

II.—Principles and Rules of Interpretation

Treaties—Interpretation of—Principles and Rules of—Interpretation of Treaties Incidental to that Directly Submitted to Arbitrator—Contemporaneous Interpretation—Limits of Interpretation in accordance with Usual Meaning of Terms—Principle of Effectiveness—Belligerent Occupation—Appropriation of Enemy Property—Limits of—Booty—*Postliminium*—Recovery of Property Looted in Occupied Territory during Second World War.

GOLD LOOTED BY GERMANY FROM ROME IN 1943.

(United States of America, France, United Kingdom, Italy).

Professor G. Sauser-Hall (Arbitrator).

Arbitral Advice of February 20, 1953.

THE FACTS (as stated by the Arbitrator).—

"[1] PRELIMINARY STATEMENT

" 1. *Arbitration Agreement*.—An Agreement submitting to arbitration certain claims with respect to gold looted by the Germans from Rome in 1943 was signed on April 25th, 1951, by the Governments of the United States of America, of the French Republic and of the United Kingdom of Great Britain and Northern Ireland. Its text runs as follows:

' The Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America (hereinafter referred to as the three Governments),

' Whereas Part III of the Final Act of the Paris Conference on Reparation provides:

" " A.—All the monetary gold found in Germany by the Allied Forces and that referred to in paragraph G below (including gold coins, except those of numismatic or historical value, which shall be restored directly if identifiable) shall be pooled for distribution as restitution among the countries participating in the pool in proportion to their respective losses of gold through looting or by wrongful removal to Germany.

" " B.—Without prejudice to claims by way of reparation for unrestored gold, the portion of monetary gold thus accruing to each country participating in the pool shall be accepted by that country in full satisfaction of all claims against Germany for restitution of monetary gold.

" " C.—A proportional share of the gold shall be allocated to each country concerned which adheres to this arrangement for the restitution of monetary gold and which can establish that a definite amount of monetary gold belonging to it was looted by Germany or, at any time after 12th March, 1938, was wrongfully removed into German territory.

" " D.—The question of the eventual participation of countries not represented at the Conference (other than Germany but including

Austria and Italy) in the above-mentioned distribution shall be reserved, and the equivalent of the total shares which these countries would receive, if they were eventually admitted to participate, shall be set aside to be disposed of at a later date in such manner as may be decided by the Allied Governments concerned.

"E.—The various countries participating in the pool shall supply to the Governments of the United States of America, France and the United Kingdom, as the occupying Powers concerned, detailed and verifiable data regarding the gold losses suffered through looting by, or removal to, Germany.

"F.—The Governments of the United States of America, France and the United Kingdom shall take appropriate steps within the Zones of Germany occupied by them respectively to implement distribution in accordance with the foregoing provisions.

"G.—Any monetary gold which may be recovered from a third country to which it was transferred from Germany shall be distributed in accordance with this arrangement for the restitution of monetary gold."

'Whereas for the purpose of fulfilling their duties under the aforesaid Part III, the three Governments established a Commission designated as the Tripartite Commission for the Restitution of Monetary Gold and invited all Governments which desired to make claims under Part III of the Final Act of the Paris Conference on Reparation for a proportionate share of the gold pool to submit their claims to the said Commission;

'Whereas in 1943 Germany looted, or wrongfully removed from Rome to German territory, 2,338.7565 kilograms of gold;

'Whereas Albania claims that the said amount of gold was monetary gold belonging to Albania within the meaning of the aforesaid paragraph C and that in consequence, under the aforesaid paragraph A, Albania should receive a proportionate part of the gold pool referred to in that paragraph;

'Whereas Italy claims that the aforesaid amount of gold was monetary gold belonging to Italy within the meaning of the aforesaid paragraph C and that in consequence, under paragraph A, Italy should receive a proportionate amount of the gold pool referred to in that paragraph;

'Whereas the Governments of Italy and Albania submitted claims to the Commission as above recited;

'Whereas the said Commission considered that the competitive claims of Albania and of Italy involved disputed questions which the Commission felt itself incompetent to determine and accordingly revoked its previous provisional decision on the matter (which previous decision shall now be regarded as a nullity) and referred the said claims to the three Governments for decision; and

'Whereas the three Governments considered that the aforesaid claims of Albania and Italy involve disputed questions of law and fact and, in order that they may, in the exercise of their duty under Part III of the Paris Act, carry out the distribution provided for in that Part correctly, they should be assisted by the opinion of an impartial and highly qualified jurist;

'Have agreed as follows:

'(1) The three Governments request the President of the International

Court of Justice to designate as an arbitrator an eminent and impartial jurist, to advise them as to the decision which they should adopt with regard to the aforementioned claims of Albania and of Italy. The emoluments and expenses of the arbitrator shall be defrayed by the Tripartite Gold Commission as a proper charge against the gold pool.

'(2) The arbitrator, after taking into account all the facts and all the legal considerations which it is proper for the three Governments to take into account under Part III and bearing in mind that his advice should be consistent with decisions already made in other cases by the Tripartite Gold Commission, is requested to advise the three Governments whether,

- (i) Albania has established that 2,338.7565 kilograms of monetary gold, which were looted by Germany from Rome in 1943, belonged to Albania, or
- (ii) Italy has established that 2,338.7565 kilograms of monetary gold, which were looted by Germany from Rome in 1943, belonged to Italy, or
- (iii) neither Albania nor Italy has established that 2,338.7565 kilograms of monetary gold, which were looted by Germany from Rome in 1943, belonged to either of them.

'The arbitrator is requested to furnish his advice in the form of a fully reasoned opinion.

'(3) Before submitting his opinion, the arbitrator shall afford to the Governments of Albania and of Italy and to each of the three Governments an opportunity of submitting to him any material, evidence and arguments relating to the questions submitted to the arbitrator which they may respectively desire to submit.

'(4) Save as provided in the two preceding Articles, the arbitrator shall determine all questions of procedure, including the manner and the time limits within which evidence and observations may be submitted to him by any Government entitled to do so. Before determining any questions of procedure, he shall convoke a meeting at Brussels of the Agents of all the Governments entitled to submit evidence and arguments to him and shall hear their views with regard to all questions of procedure. If any Government entitled to do so does not, within thirty days of being invited to do so by the arbitrator, inform the arbitrator of its intention to appoint an Agent and to submit evidence or observations, that Government shall be deemed to have renounced its right to do so.

'(5) The three Governments, in exercising their duty under Part III of the Final Act of the Paris conference on Reparation, will accept the advice given by the arbitrator on the question whether Albania, or Italy, or neither has established a claim to the aforesaid amount of gold.'

" 2. *Designation of the Arbitrator.*—In pursuance of Article I of the Agreement quoted above (hereinafter called the *Washington Agreement*), the Secretary of State of the United States, on behalf of the three signatory Governments and referring also to a *Statement* attached to the Agreement, the contents of which will be examined later in the present arbitral advice, requested the President of the International Court of Justice to designate an arbitrator entrusted with the task of giving an advice on the claims of Albania and Italy

in respect of the distribution of a certain quantity of monetary gold wrongfully removed from Rome to Germany in 1943.

" Accordingly, the President of the International Court designated the undersigned jurist, Mr. George Sauser-Hall, of Swiss nationality, Member of the Permanent Court of Arbitration, after having obtained his acceptance, as arbitrator entrusted with the task defined in the Washington Agreement.

" 3. *Procedure*.—In accordance with paragraph 4 of the Washington Agreement, the undersigned Arbitrator convoked to Brussels, on November 5th, 1951, at the seat of the Tripartite Commission for the Restitution of Monetary Gold (hereafter called the *Tripartite Commission*), the Agents of all the Governments entitled to submit to him material, evidence and oral arguments, including the Agents of the Governments of Albania and of Italy, entitled to do so under Article 3 of the aforesaid Agreement. The Government of Albania alone failed to appoint an Agent.

" After the hearing of the Agents of the United States of America, of France, of the United Kingdom of Great Britain and Northern Ireland, and of Italy, the Arbitrator made, on the same day, *Decisions upon questions of Procedure*, in French and English, which were sent by post to the High Contracting Parties on November 10th and 15th, 1951. It is stated (in Article 2, paragraph 2) of these Decisions that the Arbitral Advice will be drafted in French and English, the French text being authoritative.

" The Arbitrator transmitted this document to the Minister of Foreign Affairs of the People's Republic of Albania in Tirana, by express and registered post on November 10th, 1951, and referred to paragraph 4 *in fine*, of the Washington Agreement, which runs: 'If any Government entitled to do so does not, within thirty days of being invited to do so by the arbitrator, inform the arbitrator of its intention to appoint an Agent and to submit evidence or observations, that Government shall be deemed to have renounced its right to do so.' Accordingly, he fixed a time-limit of thirty days, from the reception of his letter dated November 10th, 1951, inviting the Minister to declare his intentions on the subject. Having failed to answer this request, the Government of Albania is deemed to have renounced its right to participate in the procedure; all the other Parties concerned were duly informed of the fact by letters dated January 26th, 1952.

" [II.] THE FACTS PROPER

" The subject of the dispute is the allocation to Albania or to Italy, or to neither of them, of a certain quantity of monetary gold looted by the Germans from Rome on September 16th, 1943.

" The dispute arose from the following facts, the exactitude of which is on the whole not contested by France, Italy and the United Kingdom, as was shown in the oral proceedings, with the exception

of a few points later to be examined in the present advice, in accordance with the arbitrator's competence to take into account all the facts and all the legal considerations which it is proper for the three Governments signatory to the Washington Agreement to take into account under Part III of the Paris Act (paragraph 2 of the Washington Agreement).

" These facts may be said to fall into four stages: first, the creation of the National Bank of Albania (to be described in this advice as *the Bank*); second, the invasion of Albania and its monetary consequences; third, the looting and wrongful removal of the gold to Germany; fourth, the allocation of the gold and the origin of the dispute.

" *A.*—After the First World War, the Financial Committee of the League of Nations asked Professor Albert Calmès, of Luxembourg, to present a report on what measures should be taken to bring about a complete reform of the finances of the Albanian State, rendered inevitable by the circumstances.

" His report, submitted to the League of Nations in September 1922, urged the immediate creation of a bank in Albania 'directed by foreigners and protected by a special charter providing against any possibility of direct or indirect seizure by the State of private capital invested or deposited there.' The State might confer upon the Bank the privilege of issuing bank-notes but, the rapporteur added, 'it is essential that the Bank should remain entirely a private venture, with no possibility of interference on the part of the State in its affairs. Apart from the Note Issue Department, the State would have no share in the matter.' The rapporteur emphasized that 'needless to say, the Bank of Issue must not on any account degenerate into a paper money factory . . . To this end, the notes should be covered partly by gold (30 per cent. to 40 per cent. of the issue) and for the rest by short-term credits.'

" In the exercise of its sovereignty, the Albanian Government deemed it possible to accept the advice proffered by the Financial Committee of the League of Nations upon the basis of this report, and entered into negotiations with an Italian Group led by Mr. Mario Alberti, a representative of the Italian Government on the aforesaid Committee; high financial circles in London and Paris did not think it advisable to take part in the constitution of the capital of the future Bank.

