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Rhine navigation (France, Germany)

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II.

GERMAN CESSION OF VESSELS AND TUGS FOR RHINE NAVIGATION ¹.

PARTIES : France, Germany.

COMPROMIS : Treaty of Versailles, Article 357.

ARBITRATOR : Walker D. Hines (U.S.A.).

DECISION : Paris, January 8, 1921.

Cession of German navigation property on the Rhine.—1913 Rhine traffic.—Traffic transhipped in Alsatian ports to and from Switzerland and Italy.—Transshipment at Mannheim.—Coal from Ruhr to France *via* the Rhine and the sea.—Ore from French colonies.—Relative importance of French and German traffic.—Increased importance of Alsatian traffic.—Factors in computing tonnage and horse-power required to satisfy legitimate needs of France.—Estimates of Reparations Commission of part of fleet to be ceded in reparation.—Cession of shares in German Rhine Navigation Companies.—Versailles 339.—Cession of tugs, vessels and material.—The *Rheinschiffahrts Aktien-Gesellschaft Vorm. Fendel Company*.—Mortgages, encumbrances, charges and liens attached to property.—Specifications and procedure for cession.

¹ For bibliography, index and tables, see Volume III.

IN THE MATTER OF THE CESSIONS BY GERMANY TO FRANCE
UNDER ARTICLE 357 OF THE TREATY OF VERSAILLES.

WALKER D. HINES, ARBITRATOR.

Decided, Paris, January 8, 1921.

Article 357¹ of the Treaty of Versailles provides that Germany shall cede to France certain property pertaining to the navigation on the Rhine, and provides that the amount and specifications of such cessions shall be determined by an arbitrator or arbitrators appointed by the United States of America. The undersigned, Walker D. Hines, has been appointed accordingly as the Arbitrator for the purposes of Article 357, and hereby makes his determination as to the amount and specifications of such cessions.

The French Government and the German Government, respectively, have designated delegates to appear before the Arbitrator, and he has received and considered the various notes presented by the respective delegates, and has also had numerous conferences with these delegates in Paris, at various places on the Rhine, and at Rotterdam.

TUGS AND VESSELS.

Article 357 requires, among other things, that Germany shall cede to France tugs and vessels, together with their fittings and gear, in good state of repair, in condition to carry on commercial traffic on the Rhine, and selected from among those most recently built; and that the amount and

¹ The complete text of Article 357 follows:

Within a maximum period of three months from the date on which notification shall be given Germany shall cede to France tugs and vessels, from among those remaining registered in German Rhine ports after the deduction of those surrendered by way of restitution or reparation, or shares in German Rhine navigation companies.

When vessels and tugs are ceded, such vessels and tugs, together with their fittings and gear, shall be in good state of repair, shall be in condition to carry on commercial traffic on the Rhine, and shall be selected from among those most recently built.

The same procedure shall be followed in the matter of the cession by Germany to France of:

(1) the installations, berthing and anchorage accommodation, platforms, docks, warehouses, plant, etc., which German subjects or German companies owned on August 1, 1914, in the port of Rotterdam, and

(2) the shares or interest which Germany or German nationals possessed in such installations at the same date.

The amount and specifications of such cessions shall be determined within one year of the present treaty by an arbitrator or arbitrators appointed by the United States of America, due regard being had to the legitimate needs of the parties concerned.

The cessions provided for in the present article shall entail a credit of which the total amount, settled in a lump sum by the arbitrator or arbitrators mentioned above, shall not in any case exceed the value of the capital expended in the initial establishment of the ceded material and installations, and shall be set off against the total sums due from Germany; in consequence, the indemnification of the proprietors shall be a matter for Germany to deal with.

specifications of such cessions shall be determined with due regard to the legitimate needs of the parties concerned.

THE TRAFFIC TO BE CONSIDERED IN ESTIMATING THE LEGITIMATE NEEDS
OF THE TWO COUNTRIES.

Both France and Germany adopt the traffic on the Rhine for the year 1913 as the basis for estimating the legitimate needs of the two countries. France, however, claims that this should be augmented by certain additional French traffic, while Germany claims that the traffic of 1913 should be regarded as the exclusive and final basis, and indeed suggests that even the year 1913 gives an exaggerated idea as to the relative importance of the French traffic.

The two parties agree that the Rhine traffic for 1913 is as shown in Appendix I. They also agree that all the classes of that traffic to or from Alsace have relation to the legitimate needs of France, except traffic going to or coming from Switzerland or Italy and transshipped to or from railroad in Alsace, which traffic France claims should be considered, and Germany claims should not be considered.

They also agree that certain 1913 traffic transshipped at Mannheim should be considered, to wit: traffic moving on the Rhine between the sea and Mannheim transshipped at that place to or from railroad for movement by rail between that place and Alsace-Lorraine or France.

France claims and Germany denies that consideration should be given to the 1913 traffic consisting of coal moving from the Ruhr district down the Rhine to the sea and thence to French seaports, and the 1913 traffic consisting of ore moving from the French colonies by sea to the Rhine and thence to the Ruhr district.

The amounts of traffic involved in these agreements and disagreements are shown in Appendix I.

The additions to the traffic of 1913 which France claims and which Germany denies are the following:

Reparation coal from the Ruhr district via the Rhine to the sea for movement by sea to France.

A large additional coal traffic from the Ruhr district to Alsace for distribution in eastern and south-eastern France,—the new hinterland which, it is claimed, the Alsatian ports acquire by virtue of the reincorporation of Alsace-Lorraine with France.

A large additional movement of potash from Alsatian ports via the Rhine to the sea, by reason of the continuing development of the comparatively new potash mining industry in Alsace-Lorraine.

An additional movement of oil by the Rhine from the sea to Alsace.

The respective amounts of these claims for additions to the traffic of 1913 are also shown in Appendix I.

ARBITRATOR'S CONCLUSIONS AS TO THE TRAFFIC TO BE CONSIDERED
IN ESTIMATING LEGITIMATE NEEDS OF THE TWO COUNTRIES.

