ECONOMIC AND FINANCIAL COLLABORATION WITH AND RECONSTRUCTION OF VARIOUS STATES
ARBITRATION UNDER ARTICLE 47 OF THE TREATY OF LAUSANNE.
CASE PRESENTED ON BEHALF OF IRAQ, PALESTINE AND TRANS-JORDAN.
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THE States of Iraq, Palestine and Trans-Jordan submit—

(1.) That the Council of the Ottoman Public Debt (hereinafter called "the Debt Council"), in determining the Contributive Parts payable by Iraq, Palestine and Trans-Jordan, have departed from the principles laid down in Articles 50 and 51 of the Treaty in certain respects; and

(2.) That the Debt Council, in determining and notifying the moneys in which the Contributive Parts should be paid, have exceeded the function assigned to them under the Treaty.

The objections herein stated are submitted by all three States, unless otherwise indicated.

The references are to the Tables and pages in the "Documents et Tableaux relatifs à la Répartition des Charges annuelles" put forward by the Debt Council in connection with its calculations of the annuities payable by the several States.

PART I.—CALCULATION OF THE ANNUITIES.

I.—Interpretation of Articles 47, 50 and 51 of the Treaty.

1. In order that the arguments advanced in the succeeding paragraphs may be more easily appreciated, it is desirable, before submitting each objection in detail, to indicate the interpretation placed by Iraq, Palestine and Trans-Jordan on certain parts of Articles 47, 50 and 51 of the Treaty.

2. Article 47 of the Treaty states that "the Council of the Ottoman Public Debt shall . . . . determine, on the basis laid down by Articles 50 and 51, the amounts of the annuities . . . ." and that "any disputes . . . . as to the application of the principles laid down in the present Article shall be referred . . . . to an arbitrator . . . ."

3. In performing the duty imposed on them by this Article, the Debt Council must, therefore, apply the principle laid down in Articles 50 and 51.

4. It is to be observed that this principle was selected by the Contracting Parties to the Treaty out of other possible principles, and that there is no provision in the Treaty which gives the Debt Council any discretion in its application, the duty of the Debt Council being the ministerial act of determining the amount of the annuities by the application of the general mathematical formula laid down by the authority which imposed on them that duty.

5. It is to be noted also that any of the other principles that the Parties to the Treaty might have adopted, such as the territorial basis or the basis of population, would, in its application, result in illogical and possibly inequitable consequences in a particular case; it must therefore be assumed that, in adopting the basis of revenue, the Parties to the Treaty thought that that basis would in its application give the fairest results, and intended that its application should be general.

6. It is submitted, therefore, that the Debt Council cannot ignore the principle in a particular case so as to override the intentions of the Parties to the Treaty, but must apply the principle in every case, and that if in any particular case such application may seem to have consequences which can be argued to be illogical or inequitable, it is, nevertheless, the duty of the Debt Council to apply the principle of the Treaty, the parties to which have not conferred on any authority the power to depart from such principle, and must, therefore, be deemed to have intended all the consequences of its complete application.

7. It is to be observed further that the Arbitrator's task is limited by Article 47 of the Treaty to determining disputes which may arise "as to the application of the principles laid down in the present Article" and that the Treaty does not confer on the Arbitrator any authority to depart from the principle laid down in Articles 50 and 51.

8. It is submitted, therefore, that the Arbitrator is bound to direct that the principle laid down in Articles 50 and 51 be applied if it is proved that the Debt Council have departed from that principle.

9. It is, however, admitted by Iraq, Palestine and Trans-Jordan that, if the Debt Council can prove that a direct application of the principle of Articles 50 and 51, in a particular case, is not possible owing to the absence of essential data, by reason of the loss of revenue records or otherwise, a case has arisen in which the contributory States and the Debt Council must agree as to the method by which the principle of Articles 50 and 51 is to be applied. In default of agreement, Iraq, Palestine and Trans-Jordan are ready to accept the Arbitrator's decision thereon since the principle of Articles 50 and 51 must be applied.

10. There arise two further points on which it is desirable that the opinion of Iraq, Palestine and Trans-Jordan should be now expressed.

11. The first is as to the meaning in Article 51 of the phrase "average total revenue of the Ottoman Empire in the financial years 1910–11 and 1911–12."

12. It is to be observed, first, that the reference is to revenue and not receipts; secondly, that it is the revenue of the Ottoman Empire which is concerned; and, thirdly, that it is the revenue of the Ottoman Empire in certain specified years.

13. It is submitted, therefore, that the phrase "average total revenue of the Ottoman Empire in the financial years 1910–11 and 1911–12" does not necessarily mean what was received by or on behalf of the Ottoman Empire or what appears in its accounts as received in the years 1910–11 and 1911–12, but what was in fact revenue to the Ottoman Empire in those years—that is to say, the amounts which in those years were at the free disposition of the Central Ottoman Government as general revenues for defraying the cost of government, together with such amounts as were received by or on behalf of the Ottoman Government in those years under arrangements which imposed on the recipient the obligation of devoting such amounts to the service of the debts for which the Ottoman Government was then liable.

14. The second point is as to the meaning of the phrase "average total revenue" of a detached territory when used in Article 51.

15. It is submitted that this phrase means that portion of the "average total revenue of the Ottoman Empire in the years 1910–11 and 1912–12," as defined in the preceding paragraph, which was actually collected within the detached territory during those years.

II.—Refunds of Customs Duties.*

Table IX. Page 64.

	1910–11.	1911–12.
	P.T.	P.T.
Item 15. Droits de Douane ...	472,657,079	482,867,251

16. The above represent the gross Customs receipts, in respect of Imports, Exports, Transit and Miscellaneous. In respect of goods subsequently re-exported, however, the import duty collected was refunded, subject to the deduction of a Transit Duty of only 1 per cent. *ad valorem.* The amounts so refunded were:—

1910–11.	1911–12.
P.T.	P.T.
6,401,205	8,444,067

Therefore, the figures representing the true Customs Revenue in these two years were:—

1910–11.	1911–12.
P.T.	P.T.
466,255,874	474,423,184

17. Owing to the peculiar geographical situation of Iraq, an exceptionally large proportion of the goods imported at its ports was subsequently re-exported, notably to Persia, and a large proportion of the import duty previously paid on those goods was refunded as explained above. The Customs receipts included in the revenue of Iraq at p. 93 and of Mosul at p. 101, taken together, amount to—

1910–11.	1911–12.
P.T.	P.T.
27,383,734	38,065,927

Of these sums the following amounts were refunded on the re-export of merchandise:—

1910–11.	1911–12.
P.T.	P.T.
1,393,679	1,129,935

18. In the case of Customs Revenue, there is a strong reason for regarding the *net* receipts (*i.e.*, after deduction of "Refunds") as the true revenue, which does not apply to other items of revenue in which refunds are made. The reason is that, in the case of Land Revenue, "Animal Tax," &c., over-collections only occur as a result of errors, miscalculations, &c., and are relatively negligible in amount, whereas in the case of the Customs Administration in a territory in which transit trade is heavy, it is a matter of everyday procedure (for the convenience and security of the Department) to collect the *maximum* duty leviable in the first instance, and subsequently to make the refunds to which the importer can prove that he is entitled by law, and these refunds are, in practice, of a relatively considerable amount.

19. It is usual in the final accounts of a Government for such refunds to be adjusted by deduction from receipts, and this, for the purpose of Article 51 of the Treaty, is the more correct procedure, since it is clearly the *net* Customs receipts after deduction of "Refunds" which constitute the real Customs Revenue. In the Turkish Accounts Department, however, the general rule was that

* This objection is submitted by Iraq.

all such refunds should not be adjusted by deduction from receipts, but should be shown in the accounts as "Expenditure." Hence, to obtain the correct figure of Customs Revenue, account must be taken of the amounts charged on the expenditure side of the accounts as "Refunds and Drawbacks," and the failure to do so, it is submitted, is contrary to Article 51 of the Treaty and, moreover, results in injustice to Iraq, for the adoption of gross Customs receipts as the basis of calculation has the effect of inflating its proportionate part.

20. The Arbitrator is asked to declare that under Article 51 of the Treaty the revenue from Customs receipts to be included—

(*a*) in the total revenue of the Ottoman Empire in 1910–11 and 1911–12 (Table IX); and

(*b*) in the revenues of the several States (Table X)

should be the total receipts after deduction of the "Refunds and Drawbacks."

III.—River boat Service on the Tigris and Euphrates.*

Table IX. Page 64.

Item 27. *Recettes des Bateaux sur le Tigre et l'Euphrate.*

1910–11.	1911–12.
P.T.	P.T.
6,673,726	6,586,430

21. The above figures represent the gross receipts from the River boat service, without deduction of the working expenses. The working expenses for the two years in question were as follows :—

1910–11.	1911–12.
P.T.	P.T.
5,052,814	4,425,292

The net revenue was therefore as follows :

1910–11.	1911–12.
P.T.	P.T.
1,620,912	2,161,138

The whole of the above receipts were collected in territory now within the State of Iraq and have been included in the revenue of that State as shown at page 93.

22. It will be observed that as regards other transport enterprises (with the exception of the Hedjaz Railway, dealt with in Section IV) the figures in Table IX include, not the gross receipts, but the portion of the receipts accruing to the Ottoman Government under the Railway Conventions (Item 43, "Part de l'État sur les Recettes des Chemins de fer").

