CASE CONCERNING CLAIMS ARISING OUT OF DECISIONS OF THE MIXED GRAECO-GERMAN ARBITRAL TRIBUNAL SET UP UNDER ARTICLE 304 IN PART X OF THE TREATY OF VERSAILLES

DECISION OF 26 JANUARY 1972

The Arbitral Tribunal,

constituted in accordance with Article 28 of the Agreement on German External Debts of 27 February 1953, composed as follows:

(Castrén, President; Richard, Arndt, Robinson, Mrs. Hedwig Maier, Geck, Sir Edward Snelson, Members; Weitnauer and Cohn, Additional Members.*)

in the case of the Kingdom of Greece (Applicant)

(represented by the agent of the Government of the Kingdom of Greece, Professor Dr. George Zotiadis, assisted by Dr. Hansjörg Plewnia, Rechtsanwalt, and Mr. Henry J. Clay, attorney-at-law).

v.

The Federal Republic of Germany (Respondent)

(represented by the agent of the Federal Government, Dr. Erwin Seidler, Ministerialrat (retired), assisted by Herr Willy Mack).

concerning claims arising out of decisions of the Mixed Graeco-German Arbitral Tribunal, on the basis of the written pleadings of the parties and the oral proceedings of 2, 3, 4, 7, 8 and 9 June 1971, renders the following decision on 26 January 1972.

The substantial questions in this case are whether, given the Agreement on German External Debts signed in London on 27 February 1953, the Kingdom of Greece and the Federal Republic of Germany are under an obligation to negotiate concerning the dispute between them, and if so to what end the obligation to negotiate is to be understood.

STATEMENT OF FACTS

I

(1) Prior to the entry of Greece in the First World War, a number of Greek ships were sunk by German naval forces and other property belonging to Greek nationals was destroyed or damaged.

(2) Reparations for the losses thus inflicted formed a subject of the peace negotiations at Versailles. Paragraph 4 of the Annex to Article 298 of the Treaty of Versailles provided that property belonging to German nationals and situated within the territory of an Allied or Associated Power could be applied to the discharge of claims for damages arising out of a violation of neutrality by the German Government or any German authority. The damages were to be fixed by an Arbitrator.

(3) A corresponding arrangement was arrived at in the German-American Treaty of Peace of 25 August 1921.

(4) The Arbitrator provided for in paragraph 4 of the Annex to Article 298 of the Treaty of Versailles was never appointed. The juris-

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* Appointed respectively by the the Government of the Federal Republic of Germany and the Government of the Kingdom of Greece.

diction to award damages for violations of Greek neutrality was assigned instead to the Mixed Graeco-German Arbitral Tribunal set up under Article 304 in Part X of the Treaty. The Tribunal promulgated its Rules of Procedure on 16/23 August 1920. On 14/19 April 1924 the Greek and German Governments, acting through their Plenipotentiaries, entered into an Agreement once more affirming the jurisdiction of the Mixed Graeco-German Arbitral Tribunal and prescribing periods of limitation.

Execution of the Tribunal's awards was provided for in Article 75 of its Rules of Procedure as follows:

> The Tribunal requests the Representatives of the Governments to ensure the execution of its awards in accordance with clause *g* of Article 304 of the Treaty of Versailles.

Each party has submitted a specimen award. The Applicant has also submitted a list of the actions brought. It covers some seven hundred cases. A higher figure is given in a paper prepared for the official use of the Reich Government in March 1931 with the title "The History of the Mixed Arbitral Tribunals established pursuant to the Treaty of Versailles". This paper speaks of 353 settled neutrality claims and 410 pending. In the case of the settled claims, with a value in dispute of 548.9 million Reichmarks, a total of 57.6 million, or about 10 1/2 per cent, is stated to have been awarded. A number of claims were compromised. The Tribunal's Rules of Procedure of 16/23 August 1920 placed compromises arrived at before the Tribunal on the same footing as awards by the Tribunal. The relevant provisions provided:

> Disputes concerning rights which the parties may freely dispose of may be settled by compromise. . . .
>
> If a Government Representative objects to a compromise within one week of being notified thereof the proceedings shall be continued.
>
> If no objection is raised within that period the compromise shall be final. It shall be confirmed by the Tribunal and have the force of an award . . .

At the conclusion of every compromise the German Government, with reference to the "inclusive amounts" principle (see paragraph 7 [below]) made the following reservation:

> This compromise is limited to the assessment of the amount due to the Claimant and does not contemplate any direct voluntary payment on the part of the German Government. Settlement of the sum mentioned in this compromise will follow the same lines as the settlement of sums awarded by a decision of the Tribunal.

Awards were expressed in English pounds sterling, in Swiss francs, Dutch florins, French francs, Greek drachmas and Bulgarian lei.

At the end of an award the Representatives of both Governments were called upon "to take steps to have the present decision carried into effect forthwith".

The first awards of the Tribunal were made in 1926, that is to say after the coming into force of the Dawes Plan, and the last in 1932.

No payments on the awards or compromises were made by Germany.

In 1922 the German Government proposed to the Greek Government that all claims arising out of breaches of neutrality be compromised. The Greek Government declined, stating that the Tribunal's awards must first be available. When the Greek Government made an offer of a compromise in 1925 the German Government turned it down with a reference to the "inclusive amounts" principle in the Dawes Plan (see the first paragraph of 7 below).

(5) Article II of the German-American Treaty of Peace states that the same rights as those provided for in Parts VIII to XII of the Treaty of Versailles shall enure in favour of the United States. Accordingly the United States and its nationals could also claim compensation in conformity with Articles 297 and 298 of the latter Treaty for losses inflicted on them by the German armed forces before America's entry into the war. The Mixed Claims Commission, United States and Germany, was set up under an Agreement dated 10 August 1922 to decide these claims. Article II of the German-American Treaty of Peace, read with Article 207 (*e*) of the Treaty of Versailles, provided that German assets seized in the United States were held as security for the payment of sums awarded by the Commission.

The first awards of the Mixed Claims Commission were made as early as 1923. The Commission ceased to function in 1934.

(6) The German Reich was unable to raise the sums required of it by the Treaty of Versailles. A new arrangement of its finanical liabilities was arrived at in the London Agreement of 1924 based on the Dawes Plan. Germany was to pay off its obligations under the Treaty of Versailles in specific annuities. The claims of private creditors arising out of breaches of neutrality were not expressly mentioned in the Dawes Plan; but under the "Agreement Regarding the Distribution of the Dawes Annuities" of 14 January 1925 Greece was to receive 0.4 per cent of the annuities, that is to say ten million Marks annually, after an initial interval of five years, to compensate those who had suffered from neutrality breaches. The reason for imposing the initial interval lay in the expectation that no awards were likely to come from the Mixed Graeco-German Arbitral Tribunal for the first few years.

The United States was not a party to the London Agreement but participated nevertheless in the Agreement on the distribution of the Dawes Annuities. Under the Dawes Plan it received 55 million Marks annually, towards the costs of occupation and 2 1/4 per cent of the Annuities—not exceeding 45 million Marks—to satisfy claims arising out of decisions by the Mixed Claims Commission.

On 10 March 1928 the Settlement of War Claims Act, otherwise known as the Release Act, was promulgated in the United States. Under this Act 80 per cent of the German assets seized there were released. A Special Deposit Account was created in the United States

Treasury into which were to be paid, *inter alia*, the remaining 20 per cent of the assets and the amounts due under the Dawes Plan. The United States Government enjoyed complete discretion in deciding what was to be attributed to reimbursement of occupation costs and how much should go to the holders of awards from the Mixed Claims Commission.

(7) Section XI of the Dawes Plan, headed "Inclusive Amounts . . . The Inclusive Nature of the Payment" reads as follows:

> 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 compromise all amounts for which Germany may be liable to the Allied and Associated Powers for the costs arising out of the war, including reparation, restitution, 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, commissions 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. They include also special payments such as those due under Articles 58, 124 and 125 of the Treaty of Versailles.

On 24 March 1926, relying on this inclusive amounts clause, the International Arbitration Tribunal created to interpret the Dawes Plan dismissed a suit brought by the Reparation Commission seeking to have reserves of social insurances relating to Alsace-Lorraine (for which the Reich was liable under Article 77 of the Treaty of Versailles) transferred to France. It also dismissed a claim by France in the same proceedings seeking payment of civil and military pensions for which the Reich was liable under Article 62 of the Treaty.

(8) A Greek Law of 10/13 September 1926 that the net proceeds of the liquidation of German assets in Greece, seized in pursuance of Articles 207 and 208 of the Treaty of Versailles, should be applied to the satisfaction of existing and future awards of the Mixed Graeco-German Arbitral Tribunal in favour of Greek nationals. As there were no substantial German assets in Greece it was directed that an advance payment of 5 per cent should be made, reduced in the case of ships to 2 1/2 per cent of the damage not covered by insurance. To what extent those aggrieved obtained redress from these or other sources has not been determined in the present proceedings.

(9) Germany was also unable to meet the Dawes Annuities. In so far as any payments did follow, they were made out of Germany's borrowings abroad. Therefore, a second plan was worked out, the "Young Plan", or the "New Plan" as it was also called. Germany accepted it under the Hague Agreement of 20 January 1930. According to Article I the Young Plan was to constitute "a complete and final settlement of the financial questions arising out of the war". Under Article II the obligations the Reich had assumed under the Dawes Plan (except the German external loan of 1924) were entirely replaced

by those of the Young Plan, which unlike those of the Dawes Plan were of limited amounts. The text continues:

> The payment in full of the annuities there mentioned, in so far as the same are due to the Creditor Powers, is accepted by those Powers as a final discharge of all the liabilities of Germany still remaining undischarged, referred to in Section XI of Part I of the Dawes Plan as interpreted by the decisions of the Interpretation Tribunal set up under the London Agreement of the 30th August, 1924.

Germany issued Debt Certificates for its obligations in the wording laid down by the Hague Agreement. Accordingly, payment was to be made—

> to the Bank for International Settlements as Trustee for the Creditor Powers, and not to any other agent nor by way of direct payment to any one of its creditors.

Provision was made in Annex I to the Agreement for the case that—

> in the future a German Government, in violation of the solemn obligation contained in the Hague Agreement of January 1930, might commit itself to actions revealing its determination to destroy the New Plan:

Should such a case arise it would create a fresh situation with respect to which the creditor countries reserved all of their rights.

(10) Greece was also a signatory to the Hague Agreement. At the closing session of the Finance Commission of the Hague Conference on 31 August 1929, the then Prime Minister of Greece, M. Venizelos, made the following statement (the original was in French);

> In case it should be supposed that the Greek Government is prepared to waive its claim arising out of the sinking of Greek merchant shipping before Greece came into the war, let me say that such a waiver never lay within the contemplation of the Greek Government, which from the outset of this Conference has set forth its view with firmness. Our standpoint has not changed. I must make it clear that if the German Government is released from its obligations through the adoption of the Young Plan we shall not, so far as we ourselves are concerned, give up our demand.

