REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

The Ambatielos Claim (Greece, United Kingdom of Great Britain and Northern Ireland)

6 March 1956

VOLUME XII pp. 83-153

THE AMBATIELOS CLAIM

PARTIES: Greece, United Kingdom of Great Britain and Northern Ireland.

COMPROMIS: Agreement of 24 February 1955.

ARBITRATORS: Commission of Arbitration: R. J. Alfaro; A. J. F. Bagge; M. Bourquin; J. Spiropoulos; Gerald A. Thesiger.

AWARD: 6 March, 1956.

ANNEXES: Various documents relating to the case.

State responsibility — Breach of contractual obligations — Undue delay in presenting claim — Principle of extinctive prescription — Absence of rule of international law laying down time limit — Right of claimant to change legal basis of action in order to obtain settlement of dispute by arbitration — Most-favoured-nation clause — Nature and scope of — " Administration of justice " as allied to " commerce and navigation " — Interpretation of Treaty — Interpretation of expressions " justice ", " right " and " equity " by reference to municipal law — Interpretation of expression " free access to the courts " — Non-exhaustion of legal remedies — Burden of proof — Need to prove existence of remedies not used — Ineffectiveness of local remedies — Failure to call available witness.

Responsabilité de l'Etat — Inobservation des obligations conventionnelles — Retard injustifié pour présenter une réclamation — Principe de la prescription extinctive — Absence d'une règle de droit international fixant la durée de la prescription — Droit de la partie demanderesse de modifier la base juridique de son action pour obtenir un règlement par arbitrage — Clause de la nation la plus favorisée — Nature et portée — « Administration de la justice », considérée comme comprise parmi les matières concernant « le commerce et la navigation » — Interprétation des traités — Interprétation des expressions « justice », « droit » et « équité » en fonction du droit interne — Interprétation de l'expression « libre accès aux tribunaux » — Non-épuisement des voies de recours interne — Charge de la preuve — Nécessité pour l'Etat défendeur de prouver l'existence, dans son système, de droit interne, de recours non utilisés — Inefficacité des voies de recours — Non-citation d'un témoin.

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AGREEMENT [1] BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GREEK GOVERNMENT REGARDING THE SUBMISSION TO ARBITRATION OF THE AMBATIELOS CLAIM. SIGNED AT LONDON, ON 24 FEBRUARY 1955

The Government of the United Kingdom of Great Britain and Northern Ireland and the Royal Hellenic Government:

CONSIDERING

(1) That the International Court of Justice, acting in virtue of Article 29 of the Anglo-Greek Treaty of Commerce and Navigation of July 16, 1926,[2] has decided by a Judgment delivered on May 19, 1953 [3] that the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter called the United Kingdom Government) are under an obligation to submit the arbitration in accordance with the Anglo-Greek Declaration of July 16, 1926 (hereinafter called the 1926 Declaration) the difference as to the validity under the Anglo-Greek Treaty of Commerce and Navigation of November 10, 1886 [4] (hereinafter called the 1886 Treaty) of the claim presented by the Royal Hellenic Government on behalf of Mr. Nicolas Eustache Ambatielos (hereinafter called the Ambatielos claim);

(2) That the 1926 Declaration provides that any differences which may arise between the two Governments as to the validity of claims on behalf of private persons based on the provisions of the 1886 Treaty shall, at the request of either Government, be referred to arbitration in accordance with the provisions of the Protocol of November 10, 1886 (hereinafter called the 1886 Protocol) annexed to the 1886 Treaty: and

(3) That the 1886 Protocol provides that any controversies which may arise respecting the interpretation or the execution of the 1886 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 decisions of Commissions of Arbitration, the result of such arbitration to be binding upon both Governments, and also that the members of such Commissions shall be selected by the two Governments by common consent:

Have decided to conclude an Agreement with a view to submitting the Ambatielos claim to arbitration in conformity with the above provisions and for that purpose have appointed as their plenipotentiaries:

The United Kingdom Government:

Sir Ivone Kirkpatrick, G.C.M.G., K.C.B., Permanent Under-Secretary of State for Foreign Affairs;

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[1] *United Nations Treaty Series*, vol. 209, p. 188.

[2] League of Nations, *Treaty Series*, vol. LXI, p. 15; vol. LXIII, p. 428; vol. LXXXIII, p. 417; vol. LXXXVIII, p. 356; vol. XCVI, p. 192; vol. C, p. 222; vol. CXXVI p. 446; vol. CXLVII, p. 343, and vol. CXLVII, p. 333.

[3] Ambatielos case (merits to arbitrate), Judgment of May 19th, 1953: I. C. J. *Reports 1953*, p. 10.

[4] De Martens, *Nouveau Recueil général de Traités*, deuxième série, tome XIII, p. 518.

The Royal Hellenic Government:

His Excellency Monsieur Basile Mostras, Ambassador Extraordinary and Plenipotentiary of Greece in London;

Who, having exhibited their respective full powers, found in good and due form,

Have agreed as follows:

Article 1

(*a*) The Commission of Arbitration (hereinafter called the Commission) shall be composed of:

Monsieur Ricardo J. Alfaro, Monsieur Algot J. F. Bagge, Monsieur Maurice Bourquin, Monsieur John Spiropoulos, Gerald Thesiger, Esquire, Q.C.

(*b*) The President of the Commission shall be Monsieur Ricardo J. Alfaro.

(*c*) Should any Member of the Commission die or become unable to act, the vacancy shall be filled by a new Member appointed by the Government which nominated the Member to be replaced or by agreement between the two Governments, according to the manner of the original appointment.

Article 2

The Commission is requested to determine —

(*a*) The validity of the Ambatielos claim under the 1886 Treaty having regard to:

(i) The question raised by the United Kingdom Government of undue delay in the presentation of the claim on the basis of the Treaty;

(ii) The question raised by the United Kingdom Government of the non-exhaustion of legal remedies in the English Courts in respect of the acts alleged to constitute breaches of the Treaty;

(iii) The provisions of the Treaty;

(*b*) In the event of the Commission holding that the claim is valid, whether the United Kingdom Government ought now in all the circumstances to pay compensation to the Royal Hellenic Government; and if so, the amount of such compensation.

Article 3

(*a*) The Commission shall, subject to the provisions of this Agreement, determine its own procedure and all questions affecting the conduct of the arbitration.

(*b*) In the absence of unanimity, the decisions of the Commission on all questions, whether of substance or procedure, shall be given by a majority vote of its Members, including all questions relating to the competence of the Commission, the interpretation of this Agreement, and the determination of the issues specified in Article 2 hereof.

Article 4

(*a*) The Parties shall, within fourteen days of the signature of the present Agreement, each appoint an Agent for the purposes of the arbitration, and shall communicate the name and address of their respective Agents to each other and to the Commission.

(*b*) Each Agent so appointed shall be entitled, as occasion may require and for such period as he may specify, to nominate a Deputy to act for him, upon making a similar communication of the Deputy's name and address.

Article 5

(*a*) The proceedings shall be written and oral.

(*b*) The written proceedings shall consist initially of a Case to be submitted by the Royal Hellenic Government within 4 months of the signature of the present Agreement and of a counter-case to be submitted by the United Kingdom Government within 4 months of the submission of the Hellenic Case.

(*c*) The Commission shall have power to extend the above time-limits at the request of either Party.

(*d*) The oral hearing shall follow the written proceedings, and shall be held in private at such place and time as the Commission, after consultation with the two Agents, may determine.

(*e*) The Parties may be represented at the oral hearing by their Agents and by such Counsel and advisers as they may appoint.

Article 6

(*a*) The pleadings, written and oral, and the Commission's decisions, shall be either in the French or the English language.

(*b*) The Commission shall arrange for such translations and interpretations as may be requisite, and shall be entitled to engage all such technical, secretarial and clerical staff, and to make all such arrangements in respect of accommodation and the purchase or hire of equipment, as may be necessary.

Article 7

(*a*) The Commission shall deliver its decisions in writing, giving the reasons therefor, and shall transmit one signed copy to each Agent.

(*b*) Any question of subsequent publication of the proceedings shall be decided by agreement between the two contracting Governments.

Article 8

(*a*) The remuneration of Members of the Commission shall be borne equally by the two contracting Governments.

(*b*) The general expenses of the arbitration shall be borne equally by the two Governments, but each Government shall bear its own expenses incurred in or for the preparation and presentation of its case.

IN WITNESS WHEREOF the above-mentioned plenipotentiaries have signed the present Agreement.

DONE in duplicate at London, in the English language, the 24th day of February, 1955.

Ivone KIRKPATRICK

B. MOSTRAS

AWARD OF THE COMMISSION OF ARBITRATION ESTABLISHED BY THE AGREEMENT CONCLUDED ON 24th FEBRUARY 1955 BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF GREECE FOR THE ARBITRATION OF THE AMBATIELOS CLAIM TOGETHER WITH THE ANNEXES TO THE AWARD, 6 MARCH, 1951 [1]

The facts leading up to the present case are as follows:

On 17th July 1919, the Greek shipowner Nicholas Eustache Ambatielos concluded with the United Kingdom Government represented by Sir Joseph Maclay, the Shipping Controller, a contract for the purchase of nine steamships, then building in the dockyards of Hong Kong and Shanghai, at a price of £40 per ton for vessels of 5,000 tons and of £36 per ton for vessels of 8,000 tons, the total purchase price amounting to £2,275,000.

The negotiations resulting in this contract were conducted on behalf of the United Kingdom Ministry of Shipping by Major Bryan Laing and on behalf of Mr. Ambatielos by his brother, Mr. G. E. Ambatielos.

Paragraphs 2, 3 and 7 of the contract of 17th July, 1919, which is set out in full in Annex 2 [2] to this award, contain the following provisions:

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 steamers' 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.

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.

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[1] Foreign Office, *Award of the Commission of Arbitration established by the Agreement concluded on 24th February 1955 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Greece for the arbitration of the Ambatielos Claim together with the Annexes to the Award*, London.

[2] See p. 138.

The Greek Government claims that the words " within the time agreed " indicate that definite delivery dates had been fixed, whereas the United Kingdom Government claims that the contract is complete without any reference to special delivery dates and denies on various grounds that any delivery date had been agreed upon.

The Greek Government, in support of its claim concerning fixed dates for delivery, has produced a letter of 3rd July, 1919, from Mr. N. Ambatielos to his brother in London giving him written instructions for the transaction with the Ministry of Shipping, including fixed dates. In a telegram of 12th July, 1919, to the Shipping Controller, confirmed by a letter of the same date, Mr. Ambatielos stated that the only person authorized to act for him was his brother, Mr. G. Ambatielos, who had written authority to buy seven B. type ships " building in Hong Kong on certain conditions set out in the authority given to him".

One of the B. type ships not being available, the written contract finally signed was concerned with six B. type and three C. type ships, without any dates being inserted. When Mr. Nicholas Ambatielos found that the contract did not contain specific dates he, according to his subsequent evidence, told his brother that he was going to repudiate the contract. However, Major Laing called on Mr. Ambatielos in Paris at the end of August, 1919, and assured Mr. Ambatielos that the ships would be delivered on dates certain which had been written down on a buff slip of paper. This buff slip of paper, the existence of which was never in dispute, contained dates certain. They were obtained by a Mr. Bamber, an official of the Ministry, from his records which contained reports from the dockyards. The Greek Government claims that the contract refers to this buff slip of paper and that fixed dates were definitely agreed upon as part of the contract. The United Kingdom Government claims that the dates written down on the buff slip of paper were merely indications of the time when the ships could be expected to be ready for delivery.

The Greek Government contends — quoting in support of their contention a statutory declaration by Major Laing, sworn in 1934 (which is set out in Annex 7 [1] to this award) — that Major Laing had induced Mr. Ambatielos to pay half a million pounds more than the price then ruling for vessels of the same type because he, Major Laing, had been able to give fixed dates. The United Kingdom Government contends that the prices were not unduly high for ships of that kind and that the price could certainly be accounted for by the privilege granted to Mr. Ambatielos for " free charter-parties " not subject to the regulations of the United Kingdom Government, by Mr. Ambatielos's being able to sail the ships under the Greek flag and by the favourable freight rates he would be able to obtain, the ships being stationed in the Far East where freight rates were very high.

By way of further proof of fixed delivery dates the Greek Government relied upon a telegram sent on 31st October, 1919, in the name of Sir John Esplen, who was Major Laing's superior in the Ministry of Shipping, to the Far Eastern representative of the Ministry of Shipping, and which was in the following terms:

> 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 *(Signed)* M. J. Straker.

The existence of this telegram is not in dispute between the Parties, but the Parties are not agreed as to the circumstances in which it was sent. It is, further-

[1] See p. 150.

more, common ground between the Parties that the ships were delivered later than had been anticipated. According to the Greek claim, the ship *Cephalonia* should have been delivered on 31st August, 1919, the second ship, the *Ambatielos*, on 30th September, 1919, and so on down to the last ship, the *Mellon*, of which delivery had to be made at latest on 15th March, 1920. The two first-named ships were delivered after a certain delay, and the others after delays of varying length extending to as much as eight months. Freight rates having fallen heavily during that time, considerable loss was suffered by the purchaser.

In November, 1920, the purchaser, Mr. N. E. Ambatielos, was indebted to the United Kingdom Government in a large sum of money. For the purpose of guaranteeing this debt he executed mortgage deeds and covenants on 4th November, 1920, on seven ships. (See Annex 3 [1] to this award.) The last two ships, the *Mellon* and the *Stathis*, were never delivered to Mr. Ambatielos. The contract for these two ships was not cancelled, and the ships were laid up from the date when they should have been delivered until the date of Mr. Justice Hill's judgment hereinafter referred to. During that time the cost of insurance and other expenses were charged to Mr. Ambatielos. The Greek Government now claims that it was wrong to cancel the contract as from the date of judgment, instead of cancelling it as from 4th November, 1920, when the mortgage deeds were signed. This is the claim contained in claim C.

In February, 1921, Mr. Ambatielos, through his brother, proposed that the purchase of these two ships be cancelled (see Annex 4 [2] to this award), but his offer was refused by the United Kingdom authorities.

According to the Greek case, Mr. Ambatielos wanted to go to London to negotiate with the Ministry of Shipping in order to reach a compromise. However, he was, so the Greek Government alleges, prevented from going to London because the United Kingdom Government preferred a claim against him for a sum of £250,000 in respect of non-payment of taxes which might render him liable to imprisonment, and it was only after the United Kingdom Government had withdrawn this claim as being unfounded that Mr. Ambatielos was able to proceed to London to protect his interests. The United Kingdom Government does not admit that any such claim was made or that any threat was made to imprison Mr. Ambatielos.

Mr. Ambatielos went to London in May, 1921, and engaged in negotiations with Sir Ernest Glover, representative of the Ministry of Shipping who, according to Mr. Ambatielos, showed a conciliatory attitude. The Greek Government contends that Sir Ernest Glover consented to reduce the agreed price by £500,000 but the United Kingdom Government denies that any agreement was concluded. Meanwhile, Mr. Ambatielos had claimed arbitration under Clause 12 of the contract of 17th July, 1919, and arbitrators had been appointed.

The Board of Trade, as successors to the Ministry of Shipping, however, instituted proceedings in the Court of Admiralty on the mortgage deeds, and in consequence, by agreement between the parties, the claim of Mr. Ambatielos was put forward by way of defence to these proceedings, instead of being dealt with by arbitration. Mr. Justice Hill heard the case in November, 1922, and on 15th January, 1923, gave judgment for the United Kingdom Government for possession and sale of certain vessels which had been delivered, and for principal and interest due under the mortgage deeds.

