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Judgment No. 17
7 June 1932

PERMANENT COURT OF INTERNATIONAL JUSTICE
Twenty-Fifth Session

Case of the Free Zones of Upper Savoy and the District of Gex

France v. Switzerland
Judgment

Vice-President: Anzilotti
BEFORE: (acting as President)
Judges: Loder, Altamira, Oda, Huber, Sir Cecil Hurst, Kellogg, Yovanovitch, Beichmann, Negulesco,
Judge(s) ad hoc: Dreyfus,
Represented By: France: J. Basdevant, Legal Adviser to the French Ministry for Foreign Affairs, Professor of the Faculty of Law at the University of Paris
Switzerland: H. E. M. A. de Pury, Swiss Minister to the Netherlands, and by M. P. Logoz, Member of the Swiss National Council, and Professor at the University of Geneva

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[p97] The Court,
composed as above,
delivers the following judgment:

[1] By a Special Agreement, which was signed at Paris on October 30th, 1924 - the ratifications being exchanged on March 21st, 1928 - and which was filed with the Registry of the Court under cover of letters dated March 29th, 1928, from the Ministers of France and Switzerland at The Hague, the Governments of the French Republic and of the Swiss Confederation, having been unable to agree in regard to the interpretation to be placed upon Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, and not having been able to effect the agreement provided for therein by direct negotiations, have asked the Court to determine the said interpretation, and to settle all the questions involved by the execution of paragraph 2 of Article 435 of the said Treaty.

[2] The relevant clauses of the Special Agreement of October 30th, 1924, are worded as follows:

"Article 1.

It shall rest with the Permanent Court of International Justice to decide whether, as between Switzerland and France, [p98] Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has abrogated or is intended to lead to the abrogation of the provisions of the Protocol of the Conference of Paris of November 3rd, 1815, of the Treaty of Paris of November 20th, 1815, of the Treaty of Turin of March 16th, 1816, and of the Manifesto of the Sardinian Court of Accounts of September 9th, 1829, regarding the customs and economic régime of the free zones of Upper Savoy and the Pays de Gex, having regard to all facts anterior to the Treaty of Versailles, such as the establishment of the Federal Customs in 1849, which are considered relevant by the Court.

The High Contracting Parties agree that the Court, as soon as it has concluded its deliberation on this question, and before pronouncing any decision, shall accord to the two Parties a reasonable time to settle between themselves the new régime to be applied in those districts, under such conditions as they may consider expedient, as provided in Article 435, paragraph 2, of the said Treaty. This time may be extended at the request of the two Parties.

Article 2.

Failing the conclusion and ratification of a convention between the two Parties within the time specified, the Court shall, by means of a single judgment rendered in accordance with Article 58 of the Court's Statute, pronounce its decision in regard to the question formulated in Article 1 and settle for a period to be fixed by it and having regard to present conditions, all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles.

Should the judgment contemplate the import of goods free or at reduced rates through the Federal Customs barrier or through the French Customs barrier, regulations of such importation shall only be made with the consent of the two Parties.

Article 3.

Each of the High Contracting Parties shall file with the Registry of the Court, in the number of copies laid down by Article 34 of the Rules of Court:

- (1) within six months after the ratification of the present Special Agreement, its Case upon the question set out in Article 1, paragraph 1, with a certified true copy of all documents and evidence in support thereof;
- (2) within five months from the expiration of the above-mentioned time, its Counter-Case with a certified true copy of all documents and evidence in support; [p99]
- (3) within five months from the expiration of the preceding time, its Reply with a certified true copy of all documents and evidence in support and its final conclusions.

Article 4.

Should the Court, in accordance with Article 2, be called upon itself to settle all the questions involved by the execution of Article 435, paragraph 2, of the Treaty of Versailles, it shall grant the Parties reasonable times for the production of all documents, proposals and observations which they may see fit to submit to the Court for the purposes of this settlement and in reply to those submitted by the other Party.

Furthermore, in order to facilitate this settlement, the Court may be requested by either Party to delegate one or three of its members for the purposes of conducting investigations on the spot and of hearing the evidence of any interested persons."

[3] On the occasion of the signature of the Special Agreement, on October 30th, 1924, the French Minister for Foreign Affairs and the Swiss Minister at Paris exchanged certain "interpretative notes", to the following effect:

"In signing the Arbitration Convention of this date, I have the honour to confirm that it is clearly

understood between the Swiss Federal Council and the Government of the Republic that:

- (1) until the Court's definitive decision shall have been given, neither Party shall take any steps calculated to modify the de facto situation now prevailing at the frontier between Switzerland and the French territories mentioned in Article 435, paragraph 2, of the Treaty of Versailles;
- (2) no objection shall be raised on either side to the communication by the Court to the Agents of the two Parties, unofficially and in each other's presence, of any indications which may appear desirable as to the result of the deliberation upon the question formulated in Article 1, paragraph 1, of the Arbitration Convention;
- (3) the words 'present conditions' in Article 2, paragraph 1, of the Arbitration Convention refer to the 'present conditions' contemplated in Article 435, paragraph 2, with its Annexes, of the Treaty of Versailles. "

[4] The Special Agreement was communicated on or before April 5th, 1928, to all concerned, as provided in Article 40 [p100] of the Statute and in Article 36 of the Rules of Court; similarly, it was communicated to all States, Members of the League of Nations, and to all other States entitled to appear before the Court.

[5] On the other hand, States Parties to the Treaty of Versailles were not specially notified under Article 63 of the Statute, which was considered as inapplicable in this case; but their attention was drawn to the right which they no doubt possessed to inform the Court, should they wish to intervene in accordance with the said Article, in which case it would rest with the Court to decide.

[6] In an Order, dated May 5th, 1928, the President of the Court - the Court itself not being then in session - fixed the "dates for the completion of the various acts of the written procedure in the case", as provided for in Article 3 of the Special Agreement; the time-limits assigned were in conformity with the proposals on that subject in the said Article.

[7] The Parties filed their Cases, Counter-Cases and Replies within the periods thus appointed.

[8] By the terms of Article 3 of the Special Agreement, the Replies were to set forth the "final conclusions" of the Parties; consequently, the Court did not avail itself of its right (under Art. 48 of its Statute) to decide the form and time in which the Parties should conclude their arguments. The submissions of the French Reply were formulated as follows:

"May it please the Court:

In accordance with the letters attached to the Special Agreement, communicate to the Agents for the two Parties, unofficially and in each other's presence, any indications which may appear desirable as to the result of its deliberation upon the question formulated in Article 1, paragraph 2, of the Special Agreement;

Determine the import of its deliberation and, in the circumstances contemplated by Article 2 of the Special Agreement, so formulate the operative part of its judgment that its effect shall be to decide that, as between France and Switzerland, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has abrogated the provisions of the Protocol of the Conferences of Paris of November 3rd, 1815, of the Treaty of Paris of November 20th, 1815, of the Treaty of Turin of [p101] March 16th, 1816, and of the Manifesto of the Sardinian Court of Accounts of September 9th, 1829, regarding the customs and economic régime of the free zones of Upper Savoy and the District of Gex;

As soon as it has concluded its deliberation on this question and before pronouncing any decision, accord to the two Parties a reasonable time to settle between themselves the new régime to be applied in those districts under such conditions as they may consider expedient, as provided by Article 435, paragraph 2, of the Treaty of Versailles, this time being capable of extension at the

request of the two Parties. "

[9] The submissions of the Swiss Reply, on the other hand, were formulated as follows:

"It is submitted that:

1. As between Switzerland and France, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has not abrogated the provisions of the Protocol of the Conferences of Paris of November 3rd, 1815, of the Treaty of Paris of November 20th, 1815, of the Treaty of Turin of March 16th, 1816, and of the Manifesto of the Sardinian Court of Accounts of September 9th, 1829, regarding the customs and economic régime of the zones of Upper Savoy and the District of Gex.

