

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

AMBATIELOS CASE

(GREECE *v.* UNITED KINGDOM)

MERITS: OBLIGATION TO ARBITRATE

JUDGMENT OF MAY 19th, 1953

1953

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE AMBATIELOS

(GRÈCE *c.* ROYAUME-UNI)

FOND: OBLIGATION D'ARBITRAGE

ARRÊT DU 19 MAI 1953

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«*Affaire Ambatielos (fond: obligation d'arbitrage), Arrêt du 19 mai 1953: C. I. J. Recueil 1953, p. 10.*»

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INTERNATIONAL COURT OF JUSTICE

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YEAR 1953

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AMBATIELOS CASE

(GREECE *v.* UNITED KINGDOM)

MERITS: OBLIGATION TO ARBITRATE

Question of obligation to accept arbitration.—Declaration of July 16th, 1926.—Judgment of the Court of July 1st, 1952.—Relation between the Declaration of 1926 and the Treaty of November 10th, 1886.—Respective jurisdictions of the Court and of a Commission of Arbitration.—Merits of claim within exclusive competence of Commission of Arbitration.—Expression “based on” Treaty means depending for support on Treaty; Commission of Arbitration to decide whether claim is actually supportable under Treaty.—Most-favoured-nation clause.—“Free access to the Courts of Justice”.—Existence of difference within meaning of Declaration of 1926.—Non-exhaustion of local remedies.—Delay in presentation of case to Court.

JUDGMENT

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

In the Ambatielos case,
between
the Kingdom of Greece,
represented by :

M. N. G. Lély, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Hellenes in the Netherlands,

as Agent,

assisted by :

M. E. Verghis, Chargé d'affaires *ad interim* of Greece in the Netherlands,

as Assistant Agent,

and by :

M. Henri Rolin, Professor of International Law at Brussels University, former President of the Belgian Senate, the Right Honourable Sir Frank Soskice, Q.C., M.P., former Attorney-General of the United Kingdom,

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

and

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

Mr. W. V. J. Evans, Assistant Legal Adviser, Foreign Office,

as Agent,

assisted by :

Mr. G. G. Fitzmaurice, C.M.G., Second Legal Adviser to the Foreign Office,

as Assistant Agent and Counsel,

and by :

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

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

as Counsel,

THE COURT,

composed as above,

delivers the following Judgment :

By its Judgment of July 1st, 1952, the Court, adjudicating upon the Preliminary Objection raised by the Government of the United Kingdom of Great Britain and Northern Ireland to the Application of the Royal Hellenic Government, found that it had jurisdiction to decide whether the United Kingdom was under an obligation to submit to arbitration, in accordance with the Declaration annexed to the Treaty of Commerce and Navigation of July 16th, 1926, between Great Britain and Greece, the difference as to the validity of the Ambatielos claim, in so far as that claim was based on the Treaty of Commerce and Navigation of November 10th, 1886, between the same contracting parties. The Court, in its Judgment, reserved the fixing of time-limits for the filing of a Reply by the Hellenic Government and a Rejoinder by the United Kingdom Government for a subsequent Order.

This Order was made on July 18th, 1952. The Reply and Rejoinder were filed within the prescribed time-limits, namely, October 3rd, 1952, and January 6th, 1953, and on the latter date the issue defined by the Court in its Judgment of July 1st, 1952, was ready for hearing.

The Court, which was presided over by the Vice-President, in accordance with Article 13, paragraph 1, of the Rules, and which included on the Bench Professor Jean Spiropoulos, appointed by the Hellenic Government to sit as judge *ad hoc*, held public sittings on March 23rd, 24th, 25th, 26th, 27th, 28th and 30th, 1953, at which it heard, on behalf of the Hellenic Government, M. Henri Rolin and Sir Frank Soskice, Counsel, and on behalf of the United Kingdom Government, Mr. G. G. Fitzmaurice, Assistant Agent and Counsel, Mr. J. E. S. Fawcett, Counsel, and Mr. W. V. J. Evans, Agent.

