

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

**Execution of German-Portuguese Arbitral Award of June 30th, 1930 (Germany,
Portugal)**

16 February 1933

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XXXV.

**EXECUTION OF GERMAN-PORTUGUESE ARBITRAL AWARD
OF JUNE 30th, 1930¹.**

PARTIES : Germany, Portugal.

SPECIAL AGREEMENT : Exchange of Notes July 8, 1931.

**ARBITRATORS : George W. Wickersham (U.S.A.), President, Marc
Wallenberg (Sweden), A. G. Kröller (Netherlands),
A. Mendelssohn Bartholdy (Germany), and
J. Caeiro da Matta (Portugal).**

AWARD : Paris, February 16, 1933.

Incompatibility between payment of reparations fixed by arbitral award and terms of Young Plan.—Finality of arbitral award.—Effect of Dawes Plan on execution of award.—Effect of previous award interpreting the Dawes Plan.—Effect of Young Plan on payment of reparation fixed by arbitral award.—Waiver of reservation.—Effect of alleged non registration of treaty in conformity with Article 18 of Covenant of League of Nations.

¹ For bibliography, index and tables, see end of this volume.

Special Agreement.

AGREEMENT BETWEEN GERMANY, BELGIUM, GREAT BRITAIN AND NORTHERN IRELAND, CANADA, AUSTRALIA, NEW ZEALAND, THE UNION OF SOUTH AFRICA, INDIA, FRANCE, GREECE, ITALY, JAPAN, POLAND, PORTUGAL, ROUMANIA, CZECHO-SLOVAKIA AND YUGOSLAVIA, REGARDING THE COMPLETE AND FINAL SETTLEMENT OF THE QUESTION OF REPARATIONS. SIGNED AT THE HAGUE, JANUARY 20, 1930.

Article I.

The Experts' Plan of the 7 June, 1929, together with this present Agreement and the Protocol of the 31 August, 1929 (all of which are hereinafter described as the New Plan) is definitely accepted as a complete and final settlement, so far as Germany is concerned, of the financial questions resulting from the War. By their acceptance the Signatory Powers undertake the obligations and acquire the rights resulting for them respectively from the New Plan.

The German Government gives the Creditor Powers the solemn undertaking to pay the annuities for which the New Plan provides in accordance with the stipulations contained therein.

Article XV.

1. Any dispute, whether between the Governments signatory to the present Agreement or between one or more of those Governments and the Bank for International Settlements, as to the interpretation or application of the New Plan shall, subject to the special provisions of Annexes I, Va, VIa and IX be submitted for final decision to an arbitration tribunal of five members appointed for five years, of whom one, who will be the Chairman, shall be a citizen of the United States of America, two shall be nationals of States which were neutral during the late war; the two others shall be respectively a national of Germany and a national of one of the Powers which are creditors of Germany.

8. The Tribunal, or the single arbitrator, may decide the question of their own jurisdiction, provided always that, if the dispute is one between Governments and a question of jurisdiction is raised, it shall, at the request of either Party, be referred to the Permanent Court of International Justice.

ALLEMAGNE, PORTUGAL

ACCORD POUR RÉGLER, PAR VOIE D'ARBITRAGE, UNE DIVERGENCE CONCERNANT L'EXÉCUTION D'UNE SENTENCE ARBITRALE RELATIVE A LA RESPONSABILITÉ DE L'ALLEMAGNE EN RAISON DE CERTAINES MESURES DE GUERRE; CONCLU PAR UN ECHANGE DE NOTES SIGNÉES A LISBONNE, LE 8 JUILLET 1931.

Copie officielle.

O Senhor Alfred Horstmann, Enviado Extraordinário e Ministro Plenipotenciário da Alemanha em Lisboa, ao
Senhor Comandante Fernando Augusto Branco, Ministro dos Negócios Estrangeiros:

Lisbonne, le 8 juillet 1931.