2. As between Switzerland and France, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has not for its object the abrogation of the provisions of the Protocol of the Conferences of Paris of November 3rd, 1815, of the Treaty of Paris of November 20th, 1815, of the Treaty of Turin of March 16th, 1816, or of the Manifesto of the Sardinian Court of Accounts of September 9th, 1829, regarding the customs and economic régime of the free zones of Upper Savoy and the District of Gex, that is to say, as between Switzerland and France, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, is not intended necessarily to lead to the abrogation of the aforesaid provisions, but simply means that Switzerland and France may abrogate them by mutual consent."

[10] During public hearings held on July 9th, 10th, 11th, 12th, 13th, 15th, 16th, 18th, 19th, 22nd and 23rd, 1929, the Court heard arguments, replies and rejoinders, by Me Paul-Boncour, Counsel of the French Government, and Professor Logoz, Agent of the Swiss Government; it also heard a statement by Professor Basdevant, Agent of the French Government. [p102]

[11] The submissions formulated in the written Replies were not modified during the oral proceedings.

[12] During this phase of the procedure, the Parties communicated to the Court, in support of their respective submissions, the documents which - so far as they have been accepted by the Court - are given in the list in the annex; these were communicated partly (as laid down in Article 3 of the Special Agreement) as annexes to the written documents, and partly during the oral proceedings.

[13] On August 19th, 1929, in order to conform to paragraph 2 of Article 1 of the Special Agreement, the Court made an Order in which it allowed the Government of the French Republic and the Government of the Swiss Confederation a period, expiring on May 1st, 1930, to settle between themselves the "new régime" to be applied in the territories referred to in Article 435, paragraph 2, of the Treaty of Versailles, under such conditions as they might consider expedient.

[14] In the recitals of the said Order, the Court gave the Parties "any indications which may appear desirable as the result of the deliberation upon the question formulated in Article 1, paragraph 1, " of the Special Agreement, that is, the question "whether, as between France and Switzerland, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has abrogated or is intended to lead to the abrogation of the provisions" of 1815, 1816 and 1829, "regarding the customs and economic régime of the free zones of Upper Savoy and the District of Gex".

[15] The Court took this step, in the first place, because of the suggestion contained in the interpretative notes attached to the Special Agreement of October 30th, 1924, providing that the indications referred to above might be communicated unofficially by the Court to the Agents of the two Parties; and secondly, because it held that it was not possible for it, according to the terms and

the spirit of its Statute, unofficially to communicate to the Parties in a case the result of the deliberation upon a question submitted to it for decision.

[16] Before the expiration of the period fixed by the Order of August 19th, 1929, the Court received a letter from the Head of the Swiss Federal Political Department, dated March 28th, 1930, and a letter from the French Agent, dated April 29th, 1930, the [p103] first informing it that it did not seem possible for a convention to be concluded and ratified by the Parties before May 1st, and the latter notifying it that it had proved impossible to conclude an agreement between the Government of the French Republic and the Swiss Federal Council concerning the settlement of the question of the free zones prior to the said date.

[17] In these circumstances, on May 3rd, 1930, the President of the Court - the Court itself not being then in session - after hearing the Agents of the Parties, made an Order by which, in accordance with Articles 2, paragraph 1, and 4, paragraph 1, of the Special Agreement, he allowed the Government of the French Republic and the Government of the Swiss Confederation a period of time "for the production by the Parties of all documents, proposals and observations which they might see fit to submit to the Court for the purposes of the settlement by it of all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles", and also a further period "to enable each Party to reply in writing to the documents, proposals and observations submitted by the other Party".

[18] Within the first of these periods, the French Government transmitted to the Court a document entitled "Observations and Proposal", containing, inter alia, a "Draft Decision" in seventeen articles; no fresh submissions were, however, set forth in the said document. Similarly, the Swiss Government submitted a document entitled "Documents, Proposal and Observations", containing, in addition to a "Draft Settlement of the régime of the territories referred to in Article 435, paragraph 2, of the Treaty of Versailles", in thirteen articles and an annex, some new submissions worded as follows:

"May it please the Court,

By a single judgment rendered in conformity with Article 58 of the Court's Statute;

1. To pronounce its decision on the question formulated in Article 1, paragraph 1, of the Special Agreement of October 30th, 1924, and to adjudge:

(a) that, as between Switzerland and France, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has not abrogated the provisions of the Protocol of the [p104] Conference of Paris of November 3rd, 1815, of the Treaty of Paris of November 20th, 1815, of the Treaty of Turin of March 16th, 1816, and of the Manifesto of the Sardinian Court of Accounts of September 9th, 1829, regarding the customs and economic régime of the free zones of Upper Savoy and the District of Gex;

(b) that furthermore, as between Switzerland and France, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, is not intended necessarily to lead to the abrogation of the aforesaid provisions, in the sense that it does not compel Switzerland to accept, as the only possible basis for the future settlement, the abolition of the free zones.

2. To settle in accordance with the proposal submitted by the Swiss Government and having regard to the terms of the second paragraph of Article 2 of the Special Agreement of October 30th, 1924, all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles."

[19] Within the second period fixed by the Order of May 3rd, 1930, and expiring on September 30th, 1930, each of the Governments concerned filed a written Reply. These Replies contained no fresh submissions, but the Swiss Government reserved its right, if necessary, to file further

submissions relating to an expert enquiry and to the despatch of a delegation of the Court to the spot, in accordance with paragraph 2 of Article 4 of the Special Agreement. In a letter dated October 11th, 1930, the Agent of the Swiss Government transmitted to the Court the following further submissions:

"May it please the Court, if the Court does not deem it possible to render de plano the judgment contemplated by Article 2 of the Special Agreement:

- I. To declare the French Proposal incompatible with the rights of Switzerland and to disregard it.
- II. To order an expert enquiry.

(1) To organize this enquiry on lines similar to those laid down in the Order made by the Court on September 13th, 1928, in the case of the Chorzów Factory.

(2) To put the following question to the experts: [p105]

"Taking it for granted that the French customs -cordon will be placed on the line indicated in the Swiss Proposal, does that Proposal regulate the relations between Switzerland and the French regions concerned in a manner calculated to satisfy the legitimate interests of the inhabitants as those interests were before 1923 ?"

[20] To the Observations and Replies of the two Governments were appended the documents enumerated in the list reproduced in the appendix.

[21] The written proceedings provided for by Article 4, paragraph 1, of the Special Agreement having thus been concluded, the President fixed October 23rd, 1930, as the date for the opening of a new series of public hearings. At the same time he caused the Parties to be notified that, not having been able to secure the attendance at The Hague for these hearings of at least nine of the judges who had taken part in the examination of the zones' case in 1929, he had been compelled to reconstitute the Court in accordance with the principles of Article 25 of the Statute.

[22] The impossibility of securing the said quorum had been apparent as early as August 1930; it exercised an effect in two different directions.

[23] In the first place, the Swiss Government, by a letter from its Agent dated July 24th, 1930, had emphasized that, in its opinion, most useful information would be afforded the Court, for the purposes of the judgment which it had to give, if it were to delegate some of its members to conduct investigations on the spot, in accordance with Article 4, paragraph 2, of the Special Agreement, and if it ordered an expert enquiry regarding the solutions proposed by the Parties for the settlement of the zones' régime; the Swiss Government held that this investigation by a delegation on the spot and this expert enquiry should be carried out immediately after the filing of the "documents, proposals and observations" mentioned in the first paragraph of the same Article; in this connection, it suggested that it would be useful to give the Agents an opportunity of presenting to the Court their Governments' observations in regard to these proceedings. On being informed, on August 11th, that in order to hold the suggested hearing, the Court would in all probability have to be reconstituted for the whole of the [p106] remainder of the case of the free zones, the Swiss Government informed the Court, by a letter from its Agent dated August 15th, 1930, that the Federal Council, in view of this new circumstance, felt that it should not maintain its request of July 24th, 1930, as it considered it inexpedient to raise the serious question of a possible reconstitution of the Court in connection with a mere detail of procedure.

