English only

I.C.J. Communiqué 53/11
(Unofficial)

The following information from the Registry of the International Court of Justice has been communicated to the Press:

Today, May 19th, 1953, the International Court of Justice delivered its Judgment in the Ambatielos case (Merits: Obligation to Arbitrate), between Greece and the United Kingdom of Great Britain and Northern Ireland.

These proceedings had been instituted by an Application by the Hellenic Government, which, having taken up the case of one of its nationals, the shipowner Ambatielos, had prayed the Court to declare that the claim which the latter had made against the Government of the United Kingdom should be submitted to arbitration in accordance with Anglo-Greek Agreements concluded in 1886 (Treaty and Protocol) and in 1926 (Declaration). Following a Preliminary Objection lodged by the United Kingdom, the Court found that it had jurisdiction to adjudicate on this question by a Judgment delivered on July 1st, 1952.

In its Judgment of today's date, the Court finds, 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.

Sir Arnold McNair, President, Judges Basdevant, Klaestad and Read appended to the Judgment a joint statement of their dissenting opinion.

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In its Judgment, the Court begins by defining the question before it: is the United Kingdom under an obligation to accept arbitration of the difference between that Government and the Hellenic Government concerning the validity of the Ambatielos claim, in so far as this claim is based on the Treaty of 1886? The distinctive character of this case is that quite unlike the Mavrommatis Palestine Concessions, decided by the Permanent Court of International Justice in 1924 the Court is called upon to decide, not its own jurisdiction, but whether a dispute should be referred to another tribunal for arbitration.

The Parties have rested their case on the Declaration of 1926 and the Judgment of the Court of July 1st, 1952. The Declaration was agreed upon for the purpose of safeguarding the interests of the Parties with respect to claims on behalf of private persons based on the Treaty of 1886, for which, on the termination of that Treaty, there would have been no remedy in the event of the failure of the Parties to arrive at amicable settlements. The Agreement of 1926 relates to a limited category of differences which the Agreement of 1886 provided should be settled by arbitration, namely differences as to the validity of claims on behalf of private persons based on the Treaty of 1886. But in both cases the Parties were prompted by the same motives and adopted the same method of arbitration. By the Judgment of July 1st, 1952, the merits of the Ambatielos claim were found to be outside the jurisdiction of the Court which consists solely of deciding whether the United Kingdom is under an obligation to accept arbitration. The limited jurisdiction of the Court is to be clearly distinguished from the jurisdiction of the Commission of Arbitration. The Court must refrain from pronouncing final judgment upon any question of fact or law falling within the merits; its task will have been completed when it has

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decided whether the difference with regard to the Ambatielos claim is a difference as to the validity of a claim on behalf of a private person based on the provisions of the Treaty of 1886 and whether, in consequence, there is an obligation binding the United Kingdom to accept arbitration.

What meaning is to be attributed to the word "based" on the Treaty of 1886? In the opinion of the Greek Government it would suffice that the claim should not prima facie appear to be unconnected with the Treaty. In the view of the United Kingdom, it is necessary for the Court to determine, as a substantive issue, whether the claim is actually or genuinely based on the Treaty. The Court is unable to accept either of these views. The first would constitute an insufficient reason; the second would lead to the substitution of the Court for the Commission of Arbitration in passing on a point which constitutes one of the principal elements of the claim. The Commission alone has jurisdiction to adjudicate on the merits; and it cannot be assumed that the Agreement of 1926 contemplates that the verification of the allegations of fact should be the duty of the Commission, while the determination of the question whether the facts alleged constitute a violation of the Treaty of 1886 should form the task of another tribunal.

At the time of the signature of the Declaration of 1926, the British and Greek Governments never intended that one of them alone or some other organ should decide whether a claim was genuinely based on the Treaty of 1886; it must have been their intention that the genuineness of the Treaty basis of any claim, if contested, should be authoritatively decided by the Commission of Arbitration, together with any other questions relating to the merits.

For the purpose of determining the obligation of the United Kingdom to accept arbitration, the expression claims based on the Treaty of 1886 cannot be understood as meaning claims actually supportable under that Treaty. Of course it is not enough that a claim should have a remote connection with the Treaty for it to be based on it; on the other hand it is not necessary that an unassailable legal basis should be shown for an alleged Treaty violation. In its context, the expression means claims depending for support on the provisions of the Treaty of 1886, so that the claims will eventually stand or fall according as the provisions of the Treaty are construed in one way or another. Consequently, in respect of the Ambatielos claim, it is not necessary for the Court to find that the Hellenic Government's interpretation of the Treaty is the only correct interpretation: it is enough to determine whether the arguments advanced by the Hellenic Government in support of its interpretation are of a sufficiently plausible character to warrant a conclusion that the claim is based on the Treaty. In other words, if an interpretation appears to be an arguable one, whether or not it ultimately prevails, then there are reasonable grounds for concluding that the claim is based on the Treaty. The validity of the respective arguments would be determined by the Commission of Arbitration in passing upon the merits of the difference.

The Court then proceeds to deal with two of the contentions put forward by Greece and contested by the United Kingdom. One is based on the most-favoured-nation clause in Article X of the Treaty of 1886 which would permit Greece to invoke the benefits of Treaties concluded by the United Kingdom with third states and obtain redress for a denial of justice Mr. Ambatielos would have suffered - if the facts alleged were true.

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The other contention, based on Article XV rests on an interpretation of the words "free access to the Courts of Justice" appearing in that Article; again on the assumption that the facts alleged are true, it is contended that Mr. Ambatielos did not have "free access" to English courts.

Having regard to these contentions, as well as the divergence of views which give rise to them, and bearing in mind especially the possible interpretation put forward by the Hellenic Government of the provisions of the Treaty of 1886 which it invokes, the Court must conclude that this is a case in which the Hellenic Government is presenting a claim on behalf of a private person based on the Treaty of 1886, and that the difference between the Parties is the kind of difference which, according to the Agreement of 1926, should be submitted to arbitration.

The Hague, May 19th, 1953.