It is submitted that, for the purpose of Article 51 of the Treaty, the revenue derived from this enterprise is represented by the net receipts.

It is also inequitable to debit one State with the gross receipts of one particular transport enterprise and to debit other States only with so much of the revenue of other transport enterprises as accrued to the Ottoman Government.

23. The Arbitrator is accordingly asked to declare that under Article 51 of the Treaty the figures to be adopted as revenue under the head of "Recettes des Bateaux sur le Tigre et l'Euphrate" should be the net, and not the gross receipts of the enterprise, and that a corresponding correction should also be made in the revenue of the State of Iraq at page 93.

* This objection is submitted by Iraq.

IV.—Hedjaz Railway.*

Table IX. Page 64.

	1910–11.	1911–12.
	P.T.	P.T.
Item 29. *Recettes du Chemin de fer du Hedjaz*	26,606,777	(1)———

(1) *Observation.*—À partir de 1911–12, le Chemin de fer du Hedjaz a été doté d'un budget-annexe et ses recettes ont été disjointes du budget de l'État pour être versées au budget-annexe en question.

Page 66. *Modifications.*	1910–11.	1911–12.
	P.T.	P.T.
(*a.*) Recettes du Chemin de fer du Hedjaz	—	+ 29,803,913

Page 67. *Observations.*

(*a.*) Les recettes du Chemin de Fer du Hedjaz ayant été inscrites à un budget-annexe en 1327 (1911–12), le montant figurant au titre des dites recettes dans ce budget a été ajouté au revenu total de la Turquie pour l'année 1327 (1911–12).

24. It is submitted that the Debt Council should not have included the gross or any receipts of the Hedjaz Railway in the revenues of the Ottoman Empire either in the year 1910–11 or the year 1911–12 for the following reasons.

25. The Hedjaz Railway is in a category by itself among railways in Turkey; it was constructed primarily for religious purposes to connect the centre of the Empire with the Holy Places, and funds for its construction and maintenance were obtained by subscription among Moslems and by a special tax. It was at all times an enterprise distinct from enterprises undertaken by the Central Government and maintained out of general revenues.

26. In 1911–12 (1327) the Hedjaz Railway Budget Law was passed as a result of which (among other things) legislative sanction to the independence of the administration as a financial unit was confirmed, and all reference to the revenue and expenditure of the Railway was excluded from the General Budget and accounts of the Ottoman Government. The terms of the law are as follows:—

Budget Law of the Hedjaz Railway for 1327.

(Dated 29 Djimadi-ol-Awal, 1329=May 15, 1327.

Article 1. The Administration of the Hedjaz Railway is vested in a Director-General attached to the office of the Prime Minister. An Administrative Council shall be constituted for the object of controlling and supervising the transactions of this railway.

Article 2. The expenditure of the Administration of the Hedjaz Railway for 1327 has been fixed at Pts. 47,650,675 as detailed in Schedule (A) attached.†

Article 3. The revenues of the Administration of the Hedjaz Railway for 1327 have been estimated at Pts. 49,928,000 as detailed in Schedule (B) attached.†

Article 4. The revenues included in the budget of the Hedjaz Railway as detailed in Schedule (C) attached† shall be collected in 1327 under the same conditions as ruling hitherto.

27. While it is true that the gross receipts and the expenditure of the Railway were included in the General Budget of the Ottoman

* This objection is submitted by Palestine and Trans-Jordan.

† Not reproduced.

Government for the year 1326, it is submitted that, during this year, the Railway was not an enterprise of the Central Government, but an independent organization, since the revenues in question, if received by the Government, were not in their disposition as general revenues, but had to be devoted to the Railway or to the purposes for which the Railway was constructed.

28. The consequence of such inclusion was that lands belonging to the Railway prior to 1326 were transferred into the name of the Treasury, as would have been appropriate if the land had belonged to the Government and not to the Railway. This step was rectified by the law of 1330, of which a literal translation is as follows :—

Law in respect of the detachment of the Office of the Director-General of the Hedjaz Railway from the Office of the Prime Minister and its attachment to the Ministry of Evqaf.

(Dated 9 Ramadan, 1332 = July 19, 1330.)

Article 1. The Director-General of the Hedjaz Railway is attached to the Ministry of Evqaf.

Article 2. The administration of the Hedjaz Railway is vested in a Director-General selected by the Ministry of Evqaf and appointed by Imperial Iradeh.

Article 3. An Administrative Council, composed of experts selected by the Ministry of Evqaf and approved by the Council of Ministers, shall be constituted for the object of supervising and controlling all the transactions of the Hedjaz Railway. A regulation and special instructions shall determine the term of office of the Administrative Council and its authority, the duties of all officials and employees and the organisation of the Administration.

Article 4. Authority is hereby given :

For the restitution to the Hedjaz Railway of the property and lands in its possession in areas traversed by the Railway or any other areas. These properties and lands were considered to belong to the Treasury and were deemed to be administered by it and had their title-deeds rectified in the name of the Treasury on the ground that the Hedjaz Railway—which have now an independent budget—were included in the General Budget in the years 1325 and 1326;

For the rectification of the deeds which were made in the name of the Treasury by transfer of the same to the Hedjaz Railway and for the administration of the properties by the above-mentioned body;

For the registration in the name of the Hedjaz Railway of the properties and lands which have not been registered and for the retention of the deeds in its custody.

Article 5. This law shall have effect from the date of its promulgation.

Article 6. The Ministry of Evqaf is responsible for the execution of this law.

29. The implication of Article 4 of the above law is that the consequences of a mistake made in the years 1325 and 1326 are to be rectified, and it is to be observed that Articles 1 and 2 merely repeat identical provisions to the same effect in the law of 1327.

30. It is submitted therefore that the inclusion of the gross Receipts in the Budget of the Ottoman Government for the year 1326 was an error of principle which does not make those receipts revenue for that year within the meaning of Article 51 of the Treaty.

31. It is further submitted that the terms of the Hedjaz Railway Budget Law, 1911–12 (1327) are such that it cannot

be argued that the gross receipts of the Railway in the year 1327 are revenue within the meaning of Article 51 of the Treaty.

32. The peculiar character of the Hedjaz Railway was recognised by Article 360 of the Treaty of Sèvres, which provided that in any arrangements for the working of the Railway and for the distribution of its property, the special position of the Railway from the religious point of view should be fully recognised and safeguarded.

33. Furthermore, at Lausanne, on the 27th January, 1923, Ismet Pasha made the following statement ("Recueil des Actes," 1re Série, Tome III, p. 59) :—

> "Quant au Chemin de fer du Hedjaz, c'est une institution dépendant du Khalifat et qui a été créée avec l'argent et le concours de tous les musulmans ; il est donc naturel que sa possession et son administration restent au Khalifat. Afin de démontrer la justesse de sa demande, la Délégation turque tient à rappeler que le susdit chemin de fer n'a jamais été rattaché au Ministère des Travaux publics et qu'il a toujours eu, au contraire, une administration indépendante."

The Arbitrator's attention is specially directed to the last sentence.

34. His Britannic Majesty's Government and the Government of France, recognising the special origin and object of this Railway and the history of its association with the Ottoman Government, thereupon made the following declaration through M. Bompard at Lausanne on the 27th January, 1923 ("Recueil des Actes," 1re Série, Tome III, p. 61) :—

> "Les Gouvernements de France et de Grande-Bretagne, agissant au nom de la Syrie, de la Palestine et de la Transjordanie, et désireux de reconnaître le caractère religieux du Chemin de fer du Hedjaz, se déclarent prêts à accepter la constitution d'un Conseil consultatif ayant qualité pour fournir à l'administration des différentes sections de ce chemin de fer situées en Syrie, en Palestine, en Transjordanie et dans le Royaume du Hedjaz, toutes recommandations tendant à assurer l'entretien de la ligne et à améliorer les conditions de transport des pèlerins. Ce Conseil comprendra quatre membres musulmans désignés respectivement par la Syrie, la Palestine, la Transjordanie et le Hedjaz et désignera lui-même son président et deux autres membres parmi les ressortissants musulmans d'autres pays intéressés au pèlerinage. Il siégera à Médine.
>
> "Les recommandations de ce Conseil ne devront pas être en opposition avec les stipulations des conventions sanitaires internationales. Les Gouvernements de France et de Grande-Bretagne déclarent que, en ce qui concerne les sections du chemin de fer situées en Syrie, en Palestine et en Transjordanie, tous les bénéfices laissés par l'exploitation seront affectés à l'entretien et à l'amélioration de l'ensemble du chemin de fer. Toutes sommes que ces améliorations laisseraient disponibles seront affectées à l'assistance des pèlerins."

35. The effect of the inclusion of the gross receipts of the Hedjaz Railway in the general revenues of the Ottoman Empire, and in the revenues of Palestine and Trans-Jordan, is to increase the percentages of the Ottoman Debt imputable to those two States in an appreciable degree, in the case of Trans-Jordan by as much as 50 per cent.