During those proceedings the United Kingdom Government, in accordance

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[1] See p. 140.
[2] See p. 147.

with the practice of Ministries, refused to produce certain inter-departmental minutes. The Greek Government claims that this was an unwarranted abuse of Crown privilege. Furthermore, letters exchanged in July, 1922, between the former Controller of Shipping, Sir Joseph Maclay, and Major Laing, referring to assurances said to have been given by the latter to Mr. Ambatielos about delivery dates, were not produced in court. These letters are set out in Annex 5 [1] to this award. Major Laing and Sir Joseph Maclay were not heard as witnesses although Major Laing is alleged to have been subpoenaed by the Ministry of Shipping. The Greek Government claims that the withholding of this evidence was also an abuse of right which amounted to a denial of justice.

The United Kingdom Government claims that this correspondence was exempt from production in accordance with English law of procedure which exempts from production any document prepared for the purpose of the proceedings. Before the case was heard in the Court of Admiralty, Major Laing had indicated to Mr. Ambatielos that these letters were in existence. He did not, however, transmit copies of the correspondence to Mr. Ambatielos before the trial.

Mr. Ambatielos appealed against the judgment of Mr. Justice Hill and asked the Court of Appeal for leave to call Major Laing as a witness. This, however, was refused by the Court of Appeal, the Court holding that it was against precedent to allow a party to call a witness in the Court of Appeal when that party could have called the witness in the court of first instance. After the Court of Appeal had given its judgment in 1923 Mr. Ambatielos did not proceed with his general appeal, nor did he try to obtain a reversal of the decision of the Court of Appeal by appealing further to the House of Lords. When, later that year, the Crown brought another claim against Mr. Ambatielos for an account and possession of the *Keramies*, the Defendant did not appear; nor was he represented by Counsel. The case which was heard on 20th July, 1923, was in all respects similar to the case previously before Mr. Justice Hill. The judgment of July, 1923, was not appealed against by Mr. Ambatielos. Thus the proceedings before the United Kingdom courts came to an end, and the diplomatic phase of the case began. It began with a Note from the Greek Legation in London to the Secretary of State for Foreign Affairs on 12th September, 1925. The case was taken up again in a new Note from the Greek Legation to the Secretary of State for Foreign Affairs on 7th February, 1933. Further Notes were sent in 1934, 1936, 1939 and 1940. The case was then in abeyance from 1940 until 11th May, 1949. It was finally brought before the International Court of Justice on 9th April, 1951.

On 9th April, 1951, the Greek Minister in the Netherlands, duly authorised by his Government, filed in the Registry of the International Court of Justice an Application instituting proceedings before that Court.

The Greek Application referred to the Treaty of Commerce and Navigation between Greece and Great Britain, signed in Athens on 10th November, 1886, which is set out as Annex 1 [2] to this award, and to the Treaty of Commerce and Navigation between the same Contracting Parties signed in London on 16th July, 1926, including a Declaration of the same date. The Declaration is set out as Annex 6 [3] to this award. The Application requested the Court:

To declare that it has jurisdiction:

To adjudge and declare . . .

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[1] See p. 148.
[2] See p. 132.
[3] See p. 150.

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 Memorial of the Greek Government contained the following Submissions:

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

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

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

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

(4) that the Hellenic Government is entitled to seize the Court of the merits of the dispute between the two Governments without even being bound to resort beforehand to the arbitration mentioned under submissions 1 and 2 above;

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

The Government of the United Kingdom filed a Counter-Memorial in which, whilst setting out its arguments and submissions on the merits of the case, it requested the Court to adjudge and declare that it had no jurisdiction:

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

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

and that, likewise, it has no jurisdiction:

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

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

* * *

On 1st July, 1952, the International Court of Justice, by thirteen votes to two, found " 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."

* * *

During the second stage of the proceedings before the International Court of Justice subsequent to the above mentioned judgment the Greek Government presented the following submissions:

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 United Kingdom Government 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 19th May, 1953, the Court held by ten votes to four " 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".

* * *

On 24th February, 1955, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Greece concluded an Agreement regarding the Submission to Arbitration of the Ambatielos Claim.

Article 1 of this Agreement stated:

(*a*) The Commission of Arbitration (hereinafter called the Commission) shall be composed of:

Monsieur Ricardo J. Alfaro
Monsieur Algot J. F. Bagge
Monsieur Maurice Bourquin
Monsieur John Spiropoulos
Gerald Thesiger, Q.C.

(*b*) The President of the Commission shall be Monsieur Ricardo J. Alfaro.

(*c*) Should any Member of the Commission die or become unable to act, the vacancy shall be filled by a new Member appointed by the Government which nominated the Member to be replaced or by agreement between the two Governments, according to the manner of the original appointment.

According to Article 2 the Commission was requested to determine:

(*a*) the validity of the Ambatielos claim under the 1886 Treaty having regard to:

(i) the question raised by the United Kingdom Government of undue delay in the presentation of the claim on the basis of the Treaty;

(ii) the question raised by the United Kingdom Government of the non-exhaustion of legal remedies in the English Courts in respect of the acts alleged to constitute breaches of the Treaty;

(iii) the provisions of the Treaty;

(*b*) in the event of the Commission holding that the claim is valid, whether the United Kingdom Government ought now in all the circumstances to pay compensation to the Royal Hellenic Government; and if so, the amount of such compensation.

* * *

The Greek Government appointed as its Agent Monsieur Georges Bensis, Counsellor of the Royal Greek Embassy in London, and the United Kingdom

Government appointed as its Agent Mr. F. A. Vallat, C.M.G., Deputy Legal Adviser of the Foreign Office.

Pursuant to Article 5 of the Agreement of 24th February, 1955, the written proceedings consisted of a Case presented by the Greek Government on 17th May, 1955, and a Counter-Case submitted by the United Kingdom Government before the expiry of the time limit fixed for 17th September, 1955.

The Commission appointed as their Registrar: Dr. Edvard Hambro.

The hearings were opened in London on 25th January, 1956.

The Greek Agent was assisted by the following Counsel:

The Rt. Hon. Sir Frank Soskice, Q.C.
Professor Henri Rolin
Dr. C. John Colombos, Q.C., Ll.D.
Mr. Frank Gahan, Q.C.
Mr. Mervyn Heald

and the United Kingdom Agent was assisted by the following Counsel:

Sir Harry Hylton-Foster, Q.C., M.P. (Solicitor-General)
Mr. John Foster, Q.C., M.P.
Sir Gerald Fitzmaurice, K.C.M.G.
Mr. Alan Orr, C.B.E.
Mr. D. H. N. Johnson

The Commission held hearings on 25th, 26th, 27th, 30th and 31st January and on 1st, 2nd, 3rd, 7th, 8th, 9th, 10th, 14th and 16th February.

During these hearings the Commission heard arguments by Sir Frank Soskice, Q.C., Mr. John Colombos, Q.C., Professor Henri Rolin and Mr. Frank Gahan, Q.C., on behalf of the Greek Government, and by Sir Harry Hylton-Foster, Q.C., M.P., Mr. John Foster, Q.C., M.P., Sir Gerald Fitzmaurice, K.C.M.G., and Mr. F. A. Vallat, C.M.G., on behalf of the United Kingdom Government.

In the Greek Case the submissions of that Government are set out as follows:

The Greek Government's contentions on the three questions so submitted to the Commission of Arbitration, as more particularly set out hereafter, are as follows:

(i) With regard to the question of undue delay raised by the United Kingdom Government in the presentation of the Ambatielos claim, the facts are that the first Note of the Greek Government asking the United Kingdom Government "to cause a careful examination of the case" was presented to the British Foreign Office in September, 1925, viz., approximately two-and-a-half years from the date of the judgment of the English Court of Appeal, and from 1933 onwards (apart from the war period) continuous requests for international arbitration were being made to the United Kingdom Government by the Greek Government. These requests were met by stubborn refusals to negotiate in any way whatever;

(ii) On the question raised by the United Kingdom Government of non-exhaustion of the legal remedies by Mr. Ambatielos in the English Court, there are two points, namely: (*a*) failure to appeal to the House of Lords against the refusal of the Court of Appeal to admit fresh evidence on appeal from the judgment of the English Court of Admiralty and (*b*) failure to prosecute an appeal from the said judgment;

As to (*a*), the short answer is that in refusing Mr. Ambatielos's request for the production of fresh evidence, the Court of Appeal was exercising its discretion in a matter of practice and procedure and that an appeal to the House of Lords had no prospects of success.

As to (*b*), in the absence of the fresh evidence referred to in (*a*), the

prospect of success on appeal was so slight as to be "ineffective" within the meaning of international law;

(iii) On the question of the validity of the Ambatielos claim under the provisions of the Treaty, the Greek Government contends that its national did not receive at the hands of the United Kingdom the treatment to which Greek nationals are entitled under the provisions of the Treaty and generally under the rules of international law, justice, right, and equity applicable thereto. As argued by Sir Frank Soskice before the International Court of Justice in March, 1953: — "The plain, unvarnished truth here is that the Greek Government complain of the fact that one of their nationals paid £1,600,000 for nine ships, got no ships, got nothing for his money: £500,000 of that £1,600,000 was specifically paid in order to ensure that the ships should be delivered at a certain time; they were not delivered at that time; the British executive authorities then kept back evidence which prevented Mr. Ambatielos getting relief from the British Courts. He got no relief but was ordered to pay some £350,000 instead."

At the end of the Case the actual claims are set out as follows:

The main claim A, consisting of £8,059,488 11*s.* 0*d.*, as compensation for breach of the contract of sale, an alternative claim B. based on unjust enrichment amounting to £4,140,075, and another alternative claim C, in connection with the cancelling date of the purchase of the *Mellon* and the *Stathis* amounting to £4,409,242.

At the end of the oral proceedings the Greek claims were put as follows:

A. Under the claim based on Article X of the Anglo-Greek Treaty of Commerce and Navigation, 1886, read in conjunction with Article 16 of the Treaty of Peace and Commerce between Great Britain and Denmark of 1660 (1661); Article 24 of the like treaty of 1670; Article III of the Anglo-Spanish Treaty of 1667; Article 6 of the Treaty of Peace and Commerce between Great Britain and Sweden, 1661; Article 7 of the Anglo-Peruvian Treaty, 1830; Article 1 of the Anglo-Japanese Treaty, 1911; and Article X of the Anglo-Bolivian Treaty, 1911.

No. *Facts*

1. British Government contracted in 1919 to sell to Mr. Ambatielos nine ships to be delivered at or before definitely agreed dates.
2. British Government broke that contract by not delivering the ships within those agreed dates.
3. As an incident of that contract, the contract price was boosted to the extent of £500,000 because the dates of delivery were agreed.
4. By reason of delivery not having been made within the time agreed, Mr. Ambatielos received nothing for that £500,000.
5. The breaches of the contract inevitably placed Mr. Ambatielos in a position of acute financial embarrassment.
6. If Mr. Ambatielos had been able to come to London in 1920 he might have saved the wreck of his fortune and so have avoided ruin by negotiating a practicable settlement; but the British Government by an unfounded claim for income tax (which claim involved the possibility of his imprisonment if he came to the United Kingdom) prevented him from coming to London.
7. When in May, 1921, Mr. Ambatielos was able without danger to come to London, the claim for income tax was abandoned and Mr. Ambatielos arranged terms with Sir Ernest Glover reducing the price outstanding by £500,000 and submitting the matters in dispute to arbitration, but the

Board of Trade, arbitrarily and without any consideration as to the merits and fairness of the case, frustrated those negotiations by insisting upon resorting to action for the purpose of enforcing their mortgages.

8. In the circumstances obtaining, common equity and fairness required that the British Government should have handed over to Mr. Ambatielos the *Stathis* and the *Mellon* in order that Mr. Ambatielos could trade with them; but the British Government (whether acting within or outside its strict legal rights) refused to hand over those ships, thereby occasioning further serious loss to Mr. Ambatielos and making his ruin certain.

9. If Mr. Ambatielos had been able to establish, by way of defence and counter-claim in the action before Mr. Justice Hill, his claim to damages for late delivery, he would have prevented the seizure and sale of the ships and, in addition, he would have been awarded substantial compensation; but the British Government, by its manoeuvres before and in the proceedings before Mr. Justice Hill, procured a miscarriage of justice in that it procured Mr. Justice Hill to reach an erroneous conclusion of fact, namely that there were no agreed dates of delivery.

10. The manoeuvres mentioned in 9 consisted in:

(*a*) The Board of Trade abused the privileges available to it as a department of the British Government in that the Board of Trade under cover of state privilege withheld crucial and essential minutes and other departmental documents, whereas a proper exercise of state privilege would have required that those documents should all have been placed before the court.

(*b*) The Board of Trade and those responsible for preparing its case in the proceedings before Mr. Justice Hill failed to make available, either to the court or to Mr. Ambatielos's advisers in reasonable time before or at the proceedings, the correspondence which had passed between Sir Joseph Maclay and Major Laing in July, 1922.

(*c*) With knowledge that Major Laing could give vitally material evidence in support of Mr. Ambatielos's case and that Mr. Ambatielos's advisers were unlikely to have access to that evidence (since it related to Major Laing's actions while a government servant), the Board of Trade and those responsible for preparing its case nevertheless kept that evidence from the court by:

(i) not calling Major Laing as a witness;

(ii) not informing Mr. Ambatielos or his advisers in good time before or at the trial that the evidence was available and could be given by Major Laing;

(iii) allowing their counsel to present before Mr. Justice Hill a version of the facts and an argument in respect of the Board of Trade's case which was contrary to the documents which they had or must have had in their possession (namely the July, 1922, correspondence, and a proof or written statement of the evidence which Lord, formerly Sir Joseph, Maclay and Major Laing were prepared to give) with the result that Mr. Justice Hill was allowed to arrive at a decision which amounted to a miscarriage of justice.

11. When Mr. Ambatielos, through his advisers, applied to the Court of Appeal for leave to call further evidence the Board of Trade ought to have consented to and indeed ought to have assisted that application, but instead the Board of Trade opposed it and persuaded the Court of Appeal to reject the application.

12. The totality of the facts above set out, or of such of them as the Commission may find to have been established.

The Greek Government contends that:

1. The above facts constitute a breach of Article X of the 1886 Treaty under which Greece and Greek subjects have the benefit of other treaties into which the United Kingdom had entered in that:

(i) In breach of Article 16 of the Anglo-Danish Treaty of Peace and Commerce, 1660 (1661) the British Government, having broken its contract with Mr. Ambatielos and having put difficulties in his way, when his cause came before Mr. Justice Hill, caused to be administered to Mr. Ambatielos not justice and right, but injustice and wrong.

(ii) Likewise in breach of Article 24 of the Anglo-Danish Treaty of Peace and Commerce, 1670, the British Government failed to cause justice and equity to be done, and caused injustice to be done.

(iii) Likewise in breach of Article 3 of the Anglo-Spanish Treaty of Paace and Friendship, 1667, the British Government failed to abstain from force, violence and wrong, and did injury to Mr. Ambatielos against common right; when justice was sought in the ordinary course of law it was not followed, but justice was denied; and when the Greek Government asked for justice, and for Commissioners to receive and hear the matter, the British Government refused and delayed justice.