[24] In the second place, at the outset of the hearings fixed for October 23rd, 1930, the President

had explained that, to comply with the provisions of Article 13, paragraph 3, of the Statute, the composition of the Court should have been the same as in 1929; circumstances, however, had rendered this impossible, the number of judges available of those who had taken part in the session of 1929 having fallen below the quorum required by Article 25 of the Statute in order to render the proceedings of the Court valid. Accordingly, it had become necessary to reconstitute the Court, in conformity with the principles of that Article, by summoning all the regular judges available and also - in the order laid down in the list kept for the purpose - the number of deputy-judges whose presence was necessary to make up the number of eleven laid down by the Statute. The President having asked the Agents whether they had any observations or statements to make in regard to this point, MM. Basdevant and Logoz made the following declarations which the President placed on record:

(M. Basdevant.)

"On behalf of the French Government, I declare that this Government agrees to the continuation of the proceedings in view of the fact that, according to its view, the solution of the question now to be argued is independent of the solution to be given to the question argued in the first phase of the proceedings. "

(M. Logoz.)

"The Swiss Government agrees to the proceedings being continued purely and simply as though the composition of the Court had not altered since the summer of 1929.

The Swiss Government for the rest maintains the view set forth in its Observations and in its Reply, more especially as regards the interdependence existing between the first judicial phase of the case and the present phase. It holds, moreover, [p107] that the question argued in the first phase of the proceedings has been decided. "

[25] Accordingly, since the representatives of the Parties did not avail themselves of their right, in view of the reconstitution of the Court, to demand to reargue the whole case, the Court heard the observations presented by Me Paul-Boncour, Counsel, and M. Basdevant, Agent for the French Government, and by M. Logoz, Agent for the Swiss Government, on October 23rd, 24th, 25th, 27th, 28th, 29th and 31st, and November 1st, 3rd and 4th, 1930. Finally, on November 24th, 1930, it heard the observations made at its request by MM. Basdevant and Logoz concerning the interpretation of Article 2, paragraph 2, of the Special Agreement, the consequences ensuing therefrom with regard to the further proceedings and the question whether, and if so under what conditions, the consent referred to in that clause "could be regarded as finally given, having been expressed in the proposals submitted by the French Government and by the Swiss Government".

[26] The statements made on this subject by the French Government's Agent may be summed up in the two following passages:

".... it follows from the fact that the consent of the Parties is expressly reserved in respect of the customs questions referred to in paragraph 2 of Article 2 of the Special Agreement, that the Court in this matter does not possess the powers of an 'amiable compositeur' and that it is only in the position of a mediator. The question under what conditions the consent contemplated by this Article will be given by the French Government is one of French domestic policy and since, in customs matters, the Government can do nothing without the approval of the Chambers, it will rest with the Government, before giving its approval, to obtain authority to do so in accordance with the Constitution. "

"The Government, in submitting the proposal in question [the proposal made in the French 'Observations'], has, in so far as it [i. e. the French Government] is concerned, given its consent once and for all; it will not go back upon it and it will strongly urge Parliament to give its approval. But the Government has not been able to commit Parliament; the Constitution does not allow it to do so." [p108]

[27] On the other hand, according to the statements made by the Agent of the Swiss Government, the "draft decision" submitted to the Court by Switzerland

"implies the consent of Switzerland, within the meaning of Article 2, paragraph 2, of the Special Agreement—a consent henceforward and unconditionally binding upon her - to all the provisions contained therein, more especially as regards the importation of French goods free of duty or at reduced rates across the line of the Federal Customs".

[28] Similarly,

".... should the Court see fit to insert in its judgment provisions regarding the importation of French goods free of duty or at reduced rates across the line of the Federal customs, other than the provisions proposed in the Swiss plan, Switzerland, in her capacity as a Party to the present proceedings, here and now gives her consent, i. e. she will accept this decision of the Court as binding upon her. This declaration also is henceforward and unconditionally binding on Switzerland.

And Switzerland's consent, in so far as concerns all the provisions of her proposal relating to the importation of goods free of duty across the line of the Federal Customs, and any other provisions on this subject which the Court may see fit to insert in its judgment, holds good even if the judgment does not uphold the Swiss contention with regard to the maintenance of the zones. "

[29] In the course of the oral proceedings, the closure of which was announced to the Parties by a communication from the Registry dated December 1st, 1930, the Parties' Agents produced the documents, a list of which is given in the appendix.

[30] On December 6th, 1930, the Court made a new Order, whereby it

"(1) Accords to the Government of the French Republic and to the Government of the Swiss Confederation a period expiring on July 31st, 1931, which may be extended at the request of both Parties, to settle between themselves the matter of importations free of duty or at reduced rates across the Federal customs line and also any other point concerning the régime of the territories referred to in Article 435, paragraph 2, of the Treaty of Versailles with which they may see fit to deal; [p109]

(2) Declares that at the expiration of the period granted or of any prolongation thereof, the Court will deliver judgment at the request of either Party, the President being empowered to grant the two Governments the necessary periods of time for the presentation beforehand of any written or oral observations. "

[31] In the recitals of this Order the Court made known its opinion on certain points of law other than those dealt with in the Order of August 19th, 1929.

[32] In a letter of July 29th, 1931, the Swiss Minister at The Hague, his Government's Agent, with reference to this Order, informed the Court that the negotiations provided for therein had proved fruitless; accordingly the Swiss Government submitted that the conditions requisite for the continuation of the proceedings were fulfilled and held that it was for the Court to deliver judgment

as provided in the Order. The Agent of the French Government, for his part, by a letter of July 30th, 1931, confirmed that the French Ambassador at Berne had received from the Federal Political Department a note whereby the latter terminated the negotiations which had been begun between the two Governments in pursuance of the Order of December 6th, 1930.

[33] After hearing - in each other's presence and in that of the judge who had presided over the Court in December 1930 - the submissions of the Parties' Agents with regard to the subsequent proceedings and the observations of each upon the submissions of the other, the President of the Court, on August 6th, 1931, made an Order whereby, in virtue of the powers conferred upon him by the operative clauses of the Order of December 6th, 1930, he allowed the Government of the Swiss Confederation and the Government of the French Republic a period expiring on September 30th, 1931, for the submission to the Court in writing of any further observations in regard to the case set out in the Special Agreement concluded between the two Governments on October 30th, 1924, and fixed for the month of October, the actual date to be decided later, a public hearing at which the representatives of each of the said Governments might reply to any written [p110] observations filed as above stated on behalf of the other Government.

[34] The following passage from the recitals of this Order should be noted:

".... according to decisions taken on November 22nd and December 4th, 1930, the Court, after deliberation, has recognized that the Court as then constituted must continue to deal with the case of the free zones and held that the judge who was then acting as President must continue to exercise his functions for the purpose of the said case".