Germany contends that the 1913 Rhine traffic transshipped in Alsatian ports in going to or coming from Switzerland or Italy should be excluded from the traffic of the Alsatian ports for the reason that it has no relation to the legitimate needs of France. France contends that it is interested in all Rhine traffic to or from its Rhine ports, just as Germany is interested in all Rhine traffic to or from its Rhine ports, and that this principle is not

changed by the fact that such traffic, before reaching a Rhine port comes from a foreign country, or after leaving a Rhine port goes to a foreign country. France also contends that the practical result of the exclusion from the Rhine traffic of the Alsatian ports of this traffic in transit to or from Switzerland or Italy would be to leave with Germany all the boats necessary to handle that traffic; or, in other words, such traffic would be thereby treated as a part of the legitimate needs of Germany. The Arbitrator's view is that each country has a legitimate need for boats to enable it to participate in the transportation of all traffic to or from its ports, and he, therefore, decides that the Rhine traffic transshipped in Alsatian ports and going to or coming from Switzerland or Italy should be considered the same as the other traffic to or from Alsatian ports in estimating the legitimate needs of France.

Germany contends that the 1913 traffic in coal moving down the Rhine from the Ruhr district to the sea destined to French seaports, and the 1913 traffic in ore coming by the sea from the French colonies and moving from the sea up the Rhine to the Ruhr district should be excluded from the Rhine traffic having a relation to the legitimate needs of France on the Rhine. The Arbitrator can find nothing in Article 357 which excludes this traffic from consideration in determining the legitimate needs of France. Germany further argues that France could have participated in this traffic prior to the war, and that its failure to do so proves that this traffic is not a legitimate need of France. It is reasonable to conclude, however, that without a base on the Rhine (such as was, of course, enjoyed by Germany and Holland, and also for practical purposes by Belgium), it was not to be expected that France would participate in this traffic. The Arbitrator, therefore, decides that this traffic ought not be to excluded.

France claims that there should be added to the 1913 Rhine traffic the reparation coal which may move from the Ruhr district by the Rhine to the sea for movement thence to French seaports. Germany denies this claim and insists that by virtue of Annex V of Part VIII of the Treaty of Versailles the obligation to transport this reparation coal to the seaport rests upon Germany, and hence that such transportation is not a legitimate need of France. France, however, insists that it has the right to perform this transportation by the Rhine from the Ruhr district to the sea to whatever extent it sees fit. France has made certain representations to this effect to the Reparation Commission. The fact is, however, that at present Germany is delivering this coal at the seaport (although in at least one instance the agency which Germany has selected for this purpose has contracted with French private interests to perform the work). No action interfering with the actual transportation of this coal by Germany has been taken by the Reparation Commission. Even if such action were taken it would remain uncertain as to the extent to which France would elect to participate in the transportation. Furthermore, there is the broad and serious question of principle as to whether Article 357, in addition to providing for normal commercial activity, should be also construed as being intended to provide the means for performing reparation, necessarily temporary in character, of coal or other articles. The Arbitrator is forced to the conclusion that this reparation coal from the Ruhr district to the sea should not be added to the 1913 traffic for the purpose of ascertaining the legitimate needs of France within the meaning of Article 357.

France claims that a large traffic to and from Alsace in addition to the traffic of 1913 should be considered. This claim is denied by Germany,

and thus an important question of principle is raised. The principal arguments urged on this point by France are the following:

1. That the improvement of the Rhine between Mannheim and ports of Alsace had not attained a condition favorable to a large traffic prior to 1912, and had not been completed even in 1913, whereas the improvements of the Rhine below Mannheim had been completed many years; so that the opportunities of the ports of Alsace to enjoy Rhine traffic on a large scale had not really begun until 1912, and the real development of Rhine traffic to and from Alsace was in a state of rapid growth when the war began, while the traffic of the German Rhine ports as a whole had long before that reached a much greater degree of maturity, and had settled down to a much slower growth. France claims that this argument is strikingly illustrated by the chart shown on page 66.

2. That while the potash industry in other parts of Germany had attained its principal development by the year 1911, the potash industry of Alsace had at that time only begun, and at the beginning of the war was developing at a rapid rate, and that the future Rhine movement of potash from Alsace ports will be greatly in excess of what it was in 1913.

3. That the reincorporation of Alsace with France has opened up to the Rhine ports of Alsace a very important hinterland in southern and south-eastern France, particularly for coal traffic, and that the result will be the handling of a large additional Rhine traffic through the ports of Alsace.

4. That these considerations constitute the reasons why Article 357 did not require the Arbitrator to have regard to the shipping traffic during any period preceding the war, although Article 339, providing for the cession of boats on certain other rivers, expressly required the Arbitrator to regard the shipping traffic during the five years preceding the war.

Germany contends that the only tangible and reliable basis is that afforded by the traffic prior to the war, and indicates its willingness, provided no additions are made to the year 1913, to take as this basis the year 1913, in which Alsace had a larger Rhine traffic than in any previous year. Germany contends that any effort to construct a theoretical Rhine traffic for Alsace in excess of the traffic for the year 1913 would be purely speculative, and that if such effort is entered upon the traffic ought to be diminished rather than increased, because of the disadvantages which Alsace will suffer by reason of its losing the support of the commercial and governmental influence of Germany.

The task that confronts the Arbitrator is to form a just estimate of the relative importance of the French traffic and of the German traffic. If he takes the 1913 basis for the German traffic (as is clearly the most convenient and practical course to pursue) it would be unfair to restrict the Alsatian traffic (which is the principal part of the French traffic) to the 1913 basis, unless he is of opinion that the Alsatian traffic will do no more than keep pace with the German traffic—diminishing if the German traffic diminishes, and remaining stationary if the German traffic remains stationary. The Arbitrator could not adopt this view without disregarding commercial factors which, in his opinion, are of great importance. Rhine navigation on a large scale to and from the Alsatian ports had only fairly

begun in 1912, and was increasing at an exceedingly rapid rate in 1913, while the rate of increase for the German ports as a whole (where Rhine navigation had long since reached a mature growth) was increasing at a much smaller rate. There is every reason to believe that Alsatian traffic will continue to increase for several years at a much more rapid rate than the general average rate of increase of the German traffic as a whole. The probability of a much greater rate of increase for the Alsatian ports is further increased by the probably very high rate of increase in the production of Alsatian potash as compared with 1913 when the industry was just beginning, and by the increased commercial importance of the Alsatian ports due to their improved opportunity to carry on commerce with the nearby portions of eastern France. The Arbitrator believes that it was because of these considerations that Article 357 omitted to refer to pre-war traffic as a standard for the Arbitrator's decision, although Article 339 adopted pre-war traffic as an important standard.