36. It should be noted, further, that the proportionate shares in the Ottoman Debt of States other than those through which the Hedjaz Railway runs are not inflated by the inclusion of the *gross receipts* from railways in their territory, since, with the single exception of the Hedjaz Railway, all other railways in the Ottoman Empire were exploited under concessions, and only the *net revenue*

accruing to the Empire is credited in the accounts. It is submitted that, under Article 51 of the treaty, there is no justification for treating as revenue, exceptionally, the gross receipts of a single railway from which, in fact, the Ottoman Government could not appropriate any net revenue in the years 1910–11 or 1911–12 if such existed.

37. The Arbitrator is therefore requested to hold that, under Article 51 of the Treaty, the gross receipts of the Hedjaz Railway be excluded from the total revenue of the Ottoman Empire and from the revenues allocated to Palestine and Trans-Jordan for the purpose of determining their contributory shares.

38. If it is held that any receipts of the Hedjaz Railway should be included in the total revenues of the Ottoman Empire and of the contributory States, it is submitted that only the net receipts for the year 1910–11, if such can be ascertained, should be included; and, further, that the Debt Council by adopting a kilometric basis whereby the gross revenue has been allocated according to the length of the line in each State has not followed the principle laid down by Article 51 of the Treaty.

39. Such a basis is not in accordance with Article 51 of the Treaty, which, it is submitted, requires the revenue actually collected to be taken as basis; and it is, moreover, inequitable in its application, owing to the great difference in productivity of the areas through which different sections of the line run.

40. It is to be observed that the receipts of the Railway were accounted for to its headquarters at Damascus, and that no portion of the gross receipts or net revenue was ever specifically assigned to Palestine or Trans-Jordan.

41. If the plea advanced in paragraph 37 is not accepted, the Arbitrator is asked to declare that, under Article 51 of the Treaty, there should be included in the revenues of Palestine and Trans-Jordan only the net revenue earned in those territories in the year 1910–11, if such can be ascertained, or, in default, the gross receipts for the year 1910–11 which were actually collected in those territories.

V.—Persian districts of Bané, Serdesht, Sulduz, &c.*

Page 64. Table IX. *Revenu total de la Turquie en* 1910–11 *et* 1911–12.

42. For many years before the Great War the ownership of certain territories lying outside the present frontiers of the Vilayet of Mosul (namely the territories of Bané, Serdesht, Sulduz, &c.) were in dispute between the Government of Persia and the Ottoman Government. The disputed territories were gradually occupied by Ottoman Military Forces in the years after 1905, and during the two years 1910–11 and 1911–12 were in effective military occupation by the Ottoman forces.

43. There are grounds for believing that during these two years revenues were actually collected within these territories by Ottoman Civil or Military Officials, in spite of a proclamation exempting the population from the payment of all taxes for a period of seven years, since some of these revenues were actually farmed out; it has been estimated that the annual revenue so collected approximated to P.T. 1,000,000.

44. As a result of the Turco-Persian Boundary Commission of 1913–14, however, these territories have been definitely allocated to Persia, and it is therefore essential that the revenues collected within these areas should be excluded from the revenues of the Ottoman Empire at pages 64 and 65, and from the Revenues of Mosul at page 101.

45. The Arbitrator is asked to declare accordingly; and, since the statistics of the revenue so collected are available only among the

* This objection is submitted by Iraq.

records of the Ottoman Government, to request the Turkish Government to furnish the necessary information.

46. In the event of its not being practicable to ascertain the revenues collected on either side of the frontier line as ultimately settled in 1914, the Arbitrator is asked to declare that, for the purpose of revising page 101 of the "Tableaux," the total revenues of the frontier cazas should be reduced by the proportion relating to the districts subsequently allocated to Persia, this proportion being based on superficial areas, as determined in 1911 by the Anglo-Russian Delegation sent for the purpose of ascertaining the territory actually occupied by the Ottoman forces, and as depicted in the official map of the delegation, of which a copy is submitted herewith to the Arbitrator.

VI.—Tribute of Egypt and Surplus Revenues of Cyprus.

Page 66. *Modifications.*	1910–11.	1911–12.
	P.T.	P.T.
(*c.*) Tribut d'Égypte	– 76,950,000	– 76,950,000
(*d.*) Excédent des revenus de Chypre	– 10,526,350	– 10,526,350

Page 67. *Observations.*

(*c* et *d.*) Le tribut d'Égypte et l'excédent des revenus de l'île de Chypre ont été défalqués, vu qu'ils sont affectés à des emprunts dont la Turquie est libérée et dont les charges annuelles n'ont pas à être réparties.

47. It is submitted that in the years 1910–11 and 1911–12 the amounts under these heads formed part of the "total revenue of the Ottoman Empire," since they were devoted, in those years, to the service of loans for which the Ottoman Empire was then still liable. It is to be observed that the tribute of Egypt and the surplus revenues of Cyprus were, for the purpose of Article 51, revenue of the Ottoman Empire in the years 1910–11 and 1911–12 no less than the revenues conceded under the Decree of Mouharrem. It is to be further observed that Turkey has been liberated from liability for the loans referred to above only with effect from a date subsequent to 1911–12. It is therefore submitted that these amounts are revenue within the meaning of Article 51.

48. The Arbitrator is therefore asked to declare that the modification made by the Debt Council under these heads should not stand.

VII.—Cretan Salt Revenue.

Page 66. *Modifications.*	1910–11.	1911–12.
	P.T.	P.T.
(*e.*) Revenu du sel en Crète ...	–866,217	–963,377

Page 67. *Observations.*

(*e.*) Le revenu du sel en Crète a été retranché, vu qu'il représente un versement à valoir sur le montant capitalisé en 1901 de la part incombant à la Crète dans les charges annuelles de la Dette de Mouharrem garanties par ce revenu et les autres Revenus Concédés.

49. Crete was detached from the Ottoman Empire in 1897, but the rights of the Debt Council were adjusted by the Convention of the 23rd July/5th August, 1901, under which the Council of the Debt surrendered all its rights in Crete to the Government of the Island in return for a sum of 1,500,000 francs, either paid in a lump sum or to be realised, with interest at $3\frac{1}{2}$ per cent., by the Debt Council out of the salt revenue of the Island.

50. It is submitted that the receipts under this head formed part of the total average revenue of the Ottoman Empire in the years 1910–11 and 1911–12 within the meaning of Article 51 of the Treaty, since such sums were applied to the service of the debt

for which the Ottoman Empire was liable in those years. The Arbitrator is therefore asked to declare that the modification made by the Debt Council under this head should not stand.

VIII.—Special Revenues from Samos and Lebanon.

Page 66. *Modifications.*

	1910–11. P.T.	1911–12. P.T.
(*f*, *g*, *h*.) Revenu du sel à Samos	— 49,081	— 171,398
„ „ „ au Liban	— 75,187	— 98,781
„ „ tabac au Liban	—1,139,956	—1,095,482

Page 67. *Observations.*

(*f*.) Le revenu du sel à Samos a été retranché du fait que, résultant d'un arrangement particulier intervenu entre le Gouvernement de Samos et l'Administration de la Dette Publique Ottomane, il n'a pas le caractère d'un revenu public perçu à Samos.

(*g*.) Le revenu du sel au Liban a été retranché, parce que, dû à un Etat de fait et non de droit, il n'a pas le caractère d'un revenu public perçu au Liban.

(*h*.) Le revenu du tabac du Liban a été retranché pour des motifs analogues à ceux indiqués dans la note (*f*) ci-dessus.

51. It is submitted that the receipts under these heads formed part of the total average revenue of the Ottoman Empire in the years 1910–11 and 1911–12 within the meaning of Article 51 of the Treaty, since they were applied to the service of the debt for which the Ottoman Empire was liable in those years. The Arbitrator is therefore asked to declare that the modifications made by the Debt Council under these heads should not stand.

IX.—Cretan Lighthouse Revenue.

Page 66. *Modifications.*

	1910–11. P.T.	1911–12. P.T.
(*i*.) Revenu des Phares en Crète ...	—155,493	—145,758

Page 67. *Observations.*

(*i*.) La part de la Turquie dans les recettes de l'Administration des Phares perçues en Crète a été retranchée, vu que, pour la détermination de la proportion prévue à l'Article 51 du Traité de Lausanne, il n'a pas paru conforme à la lettre et à l'esprit de cet article de faire état d'un seul revenu fragmentaire.

52. The reason adduced by the Debt Council does not appear sufficient to justify the elimination of this revenue, which, it is submitted, formed part of the revenue of the Ottoman Empire in the years 1910–11 and 1911–12 within the meaning of Article 51 of the Treaty, since it was applied for the service of the Debt for which the Ottoman Empire was then liable.

53. The Arbitrator is therefore asked to declare that the modification made by the Debt Council under this head should not stand.

X.—Revenue of the Vilayet of Tripoli.

Page 66. *Modifications.*

	1910–11. P.T.	1911–12 P.T.
(*j*.) Recettes du Vilayet de Tripoli et du Sandjak de Benghazi	—26,706,482	—5,011,720

Page 67. *Observations.*

(*j.*) Les recettes du Vilayet de Tripoli et du Sandjak de Benghazi ont été défalquées, vu que la Part Contributive afférente à ces territoires, annexés à l'Italie antérieurement aux guerres balkaniques, a été entièrement versée par cette Puissance.

