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ARBITRAL AWARDS**

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**Interpretation of London Agreement of August 9, 1924 (Germany, Reparation
Commission)**

24 March 1926, 29 January 1927, 29 May 1928

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XXI a.

INTERPRETATION OF LONDON AGREEMENT
OF AUGUST 9, 1924¹.

PARTIES: Germany and Reparation Commission.

SPECIAL AGREEMENT: Terms of submission contained in letter signed by Parties in Paris on August 28, 1925, in conformity with London Agreement of August 9, 1924.

ARBITRATORS: Walter P. Cook (U.S.A.), President, Marc. Wallenberg (Sweden), A. G. Kröller (Netherlands), Charles Rist (France), A. Mendelssohn Bartholdy (Germany).

AWARD: The Hague, March 24, 1926.

Social insurance funds in Alsace-Lorraine.—Social insurance funds in Upper Silesia.—Intention of a provision as a principle of interpretation.—Experts' report and countries not having accepted the report.—Baden Agreement of March 3, 1920.—Restitution *in specie*.—Spirit of a treaty.—Supply of coal to the S.S. *Jupiter*.—Transaction of private character.

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

Special Agreement.

AGREEMENT BETWEEN THE REPARATION COMMISSION
AND THE GERMAN GOVERNMENT.

Signed at London. August 9th, 1924.

III.

(b) Any dispute which may arise between the Reparation Commission and the German Government with regard to the interpretation either of the present agreement and its schedules or of the experts' plan or of the German legislation enacted in execution of that plan, shall be submitted to arbitration in accordance with the methods to be fixed and subject to the conditions to be determined by the London conference for questions of the interpretation of the experts' plan. . . .

AGREEMENT BETWEEN THE ALLIED GOVERNMENTS AND THE GERMAN GOVERNMENT CONCERNING THE AGREEMENT OF AUGUST 9th, 1924, BETWEEN THE GERMAN GOVERNMENT AND THE REPARATION COMMISSION.

Signed at London, August 30th, 1924.

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The procedure for the settlement of disputes contemplated in Article III (b) of the said agreement of August 9th, 1924, shall be as follows:

Subject to the powers of interpretation conferred upon the Reparation Commission by paragraph 12 of annex II to Part VIII of the Treaty of Versailles and subject to the provisions as to arbitration existing elsewhere, and in particular in the Experts' Plan or in the German legislation enacted in execution of that plan, all disputes which may arise between the Reparation Commission and Germany with regard to the interpretation either of the agreement concluded between them, the Experts' Plan, or the German legislation enacted in execution of that plan, shall be submitted for decision to three arbitrators appointed for five years; one by the Reparation Commission, one by the German Government, and the third, who shall act as president, by agreement between the Reparation Commission and the German Government, or failing such agreement, by the president for the time being of the Permanent Court of International Justice. . . .

ARBITRAL TRIBUNAL OF INTERPRETATION

CREATED UNDER THE PROVISIONS OF ANNEX II TO THE LONDON AGREEMENT
OF AUGUST 9, 1924, BETWEEN THE REPARATION COMMISSION AND THE
GERMAN GOVERNMENT.

Award

delivered on March 24, 1926.

BEFORE:

M. WALTER P. COOK, *President*,
M. MARC. WALLENBERG,
M. A. G. KRÖLLER,
M. CHARLES RIST,
M. A. MENDELSSOHN BARTHOLDY.

WHEREAS by Terms of Submission dated at Paris, the 28th August, 1925, the Reparation Commission and the German Government have agreed to submit for decision to the Tribunal the questions whether or not as between the Reparation Commission representing the Allied Governments signatory to the Final Protocol of the London Conference, of August 1924, on the one hand and Germany on the other, the annuities prescribed by the Plan for the discharge of the reparation obligations and other pecuniary liabilities of Germany under the Treaty of Versailles, accepted by the said London Conference (which Plan is hereinafter referred to as the Experts' Plan) as payable to the Agent General for Reparation Payments, comprise the respective payments or transfers following, that is to say:

- I. The transfers to be made by Germany to France in pursuance of Article 77 of the Treaty of Versailles, following a decision of the Council of the League of Nations dated the 21st June, 1921, in respect of social insurance funds relating to Alsace-Lorraine;
- II. The transfers to be made by Germany to Belgium in pursuance of Article 312 of the Treaty of Versailles and the Agreement of the 9th July, 1920, between Germany and Belgium in respect of social insurance funds relating to territories ceded by Germany to Belgium;
- III. The transfers to be made by Germany to Poland in pursuance of Article 312 of the Treaty of Versailles in respect of social insurance funds relating to Upper Silesia, the amounts of which transfers (other than that of the miners' superannuation fund which still remains to be settled) were determined by a decision of the Council of the League of Nations dated the 9th December, 1924;
- IV. Payments under Article 62 of the Treaty of Versailles in respect of civil and military pensions earned in Alsace-Lorraine on the 11th November, 1918;
- V. Payments under the Agreement of the 9th January, 1920, made between the German and Polish Governments in pursuance of Article 92 of the Treaty of Versailles, in respect of civil and military pensions;
- VI. Restitution of Belgian railway rolling stock effected by Germany

under the restitution agreement with Belgium dated the 6th September, 1924;

- VII. Restitutions in specie under Article 238 of the Treaty of Versailles of objects of every nature or securities.

AND WHEREAS by a supplementary agreement dated at Paris, the 18th November, 1925, the Reparation Commission and the German Government have agreed to add to the payments or transfers heretofore enumerated the following, that is to say;

- VIII. The sum of £14,185.9.8 owing by Germany to Great Britain as payment for coal supplied in December 1918 and January 1919 to the steamship *Jerusalem*;

AND WHEREAS by a joint letter dated at Paris, the 3rd March, 1926, the Reparation Commission and the German Government informed the Tribunal that these Parties had come to an agreement to the effect that the questions submitted to the Tribunal under Nos. II and VI of the Terms of Submission of the 28th August, 1925, concerning social insurance funds to be paid to Belgium by Germany, and concerning the restitution of Belgian railway material, should be withdrawn from the number of questions to be decided by the Tribunal, in consequence whereof the Tribunal was requested by the said Parties to consider questions II and VI as no longer requiring a decision to be taken by the Tribunal;