" Informed of Mr. Alberti's intentions, the Financial Committee, through its President, Mr. Albert Janssen, wrote him a letter of March 27th, 1924, that it had

'expressed its opinion on the principles on which it believes that the Bank of Issue could be founded in Albania. It trusts this opinion may assist the Government with regard to the measures to be taken and in the negotiations for the subscription of capital. But the responsibility and the powers of the Committee go no further . . . Under these circumstances it

does not pertain to the Committee to hinder other arrangements, such as those suggested in your letter, providing they be applicable and in accordance with the wishes of the Albanian Government.'

" It is not possible to find that the League of Nations gave [a] mandate to Italy to establish the Bank, as is asserted in the first Italian Memorial; its approval was of a purely moral character and may perhaps be related to the Protocol adopted on November 9th, 1921, by the Paris Conference of Ambassadors, recognising the importance of Italian interests in Albania. But the part of the League of Nations was limited to making recommendations and giving technical indications; the League did not conduct the negotiations which led to the establishment of the Bank nor did it decide its structure or functions.

" The Italian financial Group, made [up] of Italian banks, companies and private subscribers, received the support and collaboration of the Société Générale de Belgique, of the Banque Commerciale de Bâle, of a ' consortium ' of Yugoslav banks and of some Albanian citizens. On March 15th, 1925, the Group concluded in Tirana with the Albanian Government a *Banking Convention*, which was approved by the Albanian Chamber of Deputies on June 23rd, 1925, and by the Albanian Senate on July 5th, 1925, at the same time as the *Law of the National Bank of Albania*, hereinafter called the *Organic Law*, and as the *Law on the Monetary System*. These three acts were promulgated as laws of the Albanian State on the same date, in pursuance of a Presidential Decree of July 12th, 1925; they were published in the Albanian ' Official Gazette ', No. 36 and 40, on July 12th and 31st, 1925, in Italian and Albanian, the former text being authoritative in case of doubt for the interpretation of the Banking Convention.

" In accordance with clause 1 of the Convention, the Italian Group constituted the National Bank of Albania on September 2nd, 1925, in Rome, as a joint stock company, in the course of a first general meeting, an Italian notary public being present throughout the proceedings; minutes of the meeting were made in solemn form and duly registered in Rome, on September 10th, 1925, under No. 4386 of Volume 442 of the Public Acts. The meeting approved the Statute of the Bank, which was homologated by the Finance Minister and filed in the Ministry of Finance of Albania; the Statute almost wholly reproduces the provisions of the Albanian Organic Law, with a few inevitable changes of form and adaptation.

" The legal position created by the Statute is not quite accurately described in the first Italian Memorial which, failing to take all relevant texts into account, seems to place in Rome the centre of the new Bank, whereas this centre was in Tirana, as provided by the fundamental acts on which the Statute is based, namely the Banking Convention and the Organic Law. Under clause 3 of the Banking Convention, ' The central direction of the Bank shall have its head-

quarters in the capital of Albania', a provision confirmed by Article 2 of the Organic Law: 'The central direction of the Bank is in the capital of Albania.' However, the same Article goes on to say: 'the seat of the Council and of the Board of Management may be abroad'. Pursuant to this provision, the seat of the Council and of the Board of Management was fixed in Rome by the Statute; hence the necessity to hold in this city the ordinary and special assemblies of shareholders, in accordance with Article 28 of the Organic Law and Article 28 of the Statute.

"It cannot be doubted that the legal status of the Bank is determined by Albanian law as a general principle, a fact which is clearly established by the texts, namely: in the Banking Convention, clause 5: 'the Bank will be established in accordance with the law of the State'; clause 8 *in fine*: 'the Bank places itself unreservedly under the laws of the country'; clause 12: 'the Government will provide for the enactment of all requisite laws to ensure the regular working of the Bank and to provide a scientific monetary system, as also laws for regulating bills of exchange, bonds, debentures, mortgages, etc.'. Lastly, Article 1, paragraph 2, of the Organic Law, provides that 'its activities are regulated by the present law and by the Statute of the Bank drafted in accordance with the said law'.

"It is true that clause 15 of the Banking Convention provides that 'as far as possible the Bank will be administered in conformity with the practice and habits of Italian banks' and that 'the annual assemblies . . . will be held in accordance with the provisions of Italian law regulating joint stock companies'.

"This application of Italian law, however, was only subsidiary and complementary when, owing to the somewhat rudimentary nature of Albanian legislation, it became necessary to resort to a more developed legal system. This is clearly established by Article 1, paragraph 3, of the Organic Law and by Article 1, paragraph 3, of the Statute, according to which the principles of Italian legislation applicable to commercial companies will hold good by analogy in cases for which the law and the Statute make no provision.

"Another important exception to Albanian sovereignty results from the position attributed to the Bank of Issue. Under clause 6, litt. *b*, *c*, and *d* of the Banking Convention, the new Bank was to have the exclusive privilege of issuing paper money which would be sole legal tender for payments in Albania, of minting and issuing all metallic currency, the profits thereon being divided in equal parts between the Bank and the Albanian State, and finally of receiving Government funds on deposit and discharging the service of the Treasury. All these provisions were put into effect by Articles 21, 15, paragraphs 1 and 2, sections (4), (7) and (12) of the Organic Law and of the Statute. Notwithstanding the fundamental rôle assigned to the Bank in the consolidation of the finances of the Albanian State,

the metallic reserve which it had to form under clause 11 of the Banking Convention was not deposited in Albania.

"Having regard to the insecurity still prevailing in Albania, where disturbances were taking place at the time of the creation of the Bank, the Board of Management decided that the metallic reserve of the Bank would be deposited in Rome with the Royal Mint (in point of fact, a small part of this reserve was held on deposit with the Bank of Italy in Rome). It remained there and was never transferred, even temporarily, to Albania, except for a small quantity of gold which was held at the Tirana and Durazzo branches of the Bank and falls outside the scope of the present arbitration.

"It is undisputed that this metallic reserve was carried at all material times on the books of the National Bank of Albania; this is expressly admitted by the Italian Memorandum on the subject of the Bank's gold, dated December 11th, 1948, and by the First Italian Memorial; the fact is also proved by the balance sheets of the Bank compiled on December 31st, 1933 and on December 31st, 1942, the only sheets reproduced in the pleadings.

"The present Arbitrator finds that it is established beyond doubt, by the copy of original documents relating to gold purchases made by the Rome office of the National Bank of Albania (First Italian Memorial, Annexes No. 9) that the gold reserve which was, under clause 11 of the Banking Convention and Article 22, paragraph 2, of the Organic Law and of the Statute, to cover the Albanian note issue, was in fact acquired in the manner described in the First Italian Memorial (pages 11 and 12); this fact is undisputed by the Governments concerned. Suffice it then to recall that this metallic reserve was not made of gold exported from Albania, nor was it purchased with currencies drained from Albania and transferred abroad; this would be most improbable moreover, as is shown by the constant deficit in the Albanian balance of trade from 1922 to 1938. The gold necessary for the issues of the Bank was purchased on the international free market (London, Paris, New York) through firms specialised in such trade and with currencies supplied by Italy.

"The Bank's metallic reserve, made of gold for the most part, with occasionally small holdings of silver, was gradually increased so that on December 31st, 1942 (last balance sheet compiled before the events of September 1943) it amounted to 7,567,177.46 gold francs. When the gold held in Albania is deducted from this figure, the gold held on deposit in Rome represented, according to the information given in the First Italian Memorial, 7,345,349.46 gold francs. Further, the Bank had another deposit also with the Royal Italian Mint in Rome. The final amount agreed upon by the Tripartite Commission, in its letter of January 23rd, 1948 to the Delegate of Albania, correcting some of the indications given by the latter in his Reply to the Questionnaire on gold, is 2,338.7565 kilograms of gold; the three Governments parties to the Washington Agreement

have likewise agreed that this figure represents the quantity of monetary gold deposited in Rome in September 1943; this figure is the same, but for an inconsiderable difference of 0.5 milligrams of gold, as that mentioned in the Protocol established in Berlin on April 6th, 1944, and signed by Mrs. Lorenzo Musani and Sandro Bressan, both directors of the Albanian National Bank, and others, at the time of the verification of the cases containing the looted gold.

" In the constitution of the capital of the company, the Italian Group secured a privileged position. Under the provisions of the Banking Convention (clauses 1 and 3), of the Organic Law and of the Statute (Article 4), the nominal capital was fixed at 12,500,000 gold francs divided into 495,000 ordinary shares each, of the value of 25 gold francs and in 100,000 founders' shares, each of the value of 1.25 gold francs. Albanian nationals could not obtain the majority, and had the right to participate in the subscription of the capital up to the limit of 49 per cent. only of the share capital. 45 per cent. of the shares (as well as the 100,000 founders' shares) were subscribed by the Italian Group; 30 per cent. by Albanian nationals and the remaining 25 per cent. by foreign banks (Swiss, Belgian and Yugoslav); further, all the founders' shares (100,000) were reserved to the Credito Italiano, whose seat was in Genoa.

" From 1925 to 1935, the Italian Group bought almost all the shares owned by Albanian citizens, so that the latter's participation was reduced to 2 per cent. only at the end of 1935, according to information supplied in the First Italian Memorial and undisputed in the present proceedings.

" Subsequently, the shares owned by private shareholders or by companies which were members of the Italian Group changed hands as a result of the Italian Royal Decree No. 1614, dated August 28th, 1935, providing for the ' compulsory transfer of foreign credits and conversion into 5 per cent. Treasury Bonds of all foreign stocks, or Italian stocks issued abroad, owned by Italian citizens and corporations '. In pursuance of Articles 1 and 2 of the said Royal Decree, the shares of the National Bank of Albania, owned by Italian citizens residing in Italy or by firms, partnerships or corporations of every kind, of Italian nationality and residing in Italy, were surrendered and transferred to the National Institute for Foreign Exchanges, on behalf of the Italian State Treasury. Finally, from 1935 to 1941, the Italian State bought from foreign banks a further number of shares of the National Bank of Albania representing 15 per cent. of the capital.

" By these transactions, the Italian State acquired the majority of the shares; its participation represented on September 16th, 1943, 88.5 per cent. of the total of ordinary and founders' shares, the remaining being owned by a Yugoslav bank (10 per cent.) and by Albanian private subscribers (1.5 per cent.). Since then, there has been no change in this distribution of the shares (Affidavit of

Notary Giovanni Grassi, dated January 9th, 1952, First Italian Memorial, Annex No. 8).

" *B.*—On April 7th, 1939, Albania was occupied by the Italian armed forces. This did not lead to the annexation of Albania by Italy, but to the substitution of the old Government by a new one under the control of Italy.

" The two States remained separate and concluded in Tirana, on April 20th, 1939, an Economic, Monetary and Customs Convention which provides, in its article 15, that ' the monetary provisions of the Albanian Law of July 12th, 1925, and those of the law of the same date on the National Bank of Albania shall be and are abrogated and modified insofar as they conflict with or are different from the provisions of this Convention '. The provisions of the Convention which had such repealing effect are set out in Articles 10–13, reproduced in the Statute of the Bank as amended by the Assembly of shareholders held on June 10th, 1939.