After the most careful study of all the voluminous arguments, statistics, maps and diagrams, that have been presented, the Arbitrator is of opinion that the traffic of the German ports for 1913 being adopted as one of the factors, he should adopt as the Alsatian factor the Alsatian traffic of 1913, plus an addition of 850,000 tons. Two of the principal elements of the Alsatian traffic will be coal and potash. For the purpose of convenient computation it will be assumed that the increase will consist of 600,000 tons of coal from the Ruhr to Alsatian ports, and 250,000 tons of potash from Alsatian ports to Rotterdam. This method assigns the entire increase to those sorts of traffic which are loaded most heavily in the barges, and, therefore, which require the smallest number of additional barges.

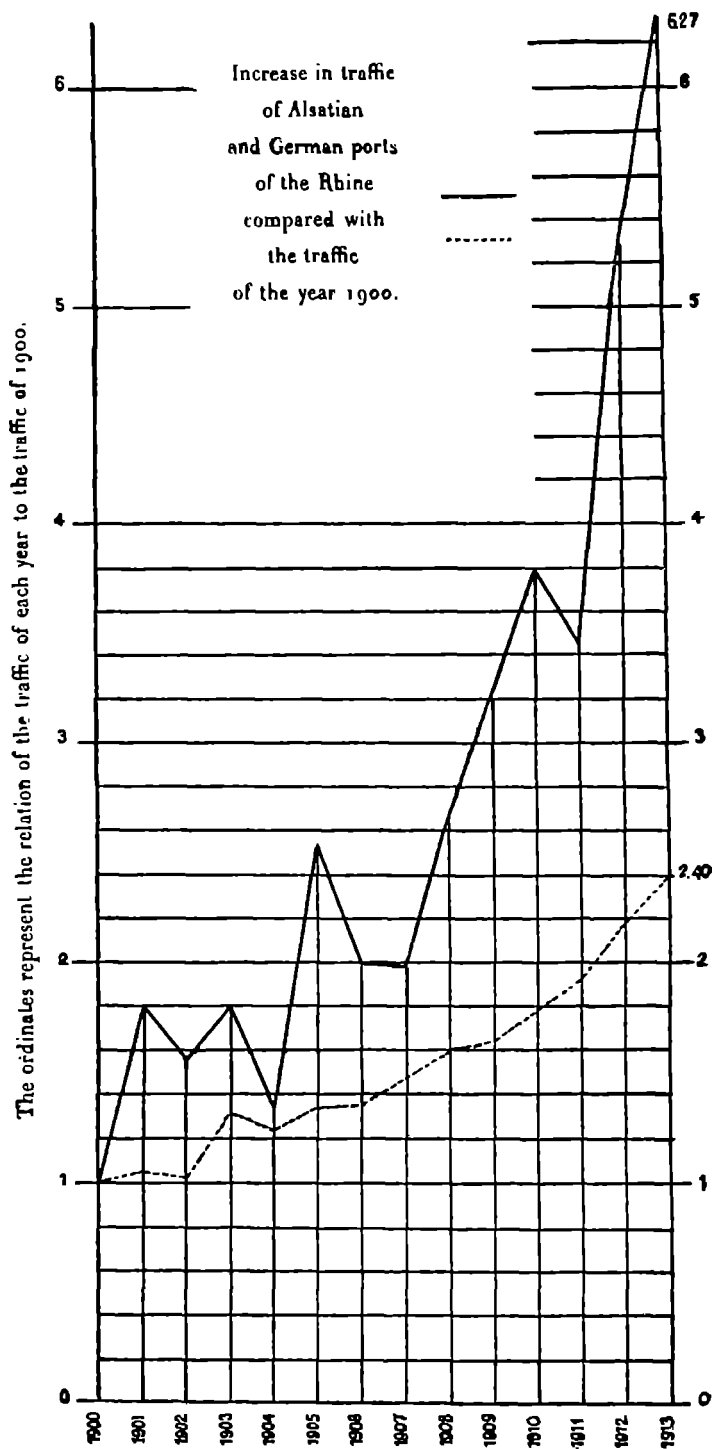
Appendix II shows, according to its various classes, the traffic which, in accordance with the views above expressed, the Arbitrator adopts as the basis of his decision.

AMOUNT OF SHIPPING REQUIRED TO PERFORM FRANCE'S PART OF THE TRAFFIC
THUS ADOPTED.

This subject involves the questions as to what part of the traffic should move in French boats, and as to how many boats would be required to transport that part.

To what extent do the legitimate needs of France and Germany, respectively, entitle them to participate in the transportation of the traffic which has been adopted as the basis of computation?

It is clear that Germany has no right to claim boats to enable it to participate in the transportation of traffic to or from France or its colonies when such traffic moves neither to nor from a point in Germany. It is equally clear that France has no right to claim the cession of boats in order to enable it to participate in the transportation of traffic which moves to or from or between points in Germany, and which moves neither to nor from France or its colonies. But much of the traffic which is treated as being of interest to France is not exclusively of interest to France, but is of joint interest to France and Germany. For example, coal from the Ruhr district to France or ore from the French colonies to the Ruhr district are sorts of traffic which are of joint interest to France and Germany, and cannot be regarded as either exclusively French traffic or exclusively German traffic.



What are the rights of the two countries to participate in the transportation of traffic which is of joint interest to the two countries? Can Germany claim the right to retain all of the boats of the present German Rhine fleet which may be needed for the transportation on the Rhine of coal produced in Germany and destined to France? If not, can France claim the right to receive by way of cession all the boats of the present German Rhine fleet which may be needed for the transportation on the Rhine of ore produced in the French colonies and destined to Germany? After taking into consideration all the special and peculiar features of traffic on the Rhine, the Arbitrator cannot escape the conclusion that, as to all traffic which moves from one of these two countries to the other, each country has a right to possess a portion of the present German Rhine fleet for such transportation, and the reasonable solution seems to be to regard the rights of the two countries in this respect as equal. The Arbitrator, therefore, decides that it is a legitimate need of each of the two countries to have one-half of the boats needed to transport such traffic. If the Arbitrator should adopt the opposite view, to wit: that France should have 100 % of the shipping required to transport Ruhr coal to Alsace, because France needs to consume all of that coal, the same reasoning would preclude France from claiming boats for the transit traffic of Switzerland and Italy via Alsace and the ore traffic from the French colonies to Germany.

Holland and Belgium also participate in traffic on the Rhine, and the Arbitrator adopts the principle, which appears to be satisfactory to both France and Germany, that Holland and Belgium should be regarded as participating in the various classes of the traffic substantially in the same proportion as they did in 1913.