Monsieur le Ministre,

Dûment autorisé par le Gouvernement du Reich j'ai l'honneur de confirmer au nom de mon Gouvernement auprès du Gouvernement de la République Portugaise les points suivants sur lesquels les deux Gouvernements sont tombés d'accord:

1. Attendu qu'une sentence arbitrale définitive a été prononcée le 30 juin 1930 à Lausanne par le tribunal arbitral présidé par Mr. Alois de Meuron concernant la responsabilité de l'Allemagne en raison des actes commis postérieurement au 31 juillet 1914 et avant que le Portugal ne participât à la guerre;

2. Considérant qu'une indemnité à payer par l'Allemagne au Portugal, en vertu du § 4 de l'annexe aux Articles 297-298 du Traité de Versailles, a été fixée dans la susdite sentence arbitrale;

3. Considérant que le Portugal a demandé l'exécution de cette sentence et le paiement de l'indemnité y fixée;

4. Attendu que l'Allemagne soutient que cette demande est couverte par les dispositions des Articles II et III B b de l'Accord signé à La Haye le 20 janvier 1930, et que par conséquent elle n'est pas obligée d'après les dispositions du Nouveau Plan aux paiements demandés par le Portugal;

5. Considérant que le Portugal soutient que le paiement de l'indemnité fixée par la sentence susmentionnée doit être réglé séparément et en plus de toutes autres obligations acceptées par l'Allemagne dans le Nouveau Plan comme règlement définitif des questions financières résultant de la guerre;

6. Vu le désir du Portugal et de l'Allemagne de mettre fin aussi vite que possible à la divergence de vues ci-dessus exprimée;

7. Attendu que le Portugal et l'Allemagne désirent également assurer d'une manière satisfaisante le règlement des questions au sujet de la liquidation du passé telle qu'elle est prévue par le Nouveau Plan ci-dessus mentionné;

Le Gouvernement Portugais et le Gouvernement Allemand sont tombés d'accord sur les points suivants:

1. Aussitôt que le Gouvernement Portugais aura ratifié le Nouveau Plan, la divergence ci-dessus exprimée concernant l'exécution de la sentence de Lausanne du 30 juin 1930 sera soumise à un tribunal arbitral. Les deux Gouvernements reconnaissent la compétence du Tribunal Arbitral prévu à l'Article XV de l'Accord signé à La Haye le 20 janvier 1930 pour prononcer cette décision définitive.

2. Dans les trois mois qui suivront la ratification du Nouveau Plan par le Gouvernement Portugais, le Gouvernement Allemand et le Gouvernement Portugais entreront en négociations pour la conclusion de l'accord spécial prévu à l'Article III C b de l'Accord signé à La Haye le 20 janvier 1930. Les différends sur l'interprétation ou l'application du Nouveau Plan qui ne pourraient être réglés à l'amiable dans le cours de ces négociations seront soumis à la décision du Tribunal Arbitral prévu à l'Article XV de l'Accord signé à La Haye le 20 janvier 1930.

La présente Note et celle de Votre Excellence d'une teneur égale, constituant l'accord définitif des deux Gouvernements, seront publiées dans les deux Pays à la même date que le Gouvernement Portugais ratifiera le Nouveau Plan.

Veillez agréer, Monsieur le Ministre, les assurances réitérées de ma haute considération.

Horstmann.

O Senhor Comandante Fernando Augusto Branco, Ministro dos Negócios Estrangeiros. ao
O Senhor Alfred Horstmann. Enviado Extraordinário e Ministro Plenipotenciário da Alemanha em Lisboa:

Lisbonne, le 8 juillet 1931.

Monsieur le Ministre,

J'ai l'honneur de confirmer au nom du Gouvernement de la République Portugaise auprès du Gouvernement du Reich les points suivants sur lesquels les deux Gouvernements sont tombés d'accord :

[Suit le texte de la Note précédente.]

La présente Note et celle de Votre Excellence d'une teneur égale, constituant l'accord définitif des deux Gouvernements, seront publiées dans les deux Pays à la même date où le Gouvernement Portugais ratifiera le Nouveau Plan.

Je profite de cette occasion, Monsieur le Ministre, pour vous renouveler les assurances de ma haute considération.

Fernando Augusto Branco.

ARBITRAL TRIBUNAL

PROVIDED FOR IN ARTICLE XV OF THE AGREEMENT MADE WITH GERMANY ON JANUARY 20, 1930, AND REFERRED TO IN THE FINAL ACT OF THE HAGUE CONFERENCE OF 1929 AND 1931.

Award No. 1.

(SECOND SERIES.)

Delivered on February 16, 1933.