(iv) Likewise in breach of Article 6 of the Anglo-Swedish Treaty of Peace and Commerce, 1661, when Mr. Ambatielos stood in need of the Magistrate's help it was not granted to him readily and in friendly manner according to the equity of his cause, and justice was not administered to him but injustice.

(v) Likewise in breach of Article 7 of the Anglo-Peruvian Treaty, 1830, Mr. Ambatielos did not in England enjoy full and perfect protection of his person and property and did not have free and open access to the courts of justice for the prosecution and defence of his just rights. On the contrary the British Government threatened his person by an unfounded income tax claim; injured his property and procured the doing of injustice in the proceedings before Mr. Justice Hill.

(vi) Likewise in breach of Article 1, paragraph 6, of the Anglo-Japanese Treaty, 1911, the British Government did not afford Mr. Ambatielos complete security for his person and property, but endangered his person by an unfounded income tax claim, and denuded him of his property.

(vii) Likewise in breach of Article 10 of the Anglo-Bolivian Treaty, 1911, justice was denied to Mr. Ambatielos, and the principles of international law were violated in that Mr. Ambatielos was subjected to arbitrary and unfair treatment and an unjust court decision was procured against him.

The damage from these breaches is set out in Claim A in the Greek Case.

2. Alternatively if, contrary to the Greek Government's contention, the Commission should hold that there was not a contract for delivery of the ships on or before fixed dates, it is clear that Mr. Ambatielos paid an additional £500,000 because of the most specific assurances about early deliveries. By reason of these assurances being broken, the British Government, in violation of the principles of international law and in breach of Article 10 of the Anglo-Bolivian Treaty, 1911, and the other treaties mentioned at the outset of this chart as incorporated by Article X of the Anglo-Greek Treaty of 1886, has been unjustly enriched.

The damage thereby suffered by Mr. Ambatielos is set out in Claim B in the Greek Case.

3. Alternatively, if regard is had only to the proceedings before Mr. Justice Hill and to the British Government's manoeuvres in relation thereto (facts No. 9, 10 and 11), the British Government procured a denial of justice to Mr. Ambatielos in breach of the above-cited Articles of Treaties between the United Kingdom and Denmark, Spain, Sweden and Bolivia.

The damage thereby suffered is set out in Claim A in the Greek Case.

4. Alternatively to Contentions 1 and 3, equity and fair dealing required that the sale of the *Mellon* and *Stathis* should have been treated as cancelled about November, 1920, and not later than 3rd February, 1921 (see the penultimate paragraph of Exhibit 4F to the Greek Case). The failure to do as equity and fair dealing required and the aggravation of damage to Mr. Ambatielos was a breach of the Treaty Articles cited.

The damage thereby suffered by Mr. Ambatielos is set out in Claim C in the Greek Case.

B. Under the claim based on Article XV of the Anglo-Greek Treaty of Commerce and Navigation, 1886.

1. The British Government put forward a case before Mr. Justice Hill contrary to documents in their possession.

2. The British Government withheld those documents, thereby preventing Mr. Ambatielos knowing that they were putting forward a case of that kind, namely a case known to be false.

3. The British Government did so in circumstances in which they knew that Mr. Ambatielos had no power to compel them to disclose those documents, they having the right to refuse to disclose them.

The Greek submission was that these three alleged facts constituted denial of free access to the Courts.

The United Kingdom submissions which were retained at the end of the oral proceedings are as follows:

In the light of the facts, considerations and contentions set out in the present Counter-Case, the United Kingdom Government asks the Commission to adjudge and declare the Greek Claim to be invalid, because

(1) there has been undue delay in presenting the claim on the basis of the 1886 Treaty;

(2) the Claimant failed to exhaust his legal remedies in the English Courts;

(3) the Claim discloses no breach of the 1886 Treaty, direct or indirect.

* * *

The Commission will begin the determination of the issues submitted to it by examining the question raised by the United Kingdom Government of undue delay in the presentation of the claim on the basis of the 1886 Treaty.

The Commission thinks it desirable thereafter to determine the question of the validity of the Ambatielos claim under the 1886 Treaty. Finally, the Commission will determine the question whether the legal remedies in the English Courts were exhausted by Mr. Ambatielos.

THE QUESTION OF UNDUE DELAY IN THE PRESENTATION OF THE CLAIM ON THE BASIS OF THE TREATY OF 1886

The Government of the United Kingdom contends that the claim of the Greek Government ought to be rejected by reason of the delay in its presentation.

It is generally admitted that the principle of extinctive prescription applies to the right to bring an action before an international tribunal. International tribunals have so held in numerous cases (Oppenheim — Lauterpacht — *International Law*, 7th Edition, I, paragraph 155c; Ralston — *The Law and Procedure of International Tribunals*, paragraphs 683-698, and *Supplement*, paragraphs 683 (*a*) and 687 (*a*)). L'Institut de Droit international expressed a view to this effect at its session at The Hague in 1925.

There is no doubt that there is no rule of international law which lays down a time limit with regard to prescription, except in the case of special agreements to that effect, and accordingly, as L'Institut de Droit international pointed out in its 1925 Resolutions, the determination of this question is " left to the unfettered discretion of the international tribunal which, if it is to accept any argument based on lapse of time, must be able to detect in the facts of the case before it the existence of one of the grounds which are indispensable to cause prescription to operate ".

The Commission does not find in the circumstances of the present case any reason which would justify the application of the principle of prescription to the claim of the Greek Government.

The diplomatic correspondence produced by the Parties shows that the Greek Government intervened from 1925 onwards in order to exercise its diplomatic protection on behalf of Mr. Ambatielos, and that, since then, it has made repeated representations at intervals which cannot be regarded as abnormal in the particular circumstances of the case.

It should also be noted that the Government of the United Kingdom has not, before the Commission, persisted in the argument which it put forward before the International Court of Justice in support of its allegation of "undue delay ". Before the International Court the Government of the United Kingdom contended that the Greek Government had been dilatory in taking up the Ambatielos Claim initially, and in prosecuting it generally. Before the Commission it abandoned this complaint. (United Kingdom Counter-Case, paragraphs 168 and 169).

In the arguments addressed to the Commission, the undue delay imputed to the Greek Government did not relate to the diplomatic representations made and pursued by that Government, but to the use the latter made of the Treaty of 1886 as being the basis of its action.

It is a fact that until 1939 the claim of the Greek Government seemed to be based solely on general international law, and that it was in the Note of 21st November, 1939, addressed by the Greek Legation in London to the Secretary of State for Foreign affairs of the United Kingdom (International Court of Justice, Ambatielos Case, Pleadings pp. 96-98) that the Treaty of 1886 was for the first time relied upon to support the claim.

The Government of the United Kingdom explains this change of attitude as being due to the anxiety of the Greek Government to submit the dispute to arbitration. So long as the dispute remained within the sphere of general international law, there was no obligation on the United Kingdom to submit to arbitration or judicial settlement. On the other hand, by linking the dispute with the Treaty of 1886, the Greek Government could, by virtue of the Declaration which the two Governments had signed on 16th July, 1926, rely upon the obli-

gation provided for in this Declaration, to the effect that " claims on behalf of private persons based on the provisions of the Anglo-Greek Commercial Treaty of 1886" were to be submitted to arbitration.

This explanation is a plausible one, but it is difficult to see what effect it can have on prescription.

The Greek Government, by changing the legal basis of its action in order to obtain a settlement of the dispute by arbitration, only exercised the right to which it was entitled. If it did not adopt this attitude until 1939 when its initial diplomatic intervention dates back to 1925, that fact cannot be held against it in so far as concerns the operation of prescription, unless it brought about results which, *in themselves*, would justify the operation of prescription — such, for instance, as the difficulties of the United Kingdom in assembling the elements of proof requisite for or useful to its defence.

Furthermore, it is not very clear from the United Kingdom Counter-Case whether the allegation against the Greek Government is directed to that Government's having waited until 1939 to decide upon the present legal basis for its action, or whether it is not rather directed to the Greek Government's having waited until 1951 to institute the legal proceedings which it was open to it to " institute, compulsorily, as early as, at the latest, 1926 ". (Counter-Case, paragraph 168.)

In the latter case the alleged delay would be concerned not with the fact that reliance was placed on the Treaty of 1886, but that *legal action* was taken on the basis of that Treaty.

The Government of the United Kingdom desires it to be understood that if the Greek Government had acted earlier, the evaluation and appreciation of the events in dispute would have been simpler and more certain. (Counter-Case, paragraph 169). This contention, however, does not find support in any specific fact, and it would seem to be all the more difficult to accept because — even though *the legal basis* of the claim has been changed during the diplomatic exchanges — *the facts* which constitute its substance have remained the same from the beginning, and from the point of view of difficulty of proof these facts are, above all, important.

The Commission is therefore of opinion that the objection of " undue delay " raised by the Government of the United Kingdom is not well-founded, in so far as it is intended to cause the claim of the Greek Government to be rejected.

But the Government of the United Kingdom would appear to draw a further conclusion from the delay which it imputes to the Greek Government. It contends, in fact, that as the Greek Government invoked the Treaty of 1886 as the basis of its claim only belatedly, there would, for this reason, be a presumption unfavourable to its case. (Counter-Case, paragraphs 175 and 176.)

This consideration, however, is irrelevant to prescription, and could have a bearing only on the requirements of proof.

The Validity of the Ambatielos Claim under the 1886 Treaty

As stated in the Greek Case (paragraph 6, iii) " the Greek Government contends that its national (Mr. Ambatielos) did not receive at the hands of the United Kingdom Government the treatment to which Greek nationals are entitled under the provisions of the Treaty, and generally under the rules of international law, justice, right and equity applicable thereto."

Further on, the part of the Case dealing specifically with the question of "the validity of the Ambatielos claim under the provisions of the 1886 Treaty" (paragraph 58), reads as follows: "The Greek Government contends that there has been a breach by the United Kingdom *of all or any of the following provisions*

of the Anglo-Greek Treaty of Commerce and Navigation of November 10, 1886, to wit: ". Articles I, X, XII and XV of the Treaty are then quoted in full in paragraphs 58, 59, 78 and 80 of the Case, respectively, and comments are made on each of the aforesaid provisions, in support of the Greek contention, in paragraphs 58 to 90 of the Case.

The position of the Greek Government as outlined above and as it presented itself when the oral hearing began, was subsequently changed. The Commission requested Counsel for the Greek Government at the end of the 6th meeting, held on 1st February, to indicate at the conclusion of their arguments *and in a precise manner:*

(1) the facts which in the opinion of that Government resulted in the international responsibility of the British Government;

(2) the Article or Articles of the Treaty of 1886 to which each of these facts, according to the Greek Government, was referable.

In accordance with this request, Sir Frank Soskice, Chief Counsel for the Greek Government, at the 8th meeting of the Commission, held on 3rd February, made the following statement:

> I accept that in order to succeed in this claim the Greek Government must be able to establish that there was a breach of some provision, some Article of the 1886 Anglo-Greek Treaty. The only Articles which, in the submission of the Greek Government, were breached, were Article X and Article XV . . . It is not asserted any longer that there was a breach of Article I.

After this statement Sir Frank Soskice set out the facts and claims which have been enumerated above.

In paragraph 12 of those submissions Chief Counsel for the Greek Government, Sir Frank Soskice, stated:

> The totality of the facts above set out or of such of them as the Commission may find to have been established . . . . . the Greek Government contends . . . constitute a breach of Article X of the 1886 Treaty.

Furthermore, Counsel for the Greek Government at the 6th meeting withdrew the contents of paragraphs 70, 71 and 74 of the Greek Case; and at the 8th meeting the previous allegation in respect of a breach of Article XII of the Treaty of 1886 was also withdrawn.

These paragraphs and a Statement made on their withdrawal are set out in Annex 8 [1] to this award.

Furthermore, Counsel for the Greek Government asserted that Article XV of the above-mentioned Treaty had been violated in the manner specified in the three particulars set out at the very end of the final submissions, and which will be the subject of consideration in connection with Article XV.

On the other hand, the Government of the United Kingdom, in paragraph 178 of the Counter-Case, maintains that " no breach of the Treaty could be established, even if the Greek version of the facts were accepted as correct ".

It is apparent, therefore, that the essential task of the Commission is to determine, in the light of such facts as it may consider duly established by the Claimant Government on whom the burden of proof obviously lies whether or not Articles X and XV of the Treaty of 1886, or either of them, have been violated by the Government of the United Kingdom.

* * *

[1] See p. 152.

THE INTERPRETATION OF ARTICLE X OF THE TREATY OF 1886

Article X of the Treaty of 10th November, 1886, reads as follows:

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.

* * *

The Greek Government claims that by virtue of the most-favoured-nation clause contained in this Article, it is entitled to claim for its nationals treatment in accordance with " justice ", " right ", " equity " and the " principles of international law ", such treatment having been assured by the United Kingdom to the nationals of other States, by virtue of the Treaties concluded by that country with Denmark, Spain, Sweden, Peru, Costa Rica, Japan and Bolivia. (Greek Case, paragraphs 60-63, and International Court of Justice, Ambatielos Case, Pleadings, pp. 509-515.)

* * *

The United Kingdom Government disputes that this is so. It puts forward the following:

(*a*) that a most-favoured-nation clause can, in principle, only attract treatment accorded to other countries or their nationals as a *privilege, favour, or immunity*, and not treatment accorded as a right (irrespective of any conventional basis), such as treatment in accordance with the principles of international law;

(*b*) that a most-favoured-nation clause can only attract matters belonging to the same category of subject as the clause itself relates to;

(*c*) that the most-favoured-nation clause in Article X of the 1886 Treaty only relates to commerce and navigation and not to the administration of justice;

(*d*) that even were Article X of the 1886 Treaty so worded as to attract a right to treatment in accordance with the general rules of international law, justice, right and equity, relative to the administration of justice, no such right is in fact conferred by the provisions of the other Treaties cited by the Greek Government. (United Kingdom Counter-Case, paragraphs 237-249.)

* * *

The Commission does not deem it necessary to express a view on the general question as to whether the most-favoured-nation clause can never have the effect of assuring to its beneficiaries treatment in accordance with the general rules of international law, because in the present case the effect of the clause is expressly limited to "any privilege, favour or immunity which either Contracting Party has actually granted or may hereafter grant to the subjects or

citizens of any other State", which would obviously not be the case if the sole object of those provisions were to guarantee to them treatment in accordance with the general rules of international law.

* * *

On the other hand, the Commission holds that the most-favoured-nation clause can only attract matters belonging to the same category of subject as that to which the clause itself relates.

The Commission is, however, of opinion that in the present case the application of this rule can lead to conclusions different from those put forward by the United Kingdom Government.

In the Treaty of 1886 the field of application of the most-favoured-nation clause is defined as including " all matters relating to commerce and navigation ". It would seem that this expression has not, in itself, a strictly defined meaning. The variety of provisions contained in Treaties of commerce and navigation proves that, in practice, the meaning given to it is fairly flexible. For example, it should be noted that most of these Treaties contain provisions concerning the administration of justice. That is the case, in particular, in the Treaty of 1886 itself, Article XV, paragraph 3, of which guarantees to the subjects of the two Contracting Parties " free access to the Courts of Justice for the prosecution and defence of their rights ". That is also the case as regards the other Treaties referred to by the Greek Government in connection with the application of the most-favoured-nation clause.