The next point is to decide upon the necessary factors to be employed in computing the amount of tonnage and horse-power requisite to be ceded to France in order that the legitimate needs of the two countries may be fairly met. These factors are:

- a) The number of days of service per year to be assumed for barges and tugs, respectively;
- b) The number of tons per horse-power which the tugs will pull upstream on the various stretches of the river;
- c) The average percentage of utilization of the cargo capacity of the barges for the various classes of traffic;
- d) The times required for tugs to make their roundtrip voyages on the various stretches of the river, and the times required for the barges to make their roundtrip voyages, and the time to be allowed for loading and unloading of barges.

It is unnecessary to complicate this decision with a discussion of the technical details involved. The Arbitrator has considered with great care both the written and the oral contentions of the two delegations, and in addition has caused certain estimates to be made by disinterested persons acting on his behalf, which estimates he has discussed with the representatives of the two delegations. As a result of all this consideration he has concluded that the amount of tonnage and horse-power which would be required to enable France to transport that part of the traffic which its legitimate needs entitle it to transport would be 305,000 tons of barge capacity, and 25,000 horse-power of tug capacity.

THE AMOUNT OF SHIPPING TO BE SPECIFIED FOR CESSION IN VIEW OF SURRENDER
FOR RESTITUTION AND REPARATION AND OF OTHER CONDITIONS
AFFECTING SUFFICIENCY OF GERMAN RHINE FLEET.

The amount of tugs and vessels to be ceded must be specified out of those which will remain registered in German Rhine ports after the deduction of the tugs and vessels surrendered by way of restitution and reparation.

The Reparation Commission has certified to the Arbitrator the size of the entire German river fleet as of November 11th, 1918 (units surrendered or to be surrendered for restitution not being included because not counted as a part of the German river fleet), and has also certified to the Arbitrator the losses incurred by the Allied and Associated Powers for which reparation is to be made by a cession of a part of the German river fleet. From the advices thus received it appears that not more than 14.34% of the tonnage of barges and not more than 2.2% of the horse-power of tugs of the entire German river fleet will be required for purposes of reparation. It is clear that the percentage of the German Rhine fleet which will be ceded for reparation will not exceed the average percentage of the entire German river fleet which will be ceded for this purpose. This is true because the Arbitrator has so provided in Article XIV of the Conditions of Cession which he has prescribed in pursuance of Annex III of Part VIII of the Treaty. As a practical matter the probabilities are that the percentage which will be taken of the German Rhine fleet for reparation will be less than the average percentage taken of the entire German river fleet for such purpose, because the lost boats for which reparation must be made were on an average much smaller than the average of the units of the German fleet: while the units of the German Rhine fleet are on an average substantially larger than the average of the units of the entire German river fleet.

The German Delegation has suggested that part of the units of inland navigation tonnage which may be ceded to France for reparation may be used by France on the Rhine, and that such use would partially satisfy the legitimate needs of France under Article 357, and, therefore, that the amount of shipping to be specified for cession under Article 357 cannot be correctly specified until after the cessions for reparation shall have been completed. But France had no inland navigation tonnage on the Rhine at the beginning of the war, and the cessions by way of reparation will be made to compensate France for losses of inland navigation tonnage incurred on rivers and canals in France. If France should elect to use on the Rhine any units ceded to it for reparation, it would then have to make good out of its own resources to a corresponding extent the losses sustained on its own rivers and canals. It is clear that such action on the part of France would not diminish Germany's obligation under Article 357, which obligation is to cede to France out of tugs and vessels remaining after restitution and reparation, such proportion of those tugs and vessels as, in the judgment of the Arbitrator, will meet the legitimate needs of France for transportation on the Rhine. Such judgment of the Arbitrator could not be affected by the fact that France might elect to purchase or construct an additional number of tugs and vessels for the Rhine, or might elect to accomplish the same purpose by purchasing or constructing tugs and vessels to make good a portion of its losses during the war on its rivers and canals so as to enable it to employ on the Rhine tugs and vessels

which had been ceded by way of reparation for losses incurred on the rivers and canals in France.

Therefore, the Arbitrator adopts the view that there will remain registered in German Rhine ports after the deduction of the tugs and vessels surrendered by way of restitution or reparation at least 85.66% of the tonnage of barges, or 1,888,651 tons, and at least 97.8% of the horse-power of tugs, or 170,264 horse-power; and the amount of cessions to be specified will, therefore, be made on the basis of 1,888,651 tons of barges, and 170,264 horse-power of tugs remaining registered in German Rhine ports after deduction of tugs and barges surrendered by way of restitution and reparation.

Not only will the Rhine fleet after reparation be smaller than the Rhine fleet in 1913, but the traffic to be carried will, according to the Arbitrator's basis, be somewhat larger than in 1913, and this latter factor also must be taken into consideration, and this the Arbitrator has done.

After making allowance for both the diminution of the fleet on account of reparation and the increase of traffic, the Arbitrator decides that barges with an aggregate capacity of 254,150 tons, and tugs with an aggregate capacity of 23,760 horse-power should now be specified for cession.

INSTALLATIONS AT ROTTERDAM,

Article 357 provides that Germany shall cede to France a portion of

1. The installations, berthing and anchorage accommodation, platforms, docks, warehouses, plant, etc., which German subjects or German companies owned on August 1, 1914, in the port of Rotterdam, and
2. The shares or interests which Germany or German nationals possessed in such installations at the same date.

The amount and specifications of such cessions shall be determined with due regard to the legitimate needs of the parties concerned.

In the port of Rotterdam coal and ore are transhipped between ocean ship and barge by means of floating appliances. France has asked for shares or interests in certain Dutch concerns (which on August 1, 1914, were controlled by German nationals), owning floating appliances for the transshipment of coal and ore. The treaty contemplates the cession of shares owned by German nationals in respect of installations which on August 1, 1914, were owned by German companies, but not, apparently, by Dutch companies. Moreover the principal installations in the port of Rotterdam for the transfer of coal and minerals appear to belong to Dutch concerns which are not controlled by German interests, and which are capable of serving, and which habitually serve, shipping in general, so that the legitimate needs of France do not require cessions of interests for this purpose.

France has also asked for the cession of installations for loading and unloading and storing oil. There appears to be only one plant of this character which on August 1, 1914, was owned by a German company. The plant appears to be operated as a unit. France's portion of the total oil traffic passing through the port of Rotterdam is a very small fraction, and the Arbitrator is of opinion that it would not be reasonable to cut off a small part of this single and unified plant for cession to France. Moreover, if such fragment of the plant were taken, the Arbitrator does not

believe it could be operated to advantage. Nor would any practical purpose be served by the cession to France of a small fraction of the shares in the company owning the plant.