Before:

M. GEORGE W. WICKERSHAM, *President.*
M. MARC WALLENBERG,
M. A. G. KRÖLLER,
M. A. MENDELSSOHN BARTHOLDY,
M. J. CAEIRO DA MATTA.

Whereas by an exchange of notes dated at Lisbon, the 8th July 1931, it was agreed on behalf of the Government of the German Reich and on behalf of the Government of the Portuguese Republic, as follows:

1. Whereas a definite arbitral sentence was passed on the 30th June 1930 at Lausanne by the Arbitral Tribunal presided over by M. Alois de Meuron in respect of Germany's liability by reason of acts committed after the 31st July 1914 and before Portugal entered the war¹;

2. Considering that an indemnity to be paid by Germany to Portugal, in virtue of § 4 of the Annex to Articles 297-298 of the Treaty of Versailles, was fixed in the arbitral decision aforesaid;

3. Considering that Portugal has applied for the execution of the said decision and for the payment of the indemnity fixed therein;

4. Seeing that Germany maintains that this claim is covered by the stipulations of Articles II and III B (b) of the agreement signed at The Hague on the 20th January 1930 and that she is therefore not obliged, according to the stipulations of the New Plan, to make the payments claimed by Portugal;

5. Considering that Portugal maintains that the payment of the indemnity fixed by the decision aforementioned should be made separately and over and above all the other obligations accepted by Germany in the New Plan as a definite settlement of the financial questions resulting from the war;

6. Having in view the desire of Portugal and of Germany to put an end as soon as possible to the difference of views referred to above;

7. Seeing that Portugal and Germany both desire to ensure in a satisfactory manner the settlement of questions relating to the liquidation of the past as provided for in the New Plan aforementioned;

The Portuguese Government and the German Government have agreed on the following points:

1. As soon as the Portuguese Government has ratified the New Plan the divergence expressed above in respect of the execution of the

¹ Vol. II, pp. 1035 *et seq.*

Lausanne sentence of the 30th June 1930 will be submitted to an arbitration tribunal. The two Governments recognize the competence of the Arbitration Tribunal provided for in Article XV of the agreement signed at The Hague on the 20th January 1930, to pronounce that final decision.

2. Within the three months which shall follow the ratification of the New Plan by the Portuguese Government, the German Government and the Portuguese Government shall enter into negotiations for the effecting of the special agreement provided for in Article III C (b) of the agreement signed at The Hague on the 20th January 1930.

The divergences as to the interpretation and the application of the New Plan which are not settled in amity in the course of these negotiations shall be submitted to the decision of the Arbitration Tribunal provided for in Article XV of the agreement signed at The Hague on the 20th January 1930.

And whereas, on July 11, 1930, the Government of Portugal duly ratified the said treaty of January 20, 1930, and by notes exchanged on behalf of the said Governments and dated at Lisbon, the 31st August 1931 and the 3rd September 1931, respectively, it was agreed by the said Governments that the aforesaid notes dated the 8th July should be considered as a special agreement in the sense of Article 52 of the Convention for the Pacific Settlement of International disputes signed at The Hague, the 18th October 1907, which article is applicable to this case by virtue of paragraph 1 of Annex XII to the aforementioned agreement with Germany of the 20th January, 1930;

And whereas, at the request of the Government of the Portuguese Republic in conformity with paragraph 3 of Article XV of the aforementioned agreement with Germany of the 20th January 1930, the said Government, duly invited by the Chairman of the Tribunal to appoint a member to take the place on the Tribunal of the member appointed by the French Government, has appointed to that effect Doctor José Caeiro da Matta, who has acted in the said capacity;

And whereas the agents of the parties to the present arbitration have duly communicated to the Tribunal their cases, counter-cases, and documentary evidence within the periods fixed by agreement of the parties;

And whereas the Tribunal has jurisdiction to pronounce upon the question submitted to it for decision, the said questions constituting a dispute with regard to the interpretation or application of the New Plan, which dispute, by virtue of paragraph 1 of Article XV of the aforementioned agreement with Germany, is to be submitted to the Tribunal for final decision;

Now therefore the Tribunal, having carefully considered the written proceedings and oral debates and the documentary evidence submitted by the parties, after due deliberation pronounces as follows:

The claim of Portugal to the payment by Germany of the amount fixed by the arbitral sentence of 30th June 1930 above referred to is covered by the stipulations of Articles II and III B (b) of the Hague Agreement of January 20, 1930—The New Plan—and Germany is not obliged to make such payment separately and over and above all the other obligations accepted in the New Plan as a definite settlement of the financial questions resulting from the war.