AND WHEREAS Polish Government has availed itself in time of its right, under Article 14 of the above-said Terms of Submission, to accede thereto for the purpose solely of obtaining a decision as between itself and the German Government of the questions whether the annuities payable under the Experts' Plan comprise the transfer of social insurance funds in Upper Silesia and the payment of civil and military pensions;

AND WHEREAS the Agents of the Parties to the present Arbitration have duly communicated to the Tribunal their cases, counter-cases, and documentary evidence within the periods fixed by agreement of the Parties;

AND WHEREAS the oral debates have taken place and have been declared closed in accordance with the rules governing this Arbitration by virtue of the Terms of Submission;

AND WHEREAS the Tribunal has jurisdiction to pronounce upon the questions submitted to it for decision, the said questions constituting with regard to the interpretation of the Experts' Plan which by the terms agreed at the London Conference confirmed in this respect by the correspondence exchanged between the Reparation Commission and the German Government on the 30th May and 4th June, 1925, are to be submitted to it for decision;

NOW THEREFORE the Tribunal, having carefully considered the written proceedings and oral debates and the documentary evidence submitted by the Parties, after due deliberation pronounces as follows :

A. *As between the Reparation Commission representing the Allied Governments signatory to the Final Protocol of the London Conference on the one hand, and Germany on the other, the annuities prescribed by the Experts' Plan comprise :*

1. The transfers to be made by Germany to France in pursuance of Article 77 of the Treaty of Versailles, following a decision of the Council of the League of Nations dated the 21st June, 1921, in respect of social insurance funds relating to Alsace-Lorraine;

2. The Transfers to be made by Germany to Poland in pursuance of Article 312 of the Treaty of Versailles in respect of social insurance funds relating to Upper Silesia, the amounts of which transfers (other than that of the miners' superannuation fund which still remains to be settled) were determined by a decision of the Council of the League of Nations dated the 9th December, 1924;
3. Payments under Article 62 of the Treaty of Versailles in respect of civil and military pensions earned in Alsace-Lorraine on the 11th November, 1918.

B. *The decision stated under (2) above is also given as between the German Government and the Polish Government.*

C. *On the other hand, the said annuities do not comprise :*

1. Restitutions in specie under Article 238 of the Treaty of Versailles of objects of every nature or securities, and
2. The sum of £14,185.9.8 owing by Germany to Great Britain as payment for coal supplied in December 1918 and January 1919 to the steamship *Jerusalem*.

D. *The Tribunal is unable at present to give a decision on the questions whether or not, as between the Reparation Commission and the German Government, and as between the German and the Polish Governments, the said annuities comprise payments under the Agreement of the 9th January, 1920, made between the German and Polish Governments in pursuance of Article 92 of the Treaty of Versailles, in respect of civil and military pensions.*

REASONS :

1. *Social insurance (Alsace-Lorraine).*

1. The task of the Experts was "to consider the means of balancing the "budget and the measures to be taken to stabilise the currency" of Germany, two conditions which they considered were necessary for the fulfilment of Germany's obligations towards the Allies under the Treaty of Versailles. At the beginning of their report (Part I, Section I, second paragraph, first and second sentences), the Experts state that they have been concerned with the practical means of recovering Germany's debt to the Allied and Associated Powers under the Treaty of Versailles. They say textually: "The dominating feature of the German Budget is Germany's obligation "to the Allies under the Treaty of Versailles. We have been concerned with "the practical means of recovering this debt"

Nothing is said or implied in this passage, which is, so to speak, the starting-point of the Experts in the building up of their Plan, which would justify the assumption that they only considered one or more component parts of the obligation contracted by Germany under the Treaty, leaving other parts outside the purview of their deliberations.

2. The Experts then laid down a plan according to which Germany is to make to the credit of the Allied and Associated Powers certain fixed annual payments (Part I, Sections VIII and X of their report).

3. The Experts have repeatedly emphasised that an important principle of their Plan through which they assumed its durable success would be ensured was, that Germany's liabilities to the Allies for any particular year

should be limited to the annuities which were proposed in the Plan and that as a general rule these annuities should comprise all possible charges.

4. After a careful consideration of the contents and spirit of the Plan, it is evident to the Tribunal that the Experts, while not losing sight of the juridical character of Germany's liabilities, looked upon the matter largely from an economic and financial point of view. To them, it must have been of minor importance whether a liability was exclusively based on the Treaty, or whether, although mentioned in the Treaty, it originated in German legislation, or from other sources. It was chiefly to the question whether the payments they had in view might influence Germany's budget or her currency, that they directed their attention. The Experts state in Section XI of Part I of their report: "The Committee have noted the important fact that "Germany is not in a position to ascertain her liabilities out of the Peace Treaty as demands are made upon her from time to time during the year, "which cannot be calculated beforehand. The difficulty will "be satisfactorily met if Germany's liabilities for any particular year are "absolutely limited according to our plan."

5. The Experts have tried repeatedly and in varying terms, to lay stress upon the principle that the obligations of Germany for the purposes of their Plan are one, and that the planned annuities represent on principle the total burden which they believed Germany could stand without jeopardising their scheme.

6. The Tribunal has been confirmed in its interpretation by the fact that the Experts found it expedient to insert in their report Section XI of Part I, which is obviously an attempt made by them to indicate to what extent the annuities to be paid by Germany are comprehensive. To that section, therefore, the Tribunal had to pay special attention.

7. It has been contended that a payment, in order to be included in the annuities, must have two characteristics: (1) that it should be imposed by the Treaty, and (2) that it must represent a cost arising out of the war. Now it is true that the Plan refers chiefly to payments which, under the Treaty of Versailles, Germany is bound to make for reasons in a more or less direct connection with the war. The Experts were, of course, especially concerned with Germany's obligations under Part VIII of the Treaty of Versailles (Reparation), but, as shown in Section XI of Part I of their report, where the expression "for the costs arising out of the war" is used, they also thought of payments in a wider sense, and it may be well argued that this expression is broad enough to include the payment or transfer now under consideration. But even if it does not, the Tribunal cannot overlook the fact, and is much impressed by it, that the report in Section XI of Part I says that "also special payments such as those due under Articles 58, 124 and 125 of the Treaty of Versailles" come under the annuities. The Tribunal does not think, especially in view of the words "such as", that it would be justified in ascribing to the term "special payments" a narrow meaning; and when it is considered that the words just quoted, read in conjunction with the preceding sentence, are used as a new category of payments, to be added to the one which it has been contended has only a reference to war costs, the Tribunal considers this new category of payments as so comprehensive as to include the payment now under discussion. This statement should not, however, be construed as meaning that all payments, without exception, to be made by Germany to the Allies under the Treaty of Versailles or in connection therewith are to come under the annuities.