The Hellenic Government presented the following Submissions in the Reply :

"May it please the Court :

1. To hold that the Ambatielos claim, based upon the provisions of the Treaty of 1886, does not *prima facie* appear to be unconnected with those provisions.

2. As a consequence, to decide that 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.

3. To declare that the Court will assume the functions of the arbitral tribunal in this case in the event of the Parties accepting its jurisdiction in their final submissions.

4. To fix time-limits for the filing by the Parties of the Reply and Rejoinder upon the merits of the dispute."

The Government of the United Kingdom presented the following Submission in the Rejoinder :

"The United Kingdom Government accordingly submits that the Court should hold and declare that the United Kingdom is not under any obligation to submit to arbitration, in accordance with the Declaration of 1926, the difference between the Parties as to the validity of the Ambatielos claim."

During the hearings, the Hellenic Government confirmed the Submissions contained in the Reply, and the Government of the United Kingdom formulated the following Submissions :

"1. That the United Kingdom Government is under no obligation to submit to arbitration, in accordance with the Declaration of 1926, the difference as to the validity of the Ambatielos claim, unless this claim is based on the Treaty of 1886.

2. That the Hellenic Government's contention that the Ambatielos claim is based on the Treaty of 1886, within the meaning of the Declaration of 1926, because it is a claim formulated on the basis of the Treaty of 1886 and not obviously unrelated to that Treaty, is ill-founded.

3. That, even if the above Hellenic contention be correct in law, the Court should still not order arbitration in respect of the Ambatielos claim, because the Ambatielos claim is in fact obviously unrelated to the Treaty of 1886.

4. That the Ambatielos claim is not a claim based on the Treaty of 1886, unless it is a claim the substantive foundation of which lies in the Treaty of 1886.

5. That, having regard to (4) above, the Ambatielos claim is not a claim the substantive foundation of which lies in the Treaty of 1886, for one or other or all of the following reasons :

- (a) the Ambatielos claim does not come within the scope of the Treaty ;
- (b) even if all the facts alleged by the Hellenic Government were true, no violation of the Treaty would have occurred ;
- (c) local remedies were not exhausted ;
- (d) the Ambatielos claim—in so far as it has any validity at all, which the United Kingdom Government denies—is based on the general principles of international law and these principles are not incorporated in the Treaty of 1886.

6. That if, contrary to (4) and (5) above, the Ambatielos claim be held to be based on the Treaty of 1886, the United Kingdom Government is not obliged to submit to arbitration the difference as to the validity of the claim for one or other or all of the following reasons :

- (a) non-exhaustion of local remedies;
- (b) undue delay in preferring the claim on its present alleged basis;
- (c) undue delay and abuse of the process of the Court in that, although reference of the dispute to the compulsory jurisdiction of the Court has been continuously possible since the 10th December 1926, no such reference took place until the 9th April 1951.

Accordingly, the United Kingdom Government prays the Court To adjudge and declare

That the United Kingdom Government is not obliged to submit to arbitration, in accordance with the Declaration of 1926, the difference as to the validity of the Ambatielos claim."

On April 9th, 1951, the Hellenic Government, in instituting proceedings against the United Kingdom of Great Britain and Northern Ireland with regard to a claim on behalf of Mr. Ambatielos, asked the Court to adjudge and declare : "that the arbitral procedure referred to in the Final Protocol of the Treaty of 1886 must receive application in the present case". In the subsequent proceedings the Hellenic Government requested the Court itself to adjudicate upon the validity of the Ambatielos claim.

By its Judgment of July 1st, 1952, the Court held that it had no jurisdiction to decide on the merits of the Ambatielos claim. It found at the same time that it had 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.

The question now before the Court is whether the United Kingdom Government is under an obligation to accept arbitration of the difference between that Government and the Hellenic Government concerning the validity of the Ambatielos claim as presented by the Hellenic Government, in so far as this claim is based on the Treaty of 1886.

This case, quite unlike the case of the *Mavrommatis Palestine Concessions*, decided by the Permanent Court of International Justice in 1924, derives its distinctive character from the fact that the Court is called upon to decide, not its own jurisdiction over any particular dispute, but whether a dispute should be referred to another tribunal for arbitration.