This reservation was not incorporated in the final Agreement.

(11) The United States was not a signatory to the Hague Agreement. Instead, on 23 June 1930, it and the German Reich entered into the German-American Debt Agreement, otherwise known as the Washington Agreement. The Reich obligated itself to pay 40,800,000 Marks a year on account of the claims determined by the Mixed Claims Commission, United States and Germany. In addition, German payments for the costs of the occupation of the Rhineland were provided for. A special schedule of payments was worked out for each of the two categories of debt. Separate non-transferable Reich bonds were issued for each. Payments were made, not as contemplated in the Young Plan through the Bank for International Settlements, but directly to the United States. Incoming payments were administered by the United States Treasury and distributed among individual claimants.

In the exchange of Notes on 20 January 1930 with the President of the Hague Conference, the German Reich gave an undertaking to the European Allies to treat the American annuities the same as the

Young annuities: that is, to exercise no right of deferment with respect to the latter without simultaneously exercising it against the United States.

(12) In order to compensate Greece for the failure of Germany to make payments, and more particularly to enable it to meet its own war debts, Greece was awarded reparations against her Eastern enemy countries. This was accomplished by an Agreement with the Allies dated 20 January 1930 (Accord concernant les biens d'état cédés par l'Autriche, la Hongrie et la Bulgarie, les dettes de libération et la répartition des réparations non allemandes). In connection with the announcement of this Agreement, the Greek Prime Minister declared before the Greek Legislature that he would see to it that compensation was assured to those who had incurred losses while Greece was neutral.

The amount of payment received by Greece from the Eastern countries and the extent to which any such payments have been applied to the satisfaction of claims arising out of her neutrality have not been determined in the present proceedings.

(13) After it became certain that Greece would receive no payment of any kind from the German Reich under the Hague Agreement, the German Government ended its participation in the Mixed Graeco-German Arbitral Tribunal. In a *Note verbale* of 21 July 1930 the Greek Government pressed for a continuation of the arbitral proceedings. The text, according to the translation provided by the Applicant, reads as follows:

> The terms of the Expert's Plan and the most recent Hague Agreement constitute for Germany, in respect of the annuities they provide for, a complete release or discharge from the obligations specified in Article 3 (*b*) of the Hague Agreement concerning German Reparations, a release or discharge which extends also to Germany's obligation to pay the sums awarded by the Graeco-German Arbitral Tribunal. Without casting the slightest doubt on the significance of these terms, the Government of the Republic considers it appropriate—for reasons of expedience—that the Arbitral Tribunal should continue to deal with these cases. . . For the private person the arbitral jurisdiction of course represents a vested right and this right has not been prejudiced by the Hague Agreement.

Thereupon, Greece and the German Reich concluded an Agreement on 10 November 1931 in which the latter declared itself ready (Article 4) to allow its Representative to resume his functions at the Tribunal subject to the reservation that he would make no motions. Article 5 of the Agreement runs:

> The General Agent of the Greek Government acknowledges that the resumption of functions by the German Representative cannot be construed as an impairment— . . .
>
> (*b*) of the German position that all claims by Greek nationals against Germany arising out of the war or the Treaty of Versailles have lost their substance with the New Plan's entry into force.

Under Article 6 the German Government was no longer liable to meet the court costs of an award made after the New Plan came into force.

(14) After the German Reich paid off the first of the Young annuities it turned out that as a result of the world-wide economic depression it was unable to make further payments. President Hoover on behalf of the United States then proposed an all-embracing moratorium. The parties to the Young Plan accepted it by the London Agreement of 11 August 1931. All payments due on international debts and reparations (''intergovernmental debts''), together with the interest, were to be postponed for a year. The two half-yearly instalments thus postponed were to be paid within ten years, with interest at 4 per cent. The moratorium did not apply to claims by private persons against Governments.

A further regulation of international debts that was to take the place of the Hague Agreement was intended according to the Lausanne Agreement of 9 July 1932. Greece dit not sign it and it was not ratified by any of the countries which had signed.

(15) Relying on the Hoover moratorium excepting provision, according to which claims of private persons were not deferred, the United States demanded payment of the annuities due under the German-American Debt Agreement for claims based on decisions of the Mixed Claims Commission. The Reich was ready to pay since once it had discharged its own liability it could expect a much larger payment from the United States. Because of the objection of France, which was entitled to 55 per cent of the Young annuities, the payment was not made. Germany, however, applied for the deferment provided for in the moratorium and this made it possible for the United States to make further payments to Germany out of German assets.

The undeferred part of the annuities under the Young Plan was paid to the creditor Powers as a whole through their Trustee, the Bank for International Settlements. The sum paid was handed back as a loan to the German State Railways which issued interest-bearing bonds in return.

From September 1933 onwards the interest was paid to the Konversionskass für deutsche Auslandsschulden which had been set up under a Reich Law of 9 June 1933. The United States pressed for payment in dollars. The German Government did not comply, and in 1934 stopped all further payments.

(16) In a dispute over whether a claim by Bulgaria arising out of the Caphandaris-Molloff Accord concluded on 9 December 1927 was of a private character and therefore not covered by the Hoover Moratorium, Greece contended in a memorandum of 30 December 1931 that the claims of her nationals arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal were of a similar legal nature and were not private claims.

The memorandum said (the original was in French):

> Germany was obliged to pay the awards of the Mixed Arbitral Tribunals where her assets in the creditor country were insufficient. The private debt thus owed by Germany was finally mingled, in virtue of the Dawes Plan as confirmed

by the Young Plan, with her general debt on reparations, and consequently transformed into an inter-governmental debt . . . These debts have unquestionably been turned into inter-governmental debt. This is the situation the interested Governments intended.

The Permanent Court of International Justice, which had been requested by the parties to give an advisory opinion, did not answer the question because in its view the claims did not fall under the Caphandaris-Molloff Accord and so there was no occasion to enquire into their legal nature.[1]

(17) On the other hand, the International Arbitral Tribunal established for the interpretation of the Young Plan under Article XV of the Hague Agreement of 20 January 1930, in the *Naulilaa case*,[2] dealt with the question whether the Reich was obliged, in spite of the Hague Agreement, to pay Portugal compensation over and above the Young annuities for losses caused in Portuguese Angola during 1914-1915 by breaches of neutrality. The basis and amount of the claim had been established by an Arbitral Tribunal at Lausanne. On 16 February 1933, the International Arbitral Tribunal under the Young Plan ruled that the sums awarded to Portugal fell under the Dawes Plan and that the money which had to be raised to pay them would have to come out of the German national budget and so the awards were included in the annuities.[3] Portugal's claim therefore also fell under the Hague Agreement of 20 January 1930 and Germany was not liable "to make this payment over and above the liabilities accepted in the New Plan as a final settlement of financial questions arising out of the war".

(18) In the course of the 1930's Greece asked the German Reich to make some payments on account of the awards of the Mixed Graeco-German Arbitral Tribunal. The Reich refused. In this connection there is to be found in the records of the German Foreign Office the following Note dated 9 October 1934 written by a certain Herr Busch (his rank is not known):

The Greek Minister spoke to me today about the neutrality claims. After we had spent rather a long time over the legal aspects of the question the Minister finally said that while his Government had no wish to contest the inclusive amounts principle in the Young Plan and wanted to acknowledge the *de facto* situation brought about by the Lausanne Agreement of 1932 it was anxious at the same time to keep the neutrality claims question open in case the matter of reparations should somehow later be settled. It believed that the claims needed special consideration. I replied to the Minister that in our view the claims were not of a special nature but would share the fate of all reparations claims.

A few days later, Herr Busch wrote to the Greek Minister as follows:

In order to avoid possible misunderstandings arising out of our conversation on the question of claims for breaches of neutrality may I set out in a few

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[1] Interpretation of the Bulgarian-Greek (Molloff-Caphandaris) Agreement of 9 December 1927, Advisory Opinion No. 24, P.C.I.J., Series A/B, No. 45, p. 68; Annual Digest, 6, p. 432.

[2] U.N.R.I.A.A., vol. III, p. 1012.

[3] U.N.R.I.A.A., vol. III, p. 1372,.

words for Your Excellency, in reply to your letter of the 10th instant, the standpoint adopted by the German Government?

So far as Germany was at all liable to pay compensation for such breaches the liability was already covered by the annuities to be paid by Germany in fulfilment of the "inclusive amounts principle" laid down in the Dawes Plan. This liability was subsequently completely replaced, pursuant to Article II of the Hague Agreement concerning the Young Plan, by the liability provided for in the "New Plan". The correctness of this interpretation was confirmed by the Arbitral Tribunal set up in pursuance of Article XV of the Hague Agreement in the similar case of the breaches of Portuguese neutrality. The Tribunal did not give its decision until 1933, and took account of the development that the reparations problem had undergone in the meantime since the Hague Agreement. In this state of the matter the German Government does not find itself in a position to comply with the wishes of the Greek Government.

The Greek letter of 10 October 1934 here referred to could not be found.

(19) After the Second World War and the founding of the Federal Republic of Germany, the latter found itself with such a burden of debts, variously disputed in detail, that they stood in the way of establishing normal commercial relations in the international field. It had to take into account the liabilities of the Reich for reparations under the Treaty of Versailles, modified by the Dawes Plan and the Young Plan; the World War II liabilities towards the victorious Powers (see Article 5, paragraph 2, of the London Debt Agreement) and other States (*ibidem*, Article 5, paragraph 3); the debts due on the Bonds issued by Germany; and the private debts from the period prior to the First World War as well as prior to the Second. In addition there were the liabilities for the economic aid given to Germany after the Second World War.

In order to restore the credit of the Federal Republic as an economic partner, the ascertainment of its total debt was necessary so that a redemption schedule could be worked out which the Republic could adhere to without endangering its economy and its currency.

In an exchange of letters on 6 March 1951 between France, Great Britain and the United States on the one side and the Federal Republic of Germany on the other, the latter announced its liability for the pre-war external debts of the Reich. It acknowledged liability in principle for the post-war and economic assistance afforded to Germany by the three Governments and declared its willingness to resume payments of German external debt according to a plan to be worked out among all interested parties. The creditor Powers on their part were prepared to go far towards restoring Germany's productive capacity with particular reference to the grant of postwar economic aid.

In May 1951 the three Allied Governments set up the Tripartite Commission on German Debts. Its task was to represent the three Governments in the negotiations relating to the settlement of German external debts and to organise the work of the international Conference to be called on those debts. Under date of 21 November 1951

the Tripartite Commission issued the so-called "Scope Document", according to which different categories of debts were divided into those to be dealt with at the London Debt Conference and those to be excluded.