8. The Tribunal finds that this decision is corroborated by the following considerations:

(a) It is difficult, considering what the task of the Experts was (a task which they earnestly and conscientiously sought to fulfil), to account for the fact that, if to their mind the payment here under consideration was to constitute an exception to their clear intention that as a general rule the annuities are to be very comprehensive, they did nowhere make a statement to that effect. Whatever may be the true nature of the payment prescribed by the decision of the Council of the League of Nations of June 21, 1921, especially as compared with the transfer originally prescribed in Article 77 of the Treaty of Versailles, it is certain that the funds required to make the payment in question would involve a charge on the German budget. The Tribunal fails to discern in the Experts' Plan any statement which must have the effect of letting this payment constitute a charge on the German budget otherwise than as part of the annuities.

(b) As appears from the "Report of the Commission set up in virtue of Article 312 of the Treaty of Versailles to examine the conditions and procedure of the transfer by the German Government to the French Government of "capital and reserve attributable to the carrying on of social insurance in "Alsace-Lorraine" (Part I, paras. 4 and 5), the amount finally determined by the Council of the League of Nations was in part the result of the offsetting of German claims against French claims, taking the form of a lump sum payment, and thus constituting a pecuniary obligation of Germany to be discharged in pursuance of the Treaty of Versailles, and being of a public character. It was not a transaction under which Germany had merely to hand over certain funds she had in her possession or under her control by virtue of some fiduciary arrangement of a private nature.

(c) The Tribunal took into consideration that, by including the payment here contemplated in the annuities, the liability for making it is by no means cancelled, and that the Experts' Plan, as stated in Section XI of Part I, is "not to be read as prejudicing questions of distribution or questions of priority between the various categories of charges". The decision of the Tribunal need not, therefore, have the effect of depriving any persons of anything which they may have a moral or legal right to receive.

2. Social insurance (*Upper Silesia*).

(a) *As between the Reparation Commission and Germany.*

The reasons given above under 1 (Social insurance—Alsace-Lorraine) in paragraphs 1-7 (inclusive), and, *mutatis mutandis*, paragraph 8 (a) and (c), also apply to the transfer or payment here under consideration.

(b) *As between the German Government and the Polish Government.*

1. The Polish Government has submitted to the Tribunal that it is in a special position for two reasons (1) that it is not a party to the various agreements made at the London Conference of August 1924, the Experts' Plan therefore being, so far as the Polish Government is concerned, *res inter alios acta*; (2) that the decision of the Council of the League of Nations dated the 9th December, 1924, with regard to the transfer or payment now under discussion has not made any reference to the Experts' Plan, in spite of the fact that the Plan had been known for some considerable time before the decision was

given. The Polish Government therefore asked the Tribunal to decide that the transfer or payment here contemplated does not fall within the annuities prescribed by the Experts.

2. The Tribunal, having in this case for its sole task the interpretation of the Experts' Plan, is of opinion that, as between the German Government and the Polish Government, just as between the Reparation Commission and Germany, this transfer or payment is to be treated exactly in the same manner as the similar case referred to under (1) with regard to social insurance (Alsace-Lorraine). The reasons are the following:

(a) It does not appear to the Tribunal that the fact that Poland has not accepted the Experts' Report should modify the interpretation to be given to the report itself. The Plan of the Experts is mainly concerned with the economic and financial situation of Germany; its purpose is to organise machinery capable of obtaining from Germany maximum annual payments. In fixing such maximum payments, the Experts evidently sought out of them to satisfy all Allied and Associated creditors without exception. Their report expressly quotes in various places the debt Germany owes to the Allied and Associated Powers, without discriminating between them in any sense.

(b) The fact that the decision of the Council of the League of Nations dated the 9th December, 1924, does not make any reference to the Expert's Plan, cannot, in the opinion of the Tribunal, modify its conclusion. As a matter of fact, what the Council was asked to do was merely to fix the amount to be paid by Germany to Poland. The solution of this clearly defined problem could not be affected by the possibility that the sum fixed would have to be paid out of the annuities.

(c) In addition, the reasons given above under 1 (Social insurance—Alsace-Lorraine) in paragraphs 1-7 (inclusive) and paragraph 8 (a) and (c) are applicable here.

3. *Civil and military pensions (Alsace-Lorraine).*

The reasons given above under 1 (Social insurance—Alsace-Lorraine) in paragraphs 1-7 (inclusive), and, *mutatis mutandis*, paragraph 8 (a) and (c), also apply to the payments here under consideration.

The Tribunal considered the provision of Article 7 of the Baden Agreement of March 3, 1920, for the execution of Article 62 of the Treaty of Versailles, and has had some question as to whether its decision in respect of pensions (Alsace-Lorraine) should not be limited to pensions dealt with and referred to in the first paragraph of the said Article 7. But as the question which the Tribunal is asked to answer refers generally to all such pensions, the Tribunal has not felt either obligated or permitted to change its form.

4. *Restitutions in specie.*

1. In considering this question, the Tribunal was aware that the Parties have agreed that the following fall within the annuities:

- a. Sums which Germany is pledged to pay under the substitution agreements referred to in Part C, Section 2 of the Case of the German Government, and in Section 106 of the Counter-Case of the Reparation Commission, and

- b. Expenses such as those of transport or repair mentioned by the German Government in the above-quoted passage of its Case, but not German administrative expenses.

2. This being so, the Tribunal noted that Article 238 of the Treaty of Versailles provides for restitutions; Article 243 provides that Germany shall not benefit by restitutions through credits to be given to her in respect of reparation obligations. The same principle is laid down in Article 250 of the Treaty. These provisions are based, as stated in the Counter-Case of the Reparation Commission (Section 103), "upon the principle that property taken away from Allied territory during the war was not to be regarded as 'properly German; not being properly German its restoration could not give rise to a pecuniary credit in favour of Germany'".

3. It would be contrary to the spirit of the above-mentioned Articles of the Treaty of Versailles to make it incumbent on an Allied Government to give credit for the value of objects or securities as here under consideration in order to have them restored. This situation would be created if the Experts' Plan meant to include the restitutions here under discussion in the annuities. It is impossible to assume that the Experts, who addressed themselves largely to economic and financial matters, had in mind to do this. Moreover, the Experts' Plan deals with payments to be made, whereas the restitutions here contemplated are restitutions in specie.