Both Greece and the United Kingdom have rested their case on the Declaration of 1926 and the Judgment of the Court of July 1st, 1952.

The Declaration of 1926 reads as follows :

"It is well understood that the Treaty of Commerce and Navigation between Great Britain and Greece of to-day's date does not prejudice claims on behalf of private persons based on the provisions of the Anglo-Greek Commercial Treaty of 1886, and that

any differences which may arise between our two Governments as to the validity of such claims shall, at the request of either Government, be referred to arbitration in accordance with the provisions of the Protocol of November 10th, 1886, annexed to the said Treaty."

The Protocol of 1886 referred to in the Declaration of 1926 contains, *inter alia*, the following provision :

"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 Declaration of 1926 was agreed upon for the purpose of safeguarding the interests of the Parties with respect to claims on behalf of private persons based on the Treaty of 1886, for which, on the termination of that Treaty, and with it the Protocol, there would have been no remedy in the event of the failure of the two Governments to arrive at amicable settlements by direct means. While the controversies for which arbitration was provided in the Protocol were relatively more general in scope, those provided for in the Declaration are limited to claims on behalf of private persons based on the Treaty of 1886. But in both cases the Parties were prompted by the same motives and adopted the same method of arbitration.

The operative part of the Court's Judgment of July 1st, 1952, is in the following terms :

"that it [the Court] is without jurisdiction to decide on the merits of the Ambatielos claim ;

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".

By that decision, the Court laid down two rulings. The first, negative in character, was that the merits of the Ambatielos claim are outside the jurisdiction of the Court. The second ruling, positive in character, assigned to the Court a limited jurisdiction in the Ambatielos case, namely, to decide whether the United Kingdom is obliged to accept arbitration, as requested by Greece. This limited jurisdiction of the Court is to be clearly distinguished from the jurisdiction of the Commission of Arbitration. In order to remove any possible doubt as to the respective spheres of action of the Court and of the Commission of Arbitration, the Court stated in its Judgment :

"The Court would decide whether there is a difference between the Parties within the meaning of the Declaration of 1926. Should

the Court find that there is such a difference, the Commission of Arbitration would decide on the merits of the difference."

The Court must refrain from pronouncing final judgment upon any question of fact or law falling within "the merits of the difference" or "the validity of the claim". If the Court were to undertake to decide such questions, it would encroach upon the jurisdiction of the Commission of Arbitration. The task of the Court will have been completed when it has decided whether the difference between Greece and the United Kingdom with regard to the validity of the Ambatielos claim is or is not a difference as to the validity of a claim on behalf of a private person based on the provisions of the Treaty of 1886 and whether, in consequence, there is an obligation binding the United Kingdom to accept arbitration.

The words "in so far as this claim is based on the Treaty of 1886", used in the operative part of the Court's Judgment of July 1st, 1952, must be understood in the sense in which they were used. They are intended to indicate the character which the Ambatielos claim must possess in order that it may be the subject of arbitration in accordance with the Declaration of 1926. They do not mean that the Ambatielos claim must be found by the Court to be validly based on the Treaty of 1886. If such a meaning had been intended by the Court, it would not have decided that it was without jurisdiction to pass on the merits of the claim.

The question whether there is a difference within the meaning of the Declaration of 1926 depends upon whether the claim as formulated by the Hellenic Government contains the elements required for arbitration as agreed upon by the Parties in that Declaration.

The Hellenic Government states in its first submission that the Ambatielos claim does not *prima facie* appear to be unconnected with the provisions of the Treaty of 1886. The Court understands that this submission is intended as a reason for the principal submission of the Hellenic Government that the United Kingdom is under an obligation to accept arbitration. But the Court considers that the reason stated in such a negative form is not sufficient.

The United Kingdom Government, on its part, contends that the Ambatielos claim is not a claim the substantive foundation of which lies in the Treaty of 1886. It maintains that, before the Court can decide upon arbitration, it is necessary to determine, by way of interpreting the Declaration of 1926 and as a substantive issue, whether the claim is actually or genuinely based on the Treaty of 1886, in the sense that the facts alleged by the Hellenic Government, if true, would constitute a violation of that Treaty.