REASONS

1. The conclusion arrived at is in no respect in derogation of the finality of the Lausanne awards. The parties are in agreement in framing the question submitted to the Tribunal that the "indemnity to be paid by Germany to Portugal, in virtue of paragraph 4 of the Annex to Articles 297-298 of the Treaty of Versailles, was fixed on the arbitral decision aforesaid".

2. Both Portugal and Germany are parties to the Peace Treaty of Versailles. The claims advanced by Portugal against Germany to indemnification for various acts committed by the latter against the former during the period of Portugal's neutrality were made pursuant to the provisions of the treaty; the arbitral proceedings taken to determine, first the basis of the liability of Germany, and, secondly, the amount of damages to which Portugal was entitled, were had in conformity with that treaty. The final award of the Arbitral Tribunal fixed the damages at 48,226,468.30 gold marks as the "indemnity to be paid by Germany to Portugal, in virtue of paragraph 4 of the Annex to Articles 297-298 of the Treaty of Versailles". The Tribunal fully recognizes the character of the Lausanne awards as *res judicata*.

3. During the pendency of these arbitral proceedings, both Portugal and Germany became parties to another agreement, made in London on August 30, 1924, for the carrying out of the Report of the Committee of Experts known as the Dawes Plan.

4. In their report (Section XI—"Inclusive Amounts—Deliveries in kind"), this Committee of Experts noted the important fact that Germany was not in a position to ascertain her liabilities arising out of the Peace Treaty as demands were made upon her from time to time during the year, which could not be calculated beforehand. It appeared to the committee a matter of impossibility for any budget to be scientifically compiled and satisfactorily balanced under such an arrangement, and, therefore, that means should be found to bring this system to an end. "The difficulty will be satisfactorily met," they said, "if Germany's liabilities for any particular year are absolutely limited according to our plan, and, as suggested above, made inclusive of all possible charges, whether in or outside Germany, including the costs of the administrative controls which are set up by our plan."

The committee also said:

Before passing from this part of our report we desire to make it quite clear that the sums denoted above in our examination of the successive years, comprise all amounts for which Germany may be liable to the Allied and Associated Powers for the costs arising out of the war, including 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 payment such as those under Articles 58, 124 and 125 of the Treaty of Versailles.

5. The Arbitral Tribunal constituted pursuant to the said London Agreement to decide disputes which might arise between the Reparation Commission and Germany with regard to the interpretation either of the agreement concluded between them, the Expert's Plan, or the German legislation enacted in pursuance of that Plan, on previous occasions was called upon to consider and determine the effect of the Dawes Plan upon the obligation of Germany arising under the Versailles Treaty. The Tribunal deems it necessary briefly to review its previous awards in their bearing on the case now under consideration, especially as, in the agreement made on January 20, 1930, hereinafter referred to, these awards, which were concerned with Section XI of Part I of the Dawes Plan, were given binding force as the authentic interpretation of that part of the Dawes Plan. In the said awards, the Tribunal emphasized the fact that the task of the Experts was to consider the means of balancing Germany's budget and the measures taken to stabilize its currency. The Tribunal recalled the statement of the Experts that "the dominating feature of the German Budget is Germany's obligation to the Allies under the Treaty of Versailles. We have been concerned with the practical means of recovering this debt, not with the imposition of penalties and the guarantees which we propose are economic and not political."

In these previous awards, the principle governing the decision was whether or not the proposed enforcement of the claim would directly affect the equilibrium of the German budget or the stability of the German currency.

In the award of March 24, 1926¹, it was held that the annuities prescribed by the Expert's Plan included:

1. The transfers to be made by Germany to France in pursuance of Article 77 of the Treaty of Versailles, following a decision of the Council of the League of Nations dated the 21st June 1921, in respect of social insurance funds relating to Alsace-Lorraine;
2. The transfers to be made by Germany to Poland in pursuance of Article 312 of the Treaty of Versailles in respect of social insurance funds relating to Upper Silesia, the amounts of which transfers (other than that of the miners' superannuation fund which still remains to be settled) were determined by a decision of the Council of the League of Nations dated the 9th December 1924;
3. Payments under Article 62 of the Treaty of Versailles in respect of civil and military pensions earned in Alsace-Lorraine on the 11th November 1918.