5. *Payment for coal supplied to the s.s. Jerusalem.*

1. It may be assumed that no difference subsists between the Parties with regard to the principal facts of the case. However that may be, it is certain that the coal in question supplied to the steamship *Jerusalem* was supplied prior to the coming into force of the Treaty of Versailles. It is also certain that there did not exist at any time an obligation arising out of a convention of an international public character which made it incumbent on the British authorities to supply the coal.

2. The Tribunal feels that the element which dominates the situation is the fact that the transactions which took place were of a private character. In selling coal to the steamship *Jerusalem* the British Government did not act as a Government, but saw fit to supply coal to those responsible for the s.s. *Jerusalem* against a consideration. It did what might just as well have been done by any coal-merchant, or by a neutral Government having coal at its disposal. The connection with the war of the obligation to pay for coal supplied (as distinct from the transport of sick and wounded) is indirect or in any event too remote to let it come under the phraseology of the Experts' Plan as the Tribunal understands it.

6. *Civil and military pensions (Poland).*

- (a) *As between the Reparation Commission and the German Government.*

The Tribunal is asked to decide whether payments under the Agreement of January 9, 1920, made between the German and the Polish Governments in pursuance of Article 92 of the Treaty of Versailles, in respect of civil and military pensions should come within the annuities. The Tribunal notes that in that Agreement no payments are prescribed; the possibility is only contemplated therein that at a future date payments, at present unknown

as regards their terms and conditions, may have to be made. No agreement between the two Governments of a later date, and dealing with this matter, has been brought to the knowledge of the Tribunal. In these circumstances, the Tribunal cannot give a decision on the question here under consideration, because at present it has no object.

(b) *As between the German Government and the Polish Government.*

The reasons stated under (a) also apply as between the German Government and the Polish Government.

The English text of this Award is authoritative.

Done at The Hague on March 24, 1926.

(Signed) WALTER P. COOKE, *President.*

(Signed) E. N. VAN KLEFFENS, *Secretary.*

XXI b.

**INTERPRETATION OF LONDON AGREEMENT
OF AUGUST 9, 1924¹.**

PARTIES: Germany, Reparation Commission.

**SPECIAL AGREEMENT: Terms of submission dated Paris,
March 25, 1926, in conformity with
London Agreement of August 9, 1924.**

**ARBITRATORS: Thomas Nelson Perkins (U.S.A.), President,
Marc. Wallenberg (Sweden), A. G. Kröller (Ne-
therlands), Charles Rist (France), A. Mendelssohn
Bartholdy (Germany).**

AWARD: The Hague, January 29, 1927.

Experts' plan and payment of compensation to German nationals.—
Competence of tribunal.—Consideration of effect of plan as means of
interpretation.—Leading thoughts of scheme as means of interpretation.

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

Special Agreement.

[See p. 875.]

ARBITRAL TRIBUNAL OF INTERPRETATION

CREATED UNDER THE PROVISIONS OF ANNEX II TO THE LONDON AGREEMENT OF AUGUST 9, 1924, BETWEEN THE REPARATION COMMISSION AND THE GERMAN GOVERNMENT.

Award No. II

delivered on January 29, 1927.

BEFORE:

M. THOMAS NELSON PERKINS, *President*,
 M. MARC. WALLENBERG,
 M. A. G. KRÖLLER,
 M. CHARLES RIST,
 M. A. MENDELSSOHN BARTHOLDY.

WHEREAS by Terms of Submission dated at Paris, the 25th March, 1926, the Reparation Commission and the German Government have agreed to submit for decision to the Tribunal the question whether or not the annuities prescribed by the Plan for the discharge of the reparation obligations and other pecuniary liabilities of Germany under the Treaty of Versailles, accepted by the London Conference of August 1924 (which Plan is hereinafter referred to as the Experts' Plan) as payable to the Agent General for Reparation Payments comprise:

Compensation paid since the 1st September, 1924, or which may be paid in the future by the German Reich to German nationals in respect of the retention, liquidation or transfer of their property, rights or interests—on whatever date such measures may have been taken—such payments being made in execution of the Treaty of Versailles and in particular under the following Articles of that Treaty—that is to say, Articles 297 (i), 74, 145, 156 (2nd paragraph) read with paragraph 2 of the Protocol signed at Versailles on the 28th June, 1919, and 260;

AND WHEREAS the Agents of the Parties to the present Arbitration have duly communicated to the Tribunal their cases, counter-cases, and documentary evidence within the periods fixed by agreement of the Parties;

AND WHEREAS the oral debates have taken place and have been declared closed in accordance with the rules governing this Arbitration by virtue of the aforesaid Terms of Submission;

AND WHEREAS the Tribunal has jurisdiction to pronounce upon the question submitted to it for decision, the said question constituting a dispute with regard to the interpretation of the Experts' Plan which by the terms agreed at the London Conference, confirmed in this respect by the correspondence exchanged by the Reparation Commission and the German Government on the 30th May and 4th June, 1925, are to be submitted to it for decision;

NOW THEREFORE the Tribunal, having carefully considered the written proceedings and oral debates and the documentary evidence submitted by the Parties, after due deliberation pronounces as follows:

The annuities prescribed by the Experts' Plan as payable to the Agent General for Reparation Payments do not comprise: Compensation paid since the 1st September, 1924, or which may be paid in the future by the German Reich to German nationals

in respect of the retention, liquidation or transfer of their property, rights or interests—on whatever date such measures may have been taken—such payments being made in execution of the Treaty of Versailles and in particular under the following Articles of that Treaty—that is to say, Articles 297 (i), 74, 145, 156 (2nd paragraph) read with paragraph 2 of the Protocol signed at Versailles on the 28th June, 1919, and 260.

REASONS.