As to installations for handling general traffic in the port of Rotterdam, the Arbitrator has considered the extent of installations owned by German subjects or German companies on August 1, 1914, and the extent of the French general traffic in the port of Rotterdam as compared with the German general traffic, and decides that there shall be ceded to France the installations, berthing and anchorage accommodations, platforms, docks, warehouses, plant, building, etc., or interests therein, which the Badische Aktien-Gesellschaft für Rheinschiffahrt und Seetransport owned on August 1, 1914, in the port of Rotterdam.

REPAIR DOCKS AND REPAIR FACILITIES.

France has requested the cession of certain repair docks and repair facilities at various places on the Rhine. Except as to Rotterdam, the Arbitrator finds no authority in Article 357 for requiring the cession of property of this character. No claim is made that German companies or nationals own any such facilities at Rotterdam, but the French Delegation suggests that on August 1, 1914, German nationals owned shares in Dutch concerns owning property of this character in the port of Rotterdam. As above pointed out, however, Article 357 does not appear to authorize the cession of shares held by German nationals on August 1, 1914, in Dutch companies.

PASSENGER STEAMERS, GOODS STEAMERS, MOTOR BOATS.

The Arbitrator concludes that he ought not to order the cession of boats of these three classes. There is no regular passenger traffic to or from the Alsatian ports. The traffic by goods steamers to and from Alsatian ports was small in 1913 and was done almost altogether in Belgian and Dutch boats. France's interest in this traffic, tested by the principles which it seems reasonable to apply to the apportionment of shipping on the Rhine, is too small to justify the allocation of enough boats (not less than three or four) to maintain a regular service. No reason has been brought forward to justify the cession of motor boats.

OIL TANK BOATS.

France has asked for the cession of certain oil tank boats. The 1913 oil traffic of interest to France was small and the boat capacity needed for its transportation, after allowing for the part carried in boats of other nationalities, is not widely different from the capacity of the oil tank boats of the Rhine Navigation Company mentioned below, so that no direct cession of oil tank boats appears necessary.

FLOATING CRANES.

France has asked for the cession of certain floating cranes. Germany objects on the ground that floating cranes are not embraced in Article 357. The principal type of floating crane consists of a crane placed upon a barge. The Arbitrator is of the opinion that such a barge with a crane upon it is within the meaning of the term "vessel" as that term is used in Article 357, and that it is proper to require the cession of a vessel of this character

with the crane and all other fittings. These floating cranes are vessels which are necessary "to carry on commercial traffic on the Rhine", and, in principle, the cession of a reasonable number of such cranes may be required. In fact, the subject is covered by the cession of the controlling interest in the Rhine Navigation Company below mentioned, which owns floating cranes with a capacity equal to France's proportion.

SHARES IN GERMAN RHINE NAVIGATION COMPANIES.

Article 357 provides that Germany shall cede tugs and vessels, or shares in German Rhine navigation companies. France asks for the cession of shares in some of these companies in addition to the cession of tugs and vessels. Germany claims that Article 357 does not require the cession of both boats and shares, but only boats or shares, and further claims that Germany has the right to choose which it will cede, and states that it chooses to cede boats and not shares.

The Arbitrator can find no basis for the view that Germany, one of the parties to the controversy, has the right to determine the character of the property it will cede under Article 357, and thereby itself determine what will be the most satisfactory for its own needs. A dominant feature of Article 357 is that all questions as to the amount and specifications of the cessions to be made in relation to the legitimate needs of the parties concerned shall be determined by the Arbitrator. Therefore, under that article Germany has no right to determine for itself that its cessions shall be made in tugs and vessels instead of in shares.

The Arbitrator is equally convinced that Article 357 does not prohibit him from requiring the cession of shares and also the cession of tugs and vessels. A controlling principle of the article is that the Arbitrator shall determine the cessions which will duly promote the legitimate needs of the parties concerned. If he finds that this great object of the article can be best promoted by requiring the cession of shares of one or more companies, and at the same time requiring the cession of additional tugs and vessels, there is nothing in the article which forbids his doing so. If the Arbitrator should conclude that it is essential that shares in one or more companies should be ceded to France, and if the article compelled him to require the cession of shares exclusively in the event he required the cession of any shares, then he would be under the necessity of requiring the cession of the shares of enough navigation companies to give France all the tugs and vessels needed by it upon the Rhine. Such a consequence would be a serious hardship upon Germany. It is far better for Germany to cede only the shares in one navigation company, and then to cede additional tugs and vessels, than to cede the shares in several navigation companies so as to produce by that method the total amount of tugs and vessels necessary for France. The real purpose of the article can only be accomplished by the Arbitrator determining with due regard to the legitimate needs of the parties, "the amount and specifications of such cessions" in respect of the various subjects dealt with by the article.

Germany also contends that the companies whose shares are sought by France perform, in addition to the function of operating tugs and vessels, various other functions of a different character, and especially those of loading and unloading freight, forwarding freight, storing freight in warehouses, etc., and insists that it was not the purpose of the article to require Germany to provide France with the means of performing such functions.

France, on the contrary, claims that these other functions are necessary and proper incidents to navigation, and are naturally and legally performed by navigation companies, and that France has a legitimate need to be provided with an organization which has already established and equipped itself for the performance of these functions; and France urges that it was for this purpose that Article 357 provided for the cession of shares in German Rhine navigation companies. Germany also urges that there is no need for equipping France to perform these functions, because France can always make arrangements for their performance through German agencies, but France insists that it ought not to be left in a position where it will have to depend upon the good will of such German agencies.

Since the Arbitrator believes that to a large extent it is necessary to cede tugs and vessels, he must either adopt for that reason the principle that no shares at all can be ceded to France, and that France must be left without any provision for the performance of the functions incidental to navigation, or he must adopt the principle that France is to be provided with the means of performing such incidental functions through the cession of shares in one or more German Rhine navigation companies.