The Tribunal, after quoting from the Report of the Committee of Experts, observed that:

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

The Tribunal referred to Section XI of Part I of the Report of the Committee of Experts, where the expression "for the costs arising out of the war" is used, showing that, while they were especially concerned with Germany's obligations under Part VIII of the Treaty of Versailles ("Reparations"),

¹ See Vol. II, pp. 873 *et seq.*

they also thought of payments in a wider sense, and the Tribunal observed that it might well be argued that this expression is broad enough to include the payment or transfer under its consideration. But even if it did not, the Tribunal could not overlook the fact by which it was much impressed

that the report, in Section XI of Part I, says that "also special payments such as those due under Articles 58, 124 and 125 of the Treaty of Versailles" come under the annuities. The Tribunal does not think, especially in view of the words "such as", that it would be justified in ascribing to the term "special payments" a narrow meaning; and when it is considered that the words just quoted, read in conjunction with the preceding sentence, are used as a new category of payments, to be added to the one which it has been contended has only a reference to war cost, the Tribunal considers this new category of payments as so comprehensive as to include the payment now under discussion. This statement should not, however, be construed as meaning that all payments, without exception, to be made by Germany to the Allies under the Treaty of Versailles or in connection therewith are to come under the annuities¹.

Summing up the question of the true nature of the payment prescribed by the decision of the Council of the League of Nations of June 21, 1921, especially as compared with the transfer originally prescribed in Article 77 of the Treaty of Versailles, the Tribunal said it was "certain that the funds required to make the payment in question would involve a charge on the German budget".

In the Tribunal's award of May 29, 1928², certain questions were submitted as to whether or not in some form or other a credit against the annuities provided in the Dawes Plan was to be given for the value, or part of the value, of such parts of the German property, rights and interests in Allied or Associated countries, as had since the 31st August 1924, been dealt with in some specified fashion under Article 297 of the Treaty of Versailles, or under that article combined with Article 243, by the Allied or Associated Powers concerned. Again the Tribunal

recalled, as was done in each of the two previous awards rendered by the Tribunal, that the task of the Experts was, as pointed out in the beginning of the Plan, to "consider the means of balancing the budget and the measures to be taken to stabilize the currency of Germany", and that the Experts in their report also said: "The dominating feature of the German budget is Germany's obligation to the Allies under the Treaty of Versailles. We have been concerned with the practical means of recovering this debt, not with the imposition of penalties and the guarantees which we propose are economic and not political³."

Finding that a liquidation of German property, rights and interests in the territory of Allied or Associated States did not directly affect the equilibrium of the German budget, nor the stability of German currency, the Tribunal concluded that the proceeds of the property, rights and interests in question could not be held to be a contribution to the annuities, and that the value of the liquidated property, rights and interests did not call for a payment or withdrawal from the annuities.

¹ Vol. II, p. 879.

² " " " " pp. 893 *et seq.*

³ " " " " pp. 895-896.

6. The Lausanne arbitral proceedings by Portugal against Germany were brought in conformity with the provisions of paragraph 4 of the Annex to Articles 297-298 of the Treaty of Versailles, the same paragraph as was under consideration by this Tribunal in its last-mentioned award. This paragraph reads as follows:

All property, rights and interests of German nationals within the territory of any Allied or Associated Power and the net proceeds of their sale, liquidation or other dealing therewith may be charged by that Allied or Associated Power in the first place with payment of amounts due in respect of claims by the nationals of that Allied or Associated Power with regard to their property, rights and interests, including companies and associations in which they are interested, in German territory, or debts owing to them by the German nationals, and with payment of claims growing out of acts committed by the German Government or by any German authorities since July 31, 1914, and before that Allied or Associated Power entered into the war. The amount of such claims may be assessed by an arbitrator assessed by Mr. Gustave Ador, if he is willing, or if no such appointment is made by him, by an arbitrator appointed by the Mixed Arbitral Tribunal provided for in Section VI. They may be charged in the second place with payment of the amounts due in respect of claims by the nationals of such Allied or Associated Power with regard to their property, rights and interests in the territory of other enemy Powers, in so far as those claims are otherwise unsatisfied.

