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 Type: Order  
 Full Title: *Case of the S.S. "Wimbledon"*  
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 Party(ies): Poland  
 Dated: June 28th, 1923  
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<sup>1</sup> date when the request for an advisory opinion or application was filed with the court Registry

[6] Application Instituting Proceeding Addressed to the Registrar of the Court,  
in conformity with Article 40 of the Statute,  
through the Intermediary of the French Legation at The Hague,  
on January 16th, 1923.

(S.S. "Wimbledon.")

[ *Translation.* ]

*To the President and Judges of the Permanent Court of International Justice.*

The undersigned, being duly authorised by the GOVERNMENTS of HIS BRITANNIC MAJESTY, of the FRENCH REPUBLIC, of HIS MAJESTY THE KING OF ITALY, and of HIS MAJESTY THE EMPEROR OF JAPAN, Principal Allied Powers under the terms of the Treaty of Peace of Versailles of June 28th, 1919, acting conjointly;

Having regard to Articles 380 to 386 of the aforementioned Treaty;

Having regard to Article 37 and 40 of the Statute of the Court, and Article 35, paragraph 2, of the Rules of Court;

Have the honour to submit the following application:

Under the terms of Article 380 of the Treaty of Peace of Versailles:

"The Kiel Canal and its approaches shall be maintained free and open to the vessels of commerce and war of all nations at peace with Germany on terms of entire quality."

On the morning of March 21st, 1921, the British steamship "Wimbledon", chartered by the French armament firm "Les Affréteurs réunis", proceeding to Danzig with a cargo of 4,000

tons of goods (military material), was refused access to, and free passage through the Kiel Canal by the German authorities.

In reply to the protests made to the German Government on this subject on March 23rd, 1921, by the French Ambassador [7] at Berlin, that Government reaffirmed its refusal to allow the passage of this vessel and, in justification of this refusal, alleged that the cargo of the steamship "Wimbledon" consisted of war material destined for Poland, that the Treaty of Peace between the latter country and Russia was not yet ratified, that there was therefore a state of war between those countries, and that German regulations regarding neutrality forbade the transit across German territory of war material destined for these two countries.

Under the terms of Article 386 of the Treaty of Peace of Versailles:

"In the event of violation of any of the conditions of Articles 380 to 386, or of disputes as to the interpretation of these Articles, any interested Power can appeal to the jurisdiction instituted for the purpose by the League of Nations."

Under the terms of Article 37 of the Statute of the Court:

"When a Treaty or Convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal."

Accordingly, subject to the subsequent presentation of the Court of any cases, counter-cases and, in general, of any other documents or evidence:

**MAY THE COURT BE PLEASED:**

To take note that for all notices and communications relating to the present case the applicant Powers have selected as their address the French Legation at The Hague;

To give notice of the present application to the Government of the German Empire, in accordance with Article 40, paragraph 2, of the Statute of the Court;

To give judgment, whether the aforementioned Government is present or absent, and after the expiration of such times as shall be fixed by the Court subject to any agreement between the parties, to the effect: [8]

That the German authorities wrongfully refused on March 21st, 1921, free access to the Kiel Canal of the steamship "Wimbledon";

That the German Government shall make reparation for the loss incurred by the aforementioned vessel in consequence of this action, a loss which is estimated at francs 174,082.86, together with interest at 6% per annum as from March 20th, 1921.

<i>(Signed)</i>	Charles Benoist.	Charles M. Marling.
	N. Ito.	Vittorio Negri.

[9] Application by the Polish Government to Intervene.

The Hague, May 22nd, 1923.

*To the Permanent Court of International Justice.*

Having regard to Article 62 of the Statute of the Court and articles 58-59 of the Rules of the Court;

Whereas the Governments of His Britannic Majesty, of the French Republic, of His Majesty the King of Italy and of His Majesty the Emperor of Japan, have instituted proceedings before the Court by means of a letter from the French Legation at The Hague dated January 16th, 1923, with regard to the refusal of the German authorities on March 21st, 1921 to allow the British S.S. "Wimbledon", chartered by the French company "Les Affréteurs réunis", free access to the Kiel Canal;

Whereas the said S.S. "Wimbledon" was bound for Danzig with a cargo of 4000 tons of goods (military material) destined for the Polish Government; whereas the German Government justifies its refusal to allow passage to the S.S. "Wimbledon" on the grounds that, the Treaty of Peace between Poland and Russia not having then been ratified, a state of war existed between Poland and Russia and that the German regulations with regard to neutrality prohibited the transit of war material through German territory to these two countries;

Whereas Poland was one of the parties to the Treaty of Peace of Versailles and whereas the refusal in question constitutes a violation of the rights and material advantages guaranteed to Poland by Article 380 of the Treaty of Versailles;

The undersigned being duly authorised by the Government of the Polish Republic, presents to the Court, in agreement with the Governments of Great Britain, France [10]Italy and Japan, the request of the Polish Government to intervene on the side of "these other States in the case of the "Wimbledon" above referred to.