" The most important of these provisions is Article 11, which modified the cover for the Albanian note issue; it reads:

' The cover of the circulation of the National Bank of Albania shall be composed of Italian lire and banknotes, or other credits on the Bank of Italy. Therefore the Albanian franc shall have the same gold cover as the Italian lira.'

" Moreover, under Article 10, the Albanian franc became a currency tied to the Italian lira, at a fixed parity of 6.25 Italian lire to one Albanian franc; Article 13 provides for convertibility at sight into Italian lire at the rate prescribed.

" No reference is made in the Convention to the Bank's metallic reserve; it is only provided that the Albanian franc shall have the same gold cover as the Italian lira. The Italian Government intended the gold reserve of the National Bank of Albania to be carried on the books of the Bank of Italy; but this attempt failed, as it was not possible to reach an agreement with the Bank's directors on the rate of exchange gold-lira. Consequently, although the Bank's gold reserve remained for the most part deposited with the Royal Mint in Rome, it never ceased to appear in the books among the assets of the Bank, and it never was part of the cover for the Italian note issue.

" Further, under Article 31 of the Peace Treaty of February 10th, 1947, between the Allied and Associated Powers on the one hand, and Italy on the other, all agreements and arrangements made between Italy and the authorities installed in Albania by Italy from April 7th, 1939, to September 3rd, 1943, are null and void.

" *C.*—The facts relating to the removal of the gold reserves of the National Bank of Albania by the German forces are not contested by the Parties concerned.

" It has been proved that, on September 16th, 1943, after the signature of the Armistice between Italy and the Allied and Asso-

ciated Powers, the Germans seized 2,338.7565 kilograms of gold, which had been for the most part deposited in the form of ingots with the Italian Mint and at the offices of the Bank of Italy in Rome; gold coins which had been deposited in part at the offices of that Bank and in part at the Rome office of the National Bank of Albania, were also seized. The seizure was made, upon instructions of the German Embassy in Rome, by a patrol of German 'S.S.' led by Major Herbert Kappler, who was assisted by Mr. Joseph Örtmann, Chancellor at the German Embassy. They gave receipt, in due form, for the gold thus wrongfully removed.

"The gold was carried away on a motor-truck, conveyed to Germany and deposited at the Reichsbank in the name of the German Ministry of Foreign Affairs; it was eventually recovered by the Allied forces after the capitulation of Germany.

"On April 6th, 1944, a 'Confidential Protocol' was concluded between the German Government and the Albanian Government in respect of the gold looted from Rome and deposited at the Reichsbank. It was agreed that the gold should remain deposited at the said Bank, in a closed depot, but in the name of the Central Direction of the National Bank of Albania, and that the right of disposing of this gold should henceforth belong solely to the Central Direction of Tirana, upon written authorization of the Albanian Government. This Confidential Protocol refers in express terms to a Protocol of the same day, April 6th, 1944, established by representatives of the National Bank of Albania, of the Reichsbank and of the German Ministry of Foreign Affairs, in which a list of the looted gold is elaborated and in which it is stated that this gold has been identified, put into numbered cases which were closed, encircled with a band of steel and finally sealed with the leaden seal of the National Bank of Albania.

"On January 13, 1945, the Albanian anti-fascist National Council of Liberation, constituted after the country had been evacuated by the German forces, promulgated a law cancelling the Convention of March 15th, 1925, between the Albanian Government and the Italian Financial Group, as well as all the shares of the National Bank of Albania, whose assets and liabilities were transferred to the Albanian State. On the same date, Albania adopted the Organic Law on the State Bank of Albania and assigned to it all the assets and liabilities of the so-called 'ex-National Bank of Albania' (Article 3).

"These measures did not conduce to the liquidation of the Rome office of the latter Bank.

"D.—After the end of the hostilities, the Governments of eighteen States, including the United States, France, the United Kingdom and Albania, signed, on January 14th, 1946, an Agreement on Reparations from Germany, on the Establishment of an Inter-Allied Reparation Agency and on the Restitution of Monetary Gold.

which is here called the *Act of Paris*. It is provided in this Agreement that all the monetary gold found in Germany by the Allied Forces and that which may be recovered from a third country to which it was transferred from Germany, shall be pooled for distribution as restitution among the countries participating in the pool, in proportion to their respective losses of gold through looting by or by wrongful removal to Germany.

"On December 16th, 1947, the Governments of the United States, France, the United Kingdom and Italy signed a Protocol, hereinafter called the *Italian Protocol*, which was deemed to have entered into force on the same day as the Treaty of Peace, that is to say on September 15th, 1947. By this Protocol, it was agreed that Italy should receive a proportional share of the gold to be distributed in pursuance of Part III of the Act of Paris, on the same basis as the other signatories.

"By Part III of the Act of Paris, the Governments of the United States, France and the United Kingdom were required to take appropriate steps to implement the distribution of monetary gold in accordance with the provisions of the said Act. To this end, they established the Tripartite Commission for the Restitution of Monetary Gold on September 27th, 1946; its decisions were required to be unanimous.

"On March 13th, 1947, the said Tripartite Commission circulated to the eighteen signatories of the Act of Paris and to three countries not represented in the Paris Conference, including Italy, its terms of reference and a 'Questionnaire on gold' containing several forms to be filled in by the claimant Governments in order to furnish the Commission with complete and circumstantial information on each individual loss of monetary gold suffered through looting by or wrongful removal to Germany.

"On September 15th, 1947, the Government of the People's Republic of Albania presented, together with its reply to the Questionnaire on gold, a claim for the restitution of the monetary gold which, in its opinion, it had been deprived of by the removal of the Bank's gold reserve.

"The Tripartite Commission was somewhat reluctant to comply with this request, as is shown by the written and oral proceedings in the present arbitration. Taking into account however the only data then in its possession, which were contained in the Albanian request, it decided twice to make a preliminary distribution of gold to Albania up to an amount of 1,121.4517 kilograms of gold, according to its letters of February 16th and June 30th, 1948. However, the gold was in fact never delivered to the Albanian Government, for the following reasons: 1° the Albanian Government expressed its intention to add a reserve based upon article 75, paragraph 8, of the Italian Peace Treaty, to the text of the receipts and waiver relating to the looted gold it had been asked to sign by the Tripartite

Commission upon delivery; the Commission was unable to accept such reserve; 2° communications with his Government being slow, the Albanian Delegate was unable, before June 16th, 1949, to indicate where the gold should be delivered to his Government; lastly, 3° during the delay, the Italian Government objected to the delivery to Albania of the Bank's gold reserve.

"Italian objections were first expressed in a rather moderate form, by letter dated May 21st, 1947, for the obvious reason that the Peace Treaty of February 10th, 1947 had not entered yet into force and that the Italian participation in the pool of monetary gold to be distributed under Part III of the Act of Paris was still uncertain. The Italian Government 'mindful of present day political realities, while prepared in this instance not to insist on Italy's right of property in the gold in question', nevertheless expressed the hope that the Tripartite Commission would carry out new investigations regarding the origin of the Bank's gold reserve and would decide that this gold be blocked pending an agreement in the matter between the Governments concerned. As the Albanian claim for restitution of the Bank's gold reserve had not been submitted then (it was submitted later, on September 15th, 1947), the Tripartite Commission did not inform forthwith the Albanian Government of this first Italian intervention.

"Two notes had previously been sent by Italy, on November 14th, 1946 and on April 30th, 1947; they were not included in the documents submitted in the present arbitration and were not found in the archives of the Tripartite Commission. After the abovementioned note of May 21st, 1947, a Memorandum of December 11th, 1948, was delivered by the diplomatic envoys of Italy to the Governments of Washington, Paris and London, Italy having meanwhile been admitted, under the Italian Protocol of December 16th, 1947, to the pool established by the Act of Paris, Part III. Brought to the knowledge of the Tripartite Commission by letter of March 18th, 1949, this document was not found to contain sufficient reasons to warrant a revision of its previous decisions; the Italian Government was informed by letter of the said Commission dated May 20th, 1949.

"In reply to this letter, the Italian Government notified the Tripartite Commission of its formal opposition to the allocation to Albania of the Bank's gold seized in 1943 and requested the said Commission, in a letter of June 22nd, 1949, accompanied with a lengthy note, to reconsider its decisions made on February 16th and June 30th, 1948, in favour of Albania.

"In view of this request, which explained in a much more explicit manner than earlier notes the reasons relied upon by the Italian Government, the Tripartite Commission decided to suspend the delivery of the gold in question until a detailed and thorough examination of the problems raised by the Italian claim could be

made. Informed of this decision, by letter of July 11th, 1949, Albania protested several times, by letters dated July 26th, October 21st, and December 1st, 1949, and urged the Commission to deliver the gold.

" Having requested, by letter of July 22nd, 1949, and obtained from Italy, on January 15th, 1950, detailed information—to which was added supplementary information contained in a letter of July 25th, 1950, from H.E. the Ambassador Sola, Special Envoy of the Italian Government to the Tripartite Commission—the Commission took, on November 17th, 1950, the following fundamental decision, which led to the present arbitration proceedings:

' The Commission finds itself seized of a case where the Albanian Government has claimed restitution of gold of the National Bank of Albania directly from Italy under the provisions of the Italian Peace Treaty on the grounds that it was wrongfully removed by Italy from Albanian possession, while both Albania and Italy have claimed restitution of this same gold from the Commission on the grounds that it was wrongfully removed by the Germans from Rome. The Commission is satisfied that 2,338.7565 kgs. of gold were looted by Germany from Rome, but the claim by Albania against Italy is beyond the competence of the Commission and it is the view of the Commission that a decision on this point is an essential preliminary to their consideration of the two claims which are before them, one by Italy and one by Albania, of wrongful removal by Germany from Rome.

' For these reasons, the Commission is unanimously agreed to cancel its previous awards and to refer that part of the claim which concerns the 2,338.7565 kgs. taken from Rome to its three Governments. If the three Governments constituting the Commission should so approve, and should no decision be reached by the three Governments which would enable the Commission to make any specific award before the Commission announces its final awards on all the claims submitted to it, the Commission would propose to place in reserve those proportions of the gold pool corresponding to the gold reserves of the National Bank of Albania, both at Rome and at Tirana, for ultimate disposal in the light of developments.'

" This decision was communicated to the Albanian Government and to the Italian Government by two letters of the same day, December 5th, 1950, of the Tripartite Commission; in its Memorials, the latter Government describes it as a decision taken on December 5th, 1950; in fact, it was taken on November 17th, 1950, and will be quoted as such in the present arbitral advice. In its correspondence with these two Governments, the said Commission emphasized on the one hand, that the revocation of its previous allocations of gold to Albania according to its letters of February 16th and June 30th, 1948, did not imply a rejection of the claim submitted by the Albanian Government in respect of the Bank's gold, and, on the other hand, that its decision to refer this claim to the three Governments, for the sole purpose of determining which claim for restitution of the gold lost by the Bank should be recognized, did

not imply a rejection of the Italian intervention; both claims remain, and all the data relating to them will be, as they indeed were, communicated to the three Governments constituting the Commission.