While this provision literally only authorized the application by one of the Allied or Associated Powers of property, rights or interests of German nationals within its territory to the payment of amounts due in respect of claims "growing out of acts committed by the German Government or by any German authorities since July 31, 1914, and before that Allied or Associated Power entered into the war", the Lausanne Arbitration Tribunal held that this provision was in effect an admission by Germany of its liability for such claims.

7. After establishing in its first award of July 31, 1928, the responsibility of Germany to Portugal for certain claims falling within its demands, the final award of the Lausanne Tribunal, dated June 30, 1930, fixed at 48,226,468.30 gold marks the indemnity to be paid by Germany to Portugal "in virtue of paragraph 4 of the Annex to Articles 297-298 of the Treaty of Versailles".

8. This Tribunal is of opinion that payment of the said final award, but for the Hague Agreement of January 20, 1931, to be hereafter considered, would have fallen within the provisions of the Dawes Plan, and that the funds required to make that payment would have involved a charge on the German budget, and therefore would have been comprised within the annuities prescribed by the Plan of the Dawes Committee of Experts.

9. Pending the Lausanne arbitration proceedings, however, the difficulties which Germany experienced in making payment of the annuities under the Dawes Plan led to a reconsideration of the entire question of Germany's liabilities by a new Committee of Experts, who reported on June 7, 1929, a plan for a complete and final settlement of the reparation problem (known as the Young Plan), which was followed by an agreement concluded at

The Hague on January 20, 1930, to carry that new plan into effect. The initial article of this agreement stipulated that

the Experts' Plan of the 7th June 1929, together with this present agreement and the protocol of the 31st August 1929 (all of which are hereinafter described as the New Plan) is definitely accepted as a complete and final settlement, so far as Germany is concerned, of the financial questions resulting from the war. By their acceptance the signatory Powers undertake the obligations and acquire the rights resulting for them respectively from the New Plan.

10. The Committee of Experts in their report proposed that the Dawes Plan should cease on August 31, 1929, and the New Plan commence on September 1, 1929; that payments should be made thereafter of fixed annuities, and that, from the day of the putting into force of this Plan,

Germany's previous obligation shall be entirely replaced by the obligation laid down in this Plan and that the payment in full of the proposed annuities in accordance with this Plan should be accepted by the Creditor 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 already given by the Interpretation Tribunal set up under the London Agreement of the 30th August 1924. That Tribunal should be retained in existence and any dispute that may arise between Germany on the one side and the Creditor Governments or any one of them or the Bank on the other side, as to the extent of these liabilities or as to any other question of the interpretation or application of this Plan should be referred to it for final decision.

In the course of their proceedings the Experts of the principal Creditor Powers have also dealt with the question of the distribution of these annuities among the Creditor Powers. Their recommendations, drawn up after careful examination of the existing distribution arrangements and of other relevant considerations laid before them and with due regard to the rights and equities of the other countries having a share in the Dawes annuities, are set out in Annex VII which they consider an inseparable part of the present report.

Accordingly, Article II of the agreement of January 20, 1930, provided as follows:

As from the date when the New Plan is put into execution as provided in the final clause of this present agreement, Germany's previous obligation is entirely replaced, except in respect of the German External Loan 1924, by the obligation laid down in the New Plan. 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.

In conformity with the recommendations of the Experts' Report, it was further provided in paragraph B (b) of Article III that the Creditor Powers accept

the payment in full of the annuities fixed thereby as a final discharge of all the liabilities of Germany still remaining undischarged and waive every claim additional to those annuities, either for a payment or for property, which has been addressed or might be addressed to Germany for any past transaction falling under the same heads of claim as those appearing under (1) to (4) above.

By paragraph C (a) of the same Article III, the Creditor Governments further undertook

as from the date of the acceptance of the Experts' Report of the 7th June, 1929, to make no further use of their right to seize, retain and liquidate the property, rights and interests of German nationals or companies controlled by them, in so far as not already liquid or liquidated or finally disposed of, including the rights of the signatory Creditor Powers under Article 306, paragraphs (5), (6) and (7) of the Treaty of Versailles.

