestion ever made on behalf of M. Ambatielos, either during the hearing before Mr. Justice Hill or in the Court of Appeal, that these letters ought to have been produced by the Crown, but, so far as the records now available show, no application was ever made by him or his advisers for the production of the documents in question. This being so the suggestion that the non-production of these letters can now be made the subject of complaint against His Majesty's Government, and still more employed as a foundation for the argument in your note, is one that I am at a loss to understand.

8. The notes addressed to your predecessor have dealt fully with the suggestion that the case put forward by the representatives of the Crown before Mr. Justice Hill was to their knowledge not in accordance with the facts, and I do not desire to repeat what has been already said. But I may point out that the evidence given at the trial, and particularly the evidence of M. Ambatielos's own witnesses, made it perfectly plain that throughout the negotiations the Shipping Controller's representatives definitely and absolutely refused to insert in the contract any provision for delivery at fixed dates. The contention that despite this persistent refusal the Ministry's representatives did in fact produce the same result by verbally agreeing that the ships should be delivered on those dates, and that in contending the contrary the representatives of the Ministry of Shipping were putting forward a case which to their knowledge was not in accordance with the facts, is one which I find it difficult to take seriously.

9. As regards the suggestion made on pages 11 and 12 of your note that certain other documents affecting the suit were not brought before the judge by His Majesty's Government, since the dates written down on the "buff slip" must have been copied from some document or documents which have passed between the Ministry and the shipbuilders, any such suggestion is quite unfounded. The question of the origin of the dates given on the "buff slip" was fully dealt with in the evidence given before Mr. Justice Hill, and it was made perfectly plain that all the documents in question had been produced. It was stated in paragraph 16 of the note of December 28th, 1933, that the whole of the correspondence between the Ministry of Shipping and the builders was disclosed to M. Ambatielos's solicitors, and while I regret that the Greek Government do not appear to accept that statement, the fact cannot be disputed. Nor is this the only instance in which your note contains statements which have previously been shown to be not in accordance with the facts, as for instance the allegation that M. Ambatielos attempted but found it impossible to call Major Laing as a witness; this point was dealt with in paragraph 14 of the note of December 28th, 1933, and the statements there made are not open to dispute; I may add that it would have been just as easy for M. Ambatielos to call Major Laing as Mr. Bamber, who was equally an official of the Ministry of Shipping and was called as a witness on behalf of M. Ambatielos.

10. As regards the figures as to M. Ambatielos's losses which are given in your note, I might point out that the statement that the

Ministry of Shipping received the sum of £91,000 over and above the contract price for the nine vessels is not correct ; the amount actually received was in fact less than the contract price for the nine vessels by over £300,000. But the relevancy of the figures in question to the matter now under discussion is not appreciated. While His Majesty's Government have never disputed that he incurred heavy losses, the fact is that M. Ambatielos (whose experience of the shipping trade before he embarked on these extensive purchases was according to his own evidence of a very limited nature) entered into a transaction which he anticipated would prove extremely profitable to himself ; his expectation was defeated, largely owing to the slump in the shipping trade which subsequently occurred, and which he, like others, had failed to anticipate. I note, however, that according to a letter from M. G. Ambatielos which was read during the trial, in 1920 his brother chartered six of the ships in question to "first-class American and British firms", and it was stated in the letter that :

"We had every reason to reckon that these charters would yield to the owner in a year's time a minimum net profit of £900,000. However, most unfortunately we have had all these charter-parties one after another cancelled for no earthly reason or excuse whatever and we are now suing the charterers for damages."

I am not aware of the result of the proceedings which M. Ambatielos took against the charterers, but it would seem that it was to this circumstance that his losses must be mainly attributed ; it is obvious that his financial position would have been very different if he had in fact in the course of one year made nearly a million pounds out of the charters into which he had entered in respect of six only of the vessels in question.

II. I do not propose to argue further the question whether M. Ambatielos must be regarded as having failed to exhaust his legal remedies ; the view of His Majesty's Government on this point has been stated in previous notes, and that view they maintain. In any case this point, while in the view of His Majesty's Government constituting a preliminary bar to the right of the Greek Government to take up the case, does not affect the main issue, and even if it were decided that all legal remedies had in fact been exhausted, the position of His Majesty's Government as regards the substantial issues in the case would be unaffected. In these circumstances I do not consider that any useful purpose would be served by submitting this preliminary point to arbitration, and His Majesty's Government are not prepared to agree to any such course.