The Conference held its first public session on 28 February 1952 in London. The Governments of the three Allies were represented by the Tripartite Commission. Separate delegations appeared for private creditors belonging to the same three countries. Twenty-two other creditor countries sent delegations. The German Delegation was headed by Dr. Hermann J. Abs.

Four Committees were set up to deal with various categories of debts. In the present proceedings it is Committee A which is of importance. This Committee dealt with 'Reich debts and other debts of public authorities'. The Committee was composed of representatives of the creditors and debtors, together with observers from the Tripartite Commission. The Conference was in session between 28 February and 8 August 1952, with the exception of the period from 5 April to 19 May which was used for the collection of necessary information. The principles and the objectives that guided the Conference are set forth in the Report of the Conference on German External Debts, Part III (Appendix B to the London Debt Agreement).

The settlement of private debts owing from nationals of the Federal Republic was to be brought about by means of individual negotiations between the German debtors and the foreign creditors, guided by recommendations worked out at the Conference.

In September 1952 the negotiations at Government level started. They resulted in the Agreement on German External Debts, concluded on 27 February 1953, which was ratified by the Federal Republic of Germany and the Kingdom of Greece, among others.

(20) Under Article 4 of the Agreement the debts to be settled are:

> (1) (*a*) non-contractual pecuniary obligations the amount of which was fixed and due before 8th May, 1945; . . .
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> (2) Provided that such debts:—
>
> (*a*) are covered by Annex I to the present Agreement, or
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> (*b*) are owed by a person, whether as principal or otherwise, and whether as original debtor or as successor, who, whenever a proposal for settlement is made by the debtor or a request for settlement is made by the creditor, or, where appropriate in the case of a bonded debt, a request for settlement is made by the creditors' representative under the present Agreement and the Annexes thereto, resides in the currency area of the Deutsche Mark West;
>
> (3) Provided also that such debts;—
>
> (*a*) are owed to the Government of a creditor country; or
>
> (*b*) are owed to a person who, whenever a proposal for settlement is made by the debtor or a request for settlement is made by the creditor under the present Agreement and the Annexes thereto, resides in or is a national of a creditor country; or

(*c*) arise out of marketable securities payable in a creditor country.

Reference to the claims arising out of decisions by the Mixed Graeco-German Arbitral Tribunal is found in paragraph 11 of Annex I, which states:

> A preliminary exchange of views has taken place between the Greek and German Delegations in regard to claims held by private persons arising out of decisions of the Mixed Graceo-German Arbitral Tribunal established after the First World War. This will be followed by further discussions, the result of which, if approved, should be covered in the Inter-governmental Agreement.

With regard to the "approval" therein contemplated, Article 19 of the Agreement, headed "Subsidiary Agreements", provides in paragraph (1) that agreements resulting from the negotiations provided for in paragraph 11 of Annex I (claims arising out of decisions of the Mixed Graeco-German Arbitral Tribunal) are to be laid before the Governments of the Three Powers for their approval by the Government of the Federal Republic.

For the governmental claims arising out of the First World War Article 5, headed "Claims excluded from the Agreement", lays down the following direction in paragraph (1):

> Consideration of governmental claims against Germany arising out of the First World War shall be deferred until a final general settlement of this matter.

(21) Claims arising out of decisions by the Mixed Claims Commission, United States and Germany, are considered in paragraph 10 of Annex I. With respect to these claims, a detailed agreement regulating the amount of the debt, maturity dates, interest on default, the issue of bonds, and so on, was reached. The agreement was arrived at between the German Delegation and the American Award-holders Committee Concerning Mixed Claims Bonds represented by Mr. Collester.

The German Delegation under the chairmanship of Dr. Abs had at first opposed the entertainment of claims arising out of decisions by the Mixed Claims Commission, United States and Germany. The reasons it gave in its letter of 20 March 1952 were that the claims concerned arose out of the First World War and were excluded from settlement at the London Debt Conference. It applied to the Tripartite Commission with a request for a statement on the question. On 24 March 1952 the Secretary of the Commission answered the letter of Dr. Abs as follows:

> The Tripartite Commission has carefully considered this question and I now enclose a statement giving their conclusion.

The statement reads:

> The Tripartite Commission wishes to state that the debts of the German Reich in respect of awards made by the German-American Mixed Claims Commission to non-governmental claimants do not fall within the category of debts which the Commission intended to be covered by paragraph 11, IV (*a*), of the Commission's memorandum of December 1951. Provision, therefore, should be made to work out terms of settlement for these debts during the present Conference.

A final settlement of these claims arising out of the Mixed Claims Commission, United States and Germany, was incorporated into the London Debt Agreement as paragraph 10 of Annex 1.

(22) After it was determined that the aforesaid American claims were to be settled, the Greek Delegation wrote on 27 May 1952 to the Secretary-General of the Conference declaring that it—

> wished to see the following claims reaffirmed:—
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> 1. A claim for 120 million Reichsmarks based on decisions of the Mixed Graeco-German Arbitral Tribunal established after the First World War . . .

The German Delegation received a copy of this but made no comment. On 12 July 1952 the Secretary-General replied to the Greek Delegation as follows:

> The Tripartite Commission has informed me that in its opinion the Greek Claim arising out of the decisions of the Mixed Greek-German Tribunal established after the First World War, in so far as they are in favour of non-governmental claimants, does not fall within the category of debts which were intended to be excluded from the negotiations of the Conference by paragraph 11, IV (*a*), of the Commission's Memorandum of December 1951.

The German Delegation received a copy of this communication too but again made no comment.

At the urging of the Greek Delegation, conversations with the German Delegation took place. At Dr. Abs's request the Greek Delegation handed over two lists, one on 21 October and the other on 8 November 1952, setting out the claims determined by the decisions of the Mixed Graeco-German Arbitral Tribunal. *Ministerialrat* Dr. Granow wrote an acknowledgement on behalf of the German Delegation on 23 October 1952. This held out the prospect of a speedy examination, but warned that the shortness of time at disposal made it doubtful that an early statement as to the existence of the claims could be expected. He added that there would be no disadvantage from the delay, because Article 19 of the London Debt Agreement expressly contemplated further discussions.

In an eight-page letter dated 12 January 1953 the German Delegation informed the Greek Delegation that it declined to settle the claims asserted. In the detailed reasons for the refusal, reference was particularly made to the 'inclusive amounts' clause of the Dawes and Young Plans.

The Greek Delegation informed the Tripartite Commission by letter of 21 January 1953, adding that it had informed its own Government and would take no further steps in the matter for the time being.

The Greek claims were also a subject of explanatory talks held in London towards the end of January 1953. These discussions were among the Tripartite Commission, the German Delegation and the representatives of Governments which had expressed themselves on a draft of the Agreement on German External Debts circulated on 9 December 1952.

Item 20 of the minutes of the discussions, dated 30 January 1953, contains the following reference to the Greek claims:

> With regard to the claims arising out of the Graeco-German Arbitral Tribunal, Herr Abs said that claims had been put forward by the Greek Government to which the Federal Republic had replied but the matter was not yet settled.

(23) After the London Debt Agreement was concluded the Greek Embassy, in a letter dated 23 March 1953, reverted to the rejection of the Greek claims by the German letter of 12 January 1953. It stated the Greek view that the Federal Government was bound, legally and morally, to satisfy those Greek claims which were not of a public nature in an appropriate way. It sought discussions under the special provisions of the Agreement.

The Federal Government replied on 16 July 1954 with a Note reiterating its standpoint that the claims put forward by the Kingdom of Greece were governmental claims within the meaning of Article 5 of the Agreement, and were accordingly deferred.

In a Note dated 31 March 1959, the Greek Government again sought discussions. The Federal Government refused this request by a *Note verbale* of 4 March 1960.

In 1962, by a *Note verbale* of 23 March, the Greek Government proposed the holding of discussions in Athens. The German Foreign Office answered on 20 November 1962 with a *Note verbale* calling attention to discussions between the Greek and German Governments on 4 March 1960 and 18 October 1961 in which the Federal Government had upheld its rejection of the claims. It added that as the matter had been thoroughly discussed already any further discussion—in the view of the Federal Government—would serve little purpose.

On 14 August 1963 the Greek Embassy once again suggested joint discussions in the light of paragraph 11 of Annex I to the Agreement. In a letter dated 7 September 1964, which mentions two "provisional replies", *Staatssekretär* Lahr acknowledged a further letter from the Greek Ambassador sent on 24 July 1964. He repeated the German legal view and added a reminder that on the occasion of negotiations which had previously taken place with a view to reaching a compensation agreement, the Greek side had held out the prospect that Greece might waive the claim based on awards of the Arbitral Tribunal. At the end of this letter the *Staatssekretär* stated that discussions concerning claims arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal had taken place and paragraph 11 of Annex I to the London Debt Agreement had accordingly been fulfilled.

The Greek Government wrote on 25 May 1965 objecting to this interpretation, and a series of *Aides-mémoires* followed (on 8 December 1965, 10 October 1966 and 9 November 1966) in which the Kingdom of Greece announced its intention to appeal to the Arbitral Tribunal established under the Agreement.

II

The Government of the Kingdom of Greece instituted proceedings by brief dated 21 March 1968. Its claim was supported as follows:

(24) As successor to the German Reich the German Federal Republic was liable under the Treaty of Versailles to meet claims for compensation determined by the Mixed Graeco-German Arbitral Tribunal. The claims were due to individuals but had been put forward, as is the practice under international law, by the country of which they were nationals. What are involved are private claims within the meaning of Article 4 of the London Debt Agreement and not governmental claims under Article 5. The fact that Greece itself had put the claims forward did nothing to alter their legal nature, any more than did Greece's efforts to secure compensation for the holders by other means than the awards of the Tribunal.

(25) The Tripartite Commission's letter of 12 July 1952 had constituted a binding declaration that the claims were not intergovernmental claims so as to be excluded from settlement under the Agreement.

Accordingly, the Respondent could not successfully object on the ground that the Greek claims did not fall within the debts to be settled under Article 4 of the Agreement but were instead intergovernmental claims under Article 5.

The wording of the text of Annex I, paragraph 11, established that the Greek claims exist. As in the case of all other debts set forth in Annex I, it remained only to be determined the manner in which they should be settled.

(26) The Dawes Plan and the Young Plan had laid down how payment was to be made; the liability to compensate was not touched upon. This was proved by the fact that the arbitral proceedings continued after the Plans came into force and by the fact that the German Representative had never suggested that the legal position had altered as a result of either Plan. The Plans had confined themselves to "the charges to be met as compensation for the costs of the War": in other words, to the reparations regulated by Part VIII of the Treaty of Versailles, leaving the breaches of neutrality dealt with in Part X untouched. Besides, the Reich had never put forward the view that either Plan had altered the nature of claims based on the Mixed Arbitral Commission's awards or rendered them void.