"After the reception of this letter, the Albanian Government renewed its earlier protests and explained its position in three letters dated February 26th, May 3rd and July 21st, 1951. It contended that the Tripartite Commission, having previously recognized its claims to the gold of the National Bank of Albania looted from Rome, could not reconsider its decisions, nor refer the mission entrusted to it to the three Governments constituting the said Commission; the same Government signified to the Commission a defence to deliver to any third party the amounts of fine gold previously allocated to Albania.

"In a reply of June 27th, 1951, the Tripartite Commission, while questioning the validity of these contentions but without entering into a discussion of them, informed the Albanian Government of the conclusion of the Washington Agreement of April 25th, 1951, and pointed out that Albania had an opportunity to submit all its arguments to the arbitrator who was to be designated pursuant to this Agreement.

"As is stated above in the part of the present advice concerning procedure, the People's Republic of Albania, although invited by the undersigned arbitrator, by registered letter of November 10th, 1951, to participate in the arbitration proceedings, under article 4 of the Washington Agreement, failed to do so and was consequently deemed to have renounced its right to submit evidence or observations to the Arbitrator."

Held: that it was established that 2,338.7565 kilograms of monetary gold, looted by Germany from Rome in 1943, belonged to Albania, within the meaning of Part III of the Act of Paris of January 14, 1946.

The Arbitrator said:

"[*The Arbitrator's Terms of Reference*]

"[(i) *Competence as determined by the Arbitration Agreement.*] It is essential to determine with precision the nature and the extent of the task with which the Governments signatory to the Washington Agreement have agreed to entrust the undersigned arbitrator. The Parties concerned are in disagreement on this subject.

"In the course of the proceedings and particularly in the oral part of the proceedings, the Agents of the Italian Government insisted on the fact that the arbitrator's powers are unlimited, inasmuch as the Governments signatory to the said Agreement had, in their opinion, given him all the authority they themselves possessed, under the Act of Paris, to implement, in the words of the Preamble to this Act, the equitable restitution of monetary gold, including

that gold wrongfully removed from the Bank by the German forces, in Rome in 1943. They took the view that the arbitrator was competent to deal with all questions which the Tripartite Commission itself regarded as preliminary, when acting in pursuance of Part III of the Act of Paris, in the terms used in its decision of November 17th, 1950, and in its two letters of December 5th, 1950, sent the one to Albania and the other to Italy, namely: *a*) questions relating to the carrying out of Article 75, paragraph 8, of the Italian Peace Treaty of February 10th, 1947, and *b*) questions relating to the problem of the ownership of the Bank's gold.

"The Agent of the United Kingdom criticized this argumentation, which would result in the questions actually put to the Arbitrator in the Washington Agreement being [replaced by] the questions formulated by the Tripartite Commission. He pointed out that the two letters written by the Commission on December 5th, 1950, merely communicate to Albania and Italy the text of an earlier decision of the said Commission, taken on November 17th, 1950, in which mention is made of Article 75, paragraph 8, of the Peace Treaty, but not of the question of ownership, in order to explain why the Tripartite Commission was referring the Albanian and the Italian claims to the three Governments establishing the Commission. He explained further that the said Governments never intended to restrict themselves to the issues the said Commission regarded as doubtful and that they never admitted these questions to be preliminary to a decision upon the allocation of looted gold to one or the other of the claimants; on the contrary, they considered these questions as subsequent, to be settled if necessary by a separate process, by the International Court of Justice, under a Statement agreed upon on the same date as the Washington Agreement and which is to be examined below.

"There can be no doubt, in the Arbitrator's opinion, that he derives all his powers from the Washington Agreement and is only competent to examine the three questions put to him in Article 2, paragraphs (i), (ii) and (iii) of this Agreement.

"However, before defining the exact scope of the Arbitrator's competence, it must be remembered that the three Governments, under the penultimate paragraph of the Preamble to the Washington Agreement, intended to seek the assistance of a qualified jurist to determine disputed questions of law and of fact involved by the competitive claims of Albania and of Italy with respect to the gold wrongfully removed in 1943 from Rome to Germany, in order that they may, in the exercise of their duty under Part III of the Paris Act, carry out the distribution provided for in that Part correctly.

"It follows that the arbitrator is substituted for the three Governments to examine whether it has been established that the looted gold belonged (i) to Albania, or (ii) to Italy, or (iii) that neither Albania nor Italy has established that it belonged to either

of them; in so doing, the arbitrator is bound to take into account all the facts and all the legal considerations ' which it is proper for the three Governments to take into account under Part III of the Act of Paris '. The Washington Agreement (paragraph 1) prescribes in express terms to the arbitrator to advise the three Governments ' as to the decision which they should adopt with regard to the claims ... of Albania and of Italy'; under paragraph 5 of the aforesaid Agreement, the three Governments ' in exercising their duty under Part III of the Final Act of the Paris Conference on Reparation, will accept the advice given by the arbitrator ' on the questions put to him.

" The dispute submitted to the Arbitrator has the following distinctive feature: it arose from a conflict of interests between Albania and Italy as regards the distribution of the Bank's gold looted from Rome by the Germans in 1943. Feeling itself incompetent to adjudicate upon the competitive claims of the two States, the Tripartite Commission referred them for decision to the three Governments, empowered under Part III of the Act of Paris, to take all necessary steps to implement the distribution of monetary gold by way of restitution in accordance with the provisions of the said Act. The three Governments are unable to agree on a point of law and interpret differently paragraph C of Part III of the Act of Paris. The conflict between the legal views of the three mandatory Governments is now submitted to the Arbitrator; his advice will be final; the three Governments will have to accept it when taking their decision, which will have legal force, as between the States concerned, as intended in the Act of Paris.

" The People's Republic of Albania, in signing the Act of Paris, accepted the powers thus given to the three Governments, with all the consequences thereof. The Italian Republic, not signatory to the Act of Paris, adhered to it and accepted in the Italian Protocol of December 16th, 1947, all the arrangements which have been or will be made upon that basis. Paragraphs 2 (*in initio*) and 3 of the said Protocol provide that:

' 2. Italy adheres to the arrangement for the restitution of monetary gold set forth in Part III of the abovementioned Agreement (Act of Paris of January 14th, 1946) ...

' 3. Italy accepts the arrangements which have been or will be made by the Allied Governments concerned for the implementation of the aforesaid arrangement.'

" The Washington Agreement is, therefore, one of the arrangements for the implementation of the Act of Paris which the three signatory Governments are empowered to make in pursuance of the said Act. As the latter was a multilateral treaty, the three Governments, in accordance with one of the most established principles in the Law of Nations, reserved in paragraph 3 of the Washington Agreement to the Governments of Albania and Italy, whose interests

are more directly concerned, the right to intervene in the present arbitral proceedings and the opportunity of submitting to the arbitrator any material, evidence and arguments relating to the questions submitted to the Arbitrator which they may respectively desire to submit.

"The Italian Government took part, without any reservation, in the present arbitral proceedings, thus recognizing that they remain within the limits fixed in the Act of Paris. The Albanian Government, although regularly invited by the Arbitrator to inform him of its intention to appoint an Agent and to submit evidence or observations, failed to do so; this voluntary abstention, however, has no other consequences than those mentioned in paragraph 4 of the Washington Agreement, namely, that Albania is deemed to have renounced her right to participate in the present procedure. By her abstention, Albania can neither affect nor limit the duty of the three Governments to distribute the stock of monetary gold found in Germany by the Allied forces, in accordance with the provisions of the Act of Paris.

"[(ii) *Interpretation of Agreements Incidental to Those Directly Submitted to the Arbitrator. Contemporaneous Interpretation.*].—In its correspondence with the Tripartite Commission, the Albanian Government contested at some length the validity of the revocation, decided on November 17th, 1950, by the Commission, of its earlier decisions of February 16th and June 30th, 1948, making a preliminary allocation of 1,121.4517 kilograms of gold. This question is not put to the arbitrator. The Washington Agreement provides in its Preamble that these latter decisions shall be regarded as a nullity; the three Governments have therefore covered with their authority the procedure followed by the Tripartite Commission pursuant to article 5, paragraph e) of its Terms of Reference of September 27th, 1946, which obliged the Commission to assist 'in such other ways as shall be decided by the three Governments establishing the Commission, in the distribution of the pool of monetary gold available for restitution.'

"As the arbitrator's competence has been substituted for that of the three signatory Governments, for the questions mentioned in the Washington Agreement, it may conveniently be defined with more precision by reference to the 'Statement to accompany publication of the Agreement between the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America for the submission to an arbitrator of certain claims with respect to gold looted by the Germans from Rome in 1943.'

"It is clearly established by the judicial practice which has developed in International Law that an international judge or arbitrator is competent, not only to interpret the treaty which sets out his terms of reference, but also any other international agreement,

if its interpretation must be regarded as incident to the decision of an issue he is competent to deal with.

"The aforesaid Statement, made on the same date as the Washington Agreement by the same three Governments which signed the latter, relates to the same question and to its possible developments; it was communicated to the arbitrator with the Agreement. The Italian Government, because it took no part in its elaboration, questions its relevance in the present proceedings. In the arbitrator's opinion, however, it should be taken into account insofar as it may help to throw some light upon his duties, in accordance with the principle of contemporaneous and practical interpretation of international acts, applied by the Permanent Court of International Justice in its Advisory Opinion of July 23rd, 1926 (*Competence of the International Labour Organization to regulate, incidentally, the Personal Work of the Employer*. Publications of the P.C.I.J., Series B, No. 13, page 19).

"It is provided in the abovementioned Statement that, should the Arbitrator's opinion state that Albania has established a claim, under Part III of the Act of Paris, to the gold looted from Rome, the three Powers would be confronted by another question because both the United Kingdom on the one hand and Italy on the other hand, maintain that the gold in question should be delivered to them.

"The United Kingdom contends that the gold should be delivered to it in payment of a sum of £843,947 that Albania has been condemned to pay, by Judgment of the International Court of Justice of April 9th, 1949, in respect of the deaths of and injuries to members of the British Navy and the loss of and damage to British Warships in the Corfu Channel, as a result of an undisclosed mine field, for which Albania was held to have a responsibility.

"Italy has asserted a claim to the gold in question and relied upon the Albanian Decree of January 13th, 1945, whereby Albania confiscated, without any compensation, the assets of the Bank, the shares of which were for the most part held by the Italian Government; the monetary gold held outside Albania was also comprised in the confiscation which, it was contended, could not have any extraterritorial effect under International Law. Italy also bases her claims upon the provisions of the Peace Treaty of February 10th, 1947; finally the effect of the said Italian Peace Treaty as regards the respective rights of the interested Parties would have to be considered.