[35] The President eventually fixed October 14th, 1931, as the date for the beginning of the hearings to be devoted to the oral replies made by each Agent to the written observations filed by the other within the period of time allowed by the Order; before the expiration of this time the French Government filed a volume entitled "Fresh Observations", accompanied by a volume of annexes containing "Documents relating to the negotiations prescribed by the Order of Court of December 6th, 1930". The Swiss Government, for its part, submitted a volume in which a short outline of the course of the said negotiations was given, by way of an introduction to documents of a similar kind. Neither the French "Fresh Observations" nor the Swiss Observations contain submissions, properly so-called. The Federal Council, in the document filed in its name, restricts itself to observing that the Court is called on to deliver judgment in accordance with its Order of December 6th, 1930; this judgment should, in the view of the Federal Council, be "executory"; i.e. it should be capable of being put into force at once as regards the fixing of the French customs line. As regards the document filed on behalf of the French Government, it contains "Draft Regulations" in eleven articles which the Government of the Republic submits to the Court; and it recapitulates, under the heading "Conclusion", the arguments which it has developed, and which may be summarized as follows:

[36] Should the Court consider that it is unable to fulfil a part of its task, it should decline the whole of it. Should the Court consider that it can fulfil the whole of its task, the new régime to be introduced must be determined having regard to [p111] present conditions. Should the Court hold that it must determine the new régime on the basis of existing law, it must decide whether the old treaties on which Switzerland claims to rely have created legal obligations between France and Switzerland and if so whether these legal obligations have not been abolished either by tacit abrogation or as the result of the change in conditions. Should the Court find it possible to fulfil the task conferred on it by the Special Agreement, the French Government requests it, in accordance with Article 4, paragraph 2, of the Special Agreement, "to delegate one or three of its members for the purposes of conducting investigations on the spot and of hearing the evidence of any interested

persons". Finally, in the latter contingency, the French Government requests the Court to give the Parties an opportunity of stating their views on the desirability of an expert enquiry (this having been proposed by the Swiss Government in its alternative submissions of October 11th, 1930) and on the methods of conducting such an enquiry, whenever the Swiss Agent has informed the Court whether these submissions are maintained, withdrawn or modified.

[37] The hearings, which had been provided for in the Order of August 6th, 1931, and had at first been fixed for October 14th, 1931, were subsequently, after the Agents had been duly heard, adjourned till April 1932, owing to the absence of a quorum - but without their character being in any way changed by this postponement. On April 19th, 20th, 21st, 22nd, 23rd, 26th, 27th, 28th and 29th, MM. Basdevant and Logoz made oral statements, replies and rejoinders before the Court and gave answers to certain questions which had been put to them. In opening the hearings the President pointed out that the oral proceedings which were about to begin were to possess the same character as the written Observations, as defined by the Order of August 6th, 1931. In the course of the hearings, or after their conclusion, the documents given in the list in the appendix were filed by one or other of the Agents.

[38] These documents include, in particular, the following submissions which were put in by the Agent of the French Government at the end of his statement: [p112]

"May it please the Court:

I. - Should the Court decide that, by reason of its Statute, it is unable to fulfil the whole task entrusted to it by the Special Agreement in a manner corresponding to the intention of the Parties:

To declare that it cannot give the judgment contemplated by Article 2, paragraph 1, of the Special Arbitration Agreement, and that it is therefore for the Parties to take such steps as this decision may involve.

II. - Should the Court decide that it can, consistently with its Statute, fulfil the whole task entrusted to it by the Special Agreement in a manner corresponding to the intention of the Parties:

To decide by means of a single judgment the question set out in Article 1 of the Special Arbitration Agreement, and to settle for a period which it will fix all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles;

And, for this purpose, to declare:

A. - As to point I:

(1) That Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has, as between France and Switzerland, abrogated the instruments enumerated in Article 1, paragraph 1, of the Special Agreement;

(2) Alternatively that, in so far as Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has not abrogated the said instruments, as between France and Switzerland, the Article was intended to lead to their abrogation, it being understood that abrogation as between France and Switzerland can be effected only by an instrument legally binding as between those two countries;

B. - As to point II:

That the régime henceforth to govern the customs relations of the territories referred to in Article 435, paragraph 2, of the Treaty of Versailles, shall be that set forth in the draft settlement contained

on pages 79 to 82 of the New French Observations;
Alternatively, any régime based upon the juxtaposition and permeability of the two customs cordons that the Court may see fit to establish. [p113]

III. - Alternatively and in case the Court is of opinion that the status of the territories referred to in Article 435, paragraph 2, of" the Treaty of Versailles should be established on the basis of the existing legal position:

To elucidate fully this legal position,

And to declare that the instruments mentioned in Article 1, paragraph 1, of the Special Agreement are not now legally binding as between France and Switzerland,

Either because Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has abrogated the said instruments;

Or, as regards the Gex zone, because Switzerland was not a Party, either as a signatory or by accession, to the international instruments which established that zone, it being particularly noted that Switzerland formally refused to accede thereto;

Or, as regards the Saint-Gingolph zone, because that zone was created by the unilateral Manifesto of September 9th, 1829, and not by the Treaty of March 16th, 1816;

Or, as regards the Sardinian zone, because Article 3 of the Treaty of March 16th, 1816, whereby that zone was created, was implicitly abrogated by subsequent instruments, notably the Treaty of June 8th, 1851;

Or, as regards all the zones, and to the extent Switzerland has hitherto been entitled to rely on the instruments whereby the zones were established, because, owing to changed conditions, resulting more particularly from the establishment of the Federal customs line at the Swiss frontier, the Court being entitled, for the purposes of this case, to judge of the effect of these changed conditions;

Or for any other reason which the Court may see fit to adopt;

Alternatively, that Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, was intended to lead to the abrogation of the instruments mentioned therein;

And that, consequently, the Court may disregard the said instruments as a basis for the régime which it is required to establish.

IV. - Alternatively:

By withdrawing the Swiss customs cordon so as to place it where it was in 1815, 1816 and 1829, to restore, not only the situation resulting for France and Sardinia from the withdrawal of the customs cordon of those two countries, but also the situation existing on the Swiss side at the time when each of the free zones was created." [p114]

[39] In formulating these submissions, the Agent of the French Government reserved his right to present, if necessary, at the proper time, submissions as to the method of conducting the investigation on the spot which had been asked for by the French Government, and also submissions as to the question of an expert enquiry, when the Agent of the Swiss Government had explained the similar request presented by him.

[40] The Agent of the Swiss Government, for his part, confined himself, in his oral statement, to requesting the Court to rule that the submissions presented by the French Government's Agent during the hearings were inadmissible; and alternatively, to reject the said submissions on their merits. For the rest, he declared that he maintained the submissions formerly presented on behalf of the Swiss Government, except that the further submissions of October 11th, 1930, should be regarded as having ceased to have any object "unless the Court were to decide that it could give judgment on the questions referred to in the second paragraph of Article 2 of the Special

Agreement".

[41] In his oral reply, the Agent of the French Government said that, although the Swiss Government had held that the delegation of members of the Court for the purpose of conducting an investigation on the spot had no longer any object, he maintained his request for the Court to conduct such an investigation in conformity with Article 4, paragraph 2, of the Special Agreement.

[42] The Agent of the Swiss Government, for his part, declared in his oral rejoinder that he maintained "in every particular" the declarations which he had made before the Court on November 24th, 1930. He further declared that the only Swiss submissions were those presented on July 10th, 1930—which "still held good" - the sole addition being the submissions asking the Court to declare inadmissible or, alternatively, to reject the new French submissions presented during the course of the hearings.

[43] During the successive phases of the procedure, both Parties have, independently of their submissions properly so-called, requested the Court to decide, in one sense or another, on a number of incidental points. In so far as these points fall within the ambit of the Special Agreement, the Court will take them up and deal with them below. [p115]

[44] The proceedings having reached this stage, the Court now delivers judgment as follows.

[45] The era of the Napoleonic wars preceding the Hundred Days was brought to an end by the treaties concluded at Paris on May 30th, 1814, between France, on the one hand, and Austria, Great Britain, Prussia and Russia respectively, on the other. Article 6 of these treaties, which all correspond, contains inter alia the following provision:

"Switzerland, independent, shall continue to govern herself [FN1]"

[FN1] Translation taken from British and Foreign State Papers, 1812-1814.