(27) To be sure, the Dawes and the Young Plans had released the Reich from the obligation to pay, but Hitler's Government had torn up the Hague Agreement of 1930. All rights under international law that the creditor countries and their nationals had before the coming into force of either Plan were thereupon revived.

It was evident from the declaration of the Greek Prime Minister at the closing session of the Finance Commission that the Kingdom of Greece had not waived its claims (see paragraph 10 above).

It was true that this declaration of non-waiver before the Finance Commission was not incorporated in the ultimate Agreement on the Young Plan, but the "New Plan" was a single whole and so the declaration must be regarded as continuing to subsist.

(28) Under Article 19 of the London Debt Agreement read with paragraph 11 of Annex I the Applicant was entitled to a continuation of the negotiations concerning the existence and the amounts of the claims. Only political States and public corporate bodies were excluded from settlement by Article 5 of the Agreement; that is, in particular, claims for reparations arising out of the First World War. The claims for breaches of neutrality were substantially different; they were private claims for damages.

The negotiations had so far never taken place. The mere exchange of Notes was no substitute.

The sense and purpose of including this obligation to negotiate in the London Debt Agreement was that the negotiations must end in a positive result. The Respondent's total rejection of the claims did not satisfy the duty to negotiate.

That the London Debt Agreement did contemplate a positive outcome could be gathered from the rest of Article 19. Besides the matter of the Greek claims this article contemplated other subsidiary agreements, covering the liability for Austrian Governmental Debts, payments into the German *Verrechnungskasse* and Swiss Franc Land Charges. These three Agreements had been concluded.

(29) Multilateral treaties were to be interpreted according to their wording, any obscurity being construed against the party which drafted it. From the text of the London Debt Agreement it clearly appeared that the Federal Republic of Germany had an obligation to conduct further negotiations. The subjective representations and views of the negotiating parties were unimportant.

(30) A promise to begin negotiations and somehow bring them to a positive result for the Kingdom of Greece was seen in Dr. Abs' July 1952 request for documents to support the Greek claims, and in Dr. Granow's letter of 23 October 1953. Dr. Abs' attitude before the signing of the Agreement, and in particular his declaration at the explanatory talks of 30 January 1953 (see paragraph 22 above), led to the impression that the Federal Republic of Germany was prepared to enter into further negotiations with the Kingdom of Greece. The Federal Government was also bound under the general rules of international law by the principle of good faith to continue conversations with the aim of reaching an agreement.

(31) Finally, the obligation to settle the Greek neutrality claims flowed from the principle of equal treatment of parties to a multilateral international treaty and from the rule against discrimination. These were principles of general international law and they were specially incorporated into the London Debt Agreement by Article 8.

The Reich had already bound itself by the exchange of Notes on 20 January 1930 (see paragraph 11 above) not to give preference to payments due to the United States under the Washington Agreement over payments due under the Young annuities. From both the factual and the legal points of view the claims determined by the Mixed Graeco-German Arbitral Tribunal stood on the same footing as those awarded by the Mixed Claims Commission, United States and Germany. These last had been brought to a settlement in the context of the London Debt Agreement. Therefore, the Greek neutrality claims, too, must be settled in the context of the same Agreement.

It followed from the principle of equal treatment that the "inclusive amounts" clause, even giving it the sense contended for by the Respondent, could not be invoked to defeat the Greek claims because the clause had not been invoked against claims arising out of awards by the Mixed Claims Commission, United States and Germany.

The Respondent could deduce no rights from its own illegal act in giving preference to the United States with respect to debt payments made in contravention of the obligation to accord equal treatment undertaken in the exchange of Notes of 20 January 1930.

The principle of equal treatment required that, with regard to the contents, the settlement of the Greek claims should correspond to those in the settlement of the American claims. This was of importance for instance in the calculation of the total sum due, as well as for the application of the gold clause, the entitlement of successors in interest and tax exemptions on payments made.

The Applicant must accordingly ask that the Tribunal's judgment include provisions covering the substantial contents of the agreement to be concluded by the parties. If it failed to do so, there was danger that on every point of detail the Federal Government in the further negotiations would adopt an attitude unfavourable to the Applicant, and the Applicant would receive "a stone instead of bread".

(32) In its original application the Kingdom of Greece had moved this Tribunal to hold the Government of the Federal Republic legally bound under the London Debt Agreement generally, and more particularly under its provisions cited above, to enter into negotiations with the Greek Government in order to settle, by an arrangement arrived at in accordance with the procedure laid down in the said Agreement, the problem of the claims arising out of decisions by the Mixed Graeco-German Arbitral Tribunal.

In its pleading of 12 December 1968 the Kingdom of Greece moved this Tribunal to find:—

(*a*) that the claims arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal constituted debts of the Federal Republic of Germany to be settled under Article 4 of the Agreement on German External Debts of 27 February 1953;

(*b*) that the Government of the Federal Republic of Germany is under an obligation to proceed, in accordance with Article 19 of the said Agreement, when

negotiating with the Government of the Kingdom of Greece with the aim of reaching an agreed settlement of the debts arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal;

(*c*) that paragraph 11 of Annex I to the said Agreement is to be interpreted as requiring the Federal Government to reach a settlement of the said claims with the Government of the Kingdom of Greece corresponding with that reached in paragraph 10 of the same Annex for claims arising out of decisions by the Mixed Claims Commission, United States and Germany;

(*d*) that the claims fixed by decisions of the Mixed Graeco-German Arbitral Tribunal are to be calculated in accordance with the provisions of Article 12 of the said Agreement.

During the oral hearings the Kingdom of Greece amended its motions on 3 June 1971 as follows:

The Arbitral Tribunal is requested to rule as follows:

1. The effect of Article 19, paragraph 1 (*a*), of the London Debt Agreement of 27 February 1953 read with paragraph 11 of Annex I, and Articles 4 and 8 read with paragraph 10 of the same Annex, is to require the German Government to arrive, within a reasonable time, at a settlement with the Government of the Kingdom of Greece of claims arising out of decisions by the Mixed Graeco-German Arbitral Tribunal, corresponding in principle and particularly in respect of the calculation of the principal sum owed—on the basis of the same currency and exchange parity (Reichsmarks with a gold clause)—together with arrears of interest, mode of payment, interest for default and security to be furnished, with the settlement of the claims arising out of the decisions of the Mixed Claims Commission, United States and Germany, as embodied in paragraph 10 of Annex I to the said Agreement, read with the German-American Agreement of 27 February 1953 concerning the indebtedness of Germany on account of the decisions of the German-American Commission.

2. Alternatively to 1:

The effect of Article 19, paragraph 1 (*a*), of the London Debt Agreement read with paragraph 11 of Annex I and Articles 4 and 8 read with paragraph 10 of the same Annex, is to require the Government of the Federal Republic of Germany to conduct negotiations with the Government of the Kingdom of Greece concerning settlement of the claims arising out of decisions by the Mixed Graeco-German Arbitral Tribunal, and at the same time to preclude it from raising any of the following objections:

(*a*) that it had already fulfilled the obligation to negotiate with the Kingdom of Greece imposed by Article 19, paragraph 1 (*a*), of the Agreement read with paragraph 11 of Annex I;

(*b*) that the bare rejection of the Greek claims constitutes what could also be regarded, under the said provisions, as amounting to an outcome of negotiations and forming a subject for an "agreement";

(*c*) that so far as the Greek claims arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal were in favour of private persons they are not debts to be settled within the meaning of Article 4 of the Agreement;

(*d*) that so far as the Greek claims arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal were in favour of private persons they are governmental claims arising out of the First World War within the meaning of Article 5, paragraph 1, of the Agreement;

(*e*) that it does not follow from Article 4 and Article 19, paragraph 1 (*a*), of the Agreement that the Greek claims arising out of the decisions of the

Mixed Graeco-German Arbitral Tribunal still subsisted at the time the Agreement on German External Debts of 27 February 1953 was concluded;

(*f*) that it does not follow from Article 19, paragraph 1 (*a*), of the Agreement read with paragraph 11 of Annex I, and from Articles 4 and 8 read with paragraph 10 of the same Annex, that there is an obligation on the Federal Republic of Germany to settle the Greek claims arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal;

(*g*) that there is so far-reaching a difference of character between the Greek claims arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal on the one hand (so far as they were in favour of private persons), and the American claims arising out of the decisions of the Mixed Claims Commission, United States and Germany, on the other (so far as they were settled by paragraph 10 of Annex I to the London Debt Agreement, read with the German-American Agreement of 27 February 1953 on the Liability of Germany arising out of decisions of the said Mixed Claims Commission), that the Federal Government's refusal to settle the Greek claims is justified and offends neither against the general principles of international law enjoining equal treatment and forbidding discrimination nor against Article 8 of the London Debt Agreement in particular;

(*h*) that it does not follow from the provisions of Article 19, paragraph 1 (*a*), of the London Debt Agreement read with paragraph 11 of Annex I and Articles 4 and 8 read with paragraph 10 of the same Annex, or from the general principles of international law enjoining equal treatment and forbidding discrimination, that the settlement of the Greek claims arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal must correspond, in the principles applied, with the settlement of the American claims arising out of decisions by the Mixed Claims Commission, United States and Germany, as embodied in paragraph 10 of Annex I to the Agreement read with the German-American Agreement of 27 February 1953 on the Liability of Germany arising out of decisions by that Commission: in particular, that a corresponding settlement could not be understood to require that the same procedure should be followed in calculating the principal sum—fixing a similar currency and exchange parity (Reichmarks with a gold clause) as a basis—and arrears of interest, conditions of payment, interest in case of default and the furnishing of security on the same principles as those in paragraph 10 of Annex I to the London Debt Agreement read with the German-American Agreement of 27 February 1953.

(33) The Federal Republic of Germany moved that the Tribunal:—

I. First of all declare that it is without jurisdiction in respect of the prayers in the Application and that, as to the Supplementary Pleading, it is without jurisdiction in respect of prayers (*b*), (*c*), and (*d*) as well as of that at (*a*) so far as it seeks a finding that the Respondent is bound to reach a positive settlement of the "claims of private persons arising out of decisions of the Mixed Graeco-German Arbitral Tribunal set up after the First World War" and must enter into an Agreement with the Applicant accordingly.

II. Alternatively,

1. declare that prayer (*b*) of the Supplementary Pleading is inadmissible so far as it asks for a finding that the Respondent must submit any eventual agreement reached with the Applicant to the Governments named in E II* for approval;

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* NOTE: The following are named in E II of the answer of the Respondent: the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

2. dismiss all other prayers in the Application and the Supplementary Pleading as unfounded;

III. Alternatively;

dismiss the prayers in the Application and the Supplementary Pleading as unfounded.