It is true that " the administration of justice ", when viewed in isolation, is a subject-matter other than " commerce and navigation ", but this is not necessarily so when it is viewed in connection with the protection of the rights of traders. Protection of the rights of traders naturally finds a place among the matters dealt with by Treaties of commerce and navigation.

Therefore it cannot be said that the administration of justice, in so far as it is concerned with the protection of these rights, must necessarily be excluded from the field of application of the most-favoured-nation clause, when the latter includes " all matters relating to commerce and navigation ". The question can only be determined in accordance with the intention of the Contracting Parties as deduced from a reasonable interpretation of the Treaty.

Although the wording of Article X does not provide a clear and decisive indication in this respect, the Commission is of opinion that it is difficult to reconcile the narrow interpretation submitted by the Government of the United Kingdom with the indications given in the text, in particular in the last part of the sentence: " it being their (the Contracting Parties') 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 ".

* * *

Having thus determined the meaning of the most-favoured-nation clause contained in Article X of the Treaty of 1886, the next question is whether this clause effectively brings about the results which the Greek Government believes it does, by relying on the various Treaties concluded by the United Kingdom with other States.

* * *

One of these results, it is contended, would be to incorporate in the Treaty of 1886 the " principles of international law ". To justify this argument, the Greek Government relies exclusively on Article 10 of the Treaty of Commerce concluded on 1st August, 1911, between the United Kingdom and Bolivia, which reads as follows:

The High Contracting Parties agree that during the period of existence of this treaty they mutually abstain from diplomatic intervention in cases of claims or complaints on the part of private individuals affecting civil or criminal matters in respect of which legal remedies are provided.

They reserve, however, the right to exercise such intervention in any case in which there may be evidence of delay in legal or judicial proceedings, denial of justice, failure to give effect to a sentence obtained in his favour by one of their nationals or violation of the principles of international law. (International Court of Justice, Ambatielos Case, Pleadings, p. 515.)

The Commission cannot agree that a provision such as this has the effect of incorporating the principles of international law in the Anglo-Greek Treaty of 1886 by virtue of the most-favoured-nation clause.

As stated above, the most-favoured-nation clause contained in the Treaty of 1886 applies only to privileges, favours and immunities granted to other countries, and therefore cannot incorporate the principles of international law in the said Treaty. If need be, this observation would suffice to reject the conclusion which the Greek Government considers itself entitled to draw from Article 10 of the Anglo-Bolivian Treaty. There is another decisive reason, however, which corroborates the preceding one: It is the fact that it is in no way the object of this provision to guarantee to the nationals of the Contracting States the principles of international law. Its object is to provide in a special manner, as between Contracting States, for the exercise of diplomatic protection. According to the first paragraph of the Article the Contracting Parties undertake to abstain from any intervention of this kind in respect of claims by private individuals for which local remedies are provided. The second paragraph provides for certain exceptions to this rule, one of which reserves the right to exercise such intervention in case of violation of the principles of international law. It is with regard to this exception that the Article refers to the principles of international law. However, it refers to these principles solely for the purpose of laying down the *condition* which governs this exception, and not for the purpose of guaranteeing the benefit of these principles to the nationals of the Contracting States.

Whichever way the matter is envisaged, it is impossible to accept the proposition that Article 10 of the Anglo-Bolivian Treaty has the effect, by virtue of the most-favoured-nation clause, of incorporating the principles of international law in the Treaty of 1886.

* * *

The provisions of other treaties on which the Greek Government relies are concerned with the *administration of justice*. Several of them date back to the seventeenth century (the Treaties of 13th February, 1660-1661, and of 11th July, 1670, with Denmark; a Treaty of 23rd May, 1667, with Spain; Treaties of 11th April, 1657, and of 21st October, 1661, with Sweden). Naturally, their wording was influenced by the customs of the period, and they must obviously be interpreted in the light of this fact. It is only in these Treaties of the seventeenth century that certain references appear to " justice ", " right " and " equity " on which the Greek Government relies in support of its claim that

these concepts have been incorporated as such in the Anglo-Greek Treaty of 1886.

The Commission takes the view that to attribute such significance to these provisions would be to strain their meaning. " Justice ", " right " and " equity " are not guaranteed by these provisions as rights independent of and superior to positive law, but simply within the framework of the municipal law of the Contracting States. It was not an ideal system of " justice ", " right " and " equity " which the signatory Governments intended to assure to their respective nationals; it was the application of their national laws concerning the administration of justice.

Furthermore, the Treaties concluded with Denmark provide an indication in this respect which leaves no room for doubt: Article 46 of the Treaty of 1660-1661 specifies, " *according to the laws and statutes of each country* ", and Article 24 of the Treaty of 1670, " *according to the laws and statutes of either country* ".

The same idea is expressed in different fashion in the Treaty of 1667 with Spain: " until such time as Justice is sought and followed *in the ordinary course of Law* "; " to the end that all such differences be compounded in friendship, or *according to Law* ".

It is true that the Treaties of 1654 and 1661 with Sweden do not expressly mention municipal law, but there is nothing which permits us to ascribe a different meaning to them. The provision that " in case the people and subjects on either part . . . 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 to them and justice shall be administered to them without long . . . delays " must refer to help and equity and justice according to municipal law. Moreover, these Treaties were contemporary with those concluded with Denmark and Spain, to which reference has just been made, and it is difficult to believe that, notwithstanding some discrepancies in wording, the intention of the Contracting Parties was not the same in each case.

The Commission cannot, therefore, accept the argument that the Treaties concluded by the United Kingdom in the seventeenth century with Denmark, Spain and Sweden give the Greek Government the right to claim for Mr. Ambatielos treatment in accordance with " justice ", " right " and " equity " in the ideal sense of those words and independently of the rules of English law.

As for the Treaties which were concluded after the seventeenth century and to which reference is made by the Greek Government, they obviously cannot be relied upon to support this argument because they are limited to guaranteeing equality of treatment with the signatories' own nationals in the matter of the administration of justice.

* * *

To sum up, the Commission is of opinion:

(1) that the Treaty concluded on 1st August, 1911, by the United Kingdom with Bolivia cannot have the effect of incorporating in the Anglo-Greek Treaty of 1886 the " principles of international law ", by the application of the most-favoured-nation clause;

(2) that the effects of the most-favoured-nation clause contained in Article X of the said Treaty of 1886 can be extended to the system of the administration of justice in so far as concerns the protection by the courts of the rights of persons engaged in trade and navigation;

(3) that none of the provisions concerning the administration of justice which are contained in the Treaties relied upon by the Greek Government can be

interpreted as assuring to the beneficiaries of the most-favoured-nation clause a system of " justice ", " right " and " equity " different from that for which the municipal law of the State concerned provides;

(4) that the object of these provisions corresponds with that of Article XV of the Anglo-Greek Treaty of 1886, and that the only question which arises is, accordingly, whether they include more extensive " privileges ", " favours " and " immunities " than those resulting from the said Article XV;

(5) that it follows from the decision summarised in (3) above that Article X of the Treaty does not give to its beneficiaries any remedy based on " unjust enrichment " different from that for which the municipal law of the State provides.

As will be shown below, the Commission is of opinion that " free access to the Courts ", which is vouchsafed to Greek nationals in the United Kingdom by Article XV of the Treaty of 1886 includes the right to use the Courts fully and to avail themselves of any procedural remedies or guarantees provided by the law of the land in order that justice may be administered on a footing of equality with nationals of the country.

The Commission is therefore of opinion that the provisions contained in other Treaties relied upon by the Greek Government do not provide for any " privileges, favours or immunities " more extensive than those resulting from the said Article XV, and that accordingly the most-favoured-nation clause contained in Article X has no bearing on the present dispute. In view of this decision as to the proper interpretation of Article X the Commission finds it unnecessary to consider expressly whether any of the 11 allegations of fact which, in their totality, are alleged to constitute a breach of Article X, have been established. Some of the allegations are however disposed of, when relevant, in other parts of this award.

The Interpretation of Article XV of the Treaty of 1886

The submissions relative to breaches of Article XV of the Anglo-Greek Treaty of 1886 will now be examined.

Article XV provides as follows:

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.

For the purposes of this arbitration the Commission is solely concerned with the third paragraph of this Article and its decision must necessarily hinge upon the interpretation to be given to the phrase " free access to the [English] Courts of Justice ", which is used by the Parties to the Treaty.

The Greek Government contends (paragraph 81, Greek Case), that " access to the Courts for the prosecution and defence of their rights is not limited to

allowing a foreign national to go to Court and plead his cause but includes the obligation to make it possible for him to avail himself of all the documents necessary for the defence of his rights. Construed in its natural meaning, the term does not apply only to a material access to the Court, but an access ensuring all rights of defence ".

The United Kingdom Government, on the other hand, maintains (paragraph 223, United Kingdom Counter-Case) that " even if the third paragraph of Article XV were given the extended meaning contended for by the Greek Government there would still be no breach of this provision because in fact the claimant had all the facilities necessary . . ."

In the submission at the end of the oral proceedings referred to above, as formulated by Counsel for the Greek Government at the 8th meeting of the Commission, the following concrete facts were asserted as constituting violations of Article XV of the Treaty of 1886:

1. The British Government put forward a case before Mr. Justice Hill contrary to documents in their possession.

2. The British Government withheld those documents, thereby preventing Mr. Ambatielos *knowing* that they were putting forward a case of that kind, namely a case known to be false.

3. The British Government did so in circumstances in which they knew that Mr. Ambatielos had no power to compel them to disclose those documents, *they having the right to refuse to disclose them.*

The submission therefore is that Mr. Ambatielos was denied " access to the English Courts " by reason of the three facts stated above. Before entering into a separate analysis of the charges implied in the three facts asserted by the Greek Government, the Commission deems it advisable to state its views on the meaning of the term " free access ", as used in the Treaty of 1886.

The modern concept of " free access to the Courts " represents a reaction against the practice of obstructing and hindering the appearance of foreigners in Court, a practice which existed in former times and in certain countries, and which constituted an unjust discrimination against foreigners. Hence, the essence of " free access " is adherence to and effectiveness of the principle of non-discrimination against foreigners who are in need of seeking justice before the courts of the land for the protection and defence of their rights. Thus, when " free access to the Courts " is covenanted by a State in favour of the subjects or citizens of another State, the covenant is that the foreigner shall enjoy full freedom to appear before the courts for the protection or defence of his rights, whether as plaintiff or defendant; to bring any action provided or authorised by law; to deliver any pleading by way of defence, set off or counterclaim; to engage Counsel; to adduce evidence, whether documentary or oral or of any other kind; to apply for bail; to lodge appeals and, in short, to use the Courts fully and to avail himself of any procedural remedies or guarantees provided by the law of the land in order that justice may be administered on a footing of equality with nationals of the country.

The Commission is of opinion that this is what was agreed upon in paragraph 3 of Article XV of the Anglo-Greek Treaty of 1886. This clause in effect provides, for the benefit of Greek subjects in the United Kingdom, that they " 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 be at liberty to employ, in all causes, their advocates, attorneys or agents . . .*"

Therefore, there would be a breach of this clause in the present case if it could be proved that when an action was brought against Mr. Ambatielos by

the Board of Trade he was prevented from exercising any procedural right or remedy; or that in some way he was not treated in accordance with English law and practice; or that he was not permitted to employ advocates, attorneys or agents; or that conditions, restrictions or taxes beyond those imposed on British subjects were imposed on him; or that he was in some other way denied access to the English Courts.

In order to determine the existence or non-existence of the facts referred to above, the Commission will examine separately each of the charges preferred by the Greek Government against the United Kingdom Government in the submissions of the former at the end of the hearing. The first is that:

The British Government put forward a case before Mr. Justice Hill contrary to documents in their possession.

In the first place the Commission must determine what is meant by the phrase *a case contrary to documents in the possession* of the United Kingdom Government. The " case ", of course, is the " case " put forward by the Board of Trade in a series of actions tried before Mr. Justice Hill in November, 1922, in the Admiralty Division of the High Court of Justice. In this arbitration these actions are generally referred to as " the proceedings before Mr. Justice Hill ". These proceedings were brought by the Board of Trade, as successors to the Shipping Controller as Mortgagees under mortgages dated 4th November, 1920, and placed on seven ships purchased by Mr. Nicholas E. Ambatielos, to secure the payment of moneys due on the purchase price. The Board of Trade claimed possession of the ships under the mortgage deeds and under the terms of a certain Indenture or Deed of Covenant executed on the same date.

The action was resisted by the Defendant on several grounds, the principal ground being that the Shipping Controller had agreed to deliver the ships which had been sold, on certain fixed dates, that the ships had not been delivered on these dates and that by reason of the delay the Defendant had suffered damage. The Defence in the *Cephalonia* case (Annex 1A, United Kingdom Counter-Case) alleges the following:

4. In addition to the written terms embodied in the said contract, it was verbally agreed at or about the time at which the said contract was entered into, that the said steamships should be delivered to the Defendant on dates certain. The said verbal agreement was made between Major Bryan Laing on behalf of the Shipping Controller and Mr. G. E. Ambatielos on behalf of the Defendant. The said verbal term of the contract was subsequently confirmed in writing by letters of the 2nd May, 1921, from the Defendant to the said Major Bryan Laing and of the 11th May, 1921, from the said Major Laing to the Defendant.

The essence of the controversy which has led to this arbitration — as the arguments, both written and oral, fully show — is whether the United Kingdom Government, represented by the Shipping Controller, agreed with Mr. Ambatielos to deliver on dates certain the ships which had been sold to him, and the basis of the claim for damages is that the contract was broken by a failure to deliver the ships on the dates alleged to have been agreed upon. The Commission, therefore, must assume that by documents contrary to the claim which was put forward by the United Kingdom Government, the Greek Government means documents which show that fixed dates were agreed upon between the Government and Mr. Ambatielos for the delivery of the ships.

In the opinion of the Commission it cannot be contended successfully that documents known to the advisers of Mr. Ambatielos at the time of the proceedings in 1922 and produced to Mr. Justice Hill were sufficient in themselves to

show so clearly that fixed dates were agreed upon as to establish that the United Kingdom Government was putting forward a case contrary to documents in its possession.

According to the evidence before the Commission, the documents in the possession of the United Kingdom Government at the time when the action was before Mr. Justice Hill (*apart from those which were shown to the advisers of Mr. Ambatielos or produced before Mr. Justice Hill*) must be divided into two categories, namely:

(*a*) Documents, the existence of which is assumed, but the contents of which are unknown to the Commission such as the minutes, jackets, inter-departmental communications, files, etc., which are supposed to have been produced in or received by the Ministry of Shipping in connection with the purchase of the ships by Mr. Ambatielos or in connection with his subsequent claim; and

(*b*) Documents which were in existence when the trial of 1922 was proceeding and which were made known subsequently and are contained in the Exhibits or Annexes filed with the Greek Case and the United Kingdom Counter-Case.

With regard to documents in the first category, it is obvious that they do not constitute evidence on which the Commission can base a decision, inasmuch as they are not specified or identified and inasmuch as their contents are purely hypothetical. The Greek Government assumes that these unknown documents contain evidence of its main allegation that fixed dates for the delivery of the ships were agreed upon between the Ministry of Shipping and Mr. Ambatielos. As stated above, however, this Commission cannot possibly determine whether or not documents the contents of which are unknown are contrary to proceedings instituted on the basis of documents that are known. In other words, the Commission is unable to reach the conclusion that documents which it has not seen are contrary to the case put forward by the United Kingdom Government against Mr. Ambatielos.