[46] Article 4 lays down that

"To secure the communications of the Town of Geneva with other parts of the Swiss Territory situated on the Lake, France consents that the road by Versoy shall be common to the two countries [FN1]"

[FN1] Translation taken from British and Foreign State Papers, 1812-1814.

[47] The treaties in question also provided in Article 32 that, within two months, all the Powers which had been engaged on one side or the other in the war which had just been brought to an end, should send plenipotentiaries to Vienna "for the purpose of regulating, in General Congress, the arrangements which are to complete the provisions of the present Treaty [FN1]".

[FN1] Translation taken from British and Foreign State Papers, 1812-1814.

[48] Articles 74 to 84 of the Act of the Congress of Vienna of June 9th, 1815, deal with the affairs of Switzerland. Under Article 75, the territory of Geneva is united to Switzerland and is to constitute a new canton. Under Article 79, France

"consents so to place the line of customs houses that the road which leads from Geneva into Switzerland by Versoy, shall at all times be free, and that neither the post nor travellers nor the transport of merchandize shall be interrupted by any examination of the officers of the customs nor subjected to any duty. It is equally understood that the passage of Swiss troops on this road shall not, in any manner, be obstructed [FN2]".

[FN2] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet.

[p116]

[49] Finally, according to Article 84 of the Act of Vienna,

"the Declaration of March 20th, addressed by the Powers who signed the Treaty of Paris, to the Diet of the Swiss Confederation and accepted by the Diet, through the Act of Adhesion of May 27th, is confirmed in the whole of its tenor, and the principles established, as also the arrangements agreed upon, in the said Declaration, shall be invariably maintained [FN1]".

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet.

[50] In the preamble to the above-mentioned Declaration of March 20th, 1815, special reference is made to the Powers' desire to provide Switzerland, by restitutions and cessions of territory, with the means of preserving her independence and maintaining her neutrality; it is also stated therein that the Powers have obtained all information relative to the interests of the various cantons. The Declaration itself states that:

"As soon as the Helvetic Diet shall have duly and formally acceded to the stipulations contained in the present Instrument, an Act shall be prepared containing the acknowledgment and the guarantee, on the part of all the Powers, of the perpetual neutrality of Switzerland in her new frontiers; which Act shall form part of that which, in the execution of Article 32 of the Treaty of Paris of May 30th, was to complete the arrangements contained in that Treaty. [FN1]"

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet.

[51] Article 5 of the "Instrument" (Transaction) referred to in the Declaration of March 20th, 1815, states that,

"in order to ensure the commercial and military communications of the Town of Geneva with the Canton of Vaud and the rest of Switzerland; and with a view to fulfil in that respect Article 4 of the Treaty of Paris, His Most Christian Majesty consents so to place the line of customs houses that the

road which leads from Geneva into Switzerland by Versoy shall at all times be free and that neither the post, nor travellers, nor the transport of merchandize shall be interrupted by any examination of the officers of the customs, nor subjected to any duty [FN1]".

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet.

[52] The accession of the Diet of the Swiss Confederation, on behalf of the Confederation, to the "Declaration made on March 20th, 1815, by the Congress of Vienna", was effected by [p117] an act of May 27th, 1815; in this act, the Diet expressed the hope that full effect would be given to the terms of the Declaration of March 20th and that the fulfilment of the engagements therein contained would be ensured.

[53] This hope met with fulfilment when the Powers concluded the second series of treaties of Paris on November 20th, 1815, after the Hundred Days; for on the same day they made a Declaration, the relevant passage of which is as follows:

"The Accession of Switzerland to the Declaration published at Vienna on the 20th March, 1815, by the Powers who signed the Treaty of Paris, having been duly notified to the Ministers of the Imperial and Royal Courts, by the Act of the Helvetic Diet on the 27th of the month of May following, there remained nothing to prevent the Act of Acknowledgment and Guarantee of the perpetual Neutrality of Switzerland from being made conformably to the above-mentioned Declaration. But the Powers deemed it expedient to suspend till this day the signature of that Act, in consequence of the changes which the events of the war, and the arrangements which might result from it might possibly occasion in the limits of Switzerland, and in respect also to the modifications resulting therefrom, in the arrangements relative to the federated territory, for the benefit of the Helvetic Body.

These changes being fixed by the stipulations of the Treaty of Paris signed this day, the Powers who signed the Declaration of Vienna of the 20th March declare, by this present Act, their formal and authentic Acknowledgment of the perpetual Neutrality of Switzerland; and they Guarantee to that country the Integrity and Inviolability of its Territory in its new limits, such as they are fixed, as well by the Act of the Congress of Vienna as by the Treaty of Paris of this day, and such as they will be hereafter; conformably to the Arrangement of the Protocol of the 3rd November, extract of which is hereto annexed, which stipulates in favour of the Helvetic Body a new increase of Territory, to be taken from Savoy, in order to disengage from Enclaves, and complete the circle of the Canton of Geneva [FN1]. "

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet

[54] The extract from the Protocol of November 3rd, 1815 - referred to in the Declaration of November 20th - which Protocol was relative to the territorial cessions to be made by France, contains inter alia the following: [p118]

"The French Government having consented to withdraw its lines of custom and excise from the frontiers of Switzerland, on the side of the Jura, the Cabinets of the Allied Powers will employ their good offices for inducing His Sardinian Majesty to withdraw in like manner, his lines of custom and excise, on the side of Savoy, at least upwards of a league from the Swiss frontiers, and on the

outside of the great road of Saleve, and of the mountains of Sion and Vuache [FN1]. "

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet

[55] An extract from the said Protocol, containing the passage quoted above, was officially communicated on November 7th to the Swiss plenipotentiary by the plenipotentiaries of the Cabinets of the Courts of Austria, Russia, Great Britain and Prussia.

[56] According to Article 1 of the treaties concluded on November 20th, 1815, between France, on the one hand, and Austria, Great Britain, Prussia and Russia, respectively, on the other:

"The Frontiers of France shall be the same as they were in the year 1790, save and except the modifications on one side and on the other, which are detailed in the present Article.

.....

3. In order to establish a direct communication between the Canton of Geneva and Switzerland, that part of the pays de Gex, bounded on the east by the Lake Lemman; on the south, by the territory of the Canton of Geneva; on the north, by that of the Canton of Vaud; on the west, by the course of the Versoix, and by a line which comprehends the Communes of Collex-Bossy, and Meyrin, leaving the Commune of Ferney to France, shall be ceded to the Helvetic Confederacy, in order to be united to the Canton of Geneva. The line of the French Customs-houses shall be placed to the west of the Jura, so that the whole of the Pays de Gex shall be without that line [FN1]. "

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet

[57] The territory comprised between the Franco-Swiss political frontier and the line of the French customs withdrawn from that frontier - as provided in the diplomatic instruments quoted above - constitutes the free zone of the District of Gex [p119] mentioned in Article I of the Special Agreement and in Article 435, paragraph 2, of the Treaty of Versailles.

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[58] The free zone of Upper Savoy, known as the "Sardinian zone", also, in the last analysis, derives its origin from the arrangements relative to Geneva made following upon the Napoleonic wars.

[59] The above quoted Article 5 of the "Transaction" appended to the Declaration of the Powers concerning Switzerland of March 20th, 1815, contains the following clause:

"The Contracting Powers shall, moreover, interpose their good offices for the purpose of obtaining for the Town of Geneva a suitable accession of territory on the side of Savoy [FN1]".