1. Clause I of Annex II A of the London Agreement of August 9th, 1924, between the Reparation Commission and the German Government provides that "subject to the powers of interpretation conferred upon the Reparation Commission by paragraph 12 of Annex II to Part VIII of the Treaty of Versailles and subject to the provisions as to arbitration existing elsewhere, "and in particular in the Experts' Plan or in the German legislation enacted "in execution of that Plan, all disputes which may arise between the Reparation Commission and Germany with regard to the interpretation either of "the Agreement concluded between them, the Experts' Plan, or the German "legislation enacted in execution of that Plan, shall be submitted for decision" to arbitrators, that is to say: to this Tribunal. As a statement preliminary to the reasons for its present Award, the Tribunal desires to recall this clear provision, which received express confirmation in the correspondence exchanged by the Reparation Commission and the German Government on the 30th May and 4th June, 1925. The provision shows that the Tribunal's jurisdiction is limited, limited to the interpretation, *inter alia*, of the Experts' Plan. It follows that the Tribunal has to take the Plan as it finds it, interpreting its meaning as it thinks is correct, without allowing itself to be influenced by considerations as to whether or not it might be rightly contended that its Award will have consequences which might be looked upon as not desirable. If the Tribunal took another view, and allowed itself to be influenced by considerations of the nature just referred to, its activities might result in what in effect would tend to be an alteration of the Experts' Plan, and it goes without saying that for this Tribunal any such action would be outside its competence. The Tribunal feels bound to explain its point of view in this respect, were it only because either Party has represented to it that a decision in favour of its opponent will have undesirable consequences.

2. In the interest of a correct appreciation of its opinion, the Tribunal wishes to emphasise the exact nature of the question submitted to it at this time. It is to be noted that the question, the only question for determination is: whether compensation paid or to be paid after the 1st September, 1924, by the German Reich to German nationals in respect of the retention, liquidation or transfer of the property, rights or interests of such nationals under the provisions of the Treaty of Versailles enumerated in the Terms of Submission governing this Arbitration, irrespective of the date of such retentions, liquidations or transfers, is to be included in the annuities prescribed by the Experts' Plan. It seems to the Tribunal to be essential to remember that it is here solely concerned with this question whether *compensation* paid or to be paid to German nationals after the 1st September, 1924, for the retention, liquidation or transfer of their property, rights or interests is to be comprised in the annuities, and to distinguish between this question and the entirely different question which is not submitted to it by the Terms of Submission, namely whether *credits* given or to be given to Germany after the 1st September, 1924, for the value of property, rights or interests of German

nationals, retained, liquidated or transferred, are to be deducted from the annuities.

3. Turning now to the Experts' Plan, the Tribunal observes that, in its beginning, it is pointed out that they were invited by the Reparation Commission to "consider the means of balancing the budget and the measures to "be taken to stabilise the currency of Germany". The Experts understood their task to mean that they were not (in the words of Part I, Section IV, of the Plan) to lose "sight of the fact that the stabilisation of the currency and the "balancing of the budget are means designed to enable Germany to satisfy "her own essential requirements and to meet her Treaty commitments. the "fulfilment of which is so vital to the reconstruction of Western Europe".

4. This was the starting-point from which the Experts began to build their Plan. As already stated, it is the function of this Tribunal to interpret that Plan, and this is a case of interpreting it. For this interpretation, the primary source of information is the Plan itself, and it has been the object of the Tribunal to determine the leading thoughts underlying the scheme laid down therein. What did the Experts do? They provided that an amount which in their opinion, based on a careful study of the economic condition of Germany, could safely be taken without jeopardising the equilibrium of the German budget (by no means necessarily a maximum amount, but an amount which could safely be taken), should be paid in gold marks or their equivalent in German currency into the Bank of Issue to the credit of the Agent General for Reparation Payments. The Plan says (Part I, Section XII): "This payment is the definitive act of the German Government in "meeting its financial obligations under the plan." Then, to guard against the unsettling of the German exchange, the Experts provided for a committee known as the Transfer Committee, whose task it would be to regulate the withdrawals of the sums thus paid by the German Government into the Bank of Issue to the credit of the Agent General for Reparation Payments, and they laid down the purposes for which this Committee, to the extent that it deemed possible without endangering the stability of German currency, was to effect withdrawals from the Agent General's account with the Bank. The Experts provided that any surplus which there might be in the Bank over and above the transfers that could be effected without endangering the stability of German currency, should be accumulated in the Bank and invested in Germany up to a limit of five milliards of gold marks, and, further, that, if and when such accumulations reached five milliards of gold marks, the payments by the German Government into the Bank to the credit of the Agent General for Reparation Payments should be reduced, below the standards set out in the Plan, to that amount which, in the opinion of the Transfer Committee, could be transferred without endangering German currency. The purposes for which the Committee was empowered and commissioned to effect withdrawals from the Agent General's account with the Bank are indicated in Part I, Section XIII, of the Plan, and more precisely defined in its Annex No. 6; they are, apart from investments in loans in Germany in case of need as above stated: payments for deliveries in kind, payments under the Reparation Recovery Acts, and the conversion of credit-balances into foreign currencies. This definition does not include, and cannot, in the opinion of the Tribunal, be read as including, compensation to German nationals to be paid under the above-enumerated Articles of the Treaty of Versailles.

5. This interpretation of the Plan is supported by many passages, to be found almost throughout its text, whilst the passages relied upon by Counsel

for Germany do not, in the opinion of the Tribunal, when read in their context, militate against the construction given in the preceding paragraph. It seems unnecessary to quote all these supporting passages, or even to refer to them all; the Tribunal is content to make three quotations.

The first passage which the Tribunal desires to quote is to be found in Section XVII of the first part of the Plan, in which the Experts emphasize some of their points. It is as follows: "From the standpoint of the taxpayer "in creditor countries the plan means in due course an annual relief to the "extent of two and one half milliards, plus such additional amount as the "index of prosperity may provide."

Secondly, the Experts stated in Part I, Section V, last paragraph, of their Report: "Without undue optimism, it may be anticipated that Germany's "production will enable her to satisfy her own requirements and raise the "amounts contemplated in this plan for reparation obligations." The distinction between Germany's own requirements and amounts destined for the discharge of reparation obligations, which is made in this passage is, in the opinion of the Tribunal, only comprehensible if the said amounts are looked upon as destined to the exclusive economic benefit of the Allied and Associated Powers.