Article 339 of the treaty provides for the cession of tugs and vessels on certain other rivers to the Allied and Associated Powers concerned. That article also provides that Germany, in addition to ceding tugs and vessels "shall in the same way cede material of all kinds necessary to the Allied and Associated Powers concerned for the utilization of those river systems". This clause is not found in Article 357, and France claims that the reason is that Article 357 sought to accomplish much the same purpose through the cession of shares in German Rhine navigation companies. If the Arbitrator declines to award to France shares in German Rhine navigation companies and awards nothing but tugs and vessels, the treaty will thereby give France in connection with the restoration of its rights on the Rhine, less than Article 339 of the treaty gives to other Allied and Associated Powers in respect of newly acquired rights on other river systems. If the Arbitrator in addition to tugs and vessels awards France shares in one or more German Rhine navigation companies, he will do no more than is expressly contemplated by Article 357, and will thereby avoid giving an effect to Article 357 much less favorable than the clear effect of Article 339. Under all the circumstances the Arbitrator cannot decline to put into effect the express authority which Article 357 gives for the cession of shares in German Rhine navigation companies. He must, therefore, consider what cessions of this character are reasonably required for the legitimate needs of France.

The traffic moving to and from Alsace, on the basis adopted by the Arbitrator approximates 3,000,000 tons per year. About 2,000,000 tons of this traffic will be loaded in German ports or unloaded in German ports. In addition it is clear that the normal method of conducting Rhine traffic to Alsace from the Lower Rhine ports, including the seaports, is for the barges to be loaded with a considerable amount of traffic in addition to traffic going to Alsace, such additional amount being discharged at Mannheim or other Middle Rhine ports. The extent of this incidental traffic appears to be much less in respect of coal than in respect of general merchandise, but it seems reasonably clear that as a normal incident to navigation to Alsace the French interests will carry on an incidental traffic to Middle Rhine ports of from 300,000 to 500,000 tons per year, and perhaps

more. In view of all these considerations, the Arbitrator is of the opinion that it is reasonable and just that Germany cede to France shares in a German-Rhine navigation company conducting an annual business of approximately 2,000,000 tons. The Rheinschaffahrts Aktien-Gesellschaft Vorm. Fendel is a Rhine navigation company having an annual business of about 2,000,000 tons and from the character of its business appears to be better adapted to such cession than the other Rhine navigation companies.

The German Delegation urges that this company owns comparatively few installations and that the leases by which it holds other installations may be cancelled. The Arbitrator does not believe, however, that this possibility is a sufficient reason for denying to France the opportunity to control an established organization possessing important installations. The Arbitrator believes that the unusually specific phrase "German-Rhine Navigation Companies" was used in Article 357 for the purpose of giving France a reasonable opportunity to enter upon the conduct of Rhine navigation under favorable conditions. The fact that the Rhine navigation company which the Arbitrator finds most available may not continue to have all the facilities which France may need is not a reason for declining to apply the provision of the treaty at all.

Germany further contends that, even if shares in a Rhine navigation company shall be ceded, Article 357 contains no authority for requiring the cession of enough shares to control the company and that cession of control of the company would violate the meaning of the article. The article expressly provides that the number of shares to be ceded shall be determined by the Arbitrator and by no means prohibits the Arbitrator from specifying a number of shares which will give control. Furthermore, no practical purposes would be accomplished by ceding a mere minority interest. In order to carry out the purpose of the article, it is both necessary and proper to require the cession of enough shares to give France control of the company selected.

SHALL FULL RIGHT OF PROPERTY BE CEDED OR MAY CESSIONS BE SUBJECT
TO MORTGAGES, ETC.

The German Delegation urges that, if the property specified by the Arbitrator for cession is subject to mortgages or other encumbrances, charges or liens, Germany will fully satisfy its obligation by delivering the property subject to such burdens and that France will receive all that it is entitled to receive under Article 357, and that France must itself satisfy the creditor or other claimants in order to obtain the full enjoyment of the property delivered. The German Delegation argues that Germany's sole obligation is to "cede" the property and that the act of cession does not involve the giving of a complete and full title to the property; and, moreover, that mortgages and other encumbrances, charges and liens on boats frequently exist and that, if the treaty had intended to impose on Germany the obligation of delivering the property freed from such burdens, express language to that effect would have been used.

The Arbitrator is unable to adopt this view. Article 357 clearly manifests the idea that Germany agrees to put France in possession and ownership of the property specified by the Arbitrator. There is nothing in the article to indicate that it is permissible for such possession and ownership to be incomplete or subject to the paramount right of another person.

The whole spirit of the article is to the effect that the possession and ownership of France shall be complete and shall not be shared with or subordinated to any other nation or individual.

Article 357 further shows that France is to pay for the property ceded to it by setting off the value of such property against the total sums due from Germany to France. If the property is ceded subject to mortgages and other encumbrances, charges and liens, and if France must satisfy all of these claims in cash, then a large part of the value, and perhaps much the greater part of it, will have to be paid by France in cash (and at times and in foreign currencies satisfactory to the creditors), despite the evident purpose of the article that such value shall be paid exclusively through the means of a credit to Germany. The article further emphasizes this purpose by declaring that "the indemnification of the proprietors shall be a matter for Germany to deal with". Certainly the full protection which the article seeks to give to France through the means of this indemnification of the proprietors by Germany cannot be destroyed by the fact that the proprietorship has been subdivided through arrangements which turn over to mortgagees and other interested parties the paramount interest in the property. Germany must make compensation for such highly important elements of proprietorship in order that its obligation to indemnify the proprietors shall be completely performed.

The incidents which are likely to accompany a mortgage still further emphasize the reason for the principle adopted by the treaty. The right to obtain relief from the paramount interest of the mortgagee through payment of the debt can be exercised only at the maturity of the debt unless the mortgagee is willing to accept payment at an earlier date. At the same time, the mere fact of the change of the nationality of the boat through the transfer by Germany to France will, in many cases, give the mortgagee the right to demand the immediate payment of the debt as the price of retaining the property. At the time of payment, whenever that may be, the necessity of paying in cash and in foreign currency will be inevitable unless the mortgagee shall agree to another method of payment. The right to sell the boat or to make a lease of it or to change the character of the service in which it is engaged may frequently be subject to the mortgagee's consent. Such mortgages frequently contain elaborate provisions controlling the methods of insurance and the methods of maintaining the property. If several boats should be covered by the same mortgage and only part should be ceded to France, the possibility of additional interference with complete ownership would exist. It is impossible to foresee the various special provisions which may limit the freedom of action of France if it must take boats subject to mortgages to which it was never a party. Nor is it possible to foresee the various other interferences with ownership and the various burdens of payment which France might incur if the general principle were recognized that Germany is under no obligation to indemnify the owners of the important rights of property created by mortgages and other charges, liens and encumbrances, and if all such modifications of complete ownership must be suffered by France. These details emphasize the soundness of the principle, which the article itself makes perfectly clear, that the complete possession and ownership shall be vested in France, and that this cannot be done unless the property is delivered free of mortgages, encumbrances, charges and liens of all kinds.