By Article XV it was further provided that "any dispute whether between the Governments signatory to the present agreement or between one or more of those Governments and the Bank for International Settlements, as to the interpretation or application of the New Plan shall, subject to the special provisions of Annexes I, Va, VIa and IX be submitted for final decision to an arbitration tribunal of five members" which "for the first period of five years from the date when the New Plan takes effect" "shall consist of the five members who at present constitute the Arbitration Tribunal established by the agreement of London of the 30th August 1924."

The final clause of the agreement provided that the New Plan should come into force and would be considered as having been put into execution on the date on which the Reparation Commission and the Chairman of the *Kriegslastenkommission* had agreed in reporting:

- (1) the ratification of the present agreement by Germany and the enactment of the German laws in accordance with the relative annexes;
- (2) the ratification of the present agreement by four of the following Powers, that is to say, Belgium, Great Britain, France, Italy and Japan;
- (3) the constitution of the Bank for International Settlements and the acceptance by the Bank of the undertakings by it for which the present agreement provides, and also its receipt of the certificate of the German Government and the certificate of the German Railway Company as provided in Annexes III and IV.

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Provided always that the substitution of the obligations and annuities of the New Plan for those of the Experts' Plan of the 9th April, 1924, shall date from the 1st September, 1929, regard being had to the provisions of the Hague Protocol of the 31st August, 1929, and of Annex II to the present agreement.

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The present agreement will come into force for each government other than the four of those mentioned above by name who first ratify, on the date of notification or deposit of ratification.

11. During the discussions, in the conference of the representatives of the Powers, parties to the Treaty of Versailles and the Dawes Plan, the representatives of Portugal objected to the provisions of the proposed New Plan, in so far as they affected the claim of Portugal against Germany growing out of the Lausanne arbitration proceedings. In the Protocol of the Hague Conference, dated the 31st August, 1929, the President of the Conference, M. Jaspar, stated that the delegates at the conference "have accepted the said Plan in principle. Nevertheless, certain delegations, while reserving their right as to final adhesion, have made on certain points observations which do not hinder the above acceptance in principle. These observations figure in the minutes of the meeting of the Financial Commission of 30th August, 1929."

The Portuguese Delegate, M. Ulrich, at that meeting has stated that his country had certain claims against Germany for damages suffered before Portugal entered the war, reclamations which were not included in the account of liquidation of war costs, which statement was repeated by him at the second conference at The Hague, and on January 19, 1930, M. Ulrich declared that he was not in a position to accept Article III of the protocol as at present drafted, so long as the German Government and the Portuguese Government had not reached an agreement. Due note was made of these reservations of M. Ulrich which were placed on record in the minutes of the meeting.

12. The representatives of Portugal have contended before the Tribunal that these objections so recorded in the *procès-verbaux* of the conference relieve them from the effects of the agreement of January 20, 1930. The subsequent action of Portugal, however, has relieved the Tribunal from considering the effect of those reservations, because on July 8, 1931, the Governments of Portugal and of the Reich entered into the agreement of that date above set forth, in which, after stating that Germany maintained that the claim of Portugal to be paid the amount of the award of the Lausanne Tribunal is covered by the stipulations of Articles II and III B (b) of the Hague Agreement on January 20, 1930, while Portugal maintained that the payment of the indemnity fixed by that decision should be made separately and over and above all the other obligations accepted by Germany in the New Plan, as a final settlement of the financial questions resulting from the war, it was agreed that:

As soon as the Portuguese Government has ratified the New Plan the divergence expressed above in respect of the execution of the Lausanne sentence of the 30th June, 1930, will be submitted to an arbitration tribunal. The two Governments recognize the competence of the Arbitration Tribunal provided for in Article XV of the agreement signed at The Hague on the 20th January, 1930, to pronounce that final decision.

Subsequently to this agreement, on July 11, 1931, the Portuguese Government ratified the said Hague agreement without any reservation, and by an exchange of letters dated respectively August 31, 1931, and September 3, 1931, the two Governments agreed that "the definitive agreement effected by the exchange of notes on the date of the 8th July can be considered as the special agreement in the sense of Article 52 of the Hague Convention of 1907", and therefore that no new special agreement was necessary.

13. Pursuant to the foregoing agreements, this controversy has been submitted to this Tribunal. It appears to the Tribunal obvious that, by the proceedings described, Portugal waived any question of reservation to the agreement of January 20, 1930, accepted the jurisdiction of this Tribunal, and submitted to its decision the question at variance between Portugal and the Reich as specified in the letters of July 8, 1931.

