

INTERNATIONAL COURT OF JUSTICE

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PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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# AMBATIELOS CASE

(GREECE *v.* UNITED KINGDOM)

COUR INTERNATIONALE DE JUSTICE

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MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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# AFFAIRE AMBATIELOS

(GRÈCE *c.* ROYAUME-UNI)



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# AMBATIELOS CASE

(GREECE *v.* UNITED KINGDOM)

JUDGMENTS OF JULY 1st, 1952, AND MAY 19th, 1953



COUR INTERNATIONALE DE JUSTICE

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MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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# AFFAIRE AMBATIOLOS

(GRÈCE c. ROYAUME-UNI)

ARRÊTS DES 1<sup>er</sup> JUILLET 1952 ET 19 MAI 1953



PART I

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APPLICATION INSTITUTING PROCEEDINGS  
AND PLEADINGS  
(MERITS AND PRELIMINARY OBJECTION)

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PREMIÈRE PARTIE

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REQUÊTE INTRODUCTIVE D'INSTANCE  
ET PIÈCES DE LA PROCÉDURE ÉCRITE  
(FOND ET EXCEPTION PRÉLIMINAIRE)

## SECTION A.—APPLICATION INSTITUTING PROCEEDINGS

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THE GREEK MINISTER IN THE NETHERLANDS,  
AGENT OF THE HELLENIC GOVERNMENT, TO THE  
REGISTRAR OF THE COURT

*[Translation by the Registry]*

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Hellenes at The Hague, duly authorized by his Government, having regard to the provisions of the Protocol annexed to the Treaty of Commerce and Navigation between Greece and Great Britain, dated November 10th, 1886, to the Final Declaration of the Greco-Britannic Treaty of Commerce and Navigation of July 16th, 1926, and also to Article 29 of the latter treaty, and in conformity with Article 40 of the Statute of the Court and with Article 32 of its Rules, has the honour to submit to the International Court of Justice an Application instituting proceedings by the Hellenic Government against the British Government in the matter which is briefly summarized below.

### STATEMENT OF FACTS :

On July 17th, 1919, Nicolas Eustache Ambatielos, a Greek shipowner, concluded with His Britannic Majesty's Government, represented by Sir Joseph Maclay, Minister of Shipping, a contract for the purchase of nine steamships, which were being built in the dockyards at Hong-Kong and Shanghai, at a rate of £40 per ton for vessels of 5,000 tons and of £36 per ton for vessels of 8,000 tons, the total price amounting to £2,275,000.

Delivery was to be made at dates fixed by the Parties and recorded in a memorandum, reference being made in the contract to the said memorandum by the words "within the time agreed". The memorandum had been delivered to the purchaser by Major Bryan Laing, assistant director of the section concerned with purchases and sales of merchant ships, who was responsible for these operations and had actually concluded such contracts up to an amount of £100,000,000.

Evidence of the fixing of these dates is moreover supplied by a letter dated July 20th, 1922, from Major Bryan Laing to his official superior, Sir Joseph Maclay, Minister of Shipping, which contains the following passage: "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 these ships could be delivered at the times 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 M. Ambatielos to purchase the ships."

The fact that dates were fixed for the delivery of the ships as an essential condition of the contract which, for the rest, appears to be a matter of elementary logic, is further confirmed by a sworn statement made by the above-mentioned Major Bryan Laing before the Commissioner for Oaths of the London Committee on January 19th, 1934.

The vessels were not delivered at the agreed dates, which had been fixed, in the case of the first ship, the *Céphalonia*, on August 31st, 1919, in the case of the second ship, *Ambatielos*, on September 30th, 1919, and so on down to the last ship, the *Mellon*, of which delivery had to be made at latest on March 15th, 1920; the two first-named ships were delivered after a certain delay, and the others after delays of varying lengths extending to as much as eight months. Freight rates having fallen appreciably during that time, considerable prejudice was caused to the purchaser. As a result, in November 1920, the purchaser N. E. Ambatielos was in the debt of the British Government for an amount of £750,000.

In order to guarantee this debt, N. E. Ambatielos mortgaged the seven ships and signed the necessary mortgage instruments ("Mortgage" and "Deeds of Covenant").

Although the amount of N. E. Ambatielos's debt was amply covered by the value of the mortgaged vessels, the British Government refused to deliver the other two ships, *Mellon* and *Stathis*, to him, although they were not included in the mortgage contract and were free of any charge, and could have been used by the purchaser who had freighted them to the Argentine Government on very favourable terms. The seven other ships were similarly seized and remained unused for two years, with the result that M. Ambatielos, who had already made payments to His Majesty's Government up to a total of £1,650,000, was completely ruined.

During this interval N. E. Ambatielos was unable to proceed to London owing to a claim upon him of £250,000 in respect of taxes, a claim which has since been recognized as unfounded and has been withdrawn.

This fiscal dispute having been settled, N. E. Ambatielos went to London (May 1921) and engaged in negotiations with Sir E. Glover, representative of the Ministry of Shipping, who showed a conciliatory attitude. He consented to reduce the agreed price by £500,000 and agreed to arbitration in regard to the delayed delivery of the seven vessels and the failure to deliver the *Mellon* and the *Stathis*. An arbitrator was actually designated in the person of Mr. Raeburn.

But, in the meantime, the British Government had reconsidered the position and instead of going on with the arbitration it brought



a legal action against N. E. Ambatielos in the Probate, Divorce and Admiralty Division for the payment of the sum which it believed to be due to it. N. E. Ambatielos counter-claimed for the payment of an indemnity in compensation for the loss he had suffered.