54. By Article 10 of the Treaty of Lausanne (October 1912) which followed the war between Italy and Turkey, it was provided that Italy should pay annually to the Debt Council a sum equal to the average of the revenues of Tripoli which were assigned to the service of the Debt during the three preceding years, but that either the Council or the Italian Government should have the right to capitalise the value of this annuity at 4 per cent. per annum.

55. The Council decided to demand capitalisation, and a lump sum of 50 million lire was paid accordingly by the Italian Government, the Council actually receiving £T. 1,684,194. This capital sum was invested, but has not been applied to the reduction of the Ottoman Debt. The purpose of the provision made by the Treaty of 1912 was to enable the Debt Council to carry out a reduction of the liabilities of the Ottoman Empire corresponding to the reduction of its territory and resources that resulted from the detachment of Tripoli. The fact that, instead of cancelling a portion of the Debt, the Council thought it preferable to invest the sum received from Italy should not deprive the contributory States of the advantage of the transaction. According to the figures now put forward by the Debt Council, the Council and the Turkish Government are left in possession of the sum paid by Italy, or of the securities representing that sum, to the exclusion of the contributory States, who have a right to participate therein if the modification made under this head stands.

56. It is submitted that the receipts from Tripoli above indicated (P.T. 26,706,482 and P.T. 5,011,720), which the Debt Council proposes to eliminate, are part of the revenue of the Ottoman Empire for the years 1910–11 and 1911–12 within the meaning of Article 51 of the Treaty. The Arbitrator is therefore requested to declare that the modification made by the Debt Council should not stand.

XI.—Book Adjustments.

Page 66. *Modifications.*

(*k.*) Différences provenant du fait que les recettes perçues par les Administrations suivantes dans un exercice déterminé ne figurent pas entièrement dans les comptes de l'État du même exercice :

	1910–11. P.T.	1911–12. P.T.
(1.) Régie des Tabacs, en ce qui concerne le monopole des tabacs	+3,773,970	−5,526,454
(2.) Régie des Tabacs, en ce qui concerne la part de l'État sur les recettes du Tumbéki indigène	+ 147,250	+ 9,810
(3.) Régie des Tabacs, en ce qui concerne la dîme et le hisséi-iané des tabacs et des tombacs	− 181,553	−1,350,552
(4.) Administration des Phares, en ce qui concerne la part de l'État sur les droits des Phares	+ 16,817	+ 64,823

Page 67. *Observations.*

(*k.*) Ces ajustements ont été nécessités par les écarts existant entre les inscriptions dans les Comptes Généraux des Finances et les recettes véritables ressortant des écritures de la Régie des Tabacs et de l'Administration des Phares.

57. There does not appear to be sufficient ground for these adjustments; in case of divergence between the accounts of the Government and those of the societies, the accounts of the former, which presumably represent the actual sums paid to the Treasury during the period, should, conformably with the terms of Article 51 of the Treaty, be accepted.

58. The Arbitrator is accordingly asked to declare that the modifications made by the Debt Council under this head should not stand.

XII.—Revenues of Cazas of Deir-el-Zor, Achara and Abou-Kemal.*

Page 93. *Iraq.—Recettes des territoires constituant la Mésopotamie après la guerre générale.*

Vilayet.	Sandjak.	Cazas.	Moyenne.	Proportions dans lesquelles les Territoires ont été cédés.	Moyenne des Recettes correspondant aux Territoires cédés.
			P. T.		P. T.
Sandjak indépendant	Zor ..	Deïr-el-Zor ..	1,049,465	1/10	404,947
		Achara (Meyadine) ..	1,374,221	2/10	274,844
		Abou-Kémal	791,026	8/10	632,820

59. In determining the revenues of each State for the purpose of the distribution of the Debt, where the frontiers of the new States do not coincide with the administrative divisions of the Ottoman Empire, the Debt Council have divided the revenues of the border cazas in proportion to the areas allocated to each State, and not on the basis of the revenues actually collected as prescribed by Article 51 of the Treaty.

60. *Deir-el-Zor Caza.*—This Caza is crossed by the Euphrates from West to South-East, and by the Khabur to the North; the course of the former river within the caza is approximately 116 miles, of the latter 200 miles. Important villages are to be found all along both rivers, with rich cultivation. The town of Deir-el-Zor is admirably situated and an important centre of trade. The above rivers and the towns and villages upon their banks lie entirely in Syrian territory. The portion of this Caza allotted to Iraq, the eastern border of the Kokab nahiyah, is barren desert, without water, villages or the possibility of cultivation.

61. The basis of calculation adopted has produced the absurd result that the revenue of this piece of desert is assessed at P. T. 404,947, whereas in fact no revenue is now derived from it, and if any revenue was ever derived from it, it must have been negligible in amount.

62. *Achara (Meyadine) Caza.*—This Caza is traversed by the Euphrates from West to South-East, and by the Khabur to the North, with an approximate length of 70 miles and 10 miles respectively. These rivers and the villages on them lie entirely in Syrian territory. The portion allotted to Iraq is the eastern border of the Nahiyah of Buseirah, which is as barren and uninhabitable as the portion of Deir-el-Zor Caza above referred to. The revenue allotted to Iraq in respect of this piece of desert is P.T. 274,844.

* This objection is submitted by Iraq.

63. *Abou-Kemal Caza.*—This Caza is crossed from West to East by the Euphrates. Most of the villages are on the Syrian side, including the Caza headquarters at Abou-Kemal, and the only important village on the Iraq side is Al Quaim. The portion of the revenues allotted to Iraq (8/10th of the whole) is P.T. 632,820, which bears no relation to the actual revenue collected in the territory concerned.

64. The rough and ready formula (of areas) adopted by the Council of the Ottoman Public Debt operates unfairly on those States to whose lot have fallen large areas of barren desert. The resources of the various portions of a country like Iraq are certainly not proportional to their area. Other more important factors are population, irrigation, cultivation and commercial activity, but by far the most important is close proximity to water. The bulk of the revenues of the above three Cazas was derived from the narrow strip of country closely adjoining the rivers.

65. The Arbitrator is asked to declare that the revenue allocated to Iraq must, under Article 51 of the Treaty, be the revenue actually collected in the territory assigned to Iraq ; and that in default of evidence as to the revenues actually collected in the areas allocated to Iraq and Syria, the revenues of each of the three Cazas should be divided between Iraq and Syria in proportion to the lengths of the River Euphrates and Khabur formerly included within each of the above Cazas and now included within the areas of those two States respectively.

66. The map which has been taken by the Debt Council as a basis of calculation of the areas allotted to the two States does not agree with the official maps in the possession of the Iraq Government, as regards the boundaries of the Sandjak of Deir-el-Zor, or the boundaries of the Cazas of Deir-el-Zor, Achara (Meyadine) and Abou-Kemal, as they were under Ottoman administration. The accuracy of this map is therefore disputed.

67. If the map used by the Council of the Ottoman Debt proves to be correct, the total length of the river included in the former Caza of Abou-Kemal was 94 miles, of which 21 miles now lie within the territory assigned to Syria, and 73 miles within the territory assigned to Iraq. In this case, the proportion of the former revenues of the Caza to be assigned to Iraq would be 77 per cent. which is substantially the proportion adopted by the Council of the Ottoman Debt. If, on the other hand, the official map now in the possession of the Iraq Government proves to be correct, the total length of the river included in the former Caza of Abou-Kemal was 34 miles, of which 21 miles now lie in the territory assigned to Syria, and 13 miles in territory assigned to Iraq. In this case, the proportion of the former revenues of the Caza to be assigned to Iraq would be 38 per cent. only.

68. The Arbitrator is therefore requested to invite the Turkish Government to indicate the correct boundaries of the Caza of Abou-Kemal as they were in 1910–11 and 1911–12 for the purpose of determining the length of river situated within that Caza.

XIII.—Revenues of Kouneitra Caza.*

Page 96. *Palestine.—Recettes des Territoires constituant la Palestine après la guerre générale.*

Vilayet.	Sandjak.	Cazas.	Moyenne.	Proportions dans lesquelles les Territoires ont été cédés.	Moyenne des Recettes correspondant aux Territoires cédés.
Damas ..	Damas ..	Kaintara .. (Kounéitra)	P.T. 3,065,451	1/10	P.T. 306,545

* This objection is submitted by Palestine.

69. The average of the revenue allocated to Palestine in respect of the Kouneitra Caza is composed as follows :—

	P.T.
Caisses fiscales (1/10)	228,307
Agence des Postes et Télégraphes (1/10)	2,840
Monopole des Tabacs (1/10) ...	19,500
Chemin de Fer du Hedjaz	55,898
	306,545

70. The revenue from Postes et Télégraphes and from the Monopole des Tabacs was collected in the Markaz (headquarters) of Kouneitra, which falls within Syria ; and no portion of these revenues, it is submitted, should be allocated to Palestine.

The section of the Hedjaz Railway in the Kouneitra Caza lies within the territory transferred to Syria or is extra-territorially Syrian, under an agreement between the French and British Governments dated the 7th March, 1923 ; and therefore, apart from the objections already set forth in Section IV to the inclusion of the gross receipts of the Hedjaz Railway, no portion of the receipts of the line in the Kouneitra Caza should in any case be allocated to Palestine.