12. In point of fact, despite the extent of the correspondence which has passed, the essential elements of this case are in the view of His Majesty's Government simple. The question which arose between M. Ambatielos and the Ministry of Shipping was whether the latter had contracted to deliver him the ships in question at certain fixed dates. The contract, which was in writing, contained no such provision, and no such suggestion was ever put forward on behalf of M. Ambatielos until nearly two years after the signature of the contract, when he was already in difficulties in meeting his obligations to the Ministry. It was then agreed that this question, instead of being dealt with under the arbitration clause in the contract, should be tried in the course of the proceedings before the Admiralty Division which had been instituted

by the Board of Trade. It was the subject of a prolonged hearing before Mr. Justice Hill, who decided against M. Ambatielos's contention, and the appeal which was entered against this decision was abandoned. No suggestion that the circumstances justified a request that the matter should be submitted to international arbitration was made until ten years after Mr. Justice Hill's decision had been given. There is no justification for a request that the decision of the tribunal to which M. Ambatielos agreed to refer his case should now be reopened and made the subject of international arbitration; His Majesty's Government are not prepared to agree to this course, and their refusal to do so is, if possible, strengthened by the nature of the allegations against the representatives of the Crown which the Greek Government have seen fit to put forward. From that attitude His Majesty's Government do not propose to depart.

I have the honour to be, etc.,

(For the Secretary of State)

(Signed) [illegible.]

Monsieur Charalambos Simopoulos, etc.

Annexe S 6

NOTE DU SECRÉTAIRE DES AFFAIRES ÉTRANGÈRES
DE GRANDE-BRETAGNE A LA LÉGATION DE GRÈCE
A LONDRES

No. R 10658/10658/19.

FOREIGN OFFICE, S.W.I.

26th December 1939.

Sir,

On the 24th November you were so good as to communicate to me personally a note dated the 21st November containing a request that the case of Monsieur N. E. Ambatielos should be referred to arbitration before an international tribunal.

2. In reply I have the honour to recall that a similar suggestion was made in the note No. 358/L/33 of the 7th February 1933, addressed by Monsieur Caclamanos to Sir John Simon. In his note No. C 4625/1172/19 of the 29th May, Sir John Simon, after reviewing the facts of the case, stated that His Majesty's Government did not consider that the Greek Government were entitled to put forward any claim on behalf of Monsieur Ambatielos and that they were unable to agree that any such claim should be submitted to international arbitration.

3. In reply to subsequent representations on the subject His Majesty's Government have consistently expressed their inability to depart from the attitude described above, and they have dealt fully with the various arguments adduced by the Greek Government. It is material to recall that the events out of which this matter arose occurred in the years 1919-22, but that it was not until 1933 that it formed the subject of formal representations from the Greek Government. Considerable correspondence has ensued, and the reply to the last representations on the

subject was contained in Mr. Eden's note No. R 3663/169/19 of the 1st July 1936.

4. The note which you left with me merely contains a repetition of allegations which have repeatedly been refuted by His Majesty's Government in the course of the previous correspondence on the subject. The only new factor is the statement contained in the third paragraph to the effect that in that correspondence the Greek Government have been able to point in this case to violations of the Anglo-Greek Treaty of Commerce and Navigation of the 10th November 1886. I am at a loss to understand the grounds on which this statement is based, since in none of the notes which have been addressed to this department by the Greek Legation has any reference been made to the Treaty of 1886, or any suggestion that what had occurred constituted a violation of its provisions. I am unable to accept this belated suggestion and in any case can find no foundation for the contention that His Majesty's Government can be called upon to agree to arbitration of this claim under the protocol attached to the Treaty.

5. In the circumstances described above and for the reasons set out in previous correspondence, I have to inform you that His Majesty's Government are unable to accede to the request contained in your present note.

I have the honour to be, etc.,

(For the Secretary of State)

(Signed) [illegible.]

Monsieur Charalambos Simopoulos, etc.

Annexe S 7

NOTE DU MINISTÈRE DES AFFAIRES ÉTRANGÈRES
DE GRANDE-BRETAGNE A L'AMBASSADE DE GRÈCE
A LONDRES

(No. R 5023/14811/19.)

AIDE-MÉMOIRE

In a note of May 11th, 1949 (No. 2775/L/49), His Excellency the Greek Ambassador stated that no formal reply had been received from His Majesty's Government to the note from the Greek Embassy of August 6th, 1940 (No. 3734/L/40), concerning the case of M. N. E. Ambatielos.

The fact is, however, that, in the course of a conversation at the Foreign Office on September 23rd, 1940, Sir Orme Sargent officially informed M. Simopoulos, the Greek Ambassador at that time, that, as every argument had been exhaustively discussed in the preceding correspondence over a number of years terminating with a letter from Lord Halifax of December 20th, 1939, His Majesty's Government in the United Kingdom saw no purpose in reopening the correspondence. They regarded the matter as closed.

This is still the position of His Majesty's Government and they cannot conceal their surprise that the Greek Government should have thought fit to raise this question again.

FOREIGN OFFICE, S.W.1.

July 1st, 1949.