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet

[60] With reference to this clause, the Sardinian Government, in a letter of March 26th, 1815,

addressed to the Powers, stated that it consented to the cessions of territory contemplated, subject to certain conditions which were specified and which the Powers approved by a Declaration on March 29th, 1815. Accordingly, provisions confirming these cessions and conditions were inserted in Articles 91 and 92 of the Act of the Congress of Vienna of June 9th, 1815. The Diet of the Swiss Confederation, for its part, by an "act of adhesion to the acts of the Congress of March 29th, 1815", dated August 12th of the same year, accepted the said conditions. The above-mentioned Protocol of November 3rd, 1815, confirmed, in its fifth Article, the position resulting from the various instruments referred to, save that it envisaged certain territorial exchanges between Sardinia and the Canton of Geneva and declared that the Cabinets of the Allied Courts would use their good offices to induce His Sardinian Majesty to withdraw his customs line on the side of Savoy at least one league from the Swiss frontier. By their Declaration of November 20th, 1815, the Powers which had signed the Declaration of March 20th formally guaranteed to Switzerland the integrity and inviolability of her territory within her new boundaries, [p120] including those subsequently to be fixed, in accordance with the clause in the Protocol of November 3rd, "which stipulates in favour of the Helvetic Body a new increase of Territory to be taken from Savoy, in order to disengage from Enclaves, and complete the circle of the Canton of Geneva [FN1]".

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet

[61] The determination of the frontier between Switzerland and Sardinia was left to a direct agreement between those two States.

[62] The latter, on March 16th, 1816, at Turin, concluded a "treaty respecting territorial cession and boundaries" in which they expressly referred to the various instruments above mentioned. Article 1 of this treaty fixes the political frontier between the two neighbouring countries, and Article 3 fixes the line of the Sardinian customs in Sardinian territory. The latter Article runs as follows:

"According to the purport of the Protocol of the 3rd of November, respecting Custom-Houses (reconciling at the same time its dispositions, as much as possible, with the interests of His Majesty) the Line of Custom-Houses in the neighbourhood of Geneva and the Lake, shall proceed from the Rhone by Cologny, Valeiry, Cheney, Luiset, Chable, Sapey, Vieson, Etrembières, Annemasse, Ville-la-Grand, along the course of the Foron to Machilly, thence by Douvaine and Colongette as far as the Lake, and along the Lake to Meillerie, afterwards resuming and continuing the present frontier at the post nearest to Saint-Gingolph; it being understood that His Majesty shall be at liberty to make such alterations and dispositions relative to the numbers and situations of his Custom-Houses within the said line as he may deem most convenient. No Custom-House duty can be performed either on the Lake or within the space (zone) which separates the territory of the Canton of Geneva from the line above described; it shall, nevertheless, be at all times lawful for His Majesty's administrative authorities, to take such measures as they may deem necessary to prevent any illegal traffic, resulting from depots or the stationing of merchandise, within the said space (zone). The Government of Geneva desiring, on its part, to second the views of His Majesty in this respect, will take the necessary precautions to prevent smuggling from being encouraged by the inhabitants of the Canton [FN1]. "

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet

[p121]

[63] The "Sardinian zone" is that comprised between the section of the line described in this Article, from the Rhone to the Lake, and the political frontier.

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As appears from Article 1 of the Treaty of Turin of March 16th, 1816 ("it being understood that the property of one half the breadth of the lake from Hermance to Vézenaz is acquired by the Canton of Geneva¹"), the political frontier between Switzerland and Sardinia followed the middle of the lake. On the other hand, under Article 3 of the same Treaty, the line of the Sardinian customs went "along the Lake" between Colongette and Meillerie. The zone comprised between the part of the shore between these two places and the middle line of the lake constitutes the so-called "Lake zone".

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[64] The same Article 3 of the Treaty of Turin states that the line of the Sardinian customs shall proceed "along the Lake to Meillerie, afterwards resuming" and continuing the present frontier at the post nearest to St. Gingolph [FN1]".

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet

[65] On this subject, a "Manifesto" was issued on September 9th, 1829, by the Royal Sardinian Court of Accounts. The first two paragraphs of the preamble and Article 1 and the first paragraph of Article 2 run as follows:

"The Canton of Valais, invoking the terms of Article 3 of the Treaty concluded with the Swiss Confederation and the Canton of Geneva on March 16th, 1816, has requested the abolition of the customs office at present established in the village of St. Gingolph and the withdrawal of the customs line from this frontier, so that a new zone shall be formed in this locality comprising the territory of the said commune.

Although this request, according to the report made to His Majesty, has appeared not to be altogether well-founded in law and only to be based on an ambiguous [p122] expression, nevertheless, in order to give satisfaction to the Canton of Valais, as a token of his good will, His Majesty has been good enough to consent to its being granted.

.....
Article 1. - The Customs office in the village of St. Gingolph shall be and remain abolished and shall be established in the village of Locum.

Article 2. - Henceforward, the line of the customs towards the above-mentioned part of the frontier of Valais shall start from the Lake, at the point where the main Evian road is intersected by the 'red bridge' beside the village of Locum; it shall proceed up the bed of the same stream of Locum and shall follow it via the peak of La Frasse and the mountain of Mémise as far as its source at the foot of the chain of rocks which serve as boundaries between the communes of Novel, Bernes, and Tolon; from this point it shall follow the mountain chain passing near Trépertuet, and rejoin the foot of the Dent d'Oche; thence it shall continue along the crest of the mountains which join the Dent de Villand beside the summit of La Cornette. "

[66] Thus is defined the zone known as the "zone of Saint-Gingolph".

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[67] On March 24th, 1860, France and Sardinia signed at Turin the Treaty "concerning the annexation of Savoy and the arrondissement of Nice to France". According to the terms of this instrument, Sardinia consents to this annexation on the understanding that it is to be effected without any constraint of the wishes of the populations and that Sardinia cannot transfer the neutralized parts of Savoy - which included the zones defined above, apart from the zone of Gex - except on the conditions upon which she herself possesses them. Accordingly, a plebiscite was organized in the territories concerned; it was taken on April 22nd and 23rd, 1860, and its result was the proclamation of the annexation to France of Savoy and Nice by the Senatus-Consultum of June 12th, 1860. In view of the special conditions in which the plebiscite was taken - [p123] in one part of the territory, the inhabitants were permitted to vote yes, yes and zone, or no, and the very great majority voted yes and zone - the French customs were withdrawn, by an imperial decree of the same day, to a new line within French territory: thus, by a sovereign and unilateral decision on the part of France, was created the "Great zone" or "Annexation zone", which included the small Sardinian zone and the zone of Saint-Gingolph. The zone was abolished by the French law of February 16th, 1923, which came into force on November 10th of the same year. However that may be, the present dispute does not concern the "Great zone" of 1860.

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[68] Ever since their creation, those free zones, which the Court has to deal with, possessed a unilateral character, that is to say that the withdrawal of the French and Sardinian Customs lines to a position in rear of the political frontier was prescribed, without any similar or countervailing obligation being imposed upon Switzerland. This legal situation was not, however, productive of a de facto inequality, owing to the Customs system in force for Geneva. This system, as instituted by the Federal and Cantonal laws of 1815 and 1816, was extremely simple in its application and only provided for very low tariffs; both the Cantonal and Federal duties were levied by the cantonal offices.

[69] This system was, however, altered as a result of the consolidation of the Federal Customs and of the abolition of the Cantonal Customs, which were effected in 1849 and developed during the succeeding years (Federal Law on Tolls of June 30th, 1849; Federal Law of August 27th, 1851); these changes affected both the method of collecting the duties (which were henceforward to be levied solely at the frontier of the Confederation and not at the cantonal frontiers) and the rates of the duties.

[70] Though the alteration in the Federal Customs system was not, at the time, regarded on either hand as seriously affecting the value of the régime of the free zones - this is evidenced by the creation of the Great zone (of Annexation) in [p124] virtue of a unilateral decision by the French Government in 1860 - it nevertheless made it necessary or desirable to effect certain adjustments by way of treaty.