Lastly, the Tribunal desires to quote Part I, Section XI, first paragraph, of the Plan. This passage reads: "We desire to make it quite clear that the "sums denoted above in our examination of the successive years, comprise all "amounts for which Germany may be liable to the Allied and Associated "Powers for the costs arising out of the war, including reparation, restitu- "tion, all costs of all armies of occupation, clearing house operations to the "extent of those balances which the Reparation Commission decide must "legitimately remain a definitive charge on the German Government, com- "missions of control and supervision, etc. Wherever in any part of this "Report or its Annexes we refer to Treaty payments, reparation, amounts "payable to the Allies, etc., we use these terms to include all charges payable "by Germany to the Allied and Associated Powers for these war costs." And immediately thereafter, in the next paragraph, the Experts add: "The funds to be deposited in the special account in the bank are to be avail- "able for the foregoing purposes, notwithstanding anything in this Report "which may be interpreted to the contrary", etc. The Tribunal cannot understand, especially when having regard to the leading thoughts which are the basis of the scheme worked out by the Experts and have been set forth above, how this passage can show anything else than that the annuities were meant by the Experts to go in full to the Allied and Associated Powers.

The above-quoted provisions, together with the many others which occur throughout the Plan, confirm the Tribunal in its opinion that it is impossible to place upon the Experts' Plan a construction according to which the annuities were intended by the Experts to comprise compensation to German nationals in respect of the retention, liquidation or transfer of their property, rights or interests which gave rise to the present arbitration.

Done at The Hague, on January 29, 1927, in English, French and German. In case of dispute as to the interpretation of this Award, the English text shall be authoritative.

THOMAS N. PERKINS, *President.*

E. N. VAN KLEFFENS, *Secretary.*

XXI c.

**INTERPRETATION OF LONDON AGREEMENT
OF AUGUST 9, 1924¹.**

PARTIES: Germany, Reparation Commission.

SPECIAL AGREEMENT: Terms of submission dated Paris, September 18, 1927, in conformity with London Agreement of August 9, 1924.

ARBITRATORS: Thomas Nelson Perkins (U.S.A.), President, Marc. Wallenberg (Sweden), A. G. Kröller (Netherlands), Charles Rist (France), A. Mendelssohn Bartholdy (Germany).

AWARD: The Hague, May 29, 1928.

Question whether net proceeds of German liquidated property should be reckoned against the annuities to be paid under the Experts' plan.—Same question concerning liquidated German property.—Same question concerning Siamese payments of 1925-1927.—Practical and economic character of plan.—Experts' scheme as organic whole.

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

Special Agreement.

[See p. 875.]

ARBITRAL TRIBUNAL OF INTERPRETATION

CREATED UNDER THE PROVISIONS OF ANNEX II TO THE LONDON AGREEMENT OF AUGUST 9, 1924, BETWEEN THE REPARATION COMMISSION AND THE GERMAN GOVERNMENT.

Award No. III

delivered on May 29, 1928.

BEFORE:

M. THOMAS NELSON PERKINS, *President*,
 M. MARC. WALLENBERG,
 M. A. G. KRÖLLER,
 M. CHARLES RIST,
 M. A. MENDELSSOHN BARTHOLDY.

WHEREAS by Terms of Submission dated at Paris, the 18th September, 1927, the Reparation Commission and the German Government have applied to the Tribunal for a decision on the following questions, submitted by the German Government with the assent of the Reparation Commission, that is to say:

- I. Are the net proceeds of German private property, rights and interests which have been, or may hereafter be, liquidated by Allied Powers and dealt with by them pursuant to Clause 4 of the Annex to Section IV of Part X of the Treaty of Versailles to be reckoned against the Annuities to be paid under the Experts' Plan
 - (a) in so far as in the accounts between Germany and the Allied Power concerned credits to Germany for the said net proceeds and debits to Germany for Allied claims under the said Clause 4 have since the 31st August, 1924, balanced, or will hereafter balance, one another,

or alternatively
 - (b) in so far as in the accounts between Germany and the Allied Power concerned the said net proceeds have been since the 31st August, 1924, or will hereafter be, credited to the German Reich,

or alternatively
 - (c) in so far as the said net proceeds have been since the 31st August, 1924, or will hereafter be, actually utilised to satisfy Allied claims under the said Clause 4?
- II. Are the net proceeds of German property, rights and interests which have already been, or may hereafter be, liquidated by Allied Powers to be reckoned against the Annuities to be paid under the Experts' Plan in so far as they have not already been, or may hereafter be, dealt with pursuant to Clause 4 of the Annex to Part X of the Treaty

of Versailles and have not already been, or may not hereafter be, released to the owners or to the German Government?

- III. Are the payments which, according to the notes of the Reparation Commission of the 16th February and 29th March, 1927 (No. 13 363), the Siamese Government made to the Reparation Commission in the years 1925 to 1927 to be reckoned against the Annuities?

AND WHEREAS the Agents of the Parties to the present Arbitration have duly communicated to the Tribunal their cases, counter-cases, and documentary evidence within the periods fixed by agreement of the Parties;

AND WHEREAS the oral debates have taken place and have been declared closed in accordance with the rules governing this Arbitration by virtue of the aforesaid Terms of Submission;

AND WHEREAS the Tribunal has jurisdiction to pronounce upon the questions submitted to it for decision, the said questions constituting disputes with regard to the interpretation of the Experts' Plan which by the terms agreed at the London Conference, confirmed in this respect by the correspondence exchanged by the Reparation Commission and the German Government on the 30th May and 4th June, 1925, are to be submitted to it for decision;

NOW THEREFORE the Tribunal, having carefully considered the written proceedings and oral debates and the documentary evidence submitted by the Parties, after due deliberation pronounces as follows:

I. The net proceeds of German private property, rights and interests which have been, or may hereafter be, liquidated by Allied Powers and dealt with by them pursuant to Clause 4 of the Annex to Section IV of Part X of the Treaty of Versailles are not to be reckoned against the Annuities to be paid under the Experts' Plan in so far as in the accounts between Germany and the Allied Power concerned credits to Germany for the said net proceeds and debits to Germany for Allied claims under the said Clause 4 have since the 31st August, 1924, balanced, or will hereafter balance, one another, or alternatively in so far as in the accounts between Germany and the Allied Power concerned the said net proceeds have been since the 31st August, 1924, or will hereafter be, credited to the German Reich, or alternatively in so far as the said net proceeds have been since the 31st August, 1924, or will hereafter be, actually utilised to satisfy Allied claims under the said Clause 4.