With regard to documents belonging to the second category, it is necessary to examine their contents and determine whether the United Kingdom Government and its legal advisers must have realised that in fact they were contrary to the case put forward by the United Kingdom Government, i.e., whether they were documents showing clearly that that Government, represented by the Shipping Controller, did in fact agree with Mr. Ambatielos to deliver on dates certain the ships which it has sold to him.

The Commission does not find among the documents in the second category and reproduced in the Exhibits and Annexes filed by the Parties to this arbitration any document of a date prior to 24th November, 1922, which would furnish positive evidence that the United Kingdom Government entered into a binding agreement which provided for fixed delivery dates. Only such evidence would enable the Commission to hold that the United Kingdom Government or its advisers put forward a case which they knew to be contrary to documents in their possession.

The contract of sale of 17th July, 1919, does not, in any of its clauses, expressly provide for fixed dates. Article 7 thereof refers to delivery "*within the time agreed*". Article 3 stipulates that "the steamers shall be deemed ready for delivery immediately after they have been accepted by the Vendor from the Contractors." Finally, article 9 contemplates the case of default in delivery as between the Contractors (i.e. the builders of the ships) and the Vendor (i.e. the Shipping Controller).

The phrase "*within the time agreed*" in article 7 of the contract leads to the

inference that a time certain was agreed upon somewhere, in some manner, by the Contracting Parties. The Commission, however, does not find in the evidence before it any document distinct from the written contract which contains proof of the verbal agreement said to have been made with regard to fixed delivery dates, and which would thus prove that the United Kingdom Government put forward a case contrary to documents in its possession. As the pleadings of Mr. Ambatielos in the proceedings before Mr. Justice Hill, paragraph 4 of which is set out above, show, his defence was that in addition to the written terms of the contract, " it was verbally agreed . . . that the said steamships should be delivered to the Defendant on dates certain," and that " the said verbal agreement was made between Major Bryan Laing on behalf of the Shipping Controller and Mr. G. E. Ambatielos on behalf of the Defenant." It was further alleged in the Defence that " the said verbal agreement was subsequently confirmed in writing by letters of the 2nd May, 1921, from the Defendant to the said Major Laing and of the 11th May, 1921, from the said Major Laing to the Defendant." These letters read as follows:

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's 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.

The Commission is of opinion that these two letters fail to constitute evidence confirming the alleged verbal agreement, inasmuch as the statement made by Mr. Ambatielos was: " . . . those dates you assured me *could be relied upon.*" And Major Laing in his reply agreed to the statement, saying: " so far as I can recollect ". The language of the two letters expresses an *expectation*, not an agreement.

The principal document, the contents of which are known to the Commission and which was in the possession of the Government at the time when the proceedings were before Mr. Justice Hill, and which dealt with the question of fixed delivery dates and which was not disclosed to the advisers of Mr. Ambatie-

los or produced to Mr. Justice Hill, was the letter addressed by Major Laing to Sir Joseph Maclay, the former Shipping Controller, on 20th July, 1922.

This letter was written in reply to one in which Sir Joseph Maclay had asked Major Laing for information concerning the sale of ships to Mr. Ambatielos, and Sir Joseph wrote in this connection:

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.

The pertinent paragraphs of the answer by Major Laing were the following:

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 deduction 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 Mr. Ambatielos to purchase the ships.*

It will be seen that this letter was not sufficiently concrete and to the point to constitute evidence strong enough to convince the United Kingdom Government and its advisers of the fact that a legally binding agreement obliging the Government to adhere to fixed delivery dates was concluded by Major Laing, on behalf of the Government, with Mr. Ambatielos. It is worthy of note that Major Laing in his letter does not refer to an *agreement* with Mr. Ambatielos or even to a *promise* made to him, but an "*argument*" by means of which he INDUCED him to purchase the ships. The overall context of the letter and especially the two paragraphs quoted above are evidence of Major Laing's primary purpose, viz. to "reduce the liability against the Ministry of Shipping as rapidly as possible" and to secure a purchaser for the ships then building at Hong Kong. In furtherance of this purpose, by emphasising the economic advantages of the location of the ships and of a "free charter-party", and evidently convincing Mr. G. Ambatielos that the delivery dates given by the builders could be depended upon, Major Laing, as the letter states, INDUCED him to purchase the ships on behalf of his brother.

The letter has to be considered in connection with the evidence, chiefly the testimony of Mr. G. Ambatielos, that Major Laing invariably refused to insert fixed dates in the written contract. The Commission is of opinion that this attitude of Major Laing could be regarded by the United Kingdom Government as corroborating its case that there was no binding agreement for fixed dates. The Commission is unable to understand why the two parties, having agreed on a transaction which was to take the form of a written contract, should have made a vital and essential condition of that transaction the subject of a verbal agreement operating concurrently with the written contract.

The lack of evidential value of the Laing letter is corroborated by the affidavit of Mr. N. E. Ambatielos read in the Court of Appeal on 5th March, 1923, wherein he said:

Before the trial of this action I had a conversation with Major Laing concerning matters in question in this action. . . . Major Laing mentioned the existence of

certain confidential letters . . . . Mr. Laing read me *a part* of the contents of the letters, but refused to show me the letters or to give me copies thereof . . . . I did not receive from the extracts read to me or from the conversation which I held with Major Laing a correct impression as to the meaning of the letters. *In particular, I did not understand that they confirmed my case as to the delivery of the vessels on dates certain.*

A similar statement was made in another affidavit read on the same occasion viz. an affidavit by Mr. F. P. D. Gaspar, a member of the law firm of William A. Crump & Son, solicitors for Mr. Nicholas E. Ambatielos. In paragraph 3 of his affidavit Mr. Gaspar said:

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.

Then in the final paragraph the deponent declares: " Major Laing refused to give me any statement or proof at any time either before or during the trial."

Why Major Laing refused to make clear his position prior to the proceedings before Mr. Justice Hill, with the result that he awakened fear or suspicion as to what he would say in evidence, particularly in cross-examination, and consequently was not called as a witness by Mr. Ambatielos, is something which, in the opinion of the Commission, can easily be explained. He would have found it very difficult to tell the Court why he had refused to put dates into the written contract (as testified by Mr. G. Ambatielos and other witnesses) and had at the same time said that he was binding the United Kingdom Government to deliver ships on fixed dates. He also would have found it very difficult to explain why he had pretended (as Mr. Nicholas Ambatielos testified) to make an agreement on behalf of the Ministry of Shipping in August, 1919, about sharing losses on freights.

Another document in the possession of the United Kingdom Government and one to which the Greek Government attached great weight is the cablegram relative to the S.S. *War Trooper*, renamed *Ambatielos*, referred to as having been sent by Sir John Esplen, a member of the Committee of the Ministry of Shipping on 31st October, 1919. According to the Greek Case this ship was to be delivered on or before 30th September, 1919. (Greek Case, paragraph 24.) The cablegram reads as follows:

From Esplen, Shipminder 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.

In the Statutory Declaration made by Major Laing on 19th January, 1934, he said with regard to this telegram:

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

The story of how that cable message was produced is told in a different manner by Mr. G. E. Ambatielos in his evidence before Mr. Justice Hill. His version was that the cablegram was not sent by order of either Sir John Esplen or the Committee, but on the personal instructions of Major Laing. Here is the relevant part of the evidence:

Q. Were you there when he gave the instructions?

A. Yes; I was there when the instructions were given; but I was not there when the telegram was sent.

Q. What instructions did he give? Did he call in a clerk?

A. He called this Miss Straker, who was acting as his secretary as well as the secretary to Sir John Esplen.

Q. What did he say to her?

A. He said: "You must immediately wire that definite date has been agreed in respect to the steamer *War Trooper*, and that steamer must be delivered by that date", and he turned round to me and said: "I cannot make it any stronger", and he left.

In conformity with the facts and considerations set forth above, the Commission finds that none of the documents which are known to have been in the possession of the United Kingdom Government at the time of the 1922 proceedings and which were not shown to the advisers of Mr. Ambatielos or produced to Mr. Justice Hill (i.e. documents in category (*b*)) was necessarily inconsistent with the case put forward by the United Kingdom Government. It is the view of the Commission that none of the said documents constituted evidence strong enough to satisfy the United Kingdom Government and its legal advisers that a binding oral agreement had been entered into guaranteeing fixed dates for the delivery of the vessels and supplementing the written contract of 17th July, 1919.

After this finding of fact the Commission will consider the point of law involved in the first submission of the Greek Government hereinbefore examined, to wit: whether a Government which institutes an action contrary to documents in its possession does thereby deny " free access to the Courts " to an alien defendant. The Commission is of opinion that " free access " is something entirely different from the question whether cases put forward in Courts by Governments are right or wrong, and that denial of " free access " can only be established by proving concrete facts which constitute a violation of that right as understood and defined in this award. The Commission finds, therefore, that in putting forward the case herein referred to, the United Kingdom Government did not deprive Mr. Nicholas E. Ambatielos of his right of free access to the Courts afforded to him by Article XV of the Treaty of 1886.

The second submission is that:

The British Government withheld those documents, thereby preventing Mr. Ambatielos knowing that they were putting forward a case of that kind, namely, a case known to be false.

The line of reasoning developed in connection with the first submission is applicable to the second. The notion of " free access to the Courts " does not comprise an obligation on the part of Governments to disclose to an opponent in litigation, before or during the trial, all documents in its possession. If it were held, as intimated at the hearing, that considerations of equity and fairness impose upon the State an obligation to make known to an alien opponent all documents that have or may have a bearing on the case, even if they are favourable to the alien, such considerations would be of no avail in the present controversy, which can only be decided on legal grounds. No provision in Article XV of the Treaty of 1886 imposes such an obligation on the Contracting Parties. The non-disclosure here alleged would constitute a denial of " free access " if it could be shown that the act of non-disclosure does not conform with English law or that that law gives to British subjects, and not to foreigners, a right to discovery, thereby establishing a discrimination between nationals and foreigners. No evidence to that effect has been produced in the present case.

Accordingly, the Commission finds that the withholding of certain documents in the action brought against Mr. Nicholas E. Ambatielos by the United Kingdom Government did not prevent the defendant from exercising his right of free access to the Courts guaranteed to him by Article XV of the Treaty of 1886.

The third submission is that:

The British Government did so in circumstances in which they knew that Mr. Ambatielos had no power to compel them to disclose those documents, they having the right to refuse to disclose them.

This submission, as set out, virtually decides by itself the question raised. Once it is recognised that the Government had a right to refuse to disclose the documents, and hence, that the non-disclosure was in conformity with English law and practice, the fact stated above does not constitute a violation of the right of free access to the Courts. Moreover, if the Government knew that Mr. Ambatielos had no power to compel it to disclose the documents because the Government was entitled to refuse discovery, such a knowledge was a natural consequence of the exercise of the right to refuse, and not a wrongful act. The Commission, therefore, finds that the fact set out in the third submission was not a violation of the right of Mr. Nicholas E. Ambatielos to have free access to the English Courts as defendant in the action brought against him by the Government of the United Kingdom. The Commission thinks it right to add that the reason for the words " they having the right to refuse to disclose them ", which are used by the Greek Government in the third submission quoted above, was that the Maclay-Laing letters clearly fell within the class of documents privileged from disclosure or production in English law as documents coming into existence solely for the purpose of enabling legal advisers to prepare a case for trial. The departmental minutes and files fall within a class of documents which, if and when expressly called for in the appropriate manner, may, under English law, be withheld on the ground that the production of that class of document is contrary to the public interest.

If any contention that any documents were withheld contrary to English law, had been made and persisted in, which was not the case, the Commission would have had to consider the effect of that circumstance on the application of the rule of non-exhaustion of legal remedies.

Non-Exhaustion of Local Remedies

In countering the claim of the Greek Government the Government of the United Kingdom relies on the non-exhaustion by Mr. Ambatielos of the legal remedies which English law put at his disposal.

One of the questions which the Commission is requested to determine is " The question raised by the United Kingdom Government of the non-exhaustion of legal remedies in the English Courts in respect of the acts alleged to constitute breaches of the Treaty." The Commission notes that the question raised by the United Kingdom Government covers all the acts *alleged* to constitute breaches of the Treaty.

The Commission will therefore examine the validity of the United Kingdom objection independently of the conclusions it has reached concerning the validity of the Ambatielos claim under the Treaty of 1886.

The rule thus invoked by the United Kingdom Government is well established in international law. Nor is its existence contested by the Greek Government. It means that the State against which an international action is brought for injuries suffered by private individuals has the right to resist such an action if

the persons alleged to have been injured have not first exhausted all the remedies available to them under the municipal law of that State. The defendant State has the right to demand that full advantage shall have been taken of all local remedies before the matters in dispute are taken up on the international level by the State of which the persons alleged to have been injured are nationals.

In order to contend successfully that international proceedings are inadmissible, the defendant State must prove the existence, in its system of internal law, of remedies which have not been used. The views expressed by writers and in judicial precedents, however, coincide in that the existence of remedies which are obviously ineffective is held not to be sufficient to justify the application of the rule. Remedies which could not rectify the situation cannot be relied upon by the defendant State as precluding an international action.

The Greek Government contends that in the present case the remedies which English law offered to Mr. Ambatielos were ineffective and that, accordingly, the rule is not applicable.

The ineffectiveness of local remedies may result clearly from the municipal law itself. That is the case, for example, when a Court of Appeal is not competent to reconsider the judgment given by a Court of first instance on matters of fact, and when, failing such reconsideration, no redress can be obtained. In such a case there is no doubt that local remedies are ineffective.

Furthermore, however, it is generally considered that the ineffectiveness of available remedies, without being legally certain, may also result from circumstances which do not permit any hope of redress to be placed in the use of those remedies. But in a case of that kind it is essential that such remedies, if they had been resorted to, would have proved to be *obviously futile.*

Here a question of considerable practical importance arises.

If the rule of exhaustion of local remedies is relied upon against the action of the claimant State, what is the test to be applied by an international tribunal for the purpose of determining the applicability of the rule?

As the arbitrator ruled in the *Finnish Vessels* Case of 9th May, 1934, the only possible test is to assume the truth of the facts on which the claimant State bases its claim. As will be shown below, any departure from this assumption would lead to inadmissible results.

In the *Finnish Vessels* Case the issue was whether a means of *appeal* which had not been used by the claimants ought to be regarded as ineffective.

In the Ambatielos Case, failure to use certain means of appeal is likewise relied upon by the United Kingdom Government, but reliance is also placed on the failure of Mr. Ambatielos to adduce before Mr. Justice Hill evidence which it is now said would have been essential to establish his claims. There is no doubt that the exhaustion of local remedies requires the use of the means of procedure which are essential to redress the situation complained of by the person who is alleged to have been injured.

In paragraph 109 of its Counter-Case, the United Kingdom Government says the following concerning this point:

> The "local remedies" rule . . . finds its principal field of application in the two requirements (*a*) that the complainant should have availed himself of any right given him by the local law to take legal proceedings in the local courts; and (*b*) that having done so, he should have exhausted the possibilities of appealing to a higher court against any adverse decision of a lower one. The application of the rule is not, however, confined to these two cases. It also requires that during the *progress*, and for the purposes of any particular proceedings in one of the local courts, the complainant should have availed himself of all such *procedural* facilities in the way of calling witnesses, procuring documentation, etc., as the local system provides.