SPECIFICATIONS AND PROCEDURE.

ARTICLE I.

Tugs and Vessels.

The Arbitrator hereby determines that Germany shall cede to France tugs and vessels from among those registered in German Rhine Ports, which shall be selected from among those most recently built, in accordance with the following specifications and procedure:

Section 1.—The barges to be selected shall have an aggregate capacity of 254,150 tons and shall be selected in accordance with the following basis, which has been agreed to by the two delegations:

The German fleet is divided into two classes:

Above 1,350 tons
From 500 to 1,350 tons.

France will receive half of its barges from each of these classes on a proportionate basis which is illustrated by the following example:

If France should receive 400,000 tons,

It would have 200,000 tons above 1,350
200,000 tons between 500 and 1,350;

If the German fleet be supposed to have

1,000,000 tons above 1,350
1,100,000 tons between 500 and 1,350,

There would remain to Germany

800,000 tons above 1,350
900,000 tons between 500 and 1,350;

The barges being classified by groups of 100 tons each, each group between 500 and 1,350 tons would be divided in the ratio of two for France and nine for Germany, and each group above 1,350 would be divided in the ratio of two for France and eight for Germany.

After ascertaining the barges to be selected from each group, there shall be deducted from the aggregate tonnage capacity of such barges the aggregate tonnage capacity of the barges of the Fendel Company belonging to such group, and if the aggregate tonnage capacity of the barges of the Fendel Company belonging to that group shall be in excess of the aggregate tonnage capacity of the barges to be selected from that group, the excess shall be deducted from the aggregate tonnage capacity of the barges to be selected from the next group or groups. If any barges of the Fendel Company shall have a capacity of 500 tons or less, such aggregate capacity shall be deducted from the capacity of the barges to be selected from the lowest group or groups of the classification.

Section 2.—The tugs to be selected for use between the sea and Duisburg shall be propeller tugs and shall have from 301 horse-power to 350 horse-power each; and shall have an aggregate capacity of 2,566 horse-power, less the aggregate horse-power capacity of any propeller tugs (other than harbor tugs) belonging to the Fendel Company and having a capacity of 350 horse-power or less.

The tugs to be selected for use between Duisburg and Strasbourg shall have from 801 horse-power to 1,500 horse-power each and shall have a draft not exceeding 1.35 meters; shall have an aggregate capacity of 21,194 horse-power and shall be selected proportionately from the various groups of side wheel tugs (each 100 horse-power constituting a separate group) from 801 horse-power to 1,500 horse-power. After ascertaining the side wheel tugs to be selected from each group, there shall be deducted from the aggregate horse-power capacity of such side wheel tugs the aggregate horse-power capacity of all tugs of the Fendel Company belonging to such group; and if the aggregate horse-power capacity of the tugs of the Fendel Company belonging to that group shall be in excess of the aggregate horse-power capacity of the side wheel tugs to be selected from that group, the excess shall be deducted from the aggregate horse-power capacity of the side wheel tugs to be selected from the next group or groups. The tugs of the Fendel Company having a capacity of not less than 351 horse-power and not more than 800 horse-power shall be deducted from the horse-power capacity of the side wheel tugs to be selected from the lowest group or groups of the classification.

Section 3.—Prior to Thursday, February 10, 1921, the French Delegation and the German Delegation shall endeavor to agree upon the tugs and vessels to be selected in accordance with the foregoing principles. At ten o'clock on Thursday morning, February 10, 1921, the Arbitrator will receive the reports of the French and German Delegations as to the result of their efforts to agree, will thereupon hear the two Delegations as to the points upon which they are unable to agree, and will then designate the units of tugs and barges to be ceded, and will give the notification contemplated in the first sentence of Article 357 of the Treaty of Versailles.

Section 4.—The tugs and vessels to be ceded shall be delivered by Germany to France at either Duisburg or Mannheim. The provisions as to the inspection of tugs and vessels and as to inspection of the necessary documents to be delivered therewith will be made at or before the time of the notification referred to in the preceding section.

Section 5.—All tugs and vessels ceded shall have normal and proper fittings and gear, shall be in good state of repair and shall be in condition to carry on commercial traffic on the Rhine.

Section 6.—The tugs and vessels ceded by Germany to France shall be accompanied by documents evidencing the transfer to France of the entire property in such tugs and vessels free from all encumbrances, charges and liens of all kinds.

ARTICLE II.

Installations at Rotterdam.

Section 1.—The Arbitrator hereby determines that Germany shall cede to France the installations, berthing and anchorage accommodation, platforms, docks, warehouses, plant, building, etc., which the Badische Aktien-Gesellschaft für Rheinschiffahrt und Seetransport (hereinafter referred to as the Badische Company) owned on August 1, 1914, in the port of Rotterdam, and also all interests owned by the Badische Company on August 1, 1914, in installation, berthing and anchorage accommodations, platforms, docks, warehouses, plant, building, etc., in the port of Rotterdam.

Section 2.—Prior to Thursday, February 10, 1921, the French Delegation and the German Delegation shall endeavor to agree upon the precise description of the property and interests of the Badische Company to be ceded in accordance herewith, and shall report to the Arbitrator at ten o'clock on Thursday morning, February 10, 1921, and the Arbitrator, after hearing the parties, will settle the precise description of the property and interests and will give the notification contemplated in the first sentence of Article 357.

Section 3.—The cession of the property of the Badische Company and of the interests owned by it, to be ceded as herein determined, shall be accomplished by the execution of all legal documents and the doing of all acts necessary or proper in order to vest in France the entire ownership of such property and interests, free from all encumbrances, charges and liens of all kinds.

ARTICLE III.

Shares in Fendel Company.

Section 1.—The Arbitrator hereby determines that Germany shall cede to France 76 per cent of the shares of the Rheinschiffahrts Aktien-Gesellschaft vorm. Fendel (herein referred to as Fendel Company), and shall deliver the certificates or other legal and proper evidences of such shares to the duly authorized representative of France. The time and place of such delivery shall be fixed at or after the hearing which the Arbitrator is to give to the French and German Delegations on Thursday, February 10, 1921.