II. The net proceeds of German property, rights and interests which have already been, or may hereafter be, liquidated by Allied Powers are not to be reckoned against the Annuities to be paid under the Experts' Plan in so far as they have not already been, or may not hereafter be, dealt with pursuant to Clause 4 of the Annex to Part X of the Treaty of Versailles and have not already been, or may not hereafter be, released to the owners or to the German Government.

III. The payments which, according to the notes of the Reparation Commission of the 16th February and 29th March, 1927 (No. 13 363), the Siamese Government made to the Reparation Commission in the years 1925 to 1927 are not to be reckoned against the Annuities.

REASONS.

1. The Tribunal agrees with the opinion expressed by the Reparation Commission in its Counter-Case (Section 5) and concurred in by the German Government (Reply, Section 14) that, although the specific questions of the interpretation of the Experts' Plan submitted to the Tribunal by virtue of the Terms of Submission to Arbitration, dated the 8th September, 1927, differ in detail, they contain one common and fundamental element. They

all raise the issue, not whether Germany is or is not, in some form or other, to receive a credit for liquidated property, but whether in some form or other Germany is to have a credit *against the annuities* for the value, or part of the value, of such parts of German property, rights and interests in Allied or Associated countries as have, since the 1st September, 1924, been dealt with in some specified fashion under Article 297 of the Treaty of Versailles, or under that Article combined with Article 243, by the Allied or Associated Powers concerned.

It is this common and fundamental element which is discussed in paragraphs 2-14 of these Reasons, so that the said paragraphs apply to the three questions above referred to jointly and severally.

2. The issue thus placed before the Tribunal has given rise to elaborate and illuminating arguments, both written and oral, presented by both Parties, which show to what extent that issue is complex and open to discussion. In considering those arguments, the Tribunal has, as on previous occasions, constantly kept in mind that its task is to interpret the Plan in its relation to the questions submitted, and that the Plan must therefore needs be the central object of the Tribunal's attention.

3. The matter of private property, rights and interests in an enemy country is dealt with by Section IV of Part X of the Treaty of Versailles and, so far as the matter now before the Tribunal is concerned, particularly by Article 297 and the Annex thereto.

The claim of the German Government, in its essence, is:

that under the provisions of Article 297 of the Treaty and of the Annex thereto the title to and economic value of any property, rights and interests of a German national situated in the territory of an Allied or Associated State, and the title to and the economic value of the proceeds of such property, rights and interests remain in the German national until the Allied or Associated State concerned finally exercises the option which is reserved to it in Article 297 (b) of the Treaty of Versailles to retain and liquidate such property, rights and interests;

(The German Government indicates in Questions I and II the several events which they contend may be accepted as signifying the final election of the Allied State to so retain and liquidate.)

that the final exercise or the said option by the Allied or Associated State concerned constitutes a transaction under the Treaty of Versailles by which the German national is deprived of property, rights or interests of a value fixed by the methods of sale or valuation adopted by the laws of the Allied State concerned and property, rights or interests of that value are transferred to the Allied State concerned or to the Allies;

and that if such a transaction has taken place since September 1st, 1924, or shall hereafter take place the value of the property so transferred shall be included in the annuities either as a contribution to them or as a sum to be paid out of them as a withdrawal.

4. The Tribunal finds itself unable to adopt an interpretation of the Plan by which the value of the property in question is to be included in the annuities.

5. It should be recalled, as was done in each of the two previous Awards rendered by the Tribunal, that the task of the Experts was, as pointed out in the beginning of the Plan, to "consider the means of balancing the budget "and the measures to be taken to stabilise the currency" of Germany. As stated in Part I, Section I of the Plan, they approached this task, "as business 'men anxious to obtain effective result'", and they went on to say: "We have

“been concerned with the technical, and not the political, aspects of the “problem presented to us. We have recognised indeed that political “considerations necessarily set certain limits within which a solution must “be found if it is to have any chance of acceptance. To this extent, and to “this extent only, we have borne them in mind.” And immediately thereafter they say: “The dominating feature of the German Budget is Germany’s “obligation to the Allies under the Treaty of Versailles. We have been “concerned with the practical means of recovering this debt, not with the “imposition of penalties and the guarantees which we propose are economic “and not political.”

The above-quoted passages would seem to speak for themselves. Inserted, as they were, in the beginning of the Plan, they show in what spirit the Experts conceived their task. The Experts were invited by the Reparation Commission to consider the means of balancing the German budget and the measures to be taken to stabilise German currency. The dominating feature of the German budget they found was Germany’s obligation to the Allies under the Treaty of Versailles. They were concerned with the practical means of recovering this debt, the payment of which they considered was Germany’s primary moral obligation, that is to say: the Experts were seeking a means of collecting that debt without allowing this dominating feature of the German budget to unbalance the budget or render German currency unstable.

6. There is another passage in the Plan which may be usefully quoted in order further to illustrate how the Experts conceived their task. In Part I, Section VIII (*d*), fifth and sixth paragraphs, of their Report they say: “If “reparation can, and must, be provided by means of the inclusion of an “item in the budget—i.e., by the collection of taxes in excess of internal “expenditure—it can only be paid abroad by means of an economic surplus “in the country’s activities. We have, it will be seen, attempted to give “effect to both these sets of considerations by a method we believe to be “both logical and practical. We estimate the amount which we think “Germany can pay in gold marks by consideration of her budget possibilities; but we propose safeguards against such transfers of these mark “payments into foreign exchange as would destroy stabilisation and thereby “endanger future reparation.”

7. The scheme the Experts worked out is an organic, comprehensive system, and it should be construed as such.

It is well known, and was set forth in paragraph 4 of the Tribunal’s second Award, what that scheme was. The Experts recommended that an amount which, in their opinion, based on a careful study of the economic condition of Germany, could safely be taken from her current revenue without jeopardising the equilibrium of the German budget, should be paid each year in gold marks or their equivalent in German currency into the Bank of Issue to the credit of the Agent General for Reparation Payments. And they further recommended that these sums were (Part I, Section VI, 9th paragraph of the Plan): “only to be withdrawable by the creditor nations under “conditions and safeguards which will adequately protect the German “exchange market and the interests of the creditor nations and the German “economy”. For that purpose they provided for a committee known as the Transfer Committee, whose task it would be to regulate the withdrawals of the sums to be regularly paid each year in gold marks by the German Government into the Bank of Issue to the credit of the Agent General for Reparation Payments.