The Commission shares this view in principle. At the same time it feels that it must add some clarifications and reservations to it. Although this question has hardly been studied by writers and although it does not seem, hitherto, to have been the subject of judicial decisions, it is hardly possible to limit the scope of the rule of prior exhaustion of local remedies to recourse to local courts.

The rule requires that " local remedies " shall have been exhausted before an international action can be brought. These " local remedies " include not only reference to the courts and tribunals, but also the use of the procedural facilities which municipal law makes available to litigants before such courts and tribunals. It is the whole system of legal protection, as provided by municipal law, which must have been put to the test before a State, as the protector of its nationals, can prosecute the claim on the international plane. In this sense the statement in paragraph 109 of the Counter-Case seems to be sound.

It is clear, however, that it cannot be strained too far. Taken literally, it would imply that the fact of having neglected to make use of some means of procedure — even one which is not important to the defence of the action — would suffice to allow a defendant State to claim that local remedies have not been exhausted, and that, therefore, an international action cannot be brought. This would confer on the rule of the prior exhaustion of local remedies a scope which is unacceptable.

In the view of the Commission the non-utilisation of certain means of procedure can be accepted as constituting a gap in the exhaustion of local remedies only if the use of these means of procedure were essential to establish the claimant's case before the municipal courts.

It is on the assumption that the statements of the claimant Government are correct that the international tribunal will be able to say whether the non-utilisation of this or that method of procedure makes it possible to raise against a claim a plea of inadmissibility on the ground of non-exhaustion of local remedies.

Have the local remedies been exhausted with regard to Claim A?

Claim A is a claim for compensation for breach of the contract of sale by the United Kingdom Government. The breach alleged is that the vessels which Mr. Ambatielos bought at an agreed price and on condition that they were to be delivered to him on certain fixed dates, which had been agreed upon between the Parties, were not in fact delivered on those dates. Compensation is claimed for the damage caused to Mr. Ambatielos as a result of this breach of contract.

The United Kingdom Government has raised the question of the non-exhaustion of local remedies in the English Courts in so far as concerns the acts which are alleged to constitute breaches of the Treaty of 1886.

The principal act which is alleged by the Greek Government to constitute a breach of that Treaty is the alleged breach of contract aforesaid.

As regards Claim A, the questions of the non-exhaustion of local remedies thus raised are:

(1) In the 1922 proceedings Mr. Ambatielos failed to call (as he could have done) the witnesses who, as he now says, were essential to establish his case.

With regard to Major Laing, the Greek Government has primarily contended that Mr. Ambatielos was prevented from calling Major Laing as a witness before Mr. Justice Hill because Major Laing — though not heard — had been

subpoenaed to appear as a witness for the Crown. In the course of the proceedings before the Commission, however, the Parties agreed that the fact that Major Laing had been subpoenaed by the Crown would not, under English law, have precluded Mr. Ambatielos from calling Major Laing as a witness before Mr. Justice Hill.

The Greek Government further contends that if Mr. Ambatielos had called Major Laing as a witness, the decision of Mr. Justice Hill would have been favourable to him; this is a contention which is disputed by the United Kingdom Government.

It is not possible for the Commission to decide on the evidence before it the question whether the case would have been decided in favour of Mr. Ambatielos if Major Laing had been heard as a witness. The Commission has not heard the witnesses called before Mr. Justice Hill and cannot solely on the documentary evidence put before the Commission form an opinion whether the testimony of Major Laing would have been successful in establishing the claim of Mr. Ambatielos before Mr. Justice Hill. The Commission cannot put itself in the position of Mr. Justice Hill in this respect.

The test as regards the question whether the testimony of Major Laing was essential must therefore be what the claimant Government in this respect has contended, viz. that the testimony of Major Laing would have had the effect of establishing the claim put forward by Mr. Ambatielos before Mr. Justice Hill.

Under English law Mr. Ambatielos was not precluded from calling Major Laing as a witness.

In so far as concerns Claim A, the failure of Mr. Ambatielos to call Major Laing as a witness at the hearing before Mr. Justice Hill must therefore be held to amount to non-exhaustion of the local remedy available to him in the proceedings before Mr. Justice Hill.

It may be that the decision of Mr. Ambatielos not to call Major Laing as a witness, with the result that he did not exhaust local remedies, was dictated by reasons of expediency — quite understandable in themselves — in putting his case before Mr. Justice Hill. This, however, is not the question to be determined. The Commission is not concerned with the question as to whether he was right or wrong in acting as he did. He took his decision at his own risk.

The testimony of Major Laing must be assumed to have been essential for the success of the action of Mr. Ambatielos before Mr. Justice Hill. It could have been adduced by Mr. Ambatielos but was not in fact adduced. Mr. Ambatielos has therefore not exhausted the local remedies available to him in the proceedings before Mr. Justice Hill.

The Commission, having accepted the contention of the Greek Government that the evidence adduced by Major Laing if he had been heard as a witness would have resulted in a decision of Mr. Justice Hill favourable to Mr. Ambatielos, the question whether Mr. Ambatielos was prevented by the United Kingdom Government from adducing other evidence which might have led to the same result does not seem to be relevant to the question whether the failure of Mr. Ambatielos to call Major Laing as a witness must be considered as amounting to a non-exhaustion of the local remedy available to him in the first instance. If a man can secure help by taking course A *or* course B and is prevented from taking course A, he fails to exhaust his remedies if he refrains from taking course B.

(2) The second question as to non-exhaustion raised by the United Kingdom Government is the failure of Mr. Ambatielos to make use of or exhaust his appellate rights.

As the Commission has assumed, for the purposes of the test which it has accepted, that the testimony of Major Laing was essential to establish the claim of Mr. Ambatielos before Mr. Justice Hill, and as it has decided that the omission to produce that evidence constituted a failure to exhaust the remedy available to Mr. Ambatielos in the proceedings before Mr. Justice Hill, it might seem superfluous to consider the second question which has been raised.

Nevertheless it may be pertinent to state that the failure of Mr. Ambatielos to prosecute the general appeal which he had lodged against the decision of Mr. Justice Hill would ordinarily be considered a failure to exhaust local remedies. Such failure requires some excuse or explanation.

The refusal of the Court of Appeal to give leave to adduce the evidence of Major Laing did not, of course, in itself prevent this general appeal from being proceeded with.

The Greek Government argues by way of explanation that to proceed with the general appeal once the decision of the Court of Appeal not to admit the Laing evidence had been given would have been futile because the Laing evidence was essential to enable the Court to arrive at a decision favourable to Mr. Ambatielos.

The reason why Mr. Ambatielos was not allowed to call Major Laing in the Court of Appeal was, in the words of Lord Justice Scrutton, that " One of the principal rules which this Court adopts is that it will not give leave to adduce further evidence which might have been adduced with reasonable care at the trial of the action ".

Accordingly, the failure of Mr. Ambatielos to exhaust the local remedy before Mr. Justice Hill, by not calling Major Laing as a witness, is the reason why it was futile for him to prosecute his appeal.

It would be wrong to hold that a party who, by failing to exhaust his opportunities in the Court of first instance, has caused an appeal to become futile should be allowed to rely on this fact in order to rid himself of the rule of exhaustion of local remedies.

It may be added that Mr. Ambatielos did not submit to the Court of Appeal any argument suggesting, or any evidence to show, that any illegal or improper manoeuvres by his opponents had prevented him from calling Major Laing or producing any documents.

In so far as concerns the appeal to the House of Lords, it is of course unlikely that that Court would have differed from the decision of the Court of Appeal, refusing to allow Major Laing to be called as a witness in the latter Court. If it is held that such an appeal would *not* have been obviously futile, the failure of Mr. Ambatielos to appeal to the House of Lords must be regarded as a failure to exhaust local remedies. If, on the other hand, it is held that an appeal to the House of Lords *would* have been obviously futile, Mr. Ambatielos must likewise be held to have lost his hope of a successful appeal, by reason of his failure to call Major Laing.

Have the local remedies been exhausted with regard to Claim B?

It it were to be held that, contrary to the contention of the Greek Government, the contract did not contain any provision binding the United Kingdom Government regarding agreed dates for the delivery of the ships which had been sold to Mr. Ambatielos, the Greek Government claims in the alternative the return of £500,000 which, according to the contention of the Greek Government, was paid by Mr. Ambatielos in consideration of agreed dates of delivery.

The Greek Government claims this sum on the ground of " unjust enrichment ", together with all damages, interest and costs resulting therefrom.

This claim has not been before an English Court.

The Greek Government contends that it would have been futile to submit such a claim to an English Court, on the ground that English law does not recognise unjust enrichment as a valid basis for a claim.

The Commission is of opinion that it must first examine whether the claim as defined by the Greek Government can be said to constitute a claim for unjust enrichment.

The Commission finds that this is not the case. Claim B is not, as the Greek Government contends, a " quasi contractual " claim. The claimed sum of £500,000 was only part of the price which Mr. Ambatielos was to pay for the ships (together with advantages of position and " free charter-parties ") in accordance with the contract. Furthermore the full purchase price was not received by the United Kingdom Government. If however Claim B *had* been based on unjust enrichment, and had thus been independent of and alternative to claim A, the Commission is of opinion that Claim B would have failed, in so far as remedies *were* available in English law, on the ground that such remedies had not been tried — much less exhausted. The Commission has already decided that the Treaty of 1886 did not secure, for Greek subjects, remedies *not* available in English law.

Were the local remedies exhausted as regards Claim C?

Claim C refers to the position of Mr. Ambatielos on 4th November, 1920 (the date of the signature of the Mortgage Deeds), and rests on the argument that the sale of the *Mellon* and the *Stathis* should have been cancelled on that date, and not on the date of Mr. Justice Hill's judgment, viz. on 15th January, 1923.

According to the Greek Government this claim is an alternative claim to Claim A.

The claim was not before Mr. Justice Hill. The claim before Mr. Justice Hill concerning the *Mellon* and the *Stathis* was a claim by Mr. Ambatielos for damages for *non-delivery* of these two ships. Claim C is a claim for damages based on the contention that the United Kingdom Government, by *not cancelling the sale* of the *Mellon* and the *Stathis* on the date of the Mortgage Deeds, 4th November, 1920, but only at the trial of the action before Mr. Justice Hill, has caused Mr. Ambatielos damage in the amount stated in Claim C. It is the converse of the claim put forward before Mr. Justice Hill.

The Greek Government has never contended that there was any obstacle to a recourse to local remedies in regard to this claim. But no claim was ever put forward before the English Courts. The Commission, therefore, finds that there has been, in regard to this claim, a non-exhaustion of local remedies.

For these reasons,

THE COMMISSION

rejects the United Kingdom contention that there has been undue delay in the presentation of the Greek claim on the basis of the Treaty of 1886; finds that the claim is not valid having regard to the question raised by the United Kingdom Government of the non-exhaustion of legal remedies in the English Courts in respect of the acts alleged to constitute breaches of the Treaty; finds that the claim is not valid having regard to the provisions of the Treaty of 1886.

DONE in London this sixth day of March, nineteen hundred and fifty six in three copies one of which is transmitted to each of the Governments of Greece

and the United Kingdom of Great Britain and Northern Ireland and a third to the Archives of the Permanent Court of Arbitration at The Hague.

(Signed) Ricardo J. ALFARO
President

(Signed) Algot J. F. BAGGE

(Signed) Maurice BOURQUIN

(Signed) J. SPIROPOULOS

(Signed) Gerald A. THESIGER

(Signed) E. HAMBRO
Registrar

* * *

President Alfaro did not concur in the part of the award which deals with the question of non-exhaustion of legal remedies with regard to Claim A, and has appended to the award his individual opinion.

Professor J. Spiropoulos who is unable to concur in the award has appended to the award his dissenting opinion.

(Initialled) R. J. A.
E. H.

* * *

INDIVIDUAL OPINION OF DR. RICARDO J. ALFARO

The Commission has found, in relation to Claim A put forward by the Greek Government, that the claimant failed to exhaust the local remedies because Major Bryan Laing was not called by Mr. Nicholas E. Ambatielos to testify in the proceedings before Mr. Justice Hill. I regret that I am unable to agree with this finding for the reasons hereafter set forth.

1. The judgment of the Commission, with regard to the rule of exhaustion of local remedies, contains the following statement in which I concur:

> "The rule requires that 'local remedies' shall have been exhausted before an international action can be brought. These 'local remedies' include not only reference to the courts and tribunals, but also the use of the procedural facilities which municipal law makes available to litigants before such courts and tribunals. It is the whole system of legal protection, as provided by municipal law, which must have been put to the test before a State, as the protector of its nationals, can prosecute the claim on the international plane . . .
>
> "It is clear, however, that it cannot be strained too far. Taken literally, it would imply that the fact of having neglected to make use of some means of procedure — even one which is not important to the defence of the action — would suffice to allow a defendant State to claim that local remedies have not been exhausted, and that, therefore, an international action cannot be brought. This would confer on the rule of the prior exhaustion of local remedies a scope which is unacceptable."

2. The "local remedies" rule, as enunciated in the preceding lines, means in my opinion that when a claimant appears before municipal courts, either as plaintiff or defendant, he must exhaust the procedural remedies made available to him by the law of the land before each of the several courts in which the case may be tried. The concept of *procedural remedies* must be taken in its general sense. Thus, a claimant may be held not to have exhausted the procedural remedies at his disposal, if he failed, for instance, to adduce evidence despite his necessity to prove the facts of

the case, or if he failed to appear in Court to argue his case at the stage of the trial in which he had to argue.

3. But the rule cannot be carried so far as to interfere with the actual or concrete use of a given procedural remedy. Thus, a claimant who availed himself of the procedural remedy of adducing evidence, should not be held by an international tribunal to have failed to exhaust local remedies because he did not produce a certain exhibit, or because he did not call a certain witness. Likewise, it would be unfair to apply the sanction of non-exhaustion to a claimant in the international plane, on the ground that his line of reasoning in the argument was not the proper one. This, in the language of the award, "would confer on the rule of the prior exhaustion of local remedies a scope which is unacceptable."

4. For the reason stated in the preceding paragraph, I consider that the claimant in this case should not be held to have failed to exhaust local remedies because Major Bryan Laing was not called by Mr. Ambatielos as a witness during the proceedings before Mr. Justice Hill.

5. Whether Mr. Ambatielos or his advisers were right or wrong in not calling Major Laing to testify, I believe is immaterial. Mr. Ambatielos, represented by his advisers, made use of the procedural remedy of adducing evidence in Court. He adduced such evidence as he thought might prove his case. Whether he was clever or made a mistake, whether or not he lost because of an error in handling the instrumentality of evidence, are questions with which an international tribunal cannot concern itself in dealing with the issue of exhaustion or non-exhaustion of local remedies. Such tribunal should not be called upon to pass judgment on the manner in which procedural remedies were used but on the fact that they were used.

6. It is stated in the award that in applying the test adopted by the Commission for the determination of the issue of non-exhaustion, it has been assumed that the Greek Government was right in considering the testimony of Major Laing essential to win the case, and that consequently, Mr. Ambatielos failed to exhaust the procedural remedies, by abstaining from calling a witness whose testimony was essential for the success of his defence.

7. Such an assumption, adopted by the Commission for the determination of the issue, is however contrary to the realities of the case. The evidence before the Commission does abundantly prove that if Major Laing had been called to the witness box, it was extremely doubtful that his testimony, particularly after cross-examination, would have resulted favourably to Mr. Ambatielos. Hence it can hardly be called essential.