At the oral hearing the Federal Republic of Germany maintained its objection to the jurisdiction of the Tribunal and complained that the grounds of the Application had been improperly changed and widened. It moved:—

1. that the application of 3 June 1971 be dismissed; that is to say, that motion 1 [see paragraph 32 above] be dismissed as unfounded and also, so far as it seeks a settlement corresponding to that of the American claims in paragraph 10 of Annex I to the London Debt Agreement, as inadmissible;

2. that alternative motion 2 [see paragraph 32 above] be dismissed as unfounded so far as it refers to a resumption of negotiations and that motions 2 (*a*) to 2 (*h*) be dismissed as inadmissible or alternatively as unfounded.

(34) The Respondent contended that the London Debt Agreement disclosed no duty on its part to enter into a settlement. If Article 4 did contemplate a duty to settle private debts, such a duty presupposed that the debts existed. The German Reich, however, had never been liable to pay the sums fixed by the arbitral awards. All of the awards were made after the Dawes Plan came into force. Because of the "inclusive amounts" clause it was not permissible to make payments outside the annuities laid down in the Plan. This was confirmed by the Arbitral Tribunal set up to interpret the Plan (see paragraph 7 above). Greece had acknowledged that herself, in the *Note verbale* of 21 July 1930, and repeated the acknowledgement in the Graeco-German Agreement of 10 November 1931 (see paragraph 13 above).

Greece's reservation in the minutes of the Finance Commission of 31 August 1929 (see paragraph 10 above) became ineffective upon the conclusion of the Hague Agreement that it signed without repeating its reservation.

All of the claims dealt with by the Dawes and Young Plans were replaced by the annuities. A novation took place. The original claims by private persons for compensation sanctioned under the Treaty of Versailles were rendered void.

After the Hoover moratorium, Greece did not even make the attempt to assert that claims arising out of decisions by the Mixed Graeco-German Arbitral Tribunal were private and therefore outside the moratorium, as the United States had done in respect of the claims arising out of decisions by the Mixed Claims Commission, United States and Germany.

(35) The Respondent contended that the incorporation of debts into the London Debt Agreement did not amount to a recognition of them by the Federal Republic of Germany. Thus, no agreements were reached with Denmark, Norway and Belgium under Article 10 of Annex IV to the Agreement.

At the time of the drafting of the text of Article 19 and paragraph 11 of Annex I, the Federal Republic of Germany was neither willing nor able to incur any obligation because the German Delegation was not yet familiar with the historical background. This was also true of Dr. Abs' request for supporting material in July 1952 and Dr. Granow's letter of October 1952. In so far as private Greek claims were concerned, Article 19 simply repeated the provision of Annex I, paragraph 11.

The Tripartite Commission's statement (see paragraph 22 above) did not bind the Respondent. It merely signified that the Greek claim could be dealt with at the Conference, not that it had to be positively settled. The German side would be able to raise any objections to the claim as presented, including its basis as well as its amount. Greece did not assert the binding nature of the Tripartite Commission's statement during the London Debt Conference. It did so for the first time in 1959. Likewise, the Tripartite Commission, which had knowledge of Dr. Abs' letter of 12 January 1953, did not rely upon its statement to protest the German thesis that the claim was non-existent.

In the Federal Government's view, therefore, the claims put forward had no existence. A settlement under the London Debt Agreement was only possible, as could be seen from Article 17, in the case of claims which had either been admitted by the debtor or which had been fixed by a final and binding decision of a competent Court. The issue of what effect, if any, the "inclusive amounts" clause in the Young Plan had on the claims asserted by Greece was in any case outside the jurisdiction of this Tribunal which was strictly limited by Article 28 to deciding disputes between parties to the Agreement concerning the interpretation or the application of it, or of any of its Annexes. It was not competent to determine whether or not an asserted claim existed.

(36) The Respondent continued that the German Reich did not tear up the Young Plan. Rather, it was because of the world-wide economic crisis that it was unable to pay. Moreover, the Allies contemplated measures in case of a scrapping which did not include either a revival of the Dawes Plan or the original terms of the Treaty of Versailles.

(37) The Respondent asserts that the reference to three other prospective Agreements in Article 19 of the London Debt Agreement and the fact that these other Agreements were concluded, contributes no aid in ascertaining the meaning of the obligation to negotiate the Greek claims. In the case of the German-Austrian Agreement the dispute was not whether the claims existed but whether they included amortization as well as interest. The Federal Republic of Germany carried its point. The Agreement concerning payments into the *Verrechnungskasse* simply dealt with conditions of payment. Also, in the case of the German-Swiss Agreement, the existence of the claim was never disputed.

(38) An exchange of Notes must be regarded as the equivalent of oral negotiations. Moreover, such oral negotiations had already taken place as illustrated during the conversations about an agreement on compensation for losses arising out of the Second World War on 4 March 1960 and 18 October 1961 (see paragraph 23 above).

(39) The Respondent argued that it was permissible to interpret international treaties to the prejudice of those who formulated them only when every other rule of interpretation had been tried without success. The guiding principle was that a provision must be so interpreted as to inflict the least burden, and if that were done one could not read into the London Debt Agreement an obligation to reach a positive settlement. In any case, a Greek representative was present when paragraph 11 of Annex I was drafted.

(40) It continued that neither the principle of equal treatment among parties to a multilateral international treaty nor the principle of non-discrimination could be invoked to justify a claim to a settlement corresponding to that for the awards of the Mixed Claims Commission, United States and Germany. There was no such general principle of international law. In many respects the London Debt Agreement dealt with particular claims in different ways, a procedure expressly sanctioned by the second paragraph of Article 8.

In addition, the claims arising out of decisions of the Mixed Claims Commission, United States and Germany, in many respects differed from the claims arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal. Reference was made especially to the circumstance that bonds, issued to secure the American claims, were administered by the United States Treasury as Custodian. This was why the bondholders appeared during the London debt negotiations. In contrast thereto, there was no special treatment of or exception from the "inclusive amounts" clause contemplated in the case of the Greek claims. It must also be observed that it was at the German request that the Tripartite Commission decided that the American claims were not excluded from settlement according to the principle later set forth in Article 5, paragraph 1, of the London Debt Agreement. In the case of the Greek claims, on the other hand, there was no German participation in what was a mere expression of opinion of the Tripartite Commission that the Greek claims did not fall within the aforesaid excluded debts.

The principle of equal treatment contained in Article 8 of the London Debt Agreement, which was binding on the Federal Republic of Germany, barred a positive settlement of the Greek claims. The result of including those claims in the "inclusive amounts" clause was to turn them into governmental claims arising out of the First World War, the settlement of which was expressly forbidden to the Federal Government by Article 5, paragraph 1, of the Agreement. If, nevertheless, it declared itself prepared to settle, it could not foresee what further claims would be presented to the Federal Government under the aspect of equal treatment.

(41) The Government of the Kingdom of Greece replied.

With respect to the allegations in paragraph 34 above, it said that the decisions of the Arbitral Tribunal under the Dawes Plan added nothing to the present case. Portugal had not accepted the Young Plan with the reservation that the annuities be paid in full. The reservation the Greek Representative made on 31 August 1929 at the final session of the Finance Commission during the Hague negotiations was approved in the German Law of 13 March 1930 concerning the Hague Agreement. Accordingly, it became a part of the Agreement.

With respect to the allegations in paragraph 40 above, it said that there are no other claims similar to the Greek claims. The Federal Republic of Germany need have no fear that a settlement of the claims arising out of the decisions of the Mixed Graeco-German Arbitral Tribunal could result in other States presenting claims under the aspect of equal treatment.

(42) The Applicant submitted two expert legal opinions, one dated 10 March 1969 by Professor Helmut Coing, Frankfurt University, and the other dated December 1969 by Professor Rudolf Bernhardt, Frankfurt University.

III

(43) On 24 March 1970 this Tribunal made the following interlocutory decision:

> The preliminary objection of the Government of the Federal Republic of Germany to the jurisdiction of the Tribunal is overruled.

The Tribunal supported its decision on the grounds that the case involved, *inter alia*, questions regarding the interpretation or application of the Agreement and its Annex I, in particular of Article 19, paragraph (1) (*a*), of the Agreement and of paragraph 11 of Annex I; that none of the exceptions mentioned in Article 28, paragraph (2), applied; that it followed that the Tribunal was competent to pass upon the aforementioned questions; and that the competence of the Tribunal to grant the specific motions of the Government of the Kingdom of Greece was not a subject matter of the decision.

(44) Dr. Abs, who had headed the German Delegation, was named by the Respondent as a witness to support its account of the course of negotiations at the London Debt Conference. He was called and testified as follows:

It was not the task of the Conference to settle debts but rather to ascertain their volume and, if possible, to bring the creditors and debtors to terms. In any case, a settlement, as the Agreement later provided, could only come about after the Agreement had been signed and ratified. The July 1952 letter of the Conference Secretary to the Greek Delegation, a copy of which was received by the German Delegation, did not prevent the latter from enquiring into the existence

of the claims put forward by Greece. On the contrary, it was under a duty to enquire.

He could not recall whether reasons were given, informally, for the decision of the Tripartite Commission of 24 March 1952 concerning the American Mixed Claims and for the statement of 12 July 1952 on the Greek claims. The two were of divergent natures. In the case of the American claims it was a question of making an actual decision; in the case of the Greek claims, it was only a question of commenting on them. He had looked upon the decision of 24 March 1952, like all decisions of the Tripartite Commission, as binding, subject of course to the proviso that the German Government had had its chance to urge objections. He had been empowered to make binding declarations on behalf of the Federal Republic of Germany. From the documents which came before him he had gained the impression that a distinction existed between the Greek claims and the German-American Mixed claims because they were treated differently in the Dawes and the Young Plans.

It was only during the closing phase of the London negotiations in the autumn and winter of 1952 that documents concerning the Greek claims were found which led to the letter of 12 January 1953 rejecting those claims. Some documents were not discovered until later. Up to that time the "History of the Arbitral Tribunals" (see paragraph 4 above) had not been produced. Documents were made available too from the Greek side at the request of the German Delegation. He could no longer recollect with exactness which documents were produced before the London Debt Agreement was concluded and which were not known of until later.

Prior to its issuance, the letter of 12 January 1953 had been thoroughly discussed with Dr. Granow, the competent German Foreign Office official and later an Ambassador, and with Professor Erich Kaufmann, a legal adviser to the Federal Government.

He, the witness, was not a lawyer but he had made himself fully acquainted with the contents of the letter. A copy was given to the Tripartite Commission and was before the Commission during the explanatory talks at the end of January 1953.

When he made his statements at those conversations, saying "the matter was not yet settled" (see paragraph 22 above), he had not done so with the intention of retracting the rejection of the Greek claims already communicated in his letter of 12 January 1953. No Member of the Tripartite Commission discussed the rejection. There was no contradiction between his statement at the explanatory talks and his letter of 12 January 1953. He had not looked upon that letter as ending the discussions with Greece: a matter like this could not be disposed of by the unilateral declaration of one of the parties. He testified that "It would have been disposed of if Greece had stated, 'We have taken note of your letter of 12 January 1953, and after consideration we regard the matter as settled'. Then it would have been settled." No comments by the Greek Government on the letter

had yet been made at the time of the explanatory talks. Consequently, the matter was not "settled". A "settlement of the matter" was not the same as a "settlement of the debt", which could take place only after the negotiations in London had been concluded.