*(Signed)* Joseph De Wierusz-Kowalski.

Minister.

[13] Permanent Court of International Justice.

*Applicants:*

The Governments of His Britannic Majesty;  
of the French Republic;  
of His Majesty the King of Italy;  
of His Majesty the Emperor of Japan.

*Respondent:*

The Government of the German Empire;

*Intervener:*

The Government of the Polish Republic.

QUESTION OF INTERVENTION BY POLAND.

The Court, composed as follows:

Mm. Loder,	<i>President</i>
Weiss,	<i>Vice-President.</i>
Lord Finlay, Mm. Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Huber.	<i>Judges.</i>
Wang,	<i>Deputy-judge</i>
M. Schüking	<i>National Judge</i>

having heard the observations and conclusions of the parties, delivers the following judgment: [12]

The Statute of the Permanent Court of International Justice provides for two sets of circumstances and two different forms in which intervention is possible on the part of States which are not from the outset concerned in a suit brought before it.

The first of these forms of intervention is that dealt with in Article 62 of the Statute and Articles 58 and 59 of the Rules of Court; it is based on an interest of a legal nature advanced by the intervening party, and the Court should only admit such intervention if, in its opinion, the existence of this interest is sufficiently demonstrated.

On the other hand, however, when the object of the suit before the Court is the interpretation of an international convention, any State which is a party to this convention has, under Article 63 of the Statute, the right to intervene in the proceedings instituted by others and, should it make use of the right thus accorded, the construction given by the judgment of the Court will be equally binding upon it as upon the original applicant parties.

According to the terms of an application instituting proceedings dated January 16th, 1923, and submitted on behalf of the Governments of His Britannic Majesty, of the French Republic, of His Majesty the King of Italy and of His Majesty the Emperor of Japan, represented respectively by Sir Cecil Hurst, Professor Basdevant, Commendatore Pilotti and Monsieur N. Ito, Chargé d'Affaires a.i. of Japan at The Hague, the Permanent Court of International Justice has to decide whether the German authorities were within their rights in refusing to the S.S. "Wimbledon" on March 21st, 1921, free access to the Kiel Canal, and, if necessary, to determine the damages due for the prejudice caused to this vessel by reason of this refusal.

In a Note dated May 22nd, 1923, His Excellency the Minister of the Polish Republic at The Hague informed the Court that his Government desired permission to intervene in the suit on the side of the four applicant States, under Article 62 of the Statute and Articles 58 and 59 of the Rules of Court; but, although Article 63 was not expressly referred to, the above-mentioned Note cited, in support of the application, Poland's [13] participation in the Treaty of Versailles, and the violation of the rights and interests guaranteed to Poland under Article 380 of that Treaty, resulting from the refusal to allow the "Wimbledon" access to the Kiel Canal.

From a further communication made to the Court by M. Olechowski, Agent of the Polish Government, at the public sitting of June 25th, it appears that that Government, abandoning the exclusive course which it seemed in the first instance to have adopted, now intends to avail itself of the right conferred upon it, as a party to the Treaty of Versailles, by Article 63 of the Statute and "does not insist that the grounds submitted by it as justification for intervention under Article 62 should be taken into consideration". It also states that it does not intend to ask the German Government for any special damages for the prejudice caused to it in the case of the "Wimbledon".

The attitude thus adopted renders it unnecessary for the Court to consider and satisfy itself whether Poland's intervention in the suit before it is justified by an interest of a legal nature, within the meaning of Article 62 of the Statute.

It will suffice for the Court to note that in this case the interpretation of certain clauses of the Treaty of Versailles is involved in the suit and that the Polish Republic is one of the States which are parties to this treaty.

In view of the facts established above, which are conclusive, and of the statements made at the hearing by the representatives of the applicant Powers, who left the matter to the decision of the Court,

*the Court records* that the Polish Government intends to avail itself of the right to intervene conferred upon it by Article 63 of the Statute.

FOR THESE REASONS.

*the Court accepts* the intervention of Poland in the case of the S.S. "Wimbledon",

*and adjourns* the hearings on the merits of the case until the sitting to be held on July 5th. [14]

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-eighth day of June, nineteen hundred and twenty-three, in seven copies, one of which is to be deposited in the Archives of the Court, and the others to be forwarded to the Agents of the Polish Government and of the applicant and respondent Powers, respectively.

(Signed) Loder,

President.

(Signed) Å. Hammarskjöld,

Registrar.