8. It is a fact proven by affidavits read in the Court of Appeal on 5th March, 1923, by Mr. Nicholas E. Ambatielos and by his solicitor Mr. F. P. D. Gaspar, as well as by other evidence, that Major Laing was not called to testify because both Mr. Ambatielos and his advisers were not sure that such testimony would be favourable to their cause, chiefly for the reason that at the time of the proceedings before Mr. Justice Hill, Major Laing had refused to make known to them the full contents of his correspondence with Sir Joseph Maclay and had also refused, as Mr. Gaspar said, to give him "any statement or proof at any time either before or during the trial."

9. It seems evident, therefore, that sound considerations of prudence and regard for the interest of their client led the advisers of Mr. Ambatielos while in Court to refrain from calling a witness whose hostile or favourable attitude was decidedly doubtful.

10. It was after a decision was rendered by Mr. Justice Hill that Major Laing made known to Mr. Ambatielos the contents of his correspondence with Sir Joseph

Maclay. It was then that Mr. Ambatielos and his advisers considered the testimony of Major Laing essential to prove his case. It was then that Mr. Ambatielos applied in vain to the Court of Appeal for authority to have the testimony of Major Laing admitted as evidence. Finally, it was after all these events that the Greek Government, in its diplomatic intervention and in subsequent actions before the International Court of Justice and before this Commission contended or affirmed that the testimony of Major Laing was essential.

11. In view of the above stated facts, it seems difficult to maintain that not calling a witness in 1922 because at that time his testimony was not deemed essential, and on the contrary was considered dangerous or at least doubtful, constituted failure to exhaust local remedies because in 1923 the same testimony was considered essential. Non-exhaustion of local remedies must necessarily take place at the time when the local remedy can be resorted to, but not afterwards.

12. It is further declared in the award that Mr. Ambatielos failed also to exhaust the local remedies by not prosecuting the general appeal he had lodged against the decision of Mr. Justice Hill. With regard to this point it is my view that according to the evidence before the Commission, particularly the expert opinion of Lord Porter, it would have been clearly futile for the claimant to prosecute his general appeal.

13. The award states that the failure of Mr. Ambatielos to exhaust the local remedy before Mr. Justice Hill by not calling Major Laing as a witness made it futile for him to prosecute his appeal and that for this reason he could not rid himself of the rule of exhaustion of local remedies.

14. My view regarding this situation is that once it has been established that recourse to appeal is obviously futile, the claimant is exonerated from the responsibility of non-exhaustion of that remedy, without entering into considerations as to the cause of the futility. The two things are separate and distinct. Moreover, if Mr. Ambatielos cannot be held to have failed to exhaust local remedies by not calling Major Laing as a witness, he cannot be held responsible for non-exhaustion on the ground that his decision not to call that witness made the appeal futile.

(Signed) R. J. ALFARO

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DISSENTING OPINION OF PROFESSOR SPIROPOULOS

Commissioner John Spiropoulos, being unable to accept all the views expressed in the award, desires to make the following statement.

EXHAUSTION OF LOCAL REMEDIES

1. The Agreement between the United Kingdom Government and the Greek Government requests the Commission to determine the validity of the Ambatielos claim under the Anglo-Greek Treaty of 1886 having regard to:

(ii) The question raised by the United Kingdom Government of the non-exhaustion of legal remedies in the English Courts in respect of the acts alleged to constitute breaches of the Treaty (of 1886).

According to my interpretation of the above terms of reference, the Commission would have to examine the question of the exhaustion of local remedies *only* with regard to acts which, if established, would in fact constitute a breach of the Treaty of 1886, and not with regard to any other acts alleged by the Greek Government as constituting a breach of the said Treaty.

It seems to me beyond doubt that, when a plea of non-exhaustion of local remedies is put forward by a party before an international tribunal the latter must begin by considering the law to be applied (general international law or Treaty), and then examine whether the person concerned (the plaintiff) has exhausted the local remedies with regard to the act alleged to be contrary to that law. It does not seem logical to me to go as far as to enquire whether the person concerned (the plaintiff) has exhausted local remedies with regard to an act *alleged* to be contrary to a system of law *alleged to be applicable.*

As the Commission has come to the conclusion that the non-disclosure of the documents by the Crown is the *only* act which, if proved to be contrary to the English law of procedure, would constitute a breach of the Treaty of 1886, the Commission ought to have confined itself to an examination of the question whether Mr. Ambatielos exhausted all remedies available, according to English law, at the trial before Mr. Justice Hill, for the purpose of having the documents put before Mr. Justice Hill. The Commission omitted to examine this question which, in my submission, is the only one it should have examined with regard to the question of exhaustion of local remedies.

Having found that "general international law" is not incorporated in the Treaty of 1886 by virtue of the most-favoured-nation clause, the Commission should not, according to its terms of reference, have examined the question whether local remedies were also exhausted with regard to acts which, if established, would have constituted a violation of general international law, but not of the Treaty of 1886.

Only if it had found that general international law was incorporated in the Treaty of 1886 (by virtue of the most-favoured-nation clause), could the Commission have examined the question whether Mr. Ambatielos exhausted the local remedies with regard to acts alleged to constitute a violation of general international law and, accordingly, also of the Treaty of 1886. Thus, to give an example, if the non-delivery of the ships on guaranteed dates had been held to be a violation of general international law by the United Kingdom authorities (and accordingly also of the Treaty of 1886), Mr. Ambatielos would have been under a duty to exhaust all local remedies provided by English law before his claim could have been brought before an international tribunal. In that case the fact whether or not Major Laing was called as a witness might ultimately have been relevant for the determination of the question as to whether or not Mr. Ambatielos had exhausted local remedies.

However, in view of the fact that the Commission has held that general international law is not included in Article X of the Treaty of 1886, the question of exhaustion of local remedies cannot, in my submission, refer to facts which, if established, would constitute a breach of the Treaty of 1886 by a violation of general international law.

2. Let us suppose, however, that general international law is applicable to the present case. On this assumption the question of whether or not Major Laing could have been called might ultimately be relevant to determine whether the local remedies were exhausted by Mr. Ambatielos.

For the following reasons I am unable to follow the Commission in the way in which it applies the rule of non-exhaustion of local remedies to the present case:

Writers on international law deal with the question of non-exhaustion of local remedies from the point of view of the legal means of recourse from a lower to a higher court. As far as I know, the question relevant in the present case, i.e., exhaustion of existing remedies *within one and the same court,* has never been considered by writers or international tribunals.

Now, with regard to the application of the rule of non-exhaustion, the test generally accepted in practice is the "existence" and "effectiveness" of local remedies.

The question of non-exhaustion which confronts the Commission in the present case is specific inasmuch as it is concerned with a case of non-exhaustion (that is the omission to call Major Laing as a witness) *within one and the same court.*

Although writers on international law have hitherto approached the rule of non-exhaustion only from the point of view of possible recourse from a lower to a higher court, I agree with the Commission that the *same* rule must also apply to the exhaustion of local remedies within one and the same court. Whereas, however, in the case of recourse from a lower to a higher court the test to be applied, i.e. the existence and effectiveness, or otherwise, of recourse, is an *objective* one, practical considerations must soften the rigidity of the rule in a case where one and the same court is concerned. The rule then becomes one of determining, having regard to the particular circumstances of the case, what Counsel would have done in the interests of his client. Moreover, the remedy must be such as to affect the course of the proceedings; in other words, it must be an *essential* remedy. But these are, of course, questions which can only be decided by having due regard to the merits of each individual case.

To adopt a more rigid rule would be tantamount to making the rule of exhaustion of local remedies a bar to any international claim, because it is possible, in almost every case, to find some local remedy which has not been used by the claimant.

Having thus established the general principle which, in my opinion, should be applied, I have to enquire whether the fact that Major Laing was not called as a witness can be regarded as a non-exhaustion of the remedies provided by the English law of procedure.

Major Laing was present at the trial before Mr. Justice Hill and he could have been called as a witness, both by the Crown and by Mr. Ambatielos. Without examining whether it was also up to the Crown to call Major Laing as a witness — he was the competent officer of the Ministry of Shipping who had given the delivery dates to Mr. G. Ambatielos — I will assume that it was only up to Mr. Ambatielos to call Major Laing if he wished to avail himself of his evidence in order to prove that dates certain had been promised.

As appears from the affidavit of the solicitors of Mr. Ambatielos, however, Major Laing had been approached by the solicitors, before as well as during the trial before Mr. Justice Hill, and had been asked whether he was willing to make a statement favourable to the case of Mr. Ambatielos. *He had, however, refused to do so.*

According to English practice, Counsel are rarely prepared, in ordinary circumstances, to call a witness who has refused to give a statement to the solicitor. Whatever the reasons which prompted Major Laing to refuse to make a statement — it may be that as a former officer of the Ministry (at the time of the trial he had left the Ministry of Shipping) he may have thought he was bound by an undertaking not to disclose what had occurred in relation to this matter — the fact remains that the solicitors of Mr. Ambatielos were in the dark as to what he might say if called as a witness. As Mr. Ambatielos had called three other witnesses, and as he was relying in particular on the documents which the Crown might have in its possession, it is very difficult to accept the proposition that in the special circumstances of the case the deliberate omission of Mr. Ambatielos's solicitors to call a witness whose testimony was unknown, who had refused to give a statement and whose evidence might ultimately have been detrimental to the interests of Mr. Ambatielos, can be regarded as a failure to exhaust local remedies.

Article X of the Treaty of 1886

I am of the opinion that as the Commission has rejected Claim A, "justice" and "equity" might have been held to be a suitable basis for Claim B, by applying Article 24 of the Treaty of 1670 with Denmark which the Commission holds to be

incorporated in Article X of the Treaty of 1886, and which, in my submission, allows one to complement the rules of domestic law by considerations of equity. The principle to be applied would be that of "unjust enrichment," which forms part of the general principles of law applicable in international relations.

The Commission would then, of course, have to examine the extent to which the Crown was enriched by the £500,000 paid by Mr. Ambatielos over and above the price payable for the ships purchased by him. In so far as concerns interest, the Commission would have to examine for how long Mr. Ambatielos is entitled to interest, because, though lapse of time has, in principle, no bearing on the right to put forward a claim under international law, claims for interest cannot be run on for indefinite periods.

Article XV of the Treaty of 1886

1. The main complaint of the Greek Government under Article XV of the Treaty of 1886 was, firstly, that "vital evidence" necessary for the determination of the dates of delivery of the ships was withheld by the Crown, and secondly, that Mr. Justice Hill was guilty of a denial of justice by accepting the claim of privilege without any further enquiry as to whether it could be justified in accordance with English practice.

At the oral hearing on 1st February, Counsel for Greece withdrew the complaint concerning "denial of justice" on the part of the Court of Admiralty, i.e. denial of justice by Mr. Justice Hill, with the result that the only complaint now before the Commission concerns the withholding of documents by the United Kingdom authorities.

Notwithstanding that this complaint, in view of the interpretation adopted by the Commission with regard to Articles X and XV, is now the only complaint on which the Greek Government can base its claim, the award devotes to this question a relatively limited space, thus failing to do full justice to its importance.

Furthermore, it must be emphasised that Counsel for the Greek Government, at the oral hearing on 14th February, expressly acknowledged that according to English law the Crown was not under a duty to produce minutes and interdepartmental documents, such documents being covered by Crown privileges. Counsel for the Greek Government confined himself to the contention that there must have been some other documents in the hands of the United Kingdom authorities which prove that dates certain had been promised by the Crown.

As a result, the award, as stated above, contains only a rather short passage dealing with this basic question of the Ambatielos claim. The Commission has placed on record the agreement of the Parties on this question of English law. It felt that, as an international tribunal, it was not called upon to deal with this problem of municipal law in greater detail. I am inclined to think that the Commission should not have confined itself merely to placing on record the statements of Counsel for the United Kingdom and Greece as to the law to be applied, but that it should have examined, *ex officio*, the question as to the law which is applicable. With regard to this latter question, I would like to make the following comment:

Counsel for the United Kingdom referred to the decision of the House of Lords in the case of *Duncan* v. *Cammell Laird and Co. Ltd.* (1942) A. C. 624, in order to establish that the Crown is not under a duty to produce the minutes or interdepartmental documents before an English court. This decision was referred to as stating English law on this matter.

I have serious doubts whether this is the right view to take.

According to Viscount Simon, Lord Chancellor, the principle to be applied in the case of Crown privilege is that documents otherwise relevant and liable to production must not be produced if the public interest requires that they should be withheld. This requirement, according to Viscount Simon, may be held to be

satisfied where a document is withheld from production, having regard either (*a*) to its contents, or (*b*) to the fact that it belongs to a class which, on grounds of public interest, must at all costs be withheld from production.

With regard to the criteria to be adopted in deciding whether a document must or must not be produced, Viscount Simon said:

> "It is not a sufficient ground that the documents are 'State documents,' or 'official' or are marked 'confidential.' It would not be a good ground that, if they were produced, the consequences might involve the department or the government in parliamentary discussion or in public criticism, or might necessitate the attendance as witnesses or otherwise of officials who have pressing duties elsewhere. Neither would it be a good ground that production might tend to expose a want of efficiency in the administration or tend to lay the department open to claims for compensation. In a word, it is not enough that the minister of the department does not want to have the documents produced. The minister, in deciding whether it is his duty to object, should bear these considerations in mind, for he ought not to take the responsibility of withholding production except in cases where the public interest would otherwise be damnified, for example, where disclosure would be injurious to national defence or to good diplomatic relations, or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service."

The distinguished judge, in support of the view expressed by him, refers to certain principles enunciated in other cases.

With regard to the case here referred to, I should like to make the following comment:

(*a*) First of all, the opinion of Viscount Simon has been subjected to considerable criticism, not because the documents concerned were not clearly excluded from evidence, but because, as a matter of principle, the judge ought to look at the documents before giving his decision on the objection, and ought not to abrogate his function in favour of the executive. (See 16 (1942) 58 L.Q.R. 436; 59 (1943) L.Q.R. 102, quoting 20 (1942) Can. Bar Rev. 805).

(*b*) An analysis of the "Cammell Laird" case leads to the conclusion that its importance does not lie in the general conclusions of his Lordship, because on the facts of the case there was little doubt that the documents were privileged. They were concerned with constructional details of a submarine (the *Thetis*), and any disclosure of their contents might therefore have been of value to the enemy. (The case was decided during the last war.)

(*c*) All the other cases cited by Viscount Simon in support of his views were concerned only with facts where a real public interest was involved. Not one of these cases was concerned with an ordinary *commercial transaction.*

(*d*) Finally, some of the cases mentioned by Viscount Simon expressly state that the Crown must do its utmost to give a defendant full discovery.

Thus, in the case of *Deare* v. *Attorney General* (1835), 1 Y. and C. (Ex.) 197, 208, and similarly in *Attorney General* v. *Newcastle-upon-Tyne* Corporation (1897) 2 Q. B. 384, Rigby, L. J. said: "The law is that the Crown is entitled to full discovery, and that the subject as against the Crown is not. That is a prerogative of the Crown, part of the law of England, and we must administer it as we find it . . . . . *Now I know that there has always been the utmost care to give to a defendant that discovery which the Crown would have been compelled to give if in the position of a subject,* unless there be some plain overruling principle of public interest concerned which cannot be disregarded. Where the Crown is a party to a suit, therefore, discovery of documents cannot

be demanded from it as a right, *though in practice, for reasons of fairness and in the interests of justice, all proper disclosure and production would be made.*"

Moreover, it is important to emphasise again that the privilege of the Crown has never been claimed in any commercial transaction.