8. The liquidation of German property, rights or interests in the territories of Allied or Associated States does not directly affect the equilibrium of the German budget. The indirect connection that operation has with the budget owing to Germany's obligation under the Treaty of Versailles to pay compensation to her nationals in respect of the sale or retention of their property, rights or interests in Allied or Associated States, does not justify the inclusion of the liquidation proceeds in the annuities. In accordance with the second Award rendered by the Tribunal, that compensation is not to be regarded as part of the annuities, and therefore must be considered as part of German's domestic needs.

9. Nor does liquidation affect the stability of German currency. For it does not call for any conversion of German currency into any other currency, or for the transfer of goods from Germany into any other country.

10. In the opinion of the Tribunal the proceeds of the property in question cannot be held to be a contribution to the annuities. The Experts begin in Section IX of Part I of the Plan by providing that Germany shall make payment from three sources: (A) from her ordinary budget; (B) from Railway Bonds and Transport Tax; and (C) from Industrial Debentures. They then analyse these sources and the amount which in their opinion can be derived in the several years from each, and in Section X they summarise their conclusions. Thereafter in Section XII they provide that all these payments shall be made in gold marks or their equivalent in German currency into the Bank of Issue to the credit of the "Agent for Reparation Payments". The proceeds of the liquidation are not one of the sources named by them. They are not realised in German currency, and they are not paid into the Bank of Issue to the credit of the Agent for Reparation Payments.

11. The Tribunal is also of opinion that the value of the liquidated property does not call for a payment or withdrawal from the annuities. It is true that the Plan is to be interpreted in a broad sense. It is also true that the fact that a payment is not expressly enumerated in the Plan as one of those which is to be made from the annuities does not exclude it from being made therefrom. If a payment falls within one of the categories mentioned or within the reasons for which any of those categories mentioned are included, then that payment should also be included.

In the opinion of the Tribunal, however, payments arising from the liquidation of the property in question do not fall within any of such categories or the reasons for the inclusion of those categories.

The Experts were primarily interested in the means of balancing the budget of Germany and the measures to be adopted to stabilise her currency. For this reason it was decided by the Tribunal in its first Award that certain payments for social insurance were to be included in the annuities although not expressly mentioned by the Experts, because they did affect the German budget. In its second Award the Tribunal decided that, to be included in the annuities, payments must be made to the Allies. The payments now in question are made to the Allies, but they do not affect the German budget. By the same reasoning, if they tended to create instability of the German currency, they should be included even though not expressly mentioned. But these payments do not tend to create instability of German currency, and therefore that reason for including them in the annuities does not apply. It is true that if these payments were to be included in the annuities, they would make possible withdrawals which could not otherwise be made at times when German exchange was weak. But this fact does not affect the stability of

German currency, which is protected by the duty laid upon the Transfer Committee not to make transfers which will jeopardise the stability of the currency. It merely affects the amount of the funds which in the event of unfavourable exchange conditions are to accumulate in the hands of the Agent General for Reparation Payments and, when and if those accumulations reach the maximum provided in the Plan, the amount of the annuities which are to be paid in the succeeding year or years.

This conclusion is expressly confirmed by the language of Part I, Section XI of the Plan. The Experts say in the fourth paragraph of this section: "The Committee have noted the important fact that Germany is not in a position to ascertain her liabilities out of the Peace Treaty as demands are made upon her from time to time during the year, which cannot be calculated beforehand. It appears to us a matter of impossibility for any budget to be scientifically compiled and satisfactorily balanced under such an arrangement, and that therefore means should be found to bring this system to an end. The difficulty will be satisfactorily met if Germany's liabilities for any particular year are absolutely limited according to our plan and, as suggested above, made inclusive of all possible charges whether in or outside Germany, including the costs of the administrative controls which are set up by our plan." This shows what the Experts had in mind in providing for inclusive amounts. It was to prevent unexpected demands being made upon the budget.

12. But the Tribunal does not have to depend upon any general language or reasoning from language for support for its conclusion. The Experts expressly cover the point. They say in the first paragraph of Section XI: "Before passing from this part of our report we desire to make it quite clear that the sums denoted above in our examination of the successive years, comprise all amounts for which Germany may be liable to the Allied and Associated Powers for the costs arising out of the war, including . . . clearing house operations to the extent of those balances which the Reparation Commission decide must legitimately remain a definitive charge on the German Government. . . ." Without entering into the question of just what the function of the Reparation Commission was in the matter, it is clear that the balances referred to were debit balances of Germany arising from clearing house operations, and the statement of the Experts is that clearing house operations were to be included to the extent of her debit balances from clearing house operations, and by necessary implication only to that extent. The proceeds of liquidation are credits to Germany, not debits or debit balances. In other words, clearing house operations were to be included in the annuities only so far as they resulted in balances which Germany was called upon to pay in cash or in so far as they resulted in a charge upon the budget. It is to be noted that if the transactions here under discussion are clearing house transactions only in those cases where the clearing office system has been adopted, they are in every relevant sense of the same nature where that system has not been adopted.

13. In the opinion of the Tribunal what has been said above establishes that, as a matter of interpretation of the Experts' Plan, the proceeds of liquidation of the property, rights and interests of German nationals situated at the time of the coming into force of the Treaty of Versailles in the territories of Allied or Associated Powers are not to be included in the annuities either as a contribution to the annuities or as the basis for a withdrawal from the annuities.

14. In view of the very exhaustive arguments, both oral and written, of the Parties, the Tribunal wishes to state that, whether or not in the juridical sense the ownership of the property, rights or interests in question remained in the German national concerned up to the date, however determined, of the final exercise by the Allied Power in question of the option to retain and liquidate, the economic value of the right, if any remained, of the German national, in such property was to a great extent destroyed by the provisions of Article 297 of the Treaty of Versailles. This fact and the use that had been made by the Allies of the right thus reserved to them must have been known to the Experts. As business men uninterested in juristic constructions they were therefore quite justified in not regarding this property as an asset of value in their estimate of what Germany could pay or what should be included in the annuities.

15. The reasons given above apply to the three questions submitted to the Tribunal. There is nothing which in the opinion of the Tribunal can lead to anything but a negative answer to the three questions, no matter when the property concerned may be or have been liquidated or accounted for.

Done at The Hague, on May 29, 1928, in English, French and German. In case of dispute as to the interpretation of this Award, the English text shall be authoritative.

THOMAS N. PERKINS, *President*.

E. N. VAN KLEFFENS, *Secretary*.