14. Much stress has been laid by the advocates of Portugal in their printed and oral arguments before this Tribunal, on the finality and sanctity of the award of the Lausanne Arbitration Tribunal which, it is contended, is final and must be recognized as binding.

The conclusive effect of that award in fixing the liability of Germany is not questioned. The stipulation between the two Governments admits that the indemnity to be paid "in virtue of paragraph 4 of the Annex to Articles 297-298 of the Treaty of Versailles, was fixed in the arbitral decision aforesaid". But the question of the payment fixed by that award does not alone concern Germany and Portugal. It concerns also all of the Powers, parties to the Treaty of Versailles and the Dawes Plan. It also concerns all the parties to the New Plan and the Hague Agreement of January 20, 1930, which includes Germany and Portugal. The question submitted to this Tribunal is one of the proper interpretation of the provisions of the New Plan as applied to the possible payment of the Lausanne Arbitral Award. In this connection, the Tribunal recalls that, in its award dated January 29, 1927, it was stated that

the Tribunal's jurisdiction is limited, limited to the interpretation, *inter alia*, of the Expert's Plan. It follows that the Tribunal has to take the Plan as it finds it, interpreting its meaning as it thinks is correct, without allowing itself to be influenced by considerations as to whether or not it might be rightly contended that its award will have consequence which might be looked upon as not desirable. If the Tribunal took another view, and allowed itself to be influenced by considerations of the nature just referred to, its activities might result in what in effect would tend to be an alteration of the Expert's Plan, and it goes without saying that for this Tribunal any such action would be outside its competence. The Tribunal feels bound to explain its point of view in this respect, were it only because either party has represented to it that decision in favor of its opponent will have undesirable consequences.

15. For the reasons already expressed, the Tribunal is of opinion that the claim of Portugal to payment of the amount determined in the Lausanne Tribunal's award is covered by the stipulations of Articles II and III B (b) of the Hague Agreement of January 20, 1930, and that the payment fixed by the said award cannot be made separately and over and above all the other obligations accepted by Germany in the New Plan as a definite settlement of the financial questions resulting from the war.

16. A further question concerning the applicability of the Hague Agreement of January 20, 1930, has been raised by Portugal. The Covenant of the League of Nations provides in its Article 18 that

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

The agreement of January 20, 1930, was registered in conformity with this provision on July 14, 1930, fourteen days after the date of the final award of the Lausanne Arbitral Tribunal, and Portugal contends that that award therefore was not subject to the aforesaid agreement. The answer to this contention is furnished by the voluntary act of the Portuguese Government in executing and ratifying the agreement of July 14, 1930, which by its terms above cited, expressly fixed the date when the New Plan should be considered as having come into force and as having been put into execution. "Provided always", runs the agreement, "that the substitution of the obligations and annuities of the New Plan for those of the Experts' Plan of the 9th April, 1924, shall date from the 1st September, 1929, regard being had to the provisions of the Hague Protocol of the 31st August, 1929, and to Annex II to the present agreement. The present agreement will come into force for each Government other than the four of those mentioned above by name who first ratify, on the date of notification or deposit of ratification."

Under these provisions, upon the ratification of the Hague Agreement by Portugal, that country became bound by its provisions, among which were those above quoted, providing that the substitution of the obligations and annuities of the New Plan shall date from 1st September 1929.

17. A number of other points were presented to the Tribunal, both in the printed and in the oral arguments addressed to it on behalf of the respective Governments, all of which we have carefully considered, but which we do not here discuss because the reasons above given seem to the Tribunal conclusively to sustain the decision it has made.

18. In conclusion, the Tribunal may say, as it did in its award dated March 24, 1926, that it has taken into consideration the fact that, by including in the annuities the payment here under consideration, the liability for that payment is not cancelled, and that the Dawes Plan, as stated in Section XI of Part I is "not to be read as prejudicing questions of distribution or questions of priority between the various categories of charges". The decision of the Tribunal need not, therefore, have the effect of depriving any persons of anything which they may have a moral or legal right to receive.

Done in Paris, on February 16, 1933, in English, French and German. In case of dispute as to the interpretation of this award, the English text shall be authoritative.

GEO. W. WICKERSHAM, *President*.

E. N. VAN KLEFFENS, *Secretary*.