71. The Arbitrator is asked to declare that, under Article 51 of the Treaty, there should be included in the revenues allocated to Palestine no part of the revenues from Postes et Télégraphes, Monopole du Tabac and Hedjaz Railway, and only that part of the revenue of Kouneitra Caza under the head of Caisses fiscales which was actually collected within the territory assigned to that State.

72. If it is impossible to ascertain in respect of the revenues under the head of Caisses fiscales the amounts actually collected in the territory assigned to Palestine, Palestine is prepared to concur in the adoption of the proportion of one-tenth of those revenues, being the proportion proposed by the Debt Council.

XIV.—Revenues of Cazas of Deraa and Basra-Eski-Cham.*

15. Page 97.—*Transjordanie.—Recettes des Territoires constituant la Transjordanie après la guerre générale.*

Vilayet.	Sandjak.	Cazas.	Proportions dans lesquelles les Territoires ont été cédes.
Damas	Hawran ..	Deraa (Hawran) ..	7/10
		Basra-Eski-Cham (Salhad) ..	7/10

73. The total revenue of the Cazas of Deraa (Hawran) and Basra-Eski-Cham (Salhad) has been apportioned as to seven-tenths to Trans-Jordan and as to three-tenths to Syria, and the apportionment has been based on the areas forming part of Trans-Jordan and Syria respectively and not on the revenue collected in the respective portions during the years 1910–11 and 1911–12, as contemplated by Article 51 of the Treaty.

74. The former Ottoman Caza of Deraa (Hawran) included the Markaz of Deraa and 48 villages ; of these, the Markaz and 40 villages are situated in Syria and only 8 villages in Trans-Jordan. The average revenue of the Caza of Deraa (Hawran)

* This objection is submitted by Trans-Jordan.

attributed to Trans-Jordan during the years in question was as follows :—

			£T.
Caisses fiscales ...	...	...	20,383
Postes et Télégraphes	...	...	—
Revenus concédés	...	...	1,892
Pêcheries ...	...	...	65
Hisséi-Iané sur Tabacs	...	...	1
Société du Tombac	...	...	—
Monopole des Tabacs	...	...	1,887
Chemin de Fer du Hedjaz ...		...	17,540

The average revenue from tithes, the principal item in the receipts of the Caisses fiscales, amounted to £T. 16,325, of which £T. 14,446 was derived from the 40 villages in Syria and £T. 1,879 from the 8 villages in Trans-Jordan. Moreover, revenue derived from assigned revenues, tobacco monopoly, fisheries and Hisséi-Iane on tobacco was collected only within the Markaz of Deraa. The arguments for the total exclusion of the receipts of the Hedjaz Railway appear in Section IV above.

75. It is submitted therefore that, under Article 51 of the Treaty, the only one of the above revenues of which a portion should be assigned to Trans-Jordan is that derived from the Caisses fiscales, and that such revenue should be apportioned as between Trans-Jordan and Syria according to the amounts actually received in the territories allocated to each State.

76. The territory within the Caza of Basra–Eski–Cham (Salhad) which falls within Trans-Jordan, consists of uninhabited and uncultivated lands. The revenue obtained from this Caza in the years 1910–11 and 1911–12 was derived entirely from the portion now forming part of Syria, and was collected in that portion.

77. The Arbitrator is therefore asked to declare that, under Article 51 of the Treaty—

(*a*.) In respect of the Caza of Deraa (Hawran), the only revenue to be allocated to Trans-Jordan is that part of the revenue under the heading of Caisses fiscales which was actually collected in the years 1910–11 and 1911–12 in that part of the Caza of Deraa now assigned to Trans-Jordan.

(*b*.) In respect of the Caza of Basra-Eski-Cham (Salhad) no part of the revenue should be apportioned to Trans-Jordan.

XV.—Caza of Maan.*

Page 97.

Vilayet.	Sandjak.	Caza.	Moyenne.	Proportions dans lesquelles les Territoires ont été cédés.
Damas	Kerek ..	Maan ..	P.T. 2,837,928	1

78. His Britannic Majesty's Government claim that the district of Maan forms part of the Mandated Territory of Trans-Jordan, but it is at present administered by the Hedjaz, and the question of its attribution is still under discussion between His Majesty's Government and the Government of the Hedjaz. It is therefore desired that a separate assessment be made in respect of the Maan District, in order that if it ultimately appear that it does not fall within the territory of Trans-Jordan the liability may be assigned accordingly.

* This request is put forward by Trans-Jordan.

79. The Arbitrator is asked to declare that the contributive part due in respect of the Maan District should be calculated separately, with due regard to the arguments advanced herein regarding the interpretation of Article 51 of the Treaty as well as those regarding the Hedjaz Railway receipts, and that this part should be borne by the State to which this District is ultimately allotted.

XVI.—Loan for the Irrigation of the Plain of Koniah.

Page 108. Table XII.—*Charges annuelles de la Dette publique ottomane; 2° Emprunts conclus entre le* 17 *Octobre* 1912, *et le* 1er *Novembre* 1914.

Capital nominal d'origine.
£T.

Irrigation de la plaine de Koniah ... 818,970 (4)

Page 109. *Observations.*

(4.) Capital nominal fixé le 5/18 Novembre 1913, après l'achèvement des travaux, à 18,612,957·60 fr., ou £T. 818,970·14, montant sur lequel l'intérêt et l'amortissement sont calculés.

80. It does not appear to be correct to place this loan among those contracted after the 17th October, 1912. The contract for the loan was made in November 1907; it provided that the total amount to be debited to the Ottoman Government should be finally determined by measurement of the work done on its completion. This final determination did not take place until the 19th November–2nd December, 1913. But it is clear that a debt had been incurred prior to the 17th October, 1912, inasmuch as the table of "Avances et Bons de Trésor" supplied by the Ottoman Delegation to the Balkan Financial Commission which sat in Paris in 1913 showed the following among the advances existing at the outbreak of the Balkan War (September 1911):—

—	Date des Contrats.	Taux d'Intérêt.	Capital nominal.		
			Originaire.	Amorti.	En Circulation.
			£T.	£T.	£T.
Société des Chemins de Fer d'Anatolie pour l'irrigation de la plaine de Konia, 19,500.000 fr.	23 novembre 1907	5	858,000	110,729	747,271

Under the contract of 1907 a yearly sum of £T. 25,000 was payable by the Ottoman Government to the Société des Chemins de Fer d'Anatolie "dès le commencement des travaux." This explains the amortisation shown above of £T. 110,729

81. It is evident, therefore, that this loan should be included among the "emprunts antérieurs au 17 octobre 1912" and apportioned accordingly; and the Arbitrator is requested to declare in this sense.

XVII.—Avance Régie des Tabacs.

Page 108. Table XII. *Charges annuelles de la Dette Publique Ottomane.*

Capital nominal d'origine.
£T.

Avance Régie des Tabacs 1,700,000 (6)

Page 109. *Observations.*

(6.) Le capital de cette avance, qui était de £T. 1,500,000 au début, a été porté à £T. 1,700,000 par des versements successifs.

L'annuité de £T. 110,000 est applicable, en premier lieu, aux intérêts en compte-courant et pour le surplus à l'amortissement du capital de l'avance.

82. Of the total of £T. 1,700,000 it appears that a sum of £T. 40,000 was advanced by the Régie des Tabacs subsequently to the 1st November, 1914, and should be deducted from the nominal capital distributable between Turkey and the detached territories.

83. The Arbitrator is requested to declare accordingly.

XVIII.—Annual Expenses of the Ottoman Debt.

Page 109. Table XII. *Charges annuelles de la Dette Publique Ottomane.*

Frais du Conseil de la Dette . . . . Mémoire (12).

Observations.

(12.) Les frais envisagés sont ceux afférents à l'encaissement, au recouvrement et à l'application des Parts Contributives. Leur montant ne pouvant pas être actuellement déterminé, mention en a été faite pour mémoire.

84. The Arbitrator is asked to declare that the share of expenses debited against any State shall not exceed the sum effectively expended by the Debt Council on the recovery, encashment and transmission of the contributive part of that State. It would evidently be inequitable that a State that paid its contributive part with punctuality, entailing on the Council no expense beyond that of encashing its drafts for the sums due, should be made liable for a share of the Council's expenditure in respect of the recovery of the contributive part of some other State.

XIX.—Miscellaneous.

85. It is to be observed that Article 46 of the Treaty declares that "The Ottoman Public Debt as defined in the Table annexed to the present Section shall be distributed under the conditions laid down in the present Section" among the contributory States and that "all the above States shall also participate, under the conditions laid down in the present Section, in the annual charges for the service of the Ottoman Public Debt as from the dates referred to in Article 53." In the case of Iraq, Palestine and Trans-Jordan this date is the 1st March, 1920.

86. It is to be further observed that the annuities payable by the contributory States have been calculated by the Debt Council on the basis that they will, in the aggregate, be sufficient to meet the gross cost of the annual service of the Debt. As calculated, they do not take into account the fact that prescription of coupons and bonds may have taken place since the 1st March, 1920, and may take place in the future, and that there are reserve funds in the hands of the Debt Council of which a disposition will have to be made.