"For these various reasons, the three Governments have agreed that:

'If the opinion of the arbitrator is that Albania has established a claim under Part III of the Paris Act to 2,338,756½ kilograms of monetary gold looted by Germany, they will deliver the gold to the United Kingdom in partial satisfaction of the judgment in the Corfu Channel case unless

within 90 days from the date of the communication of the arbitrator's opinion to Italy and Albania either

'a) Albania makes an application to the International Court of Justice for the determination of the question whether it is proper that the gold, to which Albania has established a claim under Part III, should be delivered to the United Kingdom in partial satisfaction of the Corfu Channel judgment; or

'b) Italy makes an application to the International Court of Justice for the determination of the question, whether by reason of any right which she claims to possess as a result of the Albanian law of January 13, 1945, or under the provisions of the Italian Peace Treaty, the gold should be delivered to Italy rather than to Albania and agrees to accept the jurisdiction of the Court to determine the question whether the claim of the United Kingdom or of Italy to receive the gold should have priority, if this issue should arise.

'The Governments of the French Republic, the United Kingdom and the United States declare that they will accept as defendants the jurisdiction of the Court for the purpose of the determination of such applications by Italy or by Albania or by both.

'The three Governments agree to conform in the matter of the delivery of gold with any decisions of the International Court of Justice given as the result of such applications by Italy or by Albania.'

"The aforesaid Statement contemplates one hypothesis only: if the opinion of the Arbitrator is that Albania has established a claim for restitution of the monetary gold in question, under Part III of the Act of Paris, another problem arises, namely, whether this gold should be delivered to the United Kingdom or to Italy which both have asserted a claim to it.

"There can therefore be no doubt that the three Governments signatory to the Washington Agreement did not intend the Arbitrator's powers to comprise the determination of any problem related to such claims, and that the following questions and claims are outside his competence: the question of the eventual delivery of the gold to the United Kingdom in partial satisfaction of the judgement of the International Court of Justice of April 9th, 1949, in the Corfu Channel case, the question of the effect of the Albanian decree of January 13th, 1945, upon the rights claimed by Italy in respect of the Bank's gold, the Italian claim founded on the clauses of the Peace Treaty of February 10th, 1947. Besides, it would have been impossible for the three Governments to refer these questions and claims to the arbitrator for decision without going beyond the limits of their duty as fixed in the Act of Paris, for these claims for restitution of gold were not founded on the basis of Part III of the said Act of Paris. As possible disputes on this subject can only be settled by international—arbitral or judicial—proceedings with the consent of the States concerned, the Statement to accompany publication of the Washington Agreement provides that they may give rise to special proceedings, instituted in the International Court of Justice by Albania or by Italy, or by both, and that the aforesaid Statement

shall be deemed to be, for these proceedings and for the time determined in the Statement, an acceptance of the jurisdiction of the Court by the three Governments which made the Statement.

"On the contrary, the determination of the question of the ownership of the gold wrongfully removed by Germany in 1943 from Rome to German territory, falls undoubtedly within the Arbitrator's competence, either, as a preliminary question, to ascertain if a right of ownership should determine or not whether the gold belongs to Albania or to Italy, or to neither of them, or, should the answer to this question be affirmative, to decide who is the legal owner; the solution of this problem depends on the interpretation of the terms used in the Washington Agreement (paragraph 2 (i), (ii) and (iii)), which is the foundation of the Arbitrator's competence. The Statement does not mention the determination of the question of ownership of the monetary gold looted and only precludes the arbitrator, should he hold that the gold belongs to Albania, from examining a possible opposition by the Albanian Government to the delivery of the gold to the United Kingdom in partial satisfaction of the debt established by the Judgment of the International Court of Justice of April 9, 1949, as well as certain Italian claims for delivery of that gold.

"Although he should not take into account considerations not adequately connected with the disputed points of law and of fact which he is requested to examine, the undersigned Arbitrator cannot fail to consider the reasons adduced by the Tripartite Commission in its decision of November 17th, 1950, and in the communication it made of this decision to Albania and to Italy in two letters dated December 5th, 1950, insofar as these reasons are related to Part III of the Act of Paris, signed by the three Governments parties to the Washington Agreement as well as by Albania, and subsequently adhered to by Italy in the Italian Protocol of December 16th, 1947. In the exercise of his duty, the arbitrator is therefore competent not only to interpret Part III of the Act of Paris, but also to appreciate questions of fact and of law implied by the carrying out of the said Act, as is provided in express terms by the Washington Agreement.

"In order to determine what questions of law and of fact are within his competence, the Arbitrator must consider the date of September 16th, 1943, which is the date of the looting from Rome of the Bank's gold and of its wrongful removal to Germany. He is bound to do so by the very wording of the questions put to him in the Washington Agreement; the use of the past tense, indicative mood, of the verb 'to belong' refers, not to a present, but to a past situation, which can only be that existing on September 16th, 1943. It follows that the arbitrator is not competent to deal with claims for restitution of looted gold motivated by events which took place after that date. In particular, the claim based on article 75, paragraph 8, of the Italian Peace Treaty, does not fall for determination

by the Arbitrator, for two reasons: first, the aforesaid Peace Treaty, concluded on February 10th, 1947, did only enter into force on September 15th, 1947; second, it is established that the 2,338.7565 kilograms of gold which are here the subject of competitive claims, were looted from Rome by the Germans, and not from Albania by the Italians, so that they do not fall under that provision.

"The Arbitrator feels bound by paragraph 2 of the Washington Agreement, insofar as it limits his freedom of interpretation and requires him to 'bear in mind that his advice should be consistent with decisions already made in other cases by the Tripartite Gold Commission'. It must be pointed out in this connection that the decisions he should bear in mind are only those which have been made in other cases, that is to say final decisions of the Tripartite Commission allocating monetary gold to one of the Signatories of the Act of Paris or to a State entitled to participate in the pool, which may be communicated to all the Governments interested in the present arbitral proceedings. In the Arbitrator's opinion, provisional or preliminary decisions, or decisions which, by reason of their confidential nature or because they were arrived at after a confidential discussion in the Tripartite Commission, could not be circulated to all the Parties concerned, are not 'decisions' within the meaning of paragraph 2 of the Washington Agreement. The arbitrator does not consider either as decisions with which his advice should be consistent, the decisions which gave rise to a disagreement between the Governments concerned and are the direct source of the dispute now submitted to him for settlement. In the course of the proceedings the Tripartite Commission informed the Arbitrator that no final decisions have been taken by them and, consequently, none of their drafts could be communicated either to the Parties or to the Arbitrator.

" III. THE LAW

" [(i) *Appropriation of Enemy Property by Belligerent Occupant. Booty. Postliminium.*]

" A.—The following submissions were presented by the Governments concerned:

" 1° The Government of the United Kingdom of Great Britain and Northern Ireland asks the Arbitrator to declare:

- a) that the looted gold formed part of Albania's monetary reserve up to April 1939;
- b) that the Convention of 20th April, 1939, did not alter the status of the looted gold as part of Albania's monetary reserve and it remained part of Albania's monetary reserve up to 16th September, 1943, or that, in the alternative, the Convention of 20th April, 1939, is to be deemed void and of no effect; and therefore,
- c) that the looted gold was on 16th September, 1943, monetary gold belonging to Albania.

" 2° The Government of Italy concludes that it may please the Arbitrator to declare in his advice that Italy has established that 2,338.7565 kilograms of monetary gold, which were looted by Germany from Rome in 1943, belonged to Italy.

" 3° The Government of the French Republic presents the following conclusions:

a) that the gold looted by Germany from Rome in 1943 was not monetary gold as regards Italy and did not belong to her within the meaning of paragraph C of Part III of the Act of Paris on Reparation;

b) that although a part of Albania's monetary reserve, the gold did not belong to Albania within the meaning of paragraph C of Part III of the Final Act of Paris on Reparation;

and that, consequently, the gold in question belonged neither to Italy nor to Albania, within the meaning of Part III of the Act of Paris, and decisions of the Tripartite Commission for the Restitution of Monetary Gold in analogous cases being borne in mind.'

These three different submissions correspond to the three questions put to the Arbitrator by Article 2 of the Washington Agreement of April 25th, 1951; the First Memorial of the United Kingdom is therefore right in saying that the answer to one of them must be affirmative and the answer to the other two negative.

" The Government of the United States of America did not present any submissions during the present arbitral proceedings.

" The Government of the People's Republic of Albania, as was pointed out above, abstained from taking part in the proceedings, but the Government of the United Kingdom, because of the provisions agreed upon in the Statement to accompany publication of the Washington Agreement and under which it is entitled, provisionally at least, to the delivery of the monetary gold, should this gold be held to belong to Albania, assumed the position of a Party having an interest in supporting the claim of Albania.

" *B.*—Because of their different construction of several provisions of Part III of the Act of Paris of January 14th, 1946, on Reparation from Germany, on the Establishment of an inter-Allied Reparation Agency and on the Restitution of Monetary Gold the Governments concerned presented in the present proceedings mutually opposed submissions; it is therefore necessary to ascertain the origins of this Act, its effects and the result desired by the signatory Parties. This analysis will help to determine the objects and the purpose of this agreement.

" The arrangements for the restitution of monetary gold, as provided for in the Act of Paris, were made in pursuance of the principles evolved from earlier decisions of the Allied victorious Powers and indicated in the circular letter, dated March 13th, 1947, by which the Tripartite Commission informed the States concerned of its constitution and its composition; it is stated in this letter:

'In general, the concepts "of loss through looting by or wrongful removal to Germany", which will guide the Commission, are those described

in the United Nations Declaration against Axis Acts of Dispossession, dated 5th January, 1943;

in the United Nations Gold Declaration of 22nd February, 1944;

and in Resolution VI of the Final Act of the United Nations Monetary and Financial Conference, dated 22nd July, 1944.'

In the Declaration of January 5th, 1943, signed in London, eighteen Governments of the Allied Powers, including the Governments of the United States, the United Kingdom and France (which was represented at that time by the French National Committee), reserved

'all their rights to declare invalid any transfer of or dealing with, property, rights and interests of any description whatsoever which are, or have been situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war, or which belong, or have belonged to persons (including juridical persons) resident in such territories.

'This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form even when they purport to be voluntarily effected.'

"This document made no special mention of dealings with gold; they are nevertheless included in this declaration of invalidity, whose scope was meant to be as wide as possible.

"The Declaration of February 22nd, 1944, made by the United States, the United Kingdom and the Union of Soviet Socialist Republics, and subsequently adhered to by several other States, was based on the latter Declaration and chiefly aimed at transactions in respect of gold carried on by Neutrals with the Axis Powers during the Second World War. It stated that one of the particular methods of dispossession used by the Axis Powers was the illegal seizure of large amounts of gold belonging to the countries they occupied and looted; the Governments made then clear what steps they intended to take in order to promote the recovery of looted gold. One of these measures was the refusal to recognize any transfer in respect of looted gold, whatever the time of the disposal of this gold by the Axis on the world market.

"In the Final Act (Resolution VI) of the United Nations Monetary and Financial Conference of July 22nd, 1944 (Bretton Woods Final Act), the signatory Governments confirmed their determination to try to locate the looted gold and to take immediate measures in order to prevent any disposition or transfer, within territory subject to their jurisdiction, as well as to uncover, segregate and hold at the disposition of the post-liberation authorities any such gold found within territory subject to their jurisdiction.

"All this international action led to the conclusion of the Act of Paris of January 14th, 1946, whereby a fundamental distinction

is established between reparation on the one hand, and restitution of monetary gold on the other, the latter being the subject of particular arrangements set forth in Part III of the aforesaid Act.