The Court cannot accept this contention. It would necessarily lead to passing on a point which constitutes one of the principal elements of the Ambatielos claim and consequently to the substitution of the Court for the Commission of Arbitration. The Court

cannot substitute itself for the Commission of Arbitration. The question of violation or non-violation of the Treaty of 1886 goes to the very roots of the Ambatielos claim. To decide whether the facts alleged by the Hellenic Government, if true, would constitute an actual violation of the Treaty of 1886 would be to pass upon "the validity of the claim" and "the merits of the difference", which are reserved exclusively for the Commission of Arbitration, and concerning which this Court, according to its own earlier Judgment, is without jurisdiction. It cannot be assumed that the Declaration of 1926 contemplates that the verification of the allegations of fact of the Hellenic Government should be the duty of the Commission of Arbitration, while the determination of the question whether the facts alleged constitute a violation of the Treaty of 1886 should form the task of another tribunal. Such a division of functions would imply a division of the merits of the claim, which is authorized neither by the Declaration nor by the previous Judgment of this Court.

The Declaration of 1926 was, as previously stated, agreed upon to ensure that the method of arbitration provided for in the Protocol of 1886 should be employed for the settlement of a limited category of differences concerning the Treaty of 1886, namely, differences as to the validity of claims on behalf of private persons based on that Treaty. At the time of the signature of the Declaration, it could hardly have entered the minds of the Parties that before arbitration should be in order, the Party requested to accept that procedure might insist that the question whether a claim was genuinely based on the Treaty of 1886 should first be examined and definitively settled by that Party itself or by an organ other than the Commission of Arbitration. It must have been their intention that the genuineness of the treaty basis of any claim, if contested, should be authoritatively decided by the Commission of Arbitration, together with any other questions relating to the merits of the claim, just as, before 1926, any question as to whether a certain controversy was concerned with the interpretation or execution of the Treaty of 1886 would have been settled by such a commission. If the Ambatielos claim had been referred to arbitration, it would have been for the Commission to decide whether the claim had a legal basis in respect of the Treaty of 1886. In the absence of any manifestation of a common intention of the Parties to the contrary, the Commission of Arbitration cannot be deprived of a part of its competence and no other body can be invested with the authority to determine definitively the validity of the treaty basis of the Ambatielos claim.

For the purpose of determining the obligation of the United Kingdom to accept arbitration, the words "claims based on the provisions of the Treaty of 1886" cannot be understood as meaning claims actually supportable under that Treaty. In the context in which the words occur, they can only mean claims

depending for support on the provisions of the Treaty of 1886, so that the claims will eventually stand or fall according as the provisions of the Treaty are construed in one way or another. The fact that a claim purporting to be based on the Treaty may eventually be found by the Commission of Arbitration to be unsupportable under the Treaty, does not of itself remove the claim from the category of claims which, for the purpose of arbitration, should be regarded as falling within the terms of the Declaration of 1926.

In order to decide, in these proceedings, that the Hellenic Government's claim on behalf of Mr. Ambatielos is "based on" the Treaty of 1886 within the meaning of the Declaration of 1926, it is not necessary for the Court to find—and indeed the Court is without jurisdiction to do so—that the Hellenic Government's interpretation of the Treaty is the correct one. The Court must determine, however, whether the arguments advanced by the Hellenic Government in respect of the treaty provisions on which the Ambatielos claim is said to be based, are of a sufficiently plausible character to warrant a conclusion that the claim is based on the Treaty. It is not enough for the claimant Government to establish a remote connection between the facts of the claim and the Treaty of 1886. On the other hand, it is not necessary for that Government to show, for present purposes, that an alleged treaty violation has an unassailable legal basis. The validity of the arguments presented by the Hellenic Government, as well as the validity of those presented by the United Kingdom Government, would be determined by the Commission of Arbitration in passing upon the merits of the difference. If the interpretation given by the Hellenic Government to any of the provisions relied upon appears to be one of the possible interpretations that may be placed upon it, though not necessarily the correct one, then the Ambatielos claim must be considered, for the purposes of the present proceedings, to be a claim based on the Treaty of 1886.