[71] Accordingly, in the Commercial Treaty concluded on June 8th, 1851, between Sardinia and Switzerland, the latter undertakes (Art. 4) to allow the importation free of duty from the Sardinian States of a certain number of specified articles, and to concede certain other benefits "in consideration of the exemption from export duties of foodstuffs and consumable goods intended to supply the City and Canton of Geneva". Again, in particular, by the Regulation concerning the District of Gex, which was annexed to the Treaty of Commerce concluded on June 30th, 1864, between France and Switzerland, the Government of the Confederation undertook to grant certain

facilities to the products of the District of Gex in addition to the customs concessions specified in the tariff annexed to the Treaty. This Regulation was followed by various agreements concerning questions of detail, and in particular by a Convention, dated June 14th, 1881, concerning a customs régime between the Canton of Geneva and the free zone of Upper Savoy (i. e., the Great zone of Annexation) and a Treaty of Commerce, dated the following day, to which was attached a Regulation concerning the District of Gex. Even after the expiry of the latter Treaty, on January 1st, 1893 (and except for a period of customs difficulties between France and Switzerland, which lasted into the year 1895), the said Regulation was in fact applied until it was replaced by another regulation of the same kind annexed to the Commercial Convention of October 20th, 1906.

[72] It should be observed that the contractual régime for the Sardinian zone (which régime was instituted by the Agreement of June 14th, 1881, for a period of thirty years, renewable by tacit consent) was distinct from that which governed the relations between Switzerland and the Gex zone; the latter régime shared the fate of the successive commercial treaties, to which the relevant regulations were attached. In 1913, however, the Convention of 1881 became subject to denunciation, in the same way as the commercial treaties, at one year's notice. [p125]

[73] Availing itself of this possibility, and having regard in particular to the change effected in the situation of the free zones owing to the establishment of a French police and fiscal cordon at the political frontier during the war, the French Government, on September 20th, 1918, denounced the Commercial Convention of October 20th, 1906 (including the Regulation concerning the Gex zone), and on December 18th, 1918, it further denounced the Convention of June 14th, 1881, concerning the customs régime between the Canton of Geneva and the free zone of Upper Savoy.

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[74] The denunciation of the agreements concerning the free zones was to become effective as from January 1st, 1920.

[75] As early as January 14th, 1919, the Swiss Government, in its reply to the French note of December 18th, 1918, denouncing the Convention of 1881, had stated that it was ready to examine "any proposals which the French Government might see fit to submit to it concerning the economic relations between Switzerland and Upper Savoy".

[76] This suggestion was followed, first, by an informal discussion, and subsequently, by an exchange of notes with a view to the inauguration of official negotiations. The opening of the latter was delayed owing to an examination of the question having been undertaken in France, where it was regarded as connected with the substitution, "for the régime of the free zones, of a régime consistent with modern ideas and requirements, adapted to the respective geographical situations of the regions concerned, and based on conditions of fairness and reciprocity". On April 26th, 1919, the French Embassy at Berne communicated to the Federal Political Department

"a draft convention for good neighbourly relations, designed to serve as a basis for the discussions about to take place between the French and Swiss representatives appointed to draw up a special contractual régime which shall be applicable to the French districts in the Departments of Ain and Upper Savoy at present outside the French customs-line, and to the adjacent Swiss cantons". [p126]

[77] The covering note, forwarding this draft, contained inter alia the following passages:

"The Government of the Republic is convinced that the régime thus established on a basis of fairness and reciprocity, and adapted to the special geographical conditions which exist, will

replace with advantage the obsolete régime of the free zones, and will materially conduce to develop friendly relations between the two countries, more particularly as regards relations between the districts specially concerned.

In this connection, the French Government desires to inform the Federal Government that it is essential, in its view, to take advantage of the assembly of the delegates of the Powers at Paris to place on record in the Treaty of Peace with Germany that the servitudes imposed on France in 1815, as regards the neutralized zone and also as regards the free zones of Savoy and the District of Gex, have now lapsed.

The French Government is very desirous of receiving an assurance at the earliest possible moment that the Swiss Government appreciates the entirely friendly character of this communication, and is at one with the French Government in recognizing that the historic relations, whose cordial character has been formally reaffirmed during the late war, between the neighbouring countries, will not fail to gain by the disappearance of obsolete clauses, which will be advantageously replaced by a contractual régime, freely negotiated, more elastic, and better suited to modern requirements. "

[78] The French note of April 26th, 1919, was followed on the 28th of the same month by a second note which elaborated the ideas put forward in the first. Thus, this note observes that:

"It will be desirable to insert in the Treaty of Peace with Germany, as successor of Prussia who signed the treaties of 1815, the abrogation of the clauses relating... to the free zones, and the French Government is specially anxious to obtain the assent of Switzerland in advance",

and that:

"The French Government is convinced that its future relations with the Federal Government will greatly benefit by the fact that Switzerland will have spontaneously borne witness to the lapse of provisions which had become an impediment to the normal development of political and economic relations between the two countries. " [p127]

[79] On the next day, April 29th, 1919, the French Minister for Foreign Affairs communicated to the President of the Swiss Confederation, who was then at Paris, "the text of the draft article which the French Government proposes to insert in the Peace Treaty". In the covering letter, forwarding this text, M. Pichon wrote as follows:

"It goes without saying that, although the Government of the Republic wishes to avail itself of the opportunity which now offers itself to put an end to the character given in 1815 to an economic system little suited to control by Powers not directly involved in that system, the French Government nevertheless does not intend to avail itself, as against Switzerland, of the abrogation in question, until the negotiations for the convention which is to replace the said régime have resulted in an agreement between France and the Confederation. "

[80] The Swiss reply to the three above-mentioned communications took the form of a note which was sent on May 2nd, 1919, by the Federal Political Department to the French Embassy at Berne. On the question of the free zones, it observes:

"2. The Federal Council will not fail to examine in the most friendly spirit the above-mentioned request of France concerning the free zones of Upper Savoy and the District of Gex, but it is indispensable that, before pronouncing an opinion, it should have the necessary time for making a study of the proposals of the French Commission and for consulting the Swiss districts more specially concerned.

For these reasons the Federal Council thinks it highly desirable that the French Government should refrain from referring to the free zones in the Treaty of Peace. "

[81] On May 4th, following, the Government of the French Republic communicated to the Swiss authorities a new draft of the article to be inserted in the Treaty of Peace, reading as follows:

"The High Contracting Parties, while they recognize the guarantees stipulated by the treaties of 1815, and especially by the Act of November 20th, 1815, in favour of Switzerland, the said guarantees constituting international obligations for the maintenance of peace, declare nevertheless that the provisions of these treaties, conventions, declarations and other supplementary acts concerning the neutralized zone of [p128] Savoy, as laid down in paragraph 1 of Article 92 of the Final Act of the Congress of Vienna and in paragraph 2 of Article 3 of the Treaty of Paris of November 20th, 1815, are no longer consistent with present conditions.

For this reason, the High Contracting Parties take note of the agreement reached between the French Government and the Swiss Government for the abrogation of the stipulations relating to this zone which are and remain abrogated.

The High Contracting Parties also agree that the stipulations of the treaties of 1815 and of the other supplementary acts concerning the free zones of Upper Savoy and the Gex District are no longer consistent with present conditions, and that it is for France and Switzerland to come to an agreement together with a view to settling between themselves the status of these territories under such conditions as shall be considered suitable by both countries. "

[82] In a note, dated May 5th, 1919, which was delivered simultaneously by the Swiss Legation at Paris to the French Ministry for Foreign Affairs and by the Political Department to the French Embassy at Berne, the Federal Council stated that, after examining the new French proposal, i. e. the new draft article, it "has happily reached the conclusion that it was -possible to acquiesce in it, under the following conditions and reservations" as regards the free zone of Upper Savoy and the District of Gex:

"a. The Federal Council makes the most express reservations to the interpretation to be given to the statement mentioned in the last paragraph of the above Article for insertion in the Treaty of Peace, which provides that the 'stipulations of the treaties of 1815 and other supplementary acts concerning the free zones of Haute-Savoie and the Gex District are no. longer consistent with present conditions'.