"The Law of Nations has developed towards an increased limitation of the occupant's rights in time of war. In the 18th century, the right of booty was still recognized by International Law, and was protected by several municipal legislations, as the Codex Maximilianus Bavaricus and the Preussisches Allgemeines Landrecht of 1794 which regulated the right of booty with precision. This right was not mentioned in the French Civil Code, nor in the civil legislations promulgated during the 19th and 20th centuries. Modern International Law rejected it entirely and affirmed the opposite principle in the two Regulations annexed, one to the Second Hague Convention of 1899, and the other to the Fourth Hague Convention of 1907, concerning the laws and customs of war on land which, in article 47, stipulates: 'pillage is formally forbidden'.

"The violation of this rule induced the States to admit a kind of postliminium in favour of the robbed owner. At first this new principle was only partially applied, in particular in the Treaty of Versailles of 1919 and in the other Peace Treaties which put an end to the First World War.

"This slow evolution of the Law of Nations became more pronounced in modern legal science and in State practice, since the Second World War. It is founded on the Roman concept of *postliminium*, whose signification it widened so that this term now means an invalidation of all acts contrary to the Law of Nations, performed in time of war by the occupant, and a revival, when the occupation is ended, of all legal relations illegitimately modified by the occupant in war, in their former condition and without payment of compensation; this is stated by, among several writers, Rivier, *Principes du droit des gens*, vol. II, p. 315, and Oppenheim-Lauterpacht, *International Law* (7th edition, 1952), vol. II, § 283, p. 619.

"This idea, much insisted upon by the Allied Powers during the Second World War, underlies the Declaration of London of January 5th, 1943, the United Nations Declaration of February 22, 1944 and the Bretton Woods Final Act of July 22nd, 1944, signed by all the United Nations. It is a manifestation of the juridical conscience of the modern world, manifestation which confers to this new concept the character of a rule of law, the more so because it has already given rise to judicial precedents and because, even in States which remained neutral like Sweden and Switzerland, legal rules departing from the provisions of municipal law were promulgated in order to make possible, in accordance with International Law, the recovery of property looted in occupied territories during the war.

"As applied to monetary gold, postliminium was regulated separately in Part III of the Paris Act of 1946, owing to the special importance of the looting by or wrongful removals of gold to Ger-

many. In the single article of the abovementioned Part III (paragraph A), it was provided that the problem of monetary gold shall be treated as a whole and that claims for restitution should be submitted, quite different in character from actions to recover property, with the one following exception: gold coins of numismatic or historical value shall be restored directly if identifiable. In this case only, the legal owner may assert a property right and claim restitution of the same gold coins he was wrongfully deprived of. Monetary gold found in Germany, which does not offer these features, was pooled for proportional distribution among the countries admitted to participate under the Act of Paris, namely in proportion to their respective losses of gold through looting by or wrongful removal to Germany.

"None of the countries which suffered losses of monetary gold has a right to recover possession of the gold coins, bars or ingots of gold which were taken from it, even if it were possible to identify the gold it originally possessed. Each of these countries has only a claim for delivery of a certain quantity of gold in proportion to its losses of monetary gold. It follows that restitution does not necessarily depend on the proof of the ownership of gold looted or wrongfully removed to Germany, but on the proof of the losses each State suffered in its reserve of monetary gold.

"The Act of Paris of 1946 gives no definition of monetary gold and this concept is not defined either in the Declarations of the United Nations of January 5th, 1943, and February 22nd, 1944, and in the Bretton Woods Final Act of July 22nd, 1944. It may have two different meanings.

"According to the Dictionary of Littré, it may mean metal coins used for exchange, stricken in gold by a sovereign authority and which bear the official stamp of that authority; in this sense, only those gold coins which are legal tender in the States which minted them are monetary gold, this cannot be the acceptance adopted in the Act of Paris, which contrasts monetary gold, as understood in Part III, whose restitution may be claimed only by Governments which suffered losses through looting or wrongful removals for which Germany has a responsibility, and non-monetary gold, as mentioned in Part I, article 8, paragraphs A and F, which, found also in Germany by the Allied Armed Forces, shall be allocated to the 'rehabilitation' and 'resettlement' of non-repatriable victims of German action, and its restitution cannot be claimed by these Governments under Part III of the Act of Paris.

"The term 'monetary gold' may also signify in a more technical sense gold in the form of coins, bars or ingots, used as a cover for the note-issue which is the recognized legal tender in one of the States signatories of the Act of Paris. This is the proper meaning of the term, under Part III of the said Act: it explains the proportionate restitutions provided for therein in favour of States victims of

German action, so that each of them may equitably reconstruct or consolidate its monetary system. The undersigned arbitrator is much inclined to adopt the latter interpretation, the more so because all the Parties which took an active part in the present arbitration recognized that the gold looted from Rome in 1943 by the German Armed Forces was monetary gold, its function being to cover the Albanian note-issue.

"C. In order to carry out Part III of the Act of Paris, the Tripartite Commission adopted the following definition of monetary gold, which it communicated to all the Signatories of the Act of Paris, to Austria, Italy and Poland, by letter of March 13th, 1947:

'All gold which, at the time of its looting or wrongful removal, was carried as a part of the claimant country's monetary reserve, either in the accounts of the claimant Government itself or in the accounts of the claimant country's Central Bank or other monetary authority, at home or abroad.'

"The tests thus laid down by the Tripartite Commission for the determination of the monetary character of a particular stock of gold met with the opposition of the Italian Government, which, in a letter to the Commission dated January 15th, 1950, found them insufficient because, in its opinion, the Commission had not taken into account the case of the gold of the National Bank of Albania and its distinctive and probably unique features. In fact, all the difficulties created by the distribution of the monetary gold involved in the present arbitration result from the following characteristics: the Albanian monetary reserve was not the property of the Albanian State but was made [up] of a quantity of gold owned by a private bank which had purchased it out of its own funds, derived from foreign shareholders; this bank's juridical seat was in Tirana whereas its administrative seat was in Rome where, so as to protect it from possible interference by the Albanian Government, the metallic reserve which covered the Albanian bank-notes recognized as legal tender for payments in Albanian territory, under Article 15 of the Bank's Organic Law of June 23rd/July 5th, 1925, was also deposited.

"Italy maintains that the definition of monetary gold, technically set out by the Tripartite Commission, is not sufficient to set aside her claim preliminarily, for if it aims at indicating what elements are necessary to establish the monetary nature of the claimed gold, it does not aim at determining who is entitled to restitution.

"The definition of monetary gold adopted by the Tripartite Commission is not one of the 'decisions already made in other cases' which the Arbitrator must bear in mind under Article 2 of the Washington Agreement, but it is consistent in all respects with Part III of the Act of Paris. This Act provides for the restitution of looted monetary gold, so as to restore the national economy of States victims of German looting and to enable them to replace, as far as possible, the gold covering their note-issue; the claimant's

acceptance of the portion of monetary gold accruing to it means that Germany's debt, on the ground of the restitution of monetary gold, is unconditionally and finally extinguished.

"It follows that the formula suggested by the aforesaid Commission in order to define the meaning of monetary gold does not conflict either with the origins of the Act of Paris or with its effects or with the result desired by the Signatories and accepted by the States which subsequently adhered to that Act. Although incomplete in so far as it does not permit, merely by applying it, to allocate with certainty monetary gold in cases as doubtful and intricate as that of the Albanian Bank's gold reserve, this formula sets out certain tests which constitute a first series of conditions to be satisfied before a claimant country is entitled to a proportional share of the gold pool under Part III of the Act of Paris. Each claimant country must show that:

on the date of the looting by or wrongful removal of the gold to Germany, it formed part of its monetary reserve,

1° either in the accounts of its Government,

2° or in the accounts of its Central Bank,

3° or in the accounts of another monetary authority, at home or abroad.

"On September 16th, 1943, the National Bank of Albania, a private bank administered, managed and controlled by foreigners, was still entrusted with the functions of a bank of issue and was the central bank of Albania. This is clearly shown by Article 15 of the Organic Law of June 23rd/July 5th, 1925, which merely provides for the implementation of clause 6 of the Banking Convention of March 15th, 1925, approved by the Albanian legislature at the same time as the Organic Law; this Article stipulates:

'The purpose of the Bank is to exercise its exclusive privilege of issuing paper money recognized as legal tender and valid for payments in Albania. It also enjoys the exclusive privilege of providing for the minting and issue of gold and metallic currency on behalf of the Albanian Government, the profits on which are divided in equal parts between the Albanian Government and the Bank.'

"It is not disputed by the Parties that the gold looted and removed by Germany formed the metallic reserve of the new Albanian currency, the Albanian franc, created by the Bank at the very beginning of its activity as a bank of issue, nor that this gold was at all times carried on the books of the Bank's seat until September 1943.

"In her Memorials and during the oral proceedings, Italy declared that she did not intend to rely on the Economic, Monetary and Customs Convention concluded on April 20th, 1939, between Italy and Albania, whereby (Articles 10 and 11) the value of the Albanian franc was established at the fixed parity of 6.25 Italian lire, and the cover of the circulation of the National Bank of Albania was to be composed of Italian lire and bank-notes of other credits

on the Bank of Italy, so that the Albanian franc would have the same gold cover as the Italian lira. This convention comes within the provisions of Article 31 of the Italian Peace Treaty of February 10th, 1947, declaring null and void all agreements and arrangements made between Italy and the authorities installed in Albania by Italy from April 7th, 1939, to September 3rd, 1943. This Convention, however, had never led to modifications in the books of the National Bank of Albania, and the Bank's gold reserve was never carried on the books of the Bank of Italy.

" It follows from the abovementioned considerations that the gold looted by or wrongfully removed to Germany and involved in the present arbitration, was Albanian monetary gold on September 16th, 1943, and that, as it did not form part of the Italian monetary reserve, Italy cannot claim its restitution as monetary gold inasmuch as, in fact and in law, it never appeared as such among the assets of the Italian Government, or of the Bank of Italy, or of any other monetary authority in Italy or abroad. Insofar as Italy's claim relates to Albanian monetary gold, the Arbitrator holds that a State's claim to monetary gold admitted by it to be the metallic cover for the note-issue of another State, is consistent neither with the letter nor with the spirit of the Act of Paris; the first condition which any State claiming restitution of monetary gold must fulfil is to show that it suffered losses in the metallic reserves covering its own currency. Italy has never contended that this was the case for the gold involved in the present arbitration.

" The Tripartite Commission took precisely the same view, at the beginning of its activity, when it explained in its circular letter dated March 13th, 1947 that it could not 'recognize claims put forward by one Government on behalf of another Government or on behalf of the Central Bank or other monetary authority of another country.' A State cannot claim for itself delivery of gold which covers the note-issue of another State.

" *D.*—The question, which country the gold belonged to within the meaning of Part III of the Act of Paris, is not necessarily solved by the definition of monetary gold; the allocation of the looted gold to the claimant State which has shown that the conditions of a formal and book-keeping nature, set out in the decision of the Tripartite Commission, were satisfied, has given rise to much controversy between the Parties concerned.