Section 2.—The cession of such shares shall be accomplished by the execution of all legal documents and the doing of all acts necessary or proper in order to vest in France the entire property in such shares, free from all encumbrances, charges and liens of all kinds.

Section 3.—If Germany shall claim that a less percentage of the shares in the Fendel Company than the 76 per cent above specified will suffice to give France full control of the Company for all purposes, the Arbitrator will entertain an application by Germany on or before Thursday, February 10, 1921, to reduce accordingly the number of shares to be ceded.

VALUATION.

At or after the hearing to be given on Thursday, February 10, 1921, the Arbitrator will prescribe the procedure to be followed with a view to his settling in a lump the value of the cessions under Article 357.

POSSIBLE ADDITIONAL CESSION BY REASON OF DIMINUTION IN CESSION FOR REPARATION.

The Arbitrator's determination as above explained is to the effect that the legitimate needs of France require 305,000 tons of barge capacity and 25,000 horse-power of tug capacity, but the amount of barge tonnage assigned to France has been reduced by 14.34 per cent, and the amount of tug horse-power capacity has been reduced by 2.20 per cent, because the Arbitrator has assumed that the barges and tugs respectively of the German Rhine fleet will be diminished by these respective percentages

after the deduction of the barges and tugs surrendered by way of reparation. It is clear to the Arbitrator that these percentages indicate the maximum amount of barges and tugs which can be taken from the German Rhine fleet for reparation. The Arbitrator believes it highly probable that the amount of barges and tugs taken from the Rhine fleet for reparation will be substantially less than is indicated by these maximum percentages, and in that event, the Arbitrator will entertain an application by France for the selection by the Arbitrator of additional units of barges and tugs within the limits of the 305,000 tons of barges and 25,000 horse-power of tugs and in accordance with principles and specifications which the Arbitrator has herein above determined for the purpose of giving France its fair proportion of all barges and tugs remaining registered in Rhine ports after the deduction of those surrendered by way of restitution or reparation.

CONCLUSION.

The work leading up to the determination of this grave problem has been most arduous for the two delegations as well as for the Arbitrator. The requests which he has had to make for information have been numerous and burdensome but have been cheerfully complied with in spite of other pressing duties characteristic of this difficult period of readjustment. The Arbitrator takes great pleasure in testifying to the diligent support which has been given him by the two delegations and desires to express his sincere appreciation of this cordial cooperation and of the uniform courtesy which they have shown throughout the hearings and discussions which have taken place.

Paris, January 8, 1921.

By the Arbitrator:

BRICE CLAGETT,
Executive Assistant.

WALKER D. HINES,
Arbitrator.

APPENDIX I.

TABLE 1.

Agreed Rhine Traffic for 1913.

Quantities of Merchandise in Tons

[illegible]

APPENDIX I.

TABLE 2.

1913 Traffic agreed upon as of interest to France.

DISTRICT	TRAFFIC IN TONS
From Alsace to the Sea	114,000
From the Sea to Alsace	433,000
From the Ruhr to Alsace	924,000
From Alsace to the Middle Rhine	27,000
From the Middle Rhine to Alsace	240,000
From Alsace to the Ruhr	117,000
From the Sea to Mannheim and transhipped by railroad to Alsace-Lorraine or France	25,000
From Mannheim to the Sea, having been transhipped by rail- road from Alsace-Lorraine or France	52,000
TOTAL	1,932,000

1913 Traffic in transit going to or coming from Switzerland or Italy. The parties agree as to the amounts of this traffic but disagree as to its being of interest to France.

From Alsace to the Sea	30,000
From the Sea to Alsace	200,000
From the Ruhr to Alsace	150,000
From Alsace to the Ruhr	20,000
TOTAL	400,000

1913 Traffic in coal and ores between the Ruhr and France or French colonies by the Rhine and the Sea. The parties agree as to the amounts of this traffic but disagree as to its being of interest to France.

From the Ruhr to the Sea and thence to French Seaports	644,000
From French colonies by Sea to Rotterdam, and thence by the Rhine to the Ruhr	1,233,000
TOTAL	1,877,000

Addition to the 1913 Traffic claimed by France but denied by Germany.

Reparation coal from the Ruhr to the Sea for movement to French Seaports	2,410,100
Additional coal from the Ruhr to Alsace for Eastern and South- eastern France	2,000,000
Additional potash from Alsace to the Sea	1,000,000
Additional oil from the Sea to Alsace	71,100
TOTAL	5,481,200

APPENDIX II.

TRAFFIC ADOPTED BY THE ARBITRATOR AS THE BASIS FOR HIS DECISION.

TABLE A.

Traffic of Interest to France.

District	Traffic in Tons			
	1913 Traffic	1913 Transit Traffic	Addition	Total
From Alsace to the Sea.....	114,000	30,000	250,000	394,000
From the Sea to Alsace.....	433,000	200,000		633,000
From the Ruhr to Alsace.....	924,000	150,000	600,000	1,674,000
From Alsace to the Middle Rhine	27,000			27,000
From the Middle Rhine to Alsace	240,000			240,000
From Alsace to the Ruhr.....	117,000	20,000		137,000
From the Sea to Mannheim and transhipped by railroad to Alsace-Lorraine or France....	25,000			25,000
From Mannheim to the Sea, having been transhipped by railroad from Alsace-Lorraine or France.....	52,000			52,000
From the Ruhr to the Sea and thence to French Seaports....	644,000			644,000
From French colonies by Sea to Rotterdam and thence by the Rhine to the Ruhr.....	1,233,000			1,233,000
TOTAL.....	3,809,000	400,000	850,000	5,059,000

TABLE B.

Other Rhine Traffic.

District	Traffic in Tons
Sea-Ruhr.....	9,723,600
Sea-Middle Rhine	7,574,300
Sea-Upper Rhine (Switzerland not included).....	314,100
Ruhr-Sea.....	13,136,700
Ruhr-Middle Rhine.....	7,851,900
Ruhr-Upper Rhine (Switzerland not included).....	916,300
Middle Rhine-Sea.....	3,712,300
Middle Rhine	4,750,000
Middle Rhine-Ruhr.....	2,467,600
Middle Rhine-Upper Rhine (Switzerland not included)...	517,400
Upper Rhine-Sea.....	
Upper Rhine-Ruhr.....	101,900
Upper Rhine-Middle Rhine.....	278,400
TOTAL	51,344,500
Local traffic	2,032,000
Swiss and Luxemburg (traffic on the Rhine)	77,000
TOTAL	53,453,500