The Federal Council would not wish that its acceptance of the above wording should lead to the conclusion that it would agree to the suppression of a system intended to give neighbouring territory the benefit of a special régime which, is appropriate to the geographical and economical situation and which has been well tested.

In the opinion of the Federal Council, the question is not the modification of the customs system of the zones as set up by the treaties mentioned above, but only the regulation in a manner more appropriate to the economic conditions of the present day of the terms of the exchange of goods between the regions in question. [p129]

The Federal Council has been led to make the preceding observations by the perusal of the draft Convention concerning the future constitution of the zones which was annexed to the note of April 26th from the French Government.

While making the above reservations, the Federal Council declares its readiness to examine in the most friendly spirit any proposals which the French Government may deem it convenient to make on the subject.

b. It is conceded that the stipulations of the treaties of 1815 and other supplementary acts relative to the free zones will remain in force until a new arrangement is come to between France and Switzerland to regulate matters in this territory. "

[83] The text of the aforementioned Article was inserted without modification - but with the text of the Swiss note of May 5th, 1919, annexed to it - in the Peace Conditions of the Allied and Associated Powers transmitted on May 7th to the German delegation at Versailles.

[84] On May 18th, 1919, the French Ministry for Foreign Affairs communicated to the Swiss Legation in Paris a note in the following terms:

"In a note dated May 5th, the Swiss Legation in Paris was good enough to inform the Government of the French Republic that the Federal Government adhered to the proposed article to be inserted in the Treaty of Peace between the Allied and Associated Governments and Germany.

The French Government have taken note with much pleasure of the agreement thus reached, and, at their request, the proposed article, which had been accepted by the Allied and Associated Governments, has been inserted under No. 435 in the Peace Conditions presented to the German plenipotentiaries.

The Swiss Government, in their note of May 5th on this subject, have expressed various views and reservations.

Concerning the observations relating to the free zones of Haute-Savoie and the Gex District, the French Government have the honour to observe that the provisions of the last paragraph of Article 435 are so clear that their purport cannot be misapprehended, especially where it implies that no other Power but France and Switzerland will in future be interested in that question. [p130]

The French Government, on their part, are anxious to protect the interests of the French territories concerned, and, with that object, having their special situation in view, they bear in mind the desirability of assuring them a suitable customs régime, and determining, in a manner better suited to present conditions, the methods of exchanges between these territories and the adjacent Swiss territories, while taking into account the reciprocal interests of both regions.

It is understood that this must in no way prejudice the right of France to adjust her customs line in this region in conformity with her political frontier, as is done on the other portions of her territorial boundaries, and as was done by Switzerland long ago on her own boundaries in this region.

The French Government are pleased to note on this subject in what a friendly disposition the Swiss Government take this opportunity of declaring their willingness to consider any French proposal dealing with the system to be substituted for the present régime of the said free zones, which the French Government intend to formulate in the same friendly spirit.

Moreover, the French Government have no doubt that the provisional maintenance of the régime of 1815 as to the free zones referred to in the above-mentioned paragraph of the note from the Swiss Legation of May 5th, whose object is to provide for the passage from the present régime to the conventional régime, will cause no delay whatsoever in the establishment of the new situation which has been found necessary by the two Governments. This remark applies also to the ratification by the Federal Chambers, dealt with in paragraph 1 (a) of the Swiss note of May 5th, under the heading 'Neutralized zone of Haute-Savoie'.

[85] This note was subsequently inserted in the Treaty of Peace signed at Versailles on June 28th, 1919, immediately after the text of the Swiss note of May 5th, 1919, and like the latter, as an annex to Article 435 of the Treaty.

[86] On May 29th, the Swiss Government replied to the French note of May 18th, 1919. This reply stated, *inter alia*:

"Since there was in fact no time for an exchange of views on the interpretation to be given to the article proposed by the French Government, the Federal Council, out of deference to the latter and in a desire to meet its wishes, by its subsequent note of May 5th, acquiesced, subject to the most

express reservations, in the text proposed by the French Government. [p131]

The Federal Council adheres in full to its reservations which have furthermore been inserted in the Acts of the Conference. This viewpoint is all the more well-founded since the text proposed by the French Government was inserted in the Peace Treaty solely with a view to securing the disinterestedness of the Signatory Powers. This text cannot therefore prejudice the basic question, viz., the contents of the convention to be negotiated between the Swiss and French Governments.

The Federal Council feels that it should specifically state that the article inserted in the Peace Treaty in no way invests the stipulations of the treaties of 1815 and other supplementary acts concerning the free zones with a provisional character; these stipulations remain in force as they stand and can neither be modified nor replaced except by a joint agreement between Switzerland and France. "

[87] In the same note, the Swiss Government alluded to the negotiations concerning the settlement of the future régime of the zones which had been envisaged since the beginning of the year and intimated that it was continuing the necessary investigations for this purpose, and notably its examination of the French draft of April 1919.

[88] In its reply sent by the French Ambassador at Berne on June 14th, 1919, the French Government expressed a wish that Swiss negotiators should be appointed as early as possible "with a view to the conclusion of an agreement meeting the wish of both countries to consolidate their friendly relations and taking account of the respective interests of their peoples".

[89] By a note dated July 1st, 1919, the Federal Political Department drew the attention of the French Embassy "to the fact that the Federal Council found it difficult to reconcile the draft convention submitted to it on April 29th, 1919, with the reservations, which it expressly formulated in its note of May 5th, concerning any modification of the existing regime which involved the establishment of the French customs at the political frontier of the two countries".

[90] The note added that the Federal Council was still "animated with the strongest desire to conclude, as soon as possible, an arrangement acceptable to both countries and of such a nature as to facilitate trade relations between the free zones and Switzerland". [p132]

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[91] The matter rested there until October 1st, 1919, when the Swiss Government communicated to the French Embassy the names of the Swiss delegates who, with the French representatives, were to negotiate the future regime of the free zones of Upper Savoy and the District of Gex, and announced that the Embassy would shortly receive a draft convention for good neighbourly relations prepared by the Swiss authorities.

[92] This communication was in fact the starting point of long and difficult negotiations, pursued both through ordinary diplomatic channels and through conversations between delegations appointed for the purpose, and culminating on August 7th, 1921, in the signature of a Convention "for the settlement of commercial and neighbourly relations between the former free zones of Upper Savoy and the District of Gex and the adjacent Swiss cantons". As its title suggests, this Convention was based on the abolition, with adequate compensation, of the said zones, i. e., on the transfer of the French customs cordon to the political frontier.

[93] The Convention was approved by the Parliaments of both countries. In consequence, however, of a demand to that effect, made in accordance with the Constitution of the Swiss Confederation, the Convention had to be submitted to a popular vote; this vote, which took place

on February 18th, 1923, having proved adverse, the Swiss Legation at Paris, on March 19th, 1923, informed the French Government that the Federal Government was unable to ratify the Convention.

[94] During the negotiations which preceded the conclusion of the Convention of August 7th, 1921 (note from the French Ministry for Foreign Affairs dated December 25th, 1919), it had been arranged that the agreements concerning the régime of the free zones which were due to expire on January 1st, 1920, should remain provisionally in force, and that this temporary régime could not be terminated without at least a month's notice.

[95] On the other hand, during the same negotiations, the French Government had informed the Swiss Government, in a note [p133] dated March 26th, 1921, from the French Embassy at Berne that it felt bound henceforward to envisage the establishment of the French customs cordon at the frontier and to introduce a bill authorizing it to take this step; the law in question would, however, not be enforced until the expiration of the required time for notice mentioned above.

[96] This