In other words, if it is made to appear that the Hellenic Government is relying upon an arguable construction of the Treaty, that is to say, a construction which can be defended, whether or not it ultimately prevails, then there are reasonable grounds for concluding that its claim is based on the Treaty. This view seems to have been in the mind of Counsel for the United Kingdom when he said:

".... we are not, of course, suggesting that the Court must decide whether the claim is valid or not, that is to say, *well-founded* on the Treaty, for that would be a matter of the ultimate merits.... We do not suggest that the Court must consider whether the claim is '*bien fondée*', but what we say is that it must at least consider whether the claim is '*fondée*'...."

The Court will use its power of appreciation to resolve the legal problem presented by the Parties, namely, whether the difference between them is of such a character as to come under the Declaration of 1926 ; but it cannot carry its power of appreciation to the extent of deciding the merits of the difference. In the opinion of the Court, this course of action would be in consonance with the intention of the Parties that all differences which might arise concerning the validity of claims on behalf of private persons based on the Anglo-Greek Commercial Treaty of 1886 should be referred to arbitration.

The Court is not departing from the principle, which is well-established in international law and accepted by its own jurisprudence as well as that of the Permanent Court of International Justice, to the effect that a State may not be compelled to submit its disputes to arbitration without its consent ; but it observes that, in this case, the question is whether the consent given by the Parties in signing the Declaration of 1926 to arbitrate a certain category of disputes, does or does not extend to the Ambatielos claim.

* * *

The articles of the Treaty of 1886 invoked by the Hellenic Government are as follows :

"Article I"

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

Article X

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

Article 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 and possessions of the other Contracting Party.
2. They shall be permitted to hire or possess the houses, manufactorys, warehouses, shops, and premises which may be necessary for them.
3. They may carry on their commerce either in person or by any agents whom 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 whatever other or greater than those which are or may be imposed upon native subjects.

Article XV

The dwellings, manufactorys, 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."

The Hellenic Government, relying upon the most-favoured-nation clause contained in Article X, invokes Article 16 of the Treaty of Peace and Commerce between the United Kingdom and Denmark of February 13th, 1660-1661, which the Hellenic Government has quoted in English as follows:

"Each Party shall in all causes and controversies now depending, or hereafter to commence, cause justice and right to be speedily administered to the subjects and people of the other Party, according to the laws and statutes of each country without tedious and unnecessary delays and charges."

The Hellenic Government has invoked similar provisions of other treaties concluded between the United Kingdom and third States, that is to say:

—Article 24 of the Treaty of Peace and Commerce with Denmark of July 11th, 1670, providing that the Parties “shall cause justice and equity to be administered to the subjects and people of each other”;

—Article 8 of the Treaties of Peace and Commerce with Sweden of April 11th, 1654, and of October 21st, 1661, providing that “In case the people and subjects on either part or those who act on their behalf before any Court of Judicature for the recovery of their debts, or for other lawful occasions, shall stand in need of the Magistrate’s help, the same shall be readily, and according to the equity of their cause, in friendly manner granted them....”;

—Article 10 of the Treaty of Commerce with Bolivia, of August 1st, 1911, reserving the right to exercise diplomatic intervention in any case in which there may be evidence of “denial of justice” or “violation of the principles of international law”.

The United Kingdom Government, in the first place, questions the correctness of the English translations from the original Latin of certain of these provisions; and in the second place, it contends that Article X of the Treaty of 1886, dealing with matters of commerce and navigation, cannot be invoked to claim the benefits of provisions in other treaties concerning judicial proceedings, which, in the Treaty of 1886, form the subject of a separate article. The United Kingdom also advances a number of other arguments designed to show that the facts alleged by the Hellenic Government, if true, would amount to a denial of justice, and that an allegation of denial of justice must be based on general principles of international law and cannot be premised on Article X of the Treaty of 1886 dealing with commerce and navigation.