" The Governments of France and Italy contend that the allocation of gold should be made on the basis of the property rights established, as regards a State claiming restitution, on September 16th, 1943, to the Bank's reserve of monetary gold affected to Albania's needs. According to the French and Italian Memorials, the ownership of the gold at that time is the decisive factor for its allocation.

"The two Governments rely upon the text of the Washington Agreement which requests the arbitrator to give an advice on this question and to determine whether Albania or Italy has established that the gold 'belonged' to it when looted by the German Armed Forces, or whether neither Albania nor Italy has established that this gold belonged to either of them. The same expression is used in Part III (paragraph C) of the Act of Paris, which provides:

'A proportional share of the gold shall be allocated to each country which adheres to this arrangement for the restitution of monetary gold and which can establish that a definite amount of *monetary gold belonging to it* was looted by Germany or, at any time after March 12th, 1938, was wrongfully removed into German territory.'

"They also rely upon the conclusion of the Washington Agreement, which would have been superfluous, had the three signatory Governments considered that the problem of allocating the gold was solved by the definition of monetary gold, and that, in other words, the fact that the gold was destined to cover the circulation of the Albanian note-issue determined decisively who was entitled to restitution; had the three Governments taken this view, the final allocation to Albania of the gold in question would have followed necessarily. As the decisions of February 16th and June 30th, 1948 of the Tripartite Commission were revoked by it and were regarded as a nullity under the Washington Agreement, the Governments of France and Italy maintain that it is necessary to establish which country the gold in question belonged to, on September 16th, 1943, that is to say to resort to the concept of ownership. They infer from this that the gold should be restored to the claimant country whose '*patrimoine national*' it was part of, because the Bank was created and its metallic reserve was purchased out of funds furnished by citizens of that country; its metallic reserve is therefore an integral part of its '*patrimoine national*'.

"The standpoint of the French Government is somewhat narrower than that of the Italian Government, for it entails restitution of the looted monetary gold only to the claimant State which shows both that the gold in question was part of its monetary reserve, and that the State was owner of the gold either directly, or indirectly through its national bank of issue, the shareholding in which must for the most part be in the hands of the said State or of its citizens, but always provided that this gold can be regarded as a part of its '*patrimoine national*'. It follows that, if the claimant State's central bank is controlled by a majority of foreign shareholders, the monetary gold wrongfully removed from it could not be distributed by way of restitution in pursuance of Part III of the Act of Paris.

"The Government of the United Kingdom contests this interpretation and puts forward another interpretation, according to which the expression '*monetary gold belonging to it*', used in the

Act of Paris and also in the Washington Agreement, means: 'gold forming part of the claimant country's monetary reserve'. It contends that the terms 'belonging to it' should be understood in their economic and functional sense and not in the sense of legal ownership, and that, where gold is held by a bank for the purpose of being used as the monetary reserve of a country, for the issue of the authorized medium of exchange or the maintenance of credit, it is said to belong to the country which has constituted the bank as its agent for this purpose. In short, the expression 'monetary gold belonging to it' does not mean, in its opinion, that the claimant State must also be the legal owner of the gold which forms part of its monetary reserve.

"[(ii) *The Principle of Effectiveness in the Interpretation of Treaties.*] -1. -These differences of interpretation are likely to have some repercussions, not on Italy's rights, but on Albania's rights to claim restitution of the monetary gold which, she contends, belongs to her.

"Even if it were admitted to be correct, for discussion's sake, the Italian interpretation of Part III (paragraph C) of the Act of Paris, and of the questions put to the arbitrator in the Washington Agreement, could not lead to a result favourable to Italy, inasmuch as the Agent of the Italian Government, confirming a previous statement made in the written proceedings, formally declared, during the oral hearing, in order to avoid any misunderstanding: 'Italy has never claimed to be the owner of the gold. The gold involved here is, and always has been, the property of a legal person named the National Bank of Albania'. After showing that the Bank was created in Italy on the initiative of the Italian Government following a recommendation of the Financial Committee of the League of Nations, that its gold reserve was purchased by use of currencies supplied by the Italian economy, and that 89 per cent. of the Bank's capital was acquired by the Italian State from Italian private groups, the Agent of the Italian Government expressly declared, in the written proceedings, that he had never contended that Italy was the owner of the gold because she was the principal shareholder in the Bank.

"The Italian Government claims restitution of the gold reserve in question because it belongs to Italy—in its opinion—within the meaning of Part III of the Act of Paris, as a part of her 'patrimoine national' and because the National Bank of Albania, which has not gone into liquidation, should recover its gold reserves in order to be able to pay its debts and to be compensated for the obligations it had undertaken with respect to the monetary circulation.

"Such a claim is manifestly outside the scope of the Act of Paris, which established a procedure for the restitution of monetary gold in favour of States, and not of private persons, physical or juridical, and which does not contain any provision on the protection of

investments made by financial groups, or even by a State, in the bank of issue of a foreign State.

" The contention that the right to the restitution of monetary gold depends on the gold being a part of the claimant State's 'patrimoine national' finds no support whatever in the Act of Paris. This idea could only be accepted if it were defined in the said Act, for the fact that the gold forms part of the 'patrimoine national' may result from many different causes: from the origin of the funds out of which the gold reserve was acquired, from the control exercised by the citizens of one State upon a foreign bank of issue at the time of its creation, from subsequent changes in the predominance of the interests of one State or the other in the bank of issue, or from other factors. The Act of Paris gives no indication whatever, which can help to choose between these various ways of defining juridically the notion of 'patrimoine national'; it seems established that the claims submitted by the Governments of the Tripartite Commission were never based on this concept of 'patrimoine national'.

" Three insurmountable difficulties prevent therefore the Italian Government from succeeding in its claim to the gold:

- a) the gold in question is Albanian monetary gold, and not Italian monetary gold;
- b) neither the Italian State nor its central bank of issue has ever owned the gold in question, which was never carried on the books of any Italian public or private Bank, but was carried on the books of the National Bank of Albania, created under Albanian law;
- c) insofar as the gold in question was purchased out of Italian investments in the said Bank, which the Italian Government intends to protect, its claim falls outside the powers given by the Act of Paris to the three Governments signatories of the Washington Agreement and, consequently, outside the competence of the undersigned arbitrator, as defined in the aforesaid Agreement.

" 2.—As regards Albania, the question of the ownership of the monetary gold arises in a manner, and assumes an aspect, altogether different, for it is established that the gold looted or wrongfully removed from Rome to Germany was, on September 16th, 1943, cover for the Albanian note-issue and had the character of Albanian monetary gold.

" It becomes necessary therefore to examine whether this character is sufficient to warrant an allocation of the gold to Albania or whether a supplementary condition should still be satisfied.

" In other words, the question is whether the words 'monetary gold belonging to it' [the country concerned], used in Part III, paragraph C, of the Act of Paris and reproduced in the Washington Agreement, must be taken to mean: 'gold forming part of the

claimant country's monetary reserve'—or, on the contrary: 'gold owned by the claimant country, or possibly by a bank or bank of issue under its control',—or, finally: 'gold forming part of the claimant country's *patrimoine national*'.

"It is unanimously recognized by the science of International Law that, as a starting-point of the process of interpretation of interstate conventions, it is advisable to take the usual meaning of the terms used by the Contracting Parties and to depart from it only when it is incompatible with the intent and purpose of these conventions.

"In French, the term '*appartenir à*' calls to mind, *prima facie*, the idea of ownership, as is shown by the definition given in Littré's Dictionary: '*être la propriété de*'. In English, the expression 'belong to' may mean the same thing and is defined as follows in the *Shorter Oxford English Dictionary*, of C. T. Onions: 'to be in the rightful possession of'. In its Questionnaire on Gold, the Tripartite Commission constantly uses the words '*propriétaire de l'or perdu*', in English 'owner of gold lost', or the words '*l'or monétaire qui appartient au Gouvernement demandeur*', in English 'gold owned by the claimant Government', or '*la preuve de la propriété*', in English 'evidence of ownership', thus clearly referring to the rights of ownership to the gold looted or wrongfully removed which are a necessary condition of the restitution provided for in Part III of the Act of Paris. It must be pointed out, however, that the Tripartite Commission, in the interpretation just quoted of the words '*appartenir à*' or 'belong to', was not considering only a Government's rights of ownership but also the rights of its Central Bank or of another monetary authority under its control. In so doing, the Commission broadened singularly the meaning of the words used in Part III, paragraph C, of the Act of Paris, for these words, taken literally, only signify that the monetary gold should belong to one of the claimant countries.

"The latter acceptance of the terms 'belonging to' cannot have been intended by the Signatories of the Act of Paris for, as a result of it, restitution of the monetary gold would only be made to those States which are able to show they had a definite right of legal ownership to the gold at the time of the looting or wrongful removal.

"Now, it is well known that most States did not grant the exclusive privilege of issuing bank-notes recognized as legal tender and valid for payments to State banks proper which, forming an integral part of a public administration, hold a metallic reserve owned by the State which constituted them; most States gave this privilege to private banks or to financial establishments of a mixed character, whose legal personality is distinct from the State's, and which possess therefore private law rights of ownership to the monetary reserve covering the circulation of the note-issue recog-

nized as legal tender. The State often keeps the right to intervene in the administration of these banks or establishments; it can supervise their business and sometimes veto measures it deems contrary to its own interests or to monetary security; it often shares in the profits which the banks derive from their activity. The banks of issue retain none the less their private character; they are often joint stock companies whose capital has been partially or wholly subscribed by private shareholders, sometimes without the State's participation.

"Even when they take the form of purely private financial establishments, or semi-public and semi-private, the banks invested with the exclusive privilege of issuing bank-notes recognized as legal tender and valid for payments, discharge a function which affects the economic prosperity of the entire community, since they have to regularize all money transactions. When creating them, the State aimed less at drawing profits from their activity than at making the whole national community share the advantages of monetary stability.

"The negotiators of the Act of Paris cannot have been ignorant of this situation nor can they have stipulated, consequently, that the right to recover monetary gold would depend on the claimant State's ownership; neither the intent nor the purpose of the aforesaid Act is consistent with this interpretation, which would lead to the consequence that many States, whose monetary gold was looted or wrongfully removed to Germany, would be denied the right to receive a proportionate share of the gold pool to be distributed by the Tripartite Commission.

"It is therefore more in keeping with the effect and purpose of the Act of Paris to give the words 'belong to' the meaning which they have also in French, according to Littré's Dictionary and which corresponds to their Latin etymology, 'pertinere', to concern, to relate to, a meaning accepted also in the English language, according to the *Shorter Oxford English Dictionary* of C.T. Onions, for the expression 'belong to', defined as follows: 'to pertain, to relate, to concern', whereas the idea of proprietorship is better conveyed by the verb 'to own'.

"From the foregoing it follows that the right to a proportionate share of the monetary gold must be recognized, under Part III of the Act of Paris, to each of the countries concerned able to establish that a definite quantity of monetary gold concerning it or relating to it has been looted by Germany or wrongfully removed to German territory. This interpretation is confirmed by paragraph 5 of the Washington Agreement whence the following formula was used to convey the idea of gold belonging to a State: 'the three Governments . . . will accept the advice given by the Arbitrator on the question whether Albania, or Italy, or neither has established a *claim* to the aforesaid amount of gold'. These claims may result,

in the first place, from the claimant State's ownership of the monetary gold at the time of its looting or wrongful removal, but also from the fact that, the claimant State not being itself the owner, its bank of issue, which possesses a legal personality distinct from the claimant State's, is the owner of the monetary gold in question, whereas the location of its seat at home or abroad is immaterial.