The provisions of paragraph 11 of Annex I to the London Debt Agreement could only establish that the question of the existence of the Greek debts was still open. The use of the conditional at the end of the paragraph where it was stated that the result of the discussions, if approved, should be incorporated into the intergovernmental agreement, showed that this could only come about if there was in fact a result.

Dr. Granow's letter to the Greek Delegation on 23 October 1952 (see paragraph 22 above) contained no assurance that the prospective further conversations were certain to have a positive outcome. If an assurance of this kind had been intended, the letter would have had to be signed by Dr. Abs himself.

He understood now—and had understood at the time—that "negotiations" mean not only discussions which lead to a positive result. The acceptance of the German point of view could also be the result of negotiations.

When the negotiations provided for in Article 19, paragraph 1 (*b*), took place with Austria it was the German point of view that prevailed.

He was familiar with the proportion the Greek claims bore to the London debts as a whole—120 million Gold Marks to 18,000 billion. The importance of a single claim in relation to the whole was not a deciding factor.

REASONS FOR THE DECISION

(45) The Tribunal has been greatly assisted by the submissions of the parties. The carefully prepared and detailed pleadings, written and oral, and the expert opinions, have sharply defined the issues. In addition, the have provided the Tribunal with a panoramic view of the historical setting in which the present controversy arose. Counsel have diligently examined the international treaties and conventions that preceded the convening of the London Debt Conference.

(46) However, in the circumstances of the present case, the task of the Tribunal can be carried out without taking a position respecting the validity of the legal conclusions reached by either party with respect to these earlier international undertakings.

(47) This does not mean that in our consideration of the issues before us no attention has been paid to the international agreements mentioned in the Statement of Facts. These agreements are of historical interest and constitute the background necessary for a better understanding of the situation that existed prior to 1953. They, of course, have to be considered in the chronological order of events

leading to the London Debt Conference. A knowledge of the provisions of these international undertakings is helpful to a full understanding of the nature of the dispute between the parties. The situation that existed at the time of the signature of the Agreement can best be understood by an examination of the events that led to that situation.

(48) As a result of the different interpretations that the parties have given to the events that occurred prior to the signature of the Agreement, the dispute between them has been brought sharply into focus, but that dispute can only be resolved by the parties themselves pursuant to Article 19 of the Agreement, which is designed to incorporate, within the Agreement itself, a special method for its settlement.

(49) During the years between the two World Wars, the Kingdom of Greece repeatedly and persistently asserted the claims in dispute, contending that the amounts were fixed, due and payable by the German Reich. The latter, on the other hand, repeatedly and persistently denied that such claims could still be asserted after the coming into force of the Dawes Plan. That was the situation that persisted until the beginning of the London Debt Conference.

(50) The Tribunal deems it appropriate to point out that, in its consideration of the case, it has proceeded from the premise that both Governments have acted in good faith.

The pleadings submitted by the Kingdom of Greece contain implications that, during the negotiations in the course of the London Debt Conference, the Federal Republic sought to avoid a settlement of the disputed claims by representing that it did not have sufficient information upon which to base a judgment, whereas, according to the representations made by the Kingdom of Greece, such information was available. Moreover, the Kingdom of Greece suggests that, at that time, the Federal Republic avoided raising the argument that the claims in dispute were deferred under Article 5, paragraph 1, of the London Debt Agreement, because if such a contention had been made the Tripartite Commission "should have commented immediately on it pointing out to the German Delegation that these Greek claims were by no means 'governmental claims arising out of the first World War' the consideration of which was deferred and that the Commission had thus informed the German Delegation via copy of the letter of the Secretary of the Conference of 12 July 1952" (see paragraph 22).

To the extent that these representations are intended to induce the Tribunal to conclude that the Federal Republic did not act in good faith or that it deliberately avoided further discussions or negotiations leading towards a possible settlement, the Tribunal considers that such conclusions are unsupported by the record before it.

(51) The undertaking of the Federal Republic to assume liability for debts that had been incurred by Germany as a whole was an event unique in the history of international relations. The extent of

that undertaking, and the complexities involved in defining and delimiting the debts to be considered, presented the German Delegation to the London Debt Conference with an agenda that obviously made it necessary to fix priorities with respect to the particular categories of debts and claims to be considered.

(52) The claim of the Kingdom of Greece in this case was, of course, substantial and important. It was, however, only one of a great number of debts that occupied the attention and the time of the parties to the Conference. Moreover, the detailed data necessary for a complete understanding of the nature of the dispute between the two Governments were not readily available to the German Delegation even at a late stage of the negotiations, as appears from Dr. Granow's letter of 23 October 1952 (see paragraph 22). It was not until shortly before the dispatch of the letter of 12 January 1953 from the Head of the German Delegation that that material was, in fact, assembled and digested.

(53) It is the present position of the Government of the Federal Republic of Germany that the statement of the Tripartite Commission referred to in the 12 July 1952 letter of the Secretary-General of the Conference that

> in its opinion, the Greek claim arising out of the awards of the Mixed Graeco-German Tribunal established after the First World War, to the extent to which such awards had been rendered in favour of non-public claimants, does not fall within the category of debts to be excluded from the negotiations of the Conference . . . (See paragraph 22.)

merely meant that the Greek claims were admitted for the purpose of discussion at the Conference; that the statement by no means purported to be a decision that the claims should be settled positively nor did it mean that the Tripartite Commission was of the opinion that the claims were established to be held by private persons. It is further contended that objections to the existence of the claims, to their amounts, and to their character as claims held by private persons, were all admissible.

(54) The Kingdom of Greece, on the other hand, contends, in substance, that the aforesaid statement of the Tripartite Commission had the effect of advancing the claims to a point where only the question of the terms of the settlement remained to be determined.

(55) For the purposes of our decision it is not necessary to determine what powers the Tripartite Commission may have had with respect to determining the existence, or nature, of the disputed claims. The opinion of the Tripartite Commission, as expressed in the letter of the Secretary of the Conference, though not determinative of our interpretation of the Agreement, aids in that interpretation, since it did, at the very least, indicate that the Greek claims were a proper matter to discuss at the Conference. What is determinative is the pertinent language of Article 19 and paragraph 11 of Annex I, which was agreed to by the parties. It is from that point that we must begin our consideration of the case. It is that language that is to be interpreted.

The interpretation will be in accordance with the general rule as stated in Article 31, paragraph 1, of the 1969 Vienna Convention on the Law of Treaties, which reads as follows:

> A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

(56) The work of Committee A of the London Debt Conference, which was competent to pass upon the Greek claims, came to an end before agreement could be reached by the parties. Consequently, the Report of the Conference on German External Debts stated that

> a preliminary exchange of views has taken place between the Greek and German delegations in regard to claims held by private persons, arising out of decisions of the Mixed Graeco-German Arbitral Tribunal established after the first World War. This will be followed by further discussions, the result of which, if approved, should be covered by the intergovernmental agreement.

This statement was later reproduced, *verbatim*, as Section D, paragraph 11, of Annex I to the Treaty (see paragraphs 19 and 20).

(57) The "further discussions", referred to in the Report, were not completed prior to the signature of the Agreement. Consequently, the Greek claims were specifically mentioned in Article 19 under the title "Subsidiary Agreements". To the extent that that article is pertinent to the present proceedings, it reads as follows:

> (1) Agreements resulting from the negotiations provided for in (*a*) Paragraph 11 of Annex I to the present Agreement (Graeco-German Mixed Arbitral Tribunal Claims); . . .
>
> shall be submitted by the Government of the Federal Republic of Germany (after its approval, where appropriate) for the approval of the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.
>
> (2) Each such agreement shall enter into force and shall be treated for all purposes as an Annex to the present Agreement, when it is approved by these Governments. A notification to this effect shall be communicated to all the Parties to the present Agreement by the Government of the United Kingdom of Great Britain and Northern Ireland.

(58) It will be observed that, whereas Annex I, paragraph 11, mentions "further discussions", Article 19 of the Agreement refers to "negotiations". If there should be a conflict between these terms, the language of Article 19 of the Agreement must prevail over that of the Annex. This is specifically covered by Article 27 of the Agreement which states that:

> In the event of any inconsistency between the provisions of the present Agreement and the provisions of any of the Annexes thereto, the provisions of the Agreement shall prevail.

(59) For our purpose, however, no conflict between these terms exists. The Report of the Conference on German External Debts, which is attached as Appendix B to the Agreement and in which the expression "further discussions" was employed with respect to the Greek claims, also contains its own clarification of what is meant by the expression. Paragraph 16 of the Report, in reference to the "several debt problems, the special nature of which made their complete and

definitive settlement during the Conference impossible", specifically states that "Plans were laid for their subsequent solution in negotiations between the interests involved". It also states that "Such negotiations shall be guided by the principles and objectives of the Conference". Thus, it seems evident that the further discussions contemplated between the parties were intended to be "negotiations" in form as well as in character.

(60) The Agreement entered into by the Governments was inspired by the principles and objectives set forth in the Report of the Conference, as may be seen from specific language to that effect in the Preamble. Accordingly, we discern no conflict between the language used in Article 19 of the Agreement and that used in paragraph 11 of Annex I. In the consideration of the issues before us, we have interpreted the expression "negotiate" to mean to confer with another with a view to reaching an agreement.

(61) The "clear", "natural" or "plain" meaning of language used in a treaty is entitled to primacy, although it does not necessarily have exclusionary effect. (See Article 31, paragraph 4, of the Vienna Convention.) A word or phrase may have an "ordinary" meaning in one context, and quite a different meaning in another. A more precise guide in the interpretation of instruments is the concept of "ordinary meaning in context" (see American Law Institute, *Restatement of the Law*, Second, Foreign Relations Law of the United States (1965), Part III, "International Agreements", pp. 451-453). We have been guided by that concept in the consideration of this case. In our decision of 3 July 1958 in the case of the *Swiss Federation v. The Federal Republic of Germany*,[4] the natural meaning was given to the phrase "place of payment", as that term is used in Annex VII, I, 2 (*a*), of the Agreement. This interpretation was confirmed by the Tribunal after an examination of the origin of Annex VII, as it emerged from the preparatory documents to the Debt Agreement, and from the legal position of the creditors as of the time of the London Conference. The Tribunal founded its decision in that case on the concept of "ordinary meaning in context". (See *Decisions of the Arbitral Tribunal and Mixed Commission*, 1958, p. 38.)

