

AMBATIELOS CASE (PRELIMINARY OBJECTION)

Judgment of 1 July 1952

The proceedings in the Ambatielos Case (Preliminary Objection), between Greece and the United Kingdom of Great Britain and Northern Ireland had been instituted by an Application by the Hellenic Government which, having taken up the case of one of its nationals, the shipowner Ambatielos, prayed the Court to declare that the claim which the latter had made against the Government of the United Kingdom must, in accordance with the terms of the Treaties concluded in 1886 and in 1926 between Greece and the United Kingdom, be submitted to arbitration. The Government of the United Kingdom, on the other hand, contended that the Court lacked jurisdiction to decide on that question. In its Judgment the Court found by ten votes to five that it had jurisdiction to decide whether the United Kingdom was under an obligation to submit to arbitration the difference as to the validity of the Ambatielos claim, in so far as this claim was based on the Anglo-Hellenic Treaty of 1886.

Judge Levi Carneiro and M. Spiropoulos, Judge *ad hoc*, appended their individual opinions to the Judgment. Five Judges—Sir Arnold McNair, Basdevant, Zoricic, Klaestad and Hsu Mo—appended their dissenting opinions to the Judgment.

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In its Judgment, the Court indicates the nature of Ambatielos's claim: it was alleged that he had suffered considerable loss in consequence of a contract which he concluded in 1919 with the Government of the United Kingdom (represented by the Ministry of Shipping) for the purchase of nine steamships which were then under construction, and in consequence of certain adverse judicial decisions in the English Courts in connection therewith. The Court refers to the treaty clauses relied on by the Parties: the Protocol annexed to the Treaty of 1886, which provides that controversies that may arise in connection with that treaty shall be referred to arbitration; the Treaty of 1926, which contains a similar clause; the Declaration accompanying that treaty, which states that the latter does not prejudice claims based on the Treaty of 1886 and that any difference that may arise in respect of such claims shall be submitted to arbitration in accordance with the provisions of the Protocol of 1886.

The Court then goes on to review the submissions of the Parties as they were developed during the proceedings. It is evident from this review that both Parties ask the Court to decide as to its jurisdiction and whether there is an obligation to submit the difference to arbitration. It is also evident that both Parties envisaged that the Court itself might undertake the function of arbitration, but there was some doubt as to the

conditions which they would consider requisite, and in the absence of a clear agreement between the Parties on that point, the Court considers that it has no jurisdiction to go into all the merits of the present case.

The Court then proceeds to examine the different arguments put forward by the United Kingdom Government in support of its Preliminary Objection to the jurisdiction and those advanced by the Hellenic Government in reply thereto. Article 29 of the Treaty of 1926 enables either of the Parties to submit to the Court any dispute as to the interpretation or the application of any of the provisions of that Treaty. But it has no retroactive effect; accordingly, the Court finds it impossible to accept the theory advanced on behalf of the Hellenic Government, that where in the 1926 Treaty there are substantive provisions similar to substantive provisions of the 1886 Treaty, then under Article 29 of the 1926 Treaty the Court can adjudicate upon the validity of a claim based on an alleged breach of any of these similar provisions, even if the alleged breach took place wholly before the new Treaty came into force. It is therefore impossible to hold that any of its provisions must be deemed to have been in force earlier. Moreover, the Declaration accompanying the Treaty of 1926 makes no distinction between claims based on one class of provisions of the Treaty of 1886 and those based on another class; they are all placed on the same footing, and differences relating to their validity are referable to the same arbitral procedure.

The Government of the United Kingdom has contended—and that is the most important of its arguments—that the Declaration was not a part of the Treaty within the meaning of Article 29. The Court does not agree with that view. The Treaty, the customs schedule appended thereto and the Declaration were included by the plenipotentiaries in a single document, published in the same way in the English *Treaty Series*, and registered under a single number with the League of Nations. The instruments of ratification of the two Parties cite the three texts without making any distinction between them. The British instrument of ratification even declares that the Treaty is “word for word as follows”: after which it goes on to cite the three texts in their entirety. Moreover, the very nature of the Declaration also points to the same conclusion. It records an understanding arrived at by the Parties before the Treaty of 1926 was signed as to what the Treaty, or as Counsel for the Government of the United Kingdom preferred to put it, the replacement of the Treaty of 1886 by the Treaty of 1926, would not prejudice. For these reasons, the Court holds that the provisions of the Declaration are provisions of the Treaty within the meaning of Article 29. Consequently, this Court has jurisdiction to decide any dispute as to the interpretation or application of the Declaration and, in a proper case, to adjudge that there should be a reference to a

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Commission of Arbitration. Any differences as to the validity of the claims involved will, however, have to be arbitrated, as provided in the Declaration itself, by the Commission.

The United Kingdom has also contended that the Declaration only covered claims formulated before it came into force. But the Declaration contains no reference to any date. Moreover, the result of such an interpretation would be that claims based on the Treaty of 1886, but brought after the conclusion of the Treaty of 1926, would be left without a solution. They would not be subject to arbitration under either Treaty, although the provision on whose breach the claim was based might appear in both and might thus have been in

force without a break since 1886. The Court cannot accept an interpretation which would have a result obviously contrary to the language of the Declaration and to the continuous will of both Parties to submit all differences to arbitration of one kind or another.

For these reasons, the Court finds, by thirteen votes to two, that it is without jurisdiction to decide on the merits of the Ambatielos claim; and by ten votes to five, that it has jurisdiction to decide whether the United Kingdom is under an obligation to submit to arbitration, in accordance with the Declaration of 1926, the difference as to the validity of the Ambatielos claim, in so far as this claim is based on the Treaty of 1886.