Although the significance of the case of *Duncan* v. *Cammell Laird and Co. Ltd.* cannot be denied, I do not think that it contains anything contrary to the view taken by the Greek Government that in cases of commercial transaction the privilege of the Crown ought to be waived.

The question as to whether the Crown failed to produce documents in its possession at the trial before Mr. Justice Hill must be determined in accordance with the practice prevailing at the time, and not in accordance with rules of law enunciated in cases decided many years later. *This point is of decisive importance.* I should like to make the following comment with regard to this:

In order to ascertain what the practice was at the time of the trial before Mr. Justice Hill, reliance should not be placed on the case of *Duncan* v. *Cammell Laird and Co. Ltd.*, which was decided in 1942, but on the case of *Robinson* v. *State of South Australia* (1931) A.C. 704, which was decided by the Privy Council in 1931 and must be regarded as the leading case for the period prior to that year.

In that case, the appellant (Robinson) had brought an action in the Supreme Court of South Australia against the respondent State claiming damages for alleged negligence in the care of wheat placed in the control of the State under the Wheat Harvest Acts, 1915-17. Upon an order for discovery, the respondent State, by an affidavit made by a civil servant, claimed privilege in respect of 1882 documents comprising communications between officers administering the department concerned; there was exhibited to the affidavit a minute by the responsible minister stating (inter alia) that disclosure of the documents would be contrary to the interests of the State and the public.

The *Privy Council* said that it must not be assumed from certain observations of Lord Justice Turner that documents relating to the trading, commercial or contractual activities of a State can never be claimed as being protected under this head of privilege. It is conceivable that even in connection with the production of such documents there may be "some plain overruling principle of public interest concerned which cannot be disregarded." But cases in which this is so, must, in view of the sole object of the privilege, and especially in time of peace, *be rare indeed*, and the distinction drawn by the Lord Justice remains instructive and illuminating.

The *Privy Council* referred to the case of *Queensland Pine Co.* v. *the Commonwealth of Australia* which was decided in 1920. The following passage appears in that case:

> " . . . notwithstanding a certificate from the Minister of State of the Commonwealth claiming protection for documents on this occasion in terms direct and unambiguous, the learned Judge at the trial inspected them, and having done so, expressed the opinion that the facts discoverable by inspection would not be detrimental or prejudicial to the public welfare, and he ordered that inspection of all the documents should be given to the Plaintiff."

The *Privy Council*, in its judgment in the case of *Robinson* v. *State of South Australia*, then advised His Majesty to discharge the order appealed from and to remit the case to the Supreme Court of South Australia with a direction *that it was one proper for the exercise of the Court's power of inspecting the documents for which privilege was claimed*, in order to determine whether the facts discoverable by their production would be prejudicial or detrimental to the public welfare in any justifiable sense.

2. In so far as concerns the question of exhaustion of local remedies, I am of opinion that the relevant passage at pages 94-95 of the transcript of the proceedings before Mr. Justice Hill does not leave much room for doubt that Mr. Ambatielos

must be held to have exhausted the local remedies in a reasonable manner, in connection with the failure of the Crown to produce the documents.

3. A passage in a Note of the Foreign Office, dated 7th November, 1934, would not have been without relevance to the decision of the Commission. This Note was a reply to a Note of the Greek Government of 3rd August, 1933, which accused the Crown of not having given to Mr. Ambatielos the same treatment that would have been accorded to a British National. The Greek Note says:

> "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 Mr. Ambatielos called for these files the privilege of the Crown was claimed and they were not produced." The Foreign Office replied as follows:
>
> > "Such 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 Department concerned, and in particular that such is the regular practice of the Greek Government itself."

The above correspondence shows an admission by the United Kingdom Government that the United Kingdom authorities were under a duty to produce, at the trial before Mr. Justice Hill, the documents which the Ministry of Shipping had in its possession.

4. The Commission has not, of course, any means of knowing (*a*) whether the Crown had any documents relating to the verbal agreement between Mr. G. Ambatielos (who acted on behalf of his brother, Mr. N. Ambatielos) and Major Laing, and (*b*) whether these documents would have established satisfactorily that the Ministry of Shipping was bound by fixed delivery dates.

In these circumstances I think that the Commission ought to have examined the question whether the award should not be based on the *assumption* that fixed delivery dates had been agreed. The leading case justifying such an assumption is the well-known case of *Armory and Delamirie* which is referred to in Smith's Leading Cases, 13th Edition, and which lays down the rule: *Omnia praesumuntur contra spoliatorem.* This rule is to the effect that if a man, by his own tortious act, had withheld the evidence to prove the nature of his case, *all presumptions will be against him.*

5. The Commission having held that the non-production of the documents by the *Crown does not constitute a breach* of Article XV of the Treaty of 1886, I may confine myself to the above comments, without going more fully into the substance of the matter which involves a great deal of responsibility, since my conclusion on the issue of production of documents would not be of any practical purpose.

(*Signed*) J. SPIROPOULOS

ANNEX 1

TREATY OF COMMERCE AND NAVIGATION BETWEEN GREAT BRITAIN AND GREECE OF NOVEMBER 10th, 1886

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 Paries 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 facilities, 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 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 sub-

mitted, 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

ANNEX 2

CONTRACT OF JULY 17, 1919, BETWEEN THE MINISTRY OF SHIPPING AND MR. N. E. AMBATIELOS

AN AGREEMENT made the 17th July, 1919, between THE SHIPPING CONTROLLER on behalf of His Majesty the King (thereinafter called "the Vendor") of the one part, and Nicholas E. AMBATIELOS, of Argostoli, Cephalonia, Greece (thereinafter 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. Fergusson & 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* £	*s.*	*d.*
Taikoo Dockyard Hong Kong	180	289,166	13	4
Taikoo Dockyard Hong Kong	177	289,166	13	4
Taikoo Dockyard Hong Kong	181	289,166	13	4
Hongkong and Wampoa Dock	564	289,166	13	4
Hongkong and Wampoa Dock	565	289,166	13	4
Hongkong and Wampoa Dock	570	289,166	13	4
Shanghai Dock and Engineering Co.	1505	180,000	0	0
Shanghai Dock and Engineering Co.	1506	180,000	0	0
Shanghai Dock and Engineering Co.	1507	180,000	0	0
		£2,275,000	0	0

For and on behalf of Nicholas E. Ambatielos:
(Signed) FERGUSSON & 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

ANNEX 3

MORTGAGE DEED AND COVENANT DATED NOVEMBER 4, 1920, BETWEEN MR. N. E. AMBATIELOS AND THE SHIPPING CONTROLLER

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 Mortages").

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 Mortgagor shall pay the interest hereinbefore 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 engagements 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 Parr's 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 Mortagor 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 Parr's 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. *Panagis*.
When the amount due is reduced by a further £150,000, the S.S. *Nicolis*.
When the amount due is reduced by £130,000, the S.S. *Trialos*.
When the amount due is reduced by £130,000, the S.S. *Cephalonia*.
When the amount due is reduced by £130,000, the S.S. *Ambatielos*.
When the amount due is reduced by £85,000, the S.S. *Yannis*.
When the balance is repaid, the S.S. *Keramies*.

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. *Keramies*	S.S. *War Coronet*	8,250 tons
S.S. *Trialos*	S.S. *War Sceptre*	8,250 tons
S.S. *Nicolis*	S.S. *War Bugler*	8,250 tons
S.S. *Ambatielos*	S.S. *War Trooper*	8,250 tons
S.S. *Cephalonia*	S.S. *War Miner*	8,250 tons
S.S. *Panagis*	S.S. *War Diadem*	5,150 tons
S.S. *Yannis*	S.S. *War Tiara*	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)

ANNEX 4

LETTER OF FEBRUARY 3, 1921, FROM MR. G. E. AMBATIELOS TO THE SHIPPING CONTROLLER

GEA/ECM
By hand February 3, 1921

IMPORTANT

The Shipping Controller,
Ministry of Shipping,
St. James's Park, S. W. 1

Sir,

Re *N. E. Ambatielos of Paris*

Whilst apologising for troubling you with this letter we ask for your indulgence while we place clearly before you the position we find ourselves in re the above, in the hope that you may give it sympathetic and favourable consideration.

In 1919 we bought 11 steamers from the Ministry involving a sum — including extras — of over three millions sterling.

From the very fact that this transaction involved, as it did, the cash provision of £2,200,000 — and left only a relatively small balance of £800,000 — to be found, we ask you to believe, that it was entered upon only after most careful calculation based on business experience, and was not hastily or rashly undertaken.

Our Bankers, both verbally and in writing, informed us that we could rely upon certain advances which would fully cover our requirements to complete this transaction and we implicity relied upon this assurance. Much to our dismay, however, when the time came for this accommodation to be provided, they refused to grant us a loan on the grounds that things had considerably changed, that they had in the meantime advanced considerable sums of money to assist shipping, and that they were obliged to meet demands from other customers, not connected with shipping.

We immediately bought the matter to the knowledge of the competent gentleman at the Ministry, but still continued our efforts to procure a loan through other Bankers, namely, Messrs. Cox & Co., with whom we negotiated over a long period, but unfortunately they also turned the business down. These efforts were known to Mr. J. O'Byrne, who, we must admit has all along done his utmost to assist us in trying to meet the situation that has arisen.

We chartered the following vessels, as under, with first-class American and English firms:

S.S *Nicolis*, chartered 30th April 1920, at the rate of $21.50 per ton, for as many consecutive voyages as steamer can make up to the 30th June 1921, from Hampton Roads to West Italy.

S.S. *Panagis*, chartered on the 29th April 1920, for as many consecutive voyages as steamer can perform up to 1st April 1921, from Hampton Roads to French Atlantic, at the rate of $20.00 per ton.

S.S. *Ambatielos*, chartered 22nd April 1920, at the rate of $21.50 per ton, for six consecutive voyages from Hampton Roads to West Italy.

S.S. *Cephalonia*, chartered 29th May 1920, at the rate of $19.50 per ton, for as many voyages as steamer can perform up to the 31st July 1921, from Hampton Roads to West Italy.

S.S. *Keramies*, chartered 25th March 1920, for six consecutive voyages, from Calcutta to Alexandria, at the rate of 120/- per ton.

S.S. *Trialos*, chartered 28th April 1920, for as many consecutive voyages as steamer can perform up to the 1st April 1921, from Hampton Roads to Antwerp or Rotterdam, at the rate of $19.

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.

Shipping, as you are well aware, Sir, is going through a most abnormal crisis, but it is to be hoped that things cannot possibly remain as they are because business at large, and trade in general is thereby paralysed and almost at a standstill. Nevertheless, one must face the actual fact, that ships can no longer pay their expenses and are being rapidly laid up.

All this has been worrying us more than it is possible for you to realise, and notwithstanding the fact that we have spared no efforts to make satisfactory arrangements with a view to meeting our obligations we can see no immediate prospect of doing so.

As above stated, Sir, this very considerable transaction was not entered upon in the spirit of speculation. Had that been so, we would certainly not deserve, or appeal for any indulgence. It was a thoroughly well thought out business proposition, in which personal property was sunk of over two millions sterling, and for which we respectfully submit, no normal foresight could have anticipated any such difficulties as have arisen.

How can we possibly deal with the present situation effectively and satisfactorily unless we receive some indulgence at your hands.

Having regard to the " impasse " we are faced with, we would ask you to consider whether you could release us from purchasing at least the ss. *Stathis* and the ss. *Mellon*. In that event, together with the proceeds of a ship we have just sold, the outstanding balance would be reduced to proportions that we could handle and thus save ourselves from utter ruin.

We beg to offer you, Sir, in anticipation of a favourable solution, our most grateful thanks and appreciation, and remain.

Yours respectfully,
(Signed) G. E. AMBATIELOS

ANNEX 5

CORRESPONDENCE BETWEEN SIR JOSEPH MACLAY AND MAJOR LAING, JULY, 1922

Station 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

20th July, 1922

Strictly private and confidential.

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

21, Bothwell Street, Glasgow

Strictly private and confidential.

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

ANNEX 6

DECLARATION ACCOMPANYING THE TREATY OF COMMERCE AND NAVIGATION BETWEEN GREAT BRITAIN AND GREECE OF JULY 16, 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.

ANNEX 7

STATUTORY DECLARATION OF MAJOR LAING OF JANUARY 19, 1934

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 0s. 0d. 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.

ANNEX 8

PARAGRAPHS 70 AND 71 OF THE GREEK CASE AND EXTRACT FROM SIR FRANK SOSKICE'S SPEECH ON FEBRUARY 1, 1956

70. The second flaw in the proceedings was committed by Mr. Justice Hill who allowed the Crown the privilege of not disclosing the files of this, a plainly commercial transaction. He accepted this claim of privilege without further inquiry, to which he was entitled, in order to ascertain that it was justified, more particularly as the Crown was a party to the litigation. See *Hennessy* v. *Wright* (1888) 21 Q.B.D. 509; In re *Joseph Hargreaves Ltd.* (1900) 1 Ch. 347 and *Robinson* v. *State of South Australia* (1931) A.C. 704.

71. It is difficult to understand this claim of privilege as the contract of July 17, 1919, was entirely and exclusively a commercial contract and no reason for the withholding of these documents existed. As held by the Court of Appeal in *the Asiatic Petroleum Co Ltd.* v. *Anglo-Persian Oil Co. Ltd.* (1916) 1 K.B. 822: " the foundation of the rule of the protection of documents from discovery is that the informa-

tion cannot be disclosed without injury to the public interest and not that the documents are confidential or official, which alone is no reason for their non-production."

* * *

May I say perfectly frankly to the Commission with regard to those two paragraphs that they contain an error, and that the Greek Government does not rely on those two paragraphs; and I wish to correct the error and to withdraw the two paragraphs, 70 and 71. The error consists in the assertion in that paragraph that there was a flaw in the proceedings on the part of Mr. Justice Hill because he did not further enquire into the rightness or wrongness of the claim of privilege. The Commission will see that English case *Hennessy* v. *Wright* is cited in support of that proposition. *Hennessy* v. *Wright*, and the doctrine that the judge could enquire once privilege were claimed, claimed in proper form, if necessary by an affidavit, that doctrine was specifically overruled by Lord Simon in his speech in the House of Lords in the case of *Cammell Laird* which I have previously cited, that case being reported as the Commission may remember, in 1942 Appeal Cases at page 638. The House of Lords in that case recognised specifically that once privilege has been claimed the court cannot go behind that privilege and ask whether the privilege is properly claimed or not. The Minister who claims the privilege takes the responsibility upon himself of claiming the privilege and using it properly. If he has misused the privilege there is no power in the court whatever to correct his misuse, to correct his abuse. If he chooses to claim the privilege it is final. The court can say — " We would like on affidavit a statement from you that you claim the privilege " — but what is said on the affidavit cannot be questioned. The Minister's statement is final, and no court can go behind it, and therefore the statement in these two paragraphs that Mr. Justice Hill made an error in not investigating whether the privilege was properly claimed, that statement cannot be supported and is contrary to the law of England. Therefore, Mr. President and Members of the Commission, I formally withdraw paragraphs 70 and 71 of the Greek case.