On the other hand, the Hellenic Government has contended that a litigation arising out of a commercial contract may be considered as a matter relating to commerce and thus falling within the term “all matters relating to commerce and navigation” to which the most-favoured-nation clause in Article X of the Treaty of 1886 applies. The undertaking by the United Kingdom vis-à-vis third States that the courts shall administer “justice and right” or “justice and equity” in any litigation is regarded by the Hellenic Government as a “favour” which inures to the benefit of Greek nationals under the most-favoured-nation clause of Article X.

With regard to the Anglo-Bolivian Treaty of 1911, the Hellenic Government argues that it imposes upon the United Kingdom, as well as upon Bolivia, the obligation to apply the principles of international law in the treatment of the nationals of the other contracting party.

Article XV, paragraph 3, of the Treaty of 1886 provides for "free access to the Courts of Justice". The United Kingdom Government insists on a limited interpretation of the term "free access" and maintains that Mr. Ambatielos must be considered as having been fully accorded this right when he was permitted to appear in the English courts for the prosecution and defence of his rights on an equal footing with British subjects.

The Hellenic Government, on the other hand, relies on a different interpretation of the term "free access" to the Courts of Justice and argues that the right of "free access" should be understood to include the prosecution of rights by the foreign litigant in the local courts free from restrictions imposed by the executive authorities. According to the contention of the Hellenic Government, Mr. Ambatielos did not enjoy "free access" to the courts, because of the "withholding" by the executive branch of the United Kingdom Government of evidence considered to be vital to his case.

Having regard to the contentions of the Parties with respect to the scope and effect of the most-favoured-nation clause in Article X of the Treaty of 1886, as well as the divergence of views concerning the meaning of the expression "free access to the Courts of Justice" contained in Article XV, paragraph 3, of that Treaty ; and bearing in mind especially the interpretations of these provisions contended for by the Hellenic Government, the Court must conclude that this is a case in which the Hellenic Government is presenting a claim on behalf of a private person "based on the provisions of the Anglo-Greek Commercial Treaty of 1886", and that the difference between the Parties is the kind of difference which, according to the Declaration of 1926, should be submitted to arbitration.

Accordingly, the Court must hold that the United Kingdom is under an obligation to co-operate with Greece in constituting a Commission of Arbitration, in accordance with the Protocol of 1886, as provided in the Declaration of 1926.

* * *

There remain for consideration contentions advanced by the United Kingdom Government that, even assuming the facts alleged by the Hellenic Government to be true, the United Kingdom still is not obliged to submit to arbitration the difference as to the validity of the Ambatielos claim, for the following additional reasons :

- (1) That Mr. Ambatielos did not exhaust local remedies ;
- (2) That there was undue delay in preferring the claim on its present alleged basis ;
- (3) That there were undue delay and abuse of the process of the Court in that, although reference of the dispute to the

compulsory jurisdiction of the Court has been continuously possible since the 10th December 1926, no such reference took place until the 9th April 1951.

With regard to the first two arguments, the Court need only observe that they are arguments in defence directed to the admissibility of the Ambatielos claim and are not in any way related to the question whether the claim is based on the Treaty of 1886. The points raised in these arguments are entirely outside the terms of the Declaration of 1926, which it is the Court's present task to interpret. For these reasons, the Court expresses no view concerning the validity or the legal effect of these arguments.

These considerations also apply to the point of delay contained in the third argument. As regards the point of abuse of the process of the Court raised in that argument, the Court does not consider that the Hellenic Government did anything improper in instituting proceedings against the United Kingdom on April 9th, 1951, in conformity with the relevant provisions of the Statute and Rules of Court.

The Court does not consider it necessary to pass on Submissions 3 and 4 of the Hellenic Government.

For these reasons,

THE COURT,

by ten votes to four,

finds that the United Kingdom is under an obligation to submit to arbitration, in accordance with the Declaration of 1926, the difference as to the validity, under the Treaty of 1886, of the Ambatielos claim.

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

(Signed) J. G. GUERRERO,

Vice-President.

(Signed) E. HAMBRO,

Registrar.

Sir Arnold McNAIR, President, Judges BASDEVANT, KLAESTAD and READ, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment the joint statement of their dissenting opinion.

(Initialled) J. G. G.
(Initialled) E. H.