87. Nor do they take into account the fact that the Debt Council may, since the 1st March, 1920, have received, and may in future receive, income available only for the service of the Debt, arising from the investment of any reserve funds and from the several arrangements referred to in Sections VII, VIII, IX and X, or any other arrangements which may be substituted therefor, and from any other sources of miscellaneous income past, present or future.

88. It is appreciated that if, after the nominal capital of the Debt has been distributed, a contributory State issues new securities in respect of its share in the Debt, it will benefit by the prescription of any coupons or bonds forming part of such securities, but it will do so only from the date of issue. Similarly,

if any reserve funds are distributed among the contributory States at the time that the nominal capital is distributed, a contributory State will benefit from the income arising from the investments of its share in such funds, but only from the date of distribution.

89. It is submitted that under Article 46 of the Treaty no contributory State can be made liable, as from the date with effect from which it became liable, for more than its proportionate share in the annual charges which may have been or may now or in future be actually necessary for the service of the Debt.

90. It is further submitted that, apart from the terms of Article 46, the contributory States in the aggregate are entitled, in the absence of an express provision to the contrary in the Treaty, to be placed in the same position towards the bondholders as the former Ottoman Empire would have been, under existing contracts, if no partition had taken place, and that, consequently, each contributory State is entitled, in proportion to its liability, and with effect from the date from which it has been made liable, to participate in any benefits arising from the loan contracts and from any miscellaneous income from other sources to which the former Ottoman Empire would have been entitled if no partition had taken place.

91. The Arbitrator is therefore asked to declare—

(1.) That Iraq, Palestine and Trans-Jordan are entitled, as from the 1st March, 1920, and in proportion to their liability respectively, to share in any sums under the following heads which would have enured to the benefit of the former Ottoman Empire if there had been no partition :—

(*a.*) Prescription of coupons and bonds.

(*b.*) Income arising from the investment of any general and special reserve funds.

(*c.*) Income available only for the service of the Debt, arising from any other miscellaneous source, whether past, present or future, other than the items of revenue referred to specifically in (*d*) below.

(*d.*) Income arising from the several arrangements referred to in Sections VII, VIII, IX and X, and under any arrangements substituted therefor, but only in the event of the plea advanced in those Sections (to the effect that these revenues should be included in the revenues of the Ottoman Empire) not being accepted by the Arbitrator.

And (2.) That all such sums should be set off against the several annuities from time to time payable by them respectively.

92. The Arbitrator is asked to take note of the fact that Iraq, Palestine and Trans-Jordan claim that, if the plea advanced in paragraph 56 is not accepted, the Treaty entitles them to participate in the actual sum paid by Italy to the Debt Council, which is referred to in paragraph 55.

PART II.—CURRENCY OF PAYMENT.

XX.—Competence of the Debt Council to determine the Currency in which Annuities should be Paid.

Page 109. Table XII. Column 12.—*Monnaies en lesquelles sont exigibles les Parts contributives.*

93. The column in the "Documents et Tableaux" above referred to raises a question in connection with which the attention of the Arbitrator is invited to the letter addressed by the President of the Debt Council on the 6th November, 1924, to the representatives of the several States concerned, notifying the amounts of the annuities payable by those States; the letter includes the following passage:—

> "II. Les montants énoncés au paragraphe I ci-dessus, bien qu'exprimés en livres turques, doivent être payés dans les monnaies stipulées aux contrats des emprunts . . . . c'est-à-dire en or pour certains emprunts . . . . et pour les autres dans la plus appréciée desdites monnaies.
>
> "En conséquence et sous réserve des modifications pouvant se produire ultérieurement dans les cours respectifs des monnaies, les Parts contributives . . . . doivent être payées de la manière suivante: . . . ."

94. It is submitted that the Debt Council, in making the above notifications as to the specific currencies in which the amounts of the several annuities were to be paid, exceeded the function assigned to it by Articles 47 and 52 of the Treaty of Lausanne.

Article 47 runs as follows:—

> "The Council of the Ottoman Public Debt shall . . . . determine, on the basis laid down by Articles 50 and 51, the amounts of the annuities for the loans . . . . which are payable by each of the States concerned, and shall notify to them this amount."

Article 52 contains the following paragraph:—

> "The Council of the Ottoman Public Debt shall . . . . determine the amount of the share in these advances for which each of the States concerned is liable, and notify them of such amount."

95. It is contended that the duty of the Debt Council under the Treaty of determining and notifying the amounts of the annuities did not comprise the duty of determining and notifying the money of payment, for the following reasons.

96. The money of payment is determined by the contracts of the several loans; it is a "private matter" between the debtor States and the creditors (M. le Général Pellé, *Procès-verbal* of the Second Committee of the Conference of Lausanne, 2nd May, 1923, "Recueil des Actes," IIe Série, Tome I, p. 192), in respect of which the Treaty could not properly intervene, either to modify or to interpret the terms of the contracts.

97. In order to understand the intention of Article 47 in this connection, the negotiations which took place in regard thereto at Lausanne must be recalled. At the Third meeting of the Financial Sub-Commission on the 5th December, 1922, a table showing the

composition of the Ottoman Public Debt prepared by the Delegations of the Allied States was submitted (" Recueil des Actes," I^re Série, Tome III, pp. 152–154), which contained columns, numbered 4, 5, 6 and 7, showing the annuities of the several loans as payable in " Livres turques or," and a " Note explicative " in the following terms :—

> " Les chiffres des colonnes 5, 6 et 7 sont exprimés en livres turques or.
>
> " La Turquie possède actuellement une circulation de papier au lieu de sa circulation d'or d'avant-guerre. Aux présents taux de change, la livre turque papier est loin de représenter les taux d'avant-guerre de la livre turque or relativement à la monnaie dans laquelle l'intérêt et l'amortissement doivent être payés en Europe conformément aux termes des contrats d'emprunts (voir Article 1er du décret-annexe de septembre 1903 et les contrats d'emprunt *passim*).
>
> " La définition de la livre turque or, en ce qui concerne ces colonnes, ne signifie pas que les provisions pour les coupons et le fonds d'amortissement doivent être faits en or, mais que le chiffre en livres turques doit être calculé à un tel taux de change qu'il soit possible aux porteurs de se faire payer dans la monnaie à laquelle ils ont droit, et que les calculs ont été faits en supposant qu'une ou plusieurs monnaies dans lesquelles le porteur d'emprunt peut demander le paiement sont au pair de l'or."

98. Considerable discussio nsubsequently arose in connection with the table and with the " Note explicative." On the one hand, the Allied Delegations pressed for a confirmation by Turkey of the rights of the bondholders under the Decree of Mouharrem ; on the other hand, the Turkish Delegation demanded the suppression of the " Note explicative." (Letter of the Turkish Delegation of the 4th February, 1923, " Recueil des Actes," I^re Série, Tome IV, p. 16, and *Procès-verbal* of the meeting of the 2nd May, 1923, *op. cit.*, IIe Série, Tome I, p. 190 *et seq.*)

99. Finally, the columns in the Table of the Debt headed " Livres turques or " and the " Note explicative " were omitted from the Table as it appeared in the Treaty. In this connection the following statements were made (*Procès-verbal* of the meeting of the 9th May, 1923, *op. cit.*, p. 204) :—

> " *Ismet Pacha* déclare que si, par la confirmation des anciens contrats, les Puissances entendent exiger de la Turquie un engagement en ce qui concerne la monnaie de paiement, la Délégation turque doit formuler une réserve expresse sur ce point. Si les Puissances acceptent cette réserve la Délégation turque consent à adresser aux porteurs la déclaration en question.
>
> " *Le Général Pellé* tient à marquer que les Gouvernements alliés ne peuvent accepter aucune réserve sur les contrats existants, pas plus en ce qui concerne la monnaie de paiement que sur toute autre stipulation de ces contrats. Leur point de vue est que le Traité de Paix ne peut en rien modifier ceux-ci. Les Délégations alliées ont donné à la Turquie une satisfaction importante, en supprimant des clauses financières toutes les dispositions susceptibles d'être interprétées comme impliquant un nouvel engagement de la part de la Turquie : à cet effet, elles ont accepté la suppression des colonnes 4, 5, 6 et 7 du tableau de la Dette et la Note explicative ; mais elles ont le devoir de maintenir intact le principe du respect des contrats existants."

The declaration referred to by Ismet Pasha was subsequently made by him at the meeting of the 17th July, 1923 (*op. cit.*, p. 260).

100. It is evident from the above that the Treaty leaves the interpretation of the contracts, where they properly rest, as a matter to be settled between the debtor States and the creditors.

101. It is, indeed, clear that this is a subject with which the Treaty was not logically concerned ; what the Powers were seeking to arrive at was an equitable *apportionment* between the States concerned of Turkey's liabilities. For this purpose it was necessary to determine (*a*) the loans to be included in the apportionment, and (*b*) the method of calculating the share of each loan to be assumed by the several States. There was no necessity to proceed beyond this to an interpretation of the various loan contracts in respect of the *mode* of discharging the debt. The apportionment of the liabilities of the Ottoman Empire on its dismemberment was a political task properly falling to the Powers in conference at Lausanne. The interpretation of the contracts was a juridical task not falling within their province.