(62) With the ratification of the Agreement, the parties acknowledged that all previous exchanges of views were only of a preliminary nature (see paragraph 11 of Annex I). They undertook to negotiate their dispute anew notwithstanding the earlier refusals of both sides to retreat from positions that had hardened over the years. Article 19 must be considered as a *pactum de negotiando*. The arrangement arrived at between the parties in the present case is not a *pactum de contrahendo* as we understand it. This term should be reserved to those cases in which the parties have already undertaken a legal obligation to conclude an agreement (McNair, *Law of Treaties* (1962), pp. 27 *et seq.*; Dahm, *Völkerrecht*, vol. III (1961), pp. 66 *et seq.*)

[4] *International Law Reports*, 25 p. 33.

That this requirement was not complied with in the present case is obvious from Article 19 (1) (*a*) of the London Debt Agreement and paragraph 11 of Annex I.

However, a *pactum de negotiando* is also not without legal consequences. It means that both sides would make an effort, in good faith, to bring about a mutually satisfactory solution by way of a compromise, even if that meant the relinquishment of strongly held positions earlier taken. It implies a willingness for the purpose of negotiation to abandon earlier positions and to meet the other side part way. The language of the Agreement cannot be construed to mean that either side intends to adhere to its previous stand and to insist upon the complete capitulation of the other side. Such a concept would be inconsistent with the term "negotiation". It would be the very opposite of what was intended. An undertaking to negotiate involves an understanding to deal with the other side with a view to coming to terms. Though the Tribunal does not conclude that Article 19 in connection with paragraph 11 of Annex I absolutely obligates either side to reach an agreement, it is of the opinion that the terms of these provisions require the parties to negotiate, bargain, and in good faith attempt to reach a result acceptable to both parties and thus bring an end to this long drawn out controversy. The desirability of such a positive result is necessarily much greater in relationships between States than between individuals if for no other reason than that the stakes are infinitely higher. When States have solemnly undertaken to resolve their differences and then fail to do so, incalculable harm can follow. The need for the peaceful solution of differences between States is so great and so essential to the well-being of the community of nations that, when disputants have reached a point of signifying their agreement to negotiate an outstanding dispute, the subsequent negotiations normally ought to lead to a satisfactory and equitable result (see Article 1 of the Agreement).

(63) The agreement to negotiate the disputed monetary claims, in this case, necessarily involves a willingness to consider a settlement. This is true, even though the dispute extends not only to the amount of the claims but to their existence as well. The principle of settlement is not thereby affected. Article 19 does not necessarily require that the parties resolve the various legal questions on which they have disagreed. For example, it does not contemplate that both sides are expected to see eye to eye on certain points separating them, such as whether the disputed claims legally exist or not, or whether they are government or private claims. As to these points, the parties, in effect, have agreed to disagree but, notwithstanding their contentions with regard to them, they did commit themselves to pursue negotiations as far as possible with a view to concluding an agreement on a settlement.

(64) In its Judgment of 20 February 1969 in the *North Sea Continental Shelf Cases*,[5] the International Court of Justice had occasion

[5] *International Court of Justice Reports*, 1969, p. 3.

to discuss the obligation to negotiate as a method for the peaceful settlement of international disputes. In that case, the Governments of the Kingdom of Denmark, the Federal Republic of Germany, and the Kingdom of the Netherlands requested the International Court of Justice to decide what principles and rules of international law were applicable to the delimitation as between the parties of the areas of the continental shelf in the North Sea. By special agreements among these Governments it had been agreed that they would delimit the continental shelf in the North Sea as between their countries by agreement in pursuance of the decision requested from the Court. These special agreements were considered by the International Court of Justice to impose an obligation to negotiate. The Court stated that

> the parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it. (*International Court of Justice Reports*, 1969, p. 47.)

The Court pointed out that the obligation to negotiate, which the parties had assumed, merely constitutes a special application of a principle which underlies all international relations, and which is moreover recognized by Article 33 of the Charter of the United Nations as one of the methods for the peaceful settlement of international disputes.

(65) The Tribunal considers that the underlying principle of the *North Sea Continental Shelf Cases* is pertinent to the present dispute. As enunciated by the International Court of Justice, it confirms and gives substance to the ordinary meaning of "negotiation". To be meaningful, negotiations have to be entered into with a view to arriving at an agreement. Though, as we have pointed out, an agreement to negotiate does not necessarily imply an obligation to reach an agreement, it does imply that serious efforts towards that end will be made.

(66) The Federal Republic contends that since the language of paragraph 11 of Annex I had already been formulated in August 1952 its significance can be measured only with respect to the situation as it existed at that time. It asserts that at the time paragraph 11 was drafted, the German Delegation had not yet had an opportunity to form an opinion with respect to the justification of the claims. It argues that the language used does not imply an acknowledgment of liability or a promise to reach a positive settlement; that its readiness to enter into discussions does not imply an admission that the claims were well founded. The Federal Republic points out that Article 19 of the Agreement merely repeats, in substance, what had already been stated in paragraph 11 of Annex I. It argues that when that article was drafted, in October 1952, the German Delegation had not been able to form a sufficiently clear picture of the Greek claims and that, accordingly,

it should not be construed to mean that an agreement had been reached to arrive at a positive settlement of those claims; that this was the proper construction at the time the article was formulated and that it was not changed by the fact that, some weeks prior to the signing of the Inter-governmental Agreement, the German Delegation had examined the Greek claims, declared them to be unfounded and absolutely refused to settle. It is contended that nothing adverse to the German position should be concluded from the fact that Article 19, paragraph 1 (*a*), remained unchanged at the time of the signature of the Agreement on 27 February 1953.

(67) For the purpose of our decision we may assume, without deciding the point, that in certain circumstances the knowledge, or lack of knowledge, of material facts by a party to an international treaty during its preparation could have a material bearing upon the interpretation and application of the Agreement. If such a rule were to be applied and if the time of drafting, as distinguished from the time of signature, were material, then the arguments by the Federal Republic would be pertinent to the present dispute. The Tribunal, however, deems these considerations not of relevance to the present proceedings because what is decisive here is the state of affairs that existed at the time of the signature of the Agreement. At that time the German Delegation admittedly was in possession of material information necessary to form a judgement with respect to the Greek claims. Moreover, it had already reached such a judgement and conveyed its conclusion, in writing, to the other side and to the Tripartite Commission. In his communication of 12 January 1953, Dr. Abs, as the Head of the German Delegation, traced the long history of the dispute and concluded:

> In these circumstances I am not in a position to recognize as justified the claim asserted by the Greek Government against the Federal Republic of Germany for compensations in respect of the neutrality damages assessed by the Mixed Graeco-German Arbitral Tribunal and I regret to be unable to comply with the request mentioned at the beginning for a settlement of that claim. I shall inform the Tripartite Commission on German Debts accordingly. (See paragraph 22.)

In that letter Dr. Abs took the position that the Greek claims in dispute had "lost their basis and become extinct" as a result of the undertakings incorporated in the Agreement on the Dawes Plan and in the Hague Agreement on the Young Plan. He further contended that the liability of the Federal Republic extended only to those debts of the German Reich that "are still existing by law", and do not include "such debts which have become void and extinct by legal waiver already before the collapse of the German Reich, as is the case of the Greek neutrality claims". In his testimony before the Tribunal, Dr. Abs stated that this communication was a final rejection of the Greek claims, that it was seriously meant and was not sent for tactical reasons.

(68) Thus the situation that existed at the time the parties placed their signatures on the Inter-governmental Agreement was clear. The German Delegation was then in possession of pertinent records. It was

under no misconception as to how the claims originated nor as to what was being demanded. It had rejected the claims unconditionally. On the other hand, the Greek side had persistently and insistently presented its claim, not only during the conference period in London, but, as Dr. Abs pointed out in his letter of 12 January 1953,

> . . . in the years between the two wars, the Greek Government repeatedly, *e.g.* on occasions of almost all the negotiations for the conclusion of trade agreements, approached the Government of the Reich with the request to obtain satisfaction in respect to the Greek claims arising out of the decisions of the Graeco-German Mixed Arbitral Tribunal. . . . The Government of the Reich at that time always rejected the Greek request with reference to the above-mentioned inclusive amounts principle of the Reparation Settlement laid down in the Dawes and Young plans.

(69) Nevertheless, notwithstanding all that had transpired, the two Governments freely became parties to the Agreement on German External Debts, which included an undertaking to negotiate the Greek claims. It is of some significance, in this connection, that subsequent to his communication of 12 January 1953 and prior to the signature of the Inter-governmental Agreement, the Head of the German Delegation stated during the course of explanatory talks in which the comments of the Governments on the draft agreement were discussed, that with regard to the claims arising out of the Mixed Graeco-German Arbitral Tribunal such claims

> had been put forward by the Greek Government to which the Federal Republic had replied but the matter was not yet settled. (See paragraph 22.)

When Dr. Abs was heard as a witness, he was asked to explain how he reconciled his letter of 12 January 1953, containing a final rejection of the Greek claims, with the statement that the matter was not yet settled. He replied that he saw no contradiction between the two, that the matter would have been settled had he been informed by the Greek side that it acknowledged the letter of 12 January 1953 and after examining the same, concluded that the matter was settled. Yet, since such a letter had not been received, the question was still open.

(70) As we understand the position of the Federal Republic, it is that, though it had agreed to enter into discussions and negotiate with respect to the claims, it was under no obligation to reconsider its previous final rejection and could satisfy its obligations under the Agreement by simply reaffirming its prior position.

(71) We cannot accept such an interpretation of Article 19, paragraph 1 (*a*), read in conjunction with paragraph 11 of Annex I. A treaty freely entered into carries with it serious responsibilities. In this case, an agreement to negotiate implies much more than mere willingness to accept the other side's complete capitulation. For such a result, negotiations are neither necessary nor desirable. We construe the pertinent provisions of the Agreement to mean that, notwithstanding earlier refusals, rejections or denials, the parties undertook to re-examine their positions and to bargain with one another for the purpose of attempting to reach a settlement.

(72) Once the Federal Republic reached the conclusion that the Greek claims had no legal basis, it drew certain inevitable further conclusions. Pointing out that the Agreement was concerned only with existing claims, as contemplated by Article 4 (1) (*a*), it urges the Tribunal to rule that the satisfaction of the Greek demands would constitute a violation of the provisions of Article 8 of the Agreement, which prohibit any discrimination or preferential treatment among the different categories of debts. It further argues that if the claims in dispute really exist, they are governmental claims within the meaning of Article 5 (1) of the Agreement, and, consequently, must be deferred until a final settlement of claims arising out of the First World War.