" This interpretation given by the Arbitrator of the words ' to belong to ' tallies with that suggested by the Government of the United Kingdom, which contends that the words ' belonging to ' are used in an economic, functional sense, that is to say that it is sufficient that a relation should exist between the gold and the claimant State's monetary system.

" The arbitrator holds that it does not behove him to qualify legally on what basis the monetary gold shall be delivered to the United Kingdom under the Statement to accompany publication of the Washington Agreement which provides that ' if the opinion of the arbitrator is that Albania has established a claim under Part III of the Paris Act to 2,338,7565 kilograms of monetary gold looted by Germany, they (the three Governments) will deliver the gold to the United Kingdom in partial satisfaction of the judgment in the Corfu Channel case '. He may content himself with pointing out that the Act of Paris does not stipulate that States have any action for the recovery of monetary gold, even when identified, and that the delivery to the United Kingdom of the share allocated to Albania is only provisional, for it may be questioned in subsequent proceedings initiated in the International Court of Justice either by Albania, or by Italy, or by both, should these countries wish to assert rights preferable to those of the United Kingdom, on the various grounds mentioned in the Statement.

" The arbitrator is unable to accept the conclusions of the French Government that Italy's claim should be rejected because the gold is not owned by this State and cannot be qualified as Italian monetary gold and that Albania's claim should be rejected as well because, although the gold must be considered as Albanian monetary gold and is owned by the National Bank of Albania, it does not form part of this country's ' patrimoine national '. These submissions have the defect of leaving unsolved the question of the restitution of the Albanian monetary gold.

" This concept of forming part of the claimant State's ' patrimoine national ' can be relied upon neither against Albania nor in favour of Italy, for reasons pertaining to its uncertainty and which were developed above when examining the claims of the latter State. Neither the very small participation of Albanian citizens in the subscription of the Bank's share capital, nor the constant diminution of their interests following the purchase of their shares by the Italian financial Group, nor the acquisition of the majority of the shares by the Italian Government, nor the predominance that

Italian financial circles finally secured in the administration of the Bank, nor the Bank's double seat—one in Tirana for the Central Direction and the other in Rome for the Council and the Board of Management—nor the deposit of the reserve of monetary gold in Rome, decided by the Board of Management pursuant to Article 22, paragraph 3, of the Organic Law and to the corresponding Article of the Statute, can support the contention that the monetary gold did not form a part of Albania's 'patrimoine national' and did not belong to her, within the meaning of Part III, paragraph C, of the Act of Paris, while it was cover for her note-issue.

"It would hardly be satisfactory to hold that the gold looted by Germany from Rome in 1943 belonged neither to Italy nor to Albania, notwithstanding that none of the Parties concerned ever questioned its monetary character under the aforesaid Act, which provides for its proportional restitution to the States which lost it for the reasons and in the conditions indicated therein.

"This standpoint would lead to the conclusion that the purpose of the Act of Paris would be defeated as regards the Albanian monetary gold; it is contrary to one of the most established principles in the law of Nations, viz. that international agreements should be interpreted so that they can have a certain effect.

"The gold, whose monetary character is recognized by all the Parties, must have this character in relation to one country for, unless it can be connected with the currency of one State, it will lose its nature of monetary gold as it is not able to function as such; the provisions of Part III of the Act of Paris would not be applicable to it and would lose all efficacy as regards Albanian monetary gold. It is impossible to admit that stocks of gold, whose monetary character was never questioned in the course of the present arbitration, do not belong to any country.

"In its answer to the Tripartite Commission's Questionnaire on Gold, Albania indicated as the owner of the monetary gold she claimed, the State Bank of Albania, created by the Organic Law of the State Bank of Albania, of January 13th, 1945, after promulgation, on the same date, of the Law No. 38 on the Nullification of the Convention concerning the National Bank of Albania and its shares, which transferred all the assets and liabilities of the latter Bank to the Albanian State. The arbitrator cannot take into account changes in the juridical position of the Parties concerned which took place after September 16th, 1943, date of the looting or wrongful removal of the gold from Rome by the German Armed Forces. At that time the State Bank of Albania was not in existence; the rights of ownership which it asserts today cannot be considered, and it is even unnecessary to examine whether the nationalization of a bank may have effects upon assets situated outside the territory of the nationalizing State. On that same date, the Albanian State was not the owner either of the monetary gold involved here, as is

proved beyond all question by the promulgation of the Law of January 13th, 1945, since it deemed it necessary to confiscate the Bank's assets in an attempt to assert its ownership.

"Albania's answers to the Questionnaire on Gold, legally erroneous though they may be, cannot lead, however, to the rejection of her claim, for the Government of the United Kingdom, placing itself exactly on September 16th, 1943, maintains for other reasons that the gold belonged to Albania.

"On that date, it is true, the monetary gold was owned by the National Bank of Albania, which has never gone into liquidation. The latter bank, a joint stock company, therefore a private law juridical person, had received from the Albanian Government the exclusive privilege of issuing bank-notes on Albanian territory and of minting the metallic currency, absolutely and irrevocably, for fifty years at least, under clauses 4 and 13 of the Banking Convention. The function of its metallic reserve was undoubtedly to cover the Albanian note-issue and, in this connection, it cannot be denied that the monetary gold, without being the property of the Albanian State, concerned, and was related to, this State, for it was the property of a Bank which, in its financial economy, played the part of a central bank, and had always been as regards Italy a foreign company governed by Albanian law, subject to subsidiary application of Italian law, owing to the insufficiency of Albanian law concerning joint stock companies.

"Part III of the Act of Paris aims at restoring the monetary gold looted by Germany to its original function, which was to be the metallic cover for the currency of the State issuing it.

"However, this Act provides for its restitution among the countries admitted to participate in the pool only in proportion to 'their respective losses of gold through looting or by wrongful removal to Germany' (paragraph A); it provides further that any allocation of monetary gold shall be accepted by the claimant State 'in full satisfaction of all [its] claims against Germany for restitution of monetary gold', without prejudice to claims by way of reparation for unrestored gold (paragraph B).

"It is clear that the situation of the National Bank of Albania is so particular that it is unlike that of all the banks of issue which carry out business in other States and have much closer connections with the State whose monetary stability they have to maintain. If it is established that no gold was ever directly drained from Albania to Italy, it is none the less certain that the depreciation of the Albanian franc dates from the time of the Italian occupation, which led to the issuing of large quantities of Albanian bank-notes; under the Economic, Monetary and Customs Convention of April 20th, 1939, then in force between Albania and Italy, these notes were only covered by Italian lire, so that the Albanian franc had, from then on, no other gold cover than that for the Italian lira.

The looting or wrongful removal of the Bank's gold reserve from Rome to Germany in 1943, made more difficult, if not impossible, any valorization of the Albanian franc. Albania's financial economy was therefore shaken and jeopardized because of the losses suffered in the metallic reserve covering the note-issue; Albania has, on this ground, a claim against Germany, which may be settled by means of allocations from the gold pool, in pursuance of Part III of the Act of Paris, these allocations being accepted by Albania in full satisfaction of all her claims against Germany for restitution of monetary gold.

"The fact that the Bank's metallic reserve remained at all material times deposited in Rome is not decisive, for article 22, paragraph 3, of the Organic Law and the corresponding article of the Statute merely empower the Board of Management to decide where the reserve shall be deposited. In the exercise of the powers it had received from the law and the Statute, the aforesaid Board decided that the reserve should be held in Rome, a choice dictated neither by the law nor by the Statute. From the written evidence presented during the proceedings it does not follow that the Bank was directly created under the auspices of the League of Nations, but rather that it was constituted after the first attempts of the League had been abandoned, by a group of Italian financiers who took all the risks involved in the creation of a new financial establishment intended to consolidate the credit and the currency of Albania. They chose to deposit the metallic reserve in Rome in order to limit these risks, which high finance in London and Paris had been unwilling to incur. The monetary gold was not as a result of their choice subjected to a particular legal status, which the simple observations and the advice contained in the Calmès Report were insufficient to create in law.

"Likewise, the decisions made at the Paris Peace Conference in 1946 are not conclusive. On October 2nd, 1946, the Economic Commission for Italy rejected an Albanian proposal for the restitution of the gold reserves of the National Bank of Albania which had remained in Italy, a decision confirmed on October 9th, 1946, during the 35th meeting of the Plenary Session of the Conference. However, as pointed out in the French Memorial, the aforesaid Treaty nowhere provides that Albania renounces her claims to the gold. The question was left open.

"For the same reason, it could not be proved, in the present proceedings, that Albania had already been compensated for the loss of her monetary gold with reparations to be paid by Italy, in pursuance of the Peace Treaty; nothing in the latter permits to consider that article 74, paragraph B, which gives Albania an amount of 5 million dollars by way of reparation, to be paid by Italy, and article 79, which allows Albania to seize, attach and liquidate all the Italian property, rights and interests within her territory,

compensate for losses of a monetary character. The question of the monetary gold was not settled therefore by the Treaty and was indeed dealt with in Part III of the Act of Paris, signed by Albania who has, on this basis, the right to put forward her claims, like all the other States entitled to similar reparations under the Italian Peace Treaty.

"From all the facts and all the legal considerations which it is proper for the three Governments to take into account under Part III of the Act of Paris, it follows:

- 1° that the gold looted from Rome on September 16th, 1943, by the German Armed Forces, was at the time the metallic cover for the Albanian note-issue, and therefore Albanian monetary gold;
- 2° that the Economic, Monetary and Customs Convention concluded between Italy and Albania on April 20th, 1939, did not change the metallic cover for the Albanian note-issue, as this Convention was declared null and void by Article 31 of the Italian Peace Treaty, on February 10th, 1947;
- 3° that a right to restitution of a proportionate share of the monetary gold, under Part III of the Act of Paris, does not depend upon the proof of the claimant State's ownership of the gold, ownership which, it may be added, has been established neither in the case of Albania nor in the case of Italy;
- 4° that the claimant State needs only establish that the looted gold was cover for its note-issue on the date of the looting or wrongful removal of the gold;
- 5° that it is established that the gold in question was the property of the National Bank of Albania, a juridical person created under Albanian law, invested with the exclusive privilege of issuing Albanian bank-notes recognized as legal tender and valid for payments in Albania, and that it constituted the metallic cover for the aforesaid notes."

[Report: Unpublished.]

Treaties—Interpretation of—Principles of—*Expressum facit cessare tacitum*.

See p. 63 (*Frontier (Local Authorities) Award*).

Treaties—Interpretation of—Principles of—Rules of Good Faith.

See p. 63 (*Frontier (Local Authorities) Award*).

Treaties—Interpretation of—Various Rules of—Interpretation by Reference to Other Provisions in Same Instrument.

See p. 63 (*Frontier (Local Authorities) Award*).