102. It is therefore submitted that the duty delegated to the Debt Council by the Powers was simply that of calculating, on their behalf, the proportionate liability of the respective Contributory States in accordance with a general mathematical formula prescribed by the Powers, and that the Debt Council was not specifically authorised under the Treaty to exercise the judicial function (which the Powers themselves refrained from claiming) of determining finally questions which rest on the interpretation of the loan contracts and that it cannot be deemed to possess that authority in the absence of an express provision to that effect in the Treaty.

103. It is submitted that the Debt Council in their letter of the 6th November, 1924, must be deemed to have acted in two entirely distinct capacities, namely :—

(*a*.) As an agent of the Powers under Article 47 of the Treaty when, in paragraph I of their letter, they notified to each Contributory State their calculation (expressed in Turkish pounds) of that State's proportionate liability ;

(*b*.) As representing the bondholders when, in order to obtain payment of the first instalment of the annuity, they, in paragraph II of their letter, indicated their interpretation of the loan contracts so far as they affect the currencies in which such instalment is payable ;

and that paragraph I of their letter is a complete fulfilment of their duty under the Treaty.

104. Article 47 directs that the Council shall " determine on the basis laid down by Articles 50 and 51 the *amounts of the annuities* for the loans referred to in Part A of the Table annexed to the present Section which are payable by each of the States concerned, and shall notify to them this amount."

Article 51 prescribes the manner in which " *the amount of the share* in the annual charges of the Ottoman Public Debt for which each State is liable shall be determined."

Article 52 provides that the Debt Council " shall . . . determine the *amount of the share* in these advances for which each of the States concerned is liable, and notify them of such amount."

It is not necessary, in order to determine the " amount of the annuities," or the " amount of the share in these advances," or " the amount of the share in the annual charges " that the currency in which the payments are to be made should be indicated, because the amount of the contributory parts can be notified on the basis of any convenient currency, such as Turkish pounds ; this is the method in fact adopted by the Debt Council in the " Documents et Tableaux " where the calculations are made throughout in Turkish pounds, and in paragraph I of their President's letter.

105. It was, indeed, impracticable for the Debt Council to adopt any other course, for the contracts of the great majority of the loans

provide for payment in alternative currencies, and it is impossible to know beforehand in what currency the bondholder will find it to his advantage to demand payment where he has an option. "The amount of the annuities" can in fact only be calculated in some conventional currency, the actual currency to be employed in respect of a particular payment being left to be determined, under the terms of the contract, in accordance with the position of the exchanges at the moment of payment

106. As the terms of the directions given by Article 51 to the Debt Council for the calculation of the shares are in themselves incompatible with the adoption of any other than a single conventional currency for the purpose, it is evident that if the Treaty had intended that there should be a *subsequent* interpretation by the Debt Council of the contracts in respect of the money of payment, it would have made specific provision accordingly. It will be observed that where the Treaty contemplates that it will be necessary for an authority appointed under the Treaty to take account of the terms of the contracts governing the loans, as it does in connection with the distribution of the nominal capital of the Ottoman Public Debt (Article 49), it specifically refers to these contracts. Article 49 is as follows :—

> "Article 49. . . . . This distribution shall be made in accordance with the proportions adopted for the division of the annuities and *account shall be taken of the terms of the agreements governing the loans* and of the provisions of this section. . . . ."

If the Treaty had required the Debt Council to take account of the provisions of the contracts, in respect of the money of payment, in determining the shares in the annuities to be borne by the several States, it would have said so.

107. Nor does Article 48, which requires that the States other than Turkey shall assign to the Debt Council adequate security for the payment of their shares, provide ground for any valid objection to the view above advanced. The adequacy of the security must no doubt be determined with due regard to the existence of a measure of uncertainty as to the future course of the exchanges, and the Article itself contemplates the possibility of a difference of opinion on this subject. But this uncertainty would exist, in some degree, even if there were no doubt as to the true interpretation of the loan contracts.

108. It is therefore submitted that the Debt Council completely fulfilled their duty under the Treaty in paragraph I of their letter of the 6th November, 1924, and the Arbitrator is requested to declare accordingly.

109. It follows from the above contention that a dispute regarding the interpretation of a loan contract is not a dispute between a Contributory State and the Debt Council as agent of the Powers under the Treaty, but is a dispute between it and the Debt Council as representing the bondholders. A dispute of the latter nature is not a dispute within the meaning of Article 47, which, it is submitted, refers to the Arbitrator only such disputes as may arise with the Debt Council as a result of acts done by them in their capacity as agent of the Powers under the Treaty. If therefore it is argued that the interpretation of the loan contracts, so far as the currency in which the annuities are payable is concerned, is a matter within the jurisdiction of the Arbitrator, Iraq, Palestine and Trans-Jordan will contend the contrary.

110. If the view above advanced is not accepted, then the Arbitrator is asked to declare that the currencies notified in the

letter of the President of the Debt Council of the 6th November, 1924, as being those in which the annuities of the several loans are payable, are erroneous in certain respects.

XXI.—Unified Debt.

Page 115. Table XIII. *Dette convertie unifiée.*

Observations.—L'annuité de la Dette convertie unifiée doit être constituée en or.

111. The letter referred to in the preceding paragraph claims payment of the Contributive Parts in respect of this Debt in Turkish pounds gold, or in their equivalent in dollars of the United States of America.

112. The Decree of Mouharrem and the Decree Annex of September 1903 constituted an annuity of £T. 2,157,375 out of the net produce of certain ceded revenues, for the provision of (*a*) 4 per cent. interest on the Unified Debt, (*b*) a sinking fund of 0·45 per cent. on the same, and (*c*) £T. 270,000 for the service of the Lots turcs. Of the excess of the ceded revenues beyond £T. 2,157,375, the Debt Council were to receive 25 per cent. to be applied as an extraordinary sinking fund for Unified Debt and Lots turcs. The Decrees made no provision for the possible insufficiency of the ceded revenues to meet the requirements of the service of these two loans; nor do they contain any guarantee of the service of these debts, beyond the cession to the bondholders of certain specified revenues.

113. The only passage in the Decree of Mouharrem and the Decree Annex bearing on the question of the currency in which the annuity was to be constituted occurs in Article XVI of the former Decree, and reads as follows:—

> "The amount of the six Indirect Contributions shall be collected in cash in conformity with the regulation in force as regards the fiscal agencies of the State (Meskukiat Nizamnamessi) promulgated on the 1st March, 1296."

The latter regulation (Article 3) lays down that "the revenues of the State shall be collected on the basis of gold and according to the fixed value of gold."

114. The fact that the annuity constituted by the Decree of Mouharrem and the Decree Annex was to be collected in gold did not oblige the Ottoman Government to pay the interest and amortization of the Unified Debt and Lots turcs in gold. The stipulation above quoted of the Decree of Mouharrem only had the effect of giving the bond-holders an assurance that the revenues ceded to them would be collected in cash in conformity with the rules governing the collection of State revenues in general.

115. These rules required the collection to be made on the basis of gold. But they were liable to be altered, and recent Turkish legislation has repealed the stipulation in question. The law of the 30th March, 1331–12th April, 1915, contains the following articles:—

> "*Article I.* Le Ministère des Finances est autorisé à émettre pour £T. 6,583,094 de billets (Evraki-Nakdiye) contre le dépôt, en or effectif, de 150,000,000 fr.—à l'Administration de la Dette publique ottomane.
>
> "*Article II.* L'acceptation et la circulation de ces billets, exactement comme du numéraire, est obligatoire sur toute l'étendue de l'Empire dans les transactions soit entre le Gouvernement et les particuliers, soit entre les particuliers eux-mêmes.

"Ceux qui ne se conformeront pas à cette obligation seront punis d'une amende de £T. 1 à £T. 15 ou de 24 heures à un mois de prison."

This law was supplemented by subsequent Currency Laws, which did not modify the tenour of the above. It is clear that collection of the ceded revenues in gold cannot be enforced in territory in which this law prevails, and could not have been enforced in territory in which this law would have prevailed but for the partition of the Ottoman Empire. It follows that the annuity of £T. 2,157,375 cannot now be constituted in gold.

116. If it is objected that the Ottoman law above quoted is an act of internal legislation not affecting the obligations of the Ottoman Empire to its foreign creditors, it is submitted :—

(*a.*) That the Decree of Mouharrem defining the obligations of the Ottoman Government is itself an internal law, without international character. It is true that Article 21 of the Decree provides that "the Imperial Government shall communicate to the Powers without delay the present Decree. . . . . ," but this communication did not alter the internal character of the Decree or give it the force of an agreement internationally binding. Indeed it was the practice of the Ottoman Government to notify to the Powers laws affecting their nationals, and such laws were frequently enforced in spite of the protests of the Powers. It is to be observed that, during the negotiations at Lausanne, the Allied Delegations pressed the Turkish Delegation to make a declaration confirming the Decree of Mouharrem, which would not have been necessary had the decree possessed the character of an international obligation.

(*b.*) That the obligations incurred by the Ottoman Government under the Decree of Mouharrem would, but for the partition of the Empire, not have been enforceable in any other than a Turkish court, and that a Turkish court would have interpreted those obligations in accordance with municipal law, and would have been bound by the currency laws above referred to.