(73) The Tribunal has given due consideration to these contentions but it declines to follow them. The Tribunal considers that the inclusion of Article 19 in the Agreement with its specific reference to the negotiation of the claims arising out of the Mixed Graeco-German Arbitral Tribunal, as well as paragraph 11 of Annex I, establish for such claims a special character. The nature of that special character becomes clear when the language of these provisions is read not in isolation but in conjunction with the other articles of the Agreement. The weight to be given to the language of these provisions must not be diminished by narrow or technical interpretations of Articles 4, 5 and 8. Pursuant to Article 19, paragraph 2, an approved agreement reached as a result of negotiations "shall be treated for all purposes as an Annex to the present Agreement". The Annex thus to be created will stand on an equal footing with the other provisions of the Agreement.

(74) The Agreement must be considered as a whole. The different clauses must be so interpreted as to avoid depriving any one of them of practical effect in order to credit others with a literal meaning. The overriding consideration is that Article 19 and paragraph 11 of Annex I are proof of the fact that both sides were prepared to remove the dispute between them from the realm of contentiousness. Any interpretation of these provisions must keep this objective in mind. That means that for the purposes of this particular situation the parties have tacitly assumed that the Greek claims should be treated as debts to be included among those to be settled under the Agreement.

(75) The non-contractual pecuniary obligations to be settled according to the provisions of Article 4 (1) (*a*) of the Agreement are those "fixed and due before 8th May 1945", provided they are covered by Annex I to the Agreement (Article 4 (2) (*a*)) and meet the conditions of Article 4 (3). The claims of the Kingdom of Greece are within the rule of Article 4 when the conditions implicit in the provisions of Article 19 are present. These include an agreement by the parties, with respect to the claims, and the approval of that agreement by the Governments which made up the Tripartite Commission. When these conditions have been met, the agreement thus reached "shall be treated for all purposes as an Annex to the present Agreement". Included among these purposes are the requirements that the amounts of the claims be fixed and due (Article 4 (1) (*a*)), that they be covered by

Annex I (see Article 4 (2) (*a*)) and that the debts are owed to creditors within the meaning of Article 4 (3). The whole purpose of Article 19 would be circumvented if a settlement of the claims were refused on the ground that they had not been acknowledged as due within the meaning of Article 4 (1) (*a*) prior to the signature of the Agreement. Similarly, a refusal to settle on the ground that any settlement reached would be in violation of Article 4 and Article 5 (1) would deprive Article 19 of all reasonable meaning. For these reasons the impact of the Dawes and Young Plans on the Greek claims can be left out of consideration in so far as the admissibility of the claims is concerned.

(76) During the course of the proceedings the Federal Republic has made it clear that it is seriously concerned about possible unforeseeable consequences involving claims of, or criticism from, other States were it to negotiate and settle the Greek claims, notwithstanding the exclusion of governmental claims arising out of World War I from the scope of the Agreement (Article 5, paragraph 1). This concern is unfounded. The statement of the Tripartite Commission of 12 July 1952 expressed the view that the Greek claims in so far as they are in favour of non-governmental claimants did not fall within the category of debts which were intended to be excluded by paragraph 11 IV (*a*) of the Commission's memorandum of December 1951, which provision, as the parties have agreed, is identical with the later Article 5, paragraph 1, of the Agreement. That statement set in motion the train of events that eventually created for the Greek claims a special character and a special legal basis within the scope of the Agreement itself. It need not be decided by the Tribunal whether the statement of the Tripartite Commission was or was not legally justified. What is significant is that the Conference accepted the conclusion of the Tripartite Commission and recommended that the claims be specially considered (see paragraph 16 of the Report of the Conference). That recommendation was accepted by all the participating States and was finally embodied in the Agreement (Article 19 in connection with paragraph 11 of Annex I). In the light of the foregoing, the claims of the Greek Government must be considered as *sui generis*. The negotiation and settlement of the claims by the Federal Republic would not be a precedent which would be invoked by any Government in order to enforce other World War I claims that were left out of consideration at the Conference.

(77) The significant point of departure is that a compromise agreement, arising out of this dispute, is to be treated as an integral part of the Agreement, and the amount agreed to in a settlement must be deemed to be included among the debts to be settled pursuant to Article 4 of the Agreement. Whether or not such an addition to the debts to be settled constitutes an exception to, or a supplementation of, Articles 4, 5 and 8 need not be decided.

(78) The Federal Republic contends that negotiations have taken place since the Agreement was signed, and that such negotiations failed

to achieve a settlement. We have examined the communications that were exchanged between the Governments subsequent to the signature of the Agreement and have concluded that these did not constitute "negotiations", as that term has been interpreted by us. The exchange of views in the main took place in writing. Some oral discussions were held but only during the course of unrelated negotiations. On all these occasions the German side simply rejected the Greek claims *ab initio* and gave reasons for this rejection. On the other hand, the Greek Government also refused to reconsider its position.

(79) In the application of the provisions of Article 19 of the Agreement, it was incumbent upon both sides to enter into discussions with the objective of agreeing upon the terms of a settlement. A unilateral decision to refuse to bargain with respect to a possible monetary settlement on the ground that the claims were not legally sustainable constitutes a position incompatible with the provisions of Article 19 requiring that an effort be made to achieve a mutually acceptable result.

(80) The give-and-take, inherent in any bargaining posture, applies to both parties. What we have said with respect to the contentions and arguments of the Federal Republic applies as well to those of the Kingdom of Greece. The latter contends that the Federal Republic is not only obliged to recognize the disputed claims, but that the payment of the amounts claimed and of the arrears of interest, as well as the mode of payment and kind of currency should correspond to the principles applied in the settlement of the claims arising out of the awards of the Mixed Claims Commission, as laid down in paragraph 10 of Annex I of the Agreement. The Kingdom of Greece has specifically moved that the operative part of the decision of the Tribunal expressly contain such an injunction. It supports this request on the ground that there is no difference between the American and the Greek claims, and that different treatments of them would amount to a violation of the prohibition against discrimination, as set forth in Article 8 of the Agreement, as well as a violation of a general rule of international law according to which all parties to a multilateral agreement are entitled to equal treatment.

(81) We cannot accept this argument. The second sentence of Article 8 of the Agreement reads as follows:

> Differences in the treatment of different categories of debts resulting from settlement in accordance with the provisions of the present Agreement and the Annexes thereto shall not be considered discrimination or preferential treatment.

As we have stated above, the Greek claims are *sui generis*. They therefore constitute a category of debts differing from the American claims. This view is confirmed by the fact that the two types of claims are dealt with in different paragraphs of Annex I—the American claims in paragraph 10 and the Greek claims in paragraph 11. It follows that a treatment of the Greek claims which differed from that of the American claims would not infringe the rule of the first sentence of Article 8. Whether or not a rule of international law exists which requires parties

to an international agreement to be treated equally need not be decided for the purpose of the present proceedings. If there be such a rule, it would not apply to the issue before us because of the clear ruling contained in the second sentence of Article 8. Counsel for the Kingdom of Greece have submitted to us detailed arguments attempting to show that the Greek claims are identical, in substance, with the American claims. Counsel for the Federal Republic on their part have tried to refute these arguments. In our opinion, the question does not require to be decided by us. It suffices to repeat that the Greek claims are *sui generis*.

(82) The parties have, as we have shown, concluded a *pactum de negotiando*. It cannot be the task of this Tribunal to prescribe the terms or conditions of a settlement between the parties. It is incumbent upon the parties themselves to determine through mutual bargaining the contents of the agreement which they have undertaken to negotiate.

(83) Counsel for the Kingdom of Greece have explained that they have moved for such relief as a matter of precaution; that, in the light of the failure of past efforts to reach a settlement, it is necessary that the Tribunal lay down strict guide-lines that will determine the course and results of the negotiations to follow; that, otherwise, there was danger of the Kingdom of Greece receiving 'a stone instead of bread'. We do not accept this argument. It exceeds what the Greek Government can claim under a *pactum de negotiando*. We have no reason to assume that a Government which has been a party to the present proceedings will not respect the letter and spirit of our decision. In particular, we have no reason to expect that the negotiations will not be imbued with the motives and purposes of the Agreement.

(84) Although the Tribunal declines to prescribe the terms or the conditions of a settlement, it has in paragraph 4 of the operative part of this decision stated the general broad principles that should guide the negotiations. These principles, and in particular that set forth in paragraph 4 (*b*) of the operative part, stem from, and give meaning to, the Agreement itself. The *pactum de negotiando* formed part of the Agreement. Any settlement that may be reached by the parties, when approved, will become an Annex to, and thus a part of, the Agreement. Consequently, the motives and purposes which influenced the Conference on German External Debts and which are set forth in the Preamble to the Agreement should pervade the negotiations which the parties are about to enter into. By adhering to these motives and principles, the overall objective of reaching a satisfactory and equitable settlement of Germany's pre-war external debts can be achieved with respect to the claims with which this decision is concerned.

(85) In its decision of 24 March 1970 overruling the preliminary objection to its jurisdiction, the Tribunal stated that its competence "to grant the specific motions of the Government of the Kingdom of Greece is not a subject matter of this decision". The objection previously raised by the Federal Republic to the competence of this Tri-

bunal has been reasserted with respect to the specific motions now made by the Kingdom of Greece. To the extent that those motions have not been granted in the operative part of this decision, the Federal Republic has not been prejudiced, and no further action need be taken with respect to its objection. To the extent that the operative part of this decision has granted relief, the objection must be deemed to have been denied.

(86) Similarly, to the extent that the motions for relief, made by the Kingdom of Greece, have not been granted in the operative part of this decision, the same must be deemed to have been denied.

For these reasons, the Arbitral Tribunal unanimously decides:

1. The expression "negotiations", as used in Article 19, paragraph (1), of the Agreement on German External Debts of 27 February 1953, in connection with the expression "further discussions", as used in Annex I, paragraph 11, of the Agreement, means that the Government of the Federal Republic of Germany and the Government of the Kingdom of Greece have undertaken to confer with a view to reaching an agreement.

2. The exchange of views, written and oral, between the Government of the Federal Republic of Germany and the Government of the Kingdom of Greece since the entry into force of the Agreement does not constitute negotiations, as that term is defined above.

3. In the application of Article 19, paragraph (1), in connection with Annex I, paragraph 11, the Government of the Federal Republic of Germany, when requested to do so by the Government of the Kingdom of Greece, is under an obligation to enter into negotiations as above defined. In the course of such negotiations, the parties are obliged to make every reasonable effort, within a reasonable time, to reach agreement with respect to the settlement of the claims in dispute, for the purpose of submitting any agreement thus reached to the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the United States of America for approval.

4. The negotiations to be conducted pursuant to Number 3 above must be guided by the following principles:

(*a*) They shall be meaningful and not merely consist of a formal process of negotiations. Meaningful negotiations cannot be conducted if either party insists upon its own position without contemplating any modification of it.

(*b*) Both parties are under an obligation to act in such a way that the principles of the Agreement are applied in order to achieve a satisfactory and equitable result.

The President
Erik CASTRÉN
The Registrar
E. A. MARSDEN