The court delivered its judgment on January 15th, 1923, condemning N. E. Ambatielos to pay £300,000 to the Board of Trade and disallowing his counter-claim.

In the foregoing, one fact is specially worthy of note. The court tried the case *without having at its disposal the data which were necessary to enlighten it and at the same time to safeguard the rights of the defence in the interests of impartial justice.*

The two principal witnesses, whose evidence would have supplied the key, so to speak, of the case, since they had handled the matter, Lord Maclay and Major Bryan Laing, were not called upon to give evidence.

N. E. Ambatielos appealed from this judgment to the "Court of Appeal" on February 17th, 1923. However, before the case came on, it became perfectly clear *that dates had been stipulated for the delivery of the vessels.* His claim having been rejected, he thought it useless to plead the case any further, seeing that it was impossible for him to produce the data which were essential for his claim. The judge of appeal, Lord Justice Bankes, accordingly delivered a confirmatory judgment, Lord Justice Scrutton assenting, on March 6th, 1923.

Such are the facts. The following are the legal deductions to be drawn from them :

(a) The fact that the Board of Trade omitted to furnish the court of first instance—this being a case between the Government and a private individual—with essential elements, in its possession, which were necessary to enlighten the court and to promote the administration of impartial justice, while at the same time safeguarding the rights of the defence, constitutes a disregard of a capital rule of British procedure, namely "full discovery", a rule to which exception may only be made where major considerations of public interest are opposed to the production of such data, which was not the case in this instance, as was recognized by Mr. Justice Hill.

(b) The rejection by the judge of appeal, Lord Bankes, of N. E. Ambatielos's demand for the production of new data in support of his claim again constitutes an infraction of another essential rule of British procedure, that of "fresh evidence".

The failure to comply with these two rules, which safeguard the rights of the defence, constitutes an act contrary to customary international law and at the same time an infraction of Article 15, paragraph 3, of the Greco-British Treaty of Commerce and Navigation of 1886, which guarantees to the subjects of each of the

contracting parties free access to the courts of justice of the other party "*for the prosecution and defence of their rights*".

It is manifest that there can be no question of an effective guarantee of the rights of the defence when the laws designed to protect those rights and to secure them are not observed.

The Hellenic Government adopted the cause of its national as early as 1925. But, to its note of September 12th, 1925 (Numbers 2335/3/25), His Britannic Majesty's Government replied by a *fin de non recevoir* (note of October 30th, 1925, Numbers C. 13509/11769/19). It also refused the proposal for arbitration in its answering notes dated May 29th, 1933 (Numbers 4625/1172/19), December 28th, 1933 (Numbers C. 11030/1172/19) and November 7th, 1934 (Numbers R. 6043/3146/19).

It is, however, clear that, in this case, as the dispute relates to a violation of a clause of the Greco-Britannic Treaty of Commerce and Navigation of November 10th, 1886, and in particular of Article 15, paragraph 3, any controversy in regard to the interpretation or application of a clause of that treaty must be submitted to a commission of arbitration, as provided by the protocol annexed to the said treaty.

The proposal for arbitration, under the above-mentioned conditions, was formally rejected by His Britannic Majesty's Government in its note of December 26th, 1939 (R. 10658/10658/19). The same treatment attended a fresh approach made by the Hellenic Government in its note of August 1940.

The refusal to arbitrate in this case brings into operation the Final Declaration of the Greco-British Treaty of Commerce and Navigation of July 16th, 1926, the terms of which are thus violated, and it makes applicable, as a consequence, the compromissory clause of Article 29 of the latter treaty, according to which any dispute that may arise as to the proper interpretation or application of the latter treaty, including the Final Declaration, may be referred, by an application, to the Permanent Court of International Justice.

In view of the foregoing considerations :

Whereas it is beyond doubt that the means of internal recourse have been exhausted in this case, as the Hellenic Government is in a position to confirm, if the fact were contested ;

Whereas it results from the provisions of the Greco-British Treaty of Commerce and Navigation of November 10th, 1886, and the Final Declaration of the Greco-British Treaty of Commerce and Navigation of July 16th, 1926, and Article 29 of the latter treaty, taken in conjunction, that the Permanent Court of International Justice has jurisdiction in the case, and that it has been duly seized of the question by an application, His Britannic

Majesty's Government having declined the repeated proposals of the Hellenic Government to submit the present dispute to the procedure for arbitration provided by the Final Protocol of the Treaty of 1886 ;

Whereas the means for a direct and amicable settlement have been exhausted in this case and the dispute now turns on the interpretation and application of the Treaty of 1886, in particular of Article 15, paragraph 3 ;

Accordingly, subject to the subsequent presentation to the Court of any Memorials, Counter-Memorials and, in general, of any other documents of evidence in conformity with Article 42 of the Rules of Court ;

MAY IT PLEASE THE COURT :

To communicate the present Application to His Britannic Majesty's Government in accordance with Article 40, paragraph 2, of the Statute of the Court ;

To declare that it has jurisdiction :

To adjudge and declare, whether the aforesaid Government is present or absent and after such time-limits as the Court may see fit to fix, subject to any agreement between the Parties :

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

The Hellenic Government reserves its right, in case His Britannic Majesty's Government should have failed to designate its arbitrator, or arbitrators, within the time-limit fixed by the Court, to seize the Court of the merits of the dispute.

The undersigned is also authorized to state that, in regard to any notifications and communications which may have to be made in this case, the Hellenic Government has selected its address in the Greek Legation at The Hague and that the undersigned Envoy Extraordinary and Minister Plenipotentiary in this city is designated as Agent of the Hellenic Government.

The Hague, April 9th, 1951.

(Signed) N. G. LÉLY,  
Agent of the Hellenic Government.