117. It is deduced from the above considerations that the liability of the former Ottoman Empire in respect of the annuity of the Unified Debt under the Decrees would have been in Turkish pounds current, and that the Contributive Parts in respect thereof are payable in the same; and the Arbitrator is asked to declare accordingly.

XXII.—Lots turcs.

118. The Decree Annex of September 1903 assigned an annuity of £T. 270,000, being part of the annuity of £T. 2,157,375 referred to in the previous section, to the service of the Lots turcs, which were to be drawn for repayment, some at 240 francs and some at 400 francs, in accordance with the plan of amortization. They were to receive no interest.

119. The question whether the annuity of £T. 2,157,375, and consequently this annuity of £T. 270,000 comprised in it, are to be constituted in gold has been dealt with in the preceding section, and the considerations set forth therein lead to the conclusion that it should not be so constituted, but in Turkish pounds current.

120. The Arbitrator is asked to declare that the £T. 270,000 assigned for the purpose of the service of this loan are Turkish pounds current, and that the Contributive Parts are payable in the same.

XXIII.—Hodeida-Sanaa (1901) and Soma-Panderma (1910) Loans.

121. The letter of the President of the Debt Council requires the Contributive Parts in respect of the annuities of these loans to be paid in Turkish pounds gold, or in their equivalent in dollars of the United States of America. The relevant portions of the contracts of these two loans are substantially the same; they state that the bonds—

> "porteront un intérêt de 4 pour cent . . . . payable semestriellement au choix du porteur à Constantinople ou à Paris, par coupons de 44 piastres or ou 10 fr."

The prospectus of the former loan stated that—

> "Les obligations de cet emprunt rapportent piastres or 88 ou fr. 20 d'intérêt annuel."

The prospectus of the latter loan stated that—

> "Le paiement des coupons et des titres . . . . aura lieu au choix des porteurs à Constantinople ou à Paris dans la monnaie du lieu de paiement."

122. It may be observed that the expressions "44 piastres or" and "piastres or 88" do not signify that the sums in question are payable in gold only. At the time of the issue of these loans the word "piastre" might mean one of three things: (a) the one-hundredth part of the lira or Turkish pound; (b) the official piastre of account, of which there were 102·6 to the Turkish pound; (c) the silver piastre coin, the exchange value of which fluctuated about 108 to the Turkish pound. It was consequently necessary when stating a sum in piastres to indicate the kind of piastre that was meant. "Piastres or 88" signified 88-hundredths of a Turkish pound.

123. It is submitted that there is nothing in the terms of these contracts to justify the claim that the annuity should be paid otherwise than in Turkish pounds or French francs in current money, and the Arbitrator is asked to decide accordingly.

XXIV.—Première Tranche des Bons du Trésor, 1913.

124. The letter of the President of the Debt Council requires the contributive parts in respect of these bonds to be paid in Turkish pounds gold or in their equivalent in dollars of the United States of America.

125. The *arrêté* annexed to the provisional law of the 19th January, 1913, relating to this issue provides that each bond shall be for "piastres or 110" or £1 sterling or 25 francs or their multiples (Article 2); that as payment of capital and interest is to be made in five years, each bond shall have attached five coupons, divided into two parts, one relating to the reimbursement of the capital and the other to the payment of interest (Article 3); and that the capital and interest shall be paid in the Ottoman Empire by the "Caisses fiscales," and abroad by banks to be named by the borrowing State.

126. It should be noted that while the nominal value of the bonds is given in alternative currencies, no mention is made of the right of the bondholder to choose between these for purpose of repayment. The coupons themselves, both in respect of capital and interest, provide for payment only in Turkish money.

127. It should be noted further that the bonds were issued in Constantinople by the Ministry of Finance directly and not in any foreign countries; and that they were issued under a municipal law of precisely the same character as the currency laws of the Ottoman Empire referred to in paragraph 115 above.

128. Having regard to these considerations, it is submitted that the annuities in respect of these bonds are payable in Turkish pounds current; and the Arbitrator is asked to declare accordingly.

XXV.—Avances de l'Administration des Phares (1904, 1907 et 1913).

129. The letter of the President of the Debt Council requires the Contributive Parts in respect of these Advances to be paid in Turkish pounds gold or in their equivalent in dollars of the United States of America.

130. The contracts of these advances contain the following provision bearing on the question here at issue:—

> "Le montant du capital ainsi que les intérêts seront remboursés en livres turques d'or effectives actuellement existantes. Le paiement ne pourra en être effectué en autres monnaies, obligations ou titres."

131. The Ottoman legislation referred to in paragraph 115 above has made the acceptance of paper money obligatory, on exactly the same footing as coin, and the Arbitrator is accordingly asked to decide that the annuities in respect of these advances are payable in Turkish pounds current.

XXVI.—Annuities claimed in Reichsmarks.

132. The letter above referred to of the President of the Debt Council requires the Contributive Parts of the annuities of the following loans to be paid in "Reichsmarks (marks-or)," which is understood to mean the Reichsmarks of the currency existing before the war at their gold parity:—

Osmanié (1890).
Priorité Tombac (1893).
Emprunt de 40,000,000 fr. des Chemins de fer orientaux (1894).
5 pour Cent (1896).
Douanes (1902).
4 pour Cent (1903) Pêcheries.
Bagdad, Série I (1903).
Bagdad, Series II and III (1908).
Tedjhizat-i-Askérié (1905).
4 pour Cent (1901–1905).
4 pour Cent (1908).
4 pour Cent (1909).
Douanes (1911).

133. By law of the German Reich No. 4448 of the 4th August, 1914, Reichsbank notes and Treasury notes (Reichskassenscheine) were made inconvertible until further notice, such Reichsbank notes and Treasury notes having been made legal tender by laws No. 3625 of the 1st June, 1909, and No. 4434 of the 4th August, 1914, respectively.

134. Article III of the German Law of the 30th August, 1924, reads as follows:—

> "III. The banknotes shall be expressed in Reichsmarks. Banknotes for amounts of less than ten Reichsmarks may be issued exclusively with the assent of the Government of the Reich for the purpose of satisfying a transitory trade requirement.

"The Banknotes of the Reichsbank are, in addition to the Reich gold coins, the only legal tender for an unlimited amount in Germany.

"The Reichsbank is bound to call in the whole of its notes hitherto in circulation and to exchange them against Reichsmark notes. A billion marks of the late issue shall be replaced by one Reichsmark. The notes which have been called in shall be destroyed. The detailed provisions as to the calling-in, and as to the periods for the delivery and cancellation of the old notes, shall be fixed by the Managing Board of the Reichsbank."

135. If it is objected that the Debtor State cannot avail itself of German legislation to defeat the claim of the Creditor to payment in the currency which was in existence at the time his contract was made, it is submitted that if the Creditor had recourse to the courts of the debtor country (the only ones open to him for the purpose) to enforce his claim, the latter would necessarily refer to the legislation of the country where the contract is to be executed in order to determine the proper method of payment; and this legislation sanctions payment in paper.

136. The contracts of the loans enumerated above make provision for the payment of interest and capital in alternative currencies in different towns, among others marks or Reichsmarks in Berlin and Frankfort. Having regard to the date of the contracts in question, it is contended that the obligation to pay the sums due in Reichsmarks may be discharged at the rate of one Reichsmark of the present currency for one billion Reichsmarks of the pre-war currency, and the Arbitrator is asked to declare accordingly.

XXVII.—Annuities claimed in Swiss francs.

137. The letter of the President of the Council of the Debt Council requires the Contributive Parts of the annuities of the following loans to be paid in Swiss francs:—

(*a.*) Emprunt Irrigation de la Plaine de Koniah (1913).
(*b.*) Avance de la Société du Câble de Constanza (1904).

(*a.*) The contract for the loan for the irrigation of the Plain of Koniah was passed with the Société des Chemins de fer d'Anatolie, an Ottoman Company, on the 23rd November, 1907. The amount of the loan was to be finally determined, in francs, on the completion of the irrigation works. The rate of interest was to be 5 per cent. and the sinking fund 1·072 per cent. From the commencement of the work the Ottoman Government was to pay the Company an annuity of £T. 25,000. The place of payment of the sums due to the Company was not specifically stated, but may be assumed to have been the principal place of business of the Company, which was in the Ottoman Empire.

It is contended that in the absence of specific provision as to the kind of francs intended, or of specific provision that the choice between them rested with the creditor, the debtor is entitled to pay in Swiss or French francs at his option; and the Arbitrator is requested to decide accordingly.

(*b.*) It has not been possible to obtain a copy of the Contract of the Advance of the Société du Câble de Constanza, but it is indicated at p. 110–111 of the "Documents et Tableaux" that the debt is in Turkish pounds and the annuity is payable in Turkish pounds or francs on the basis P.T. 4·40 = 1 fr.; it further appears that the place of payment is within what was the Ottoman Empire, the Société du Câble de Constanza being an Ottoman Company.

It is submitted that where there is an alternative obligation as to money of payment and a single place of payment, but the contract does not stipulate with whom lies the option, the choice of money of payment rests with the Debtor. It would seem, therefore, that the annuity is payable in Turkish pounds current, or in French or Swiss francs at the option of the debtor. The Arbitrator is requested to decide accordingly.

(Signed) H. P. HARVEY.

(For and on behalf of
Iraq, Palestine and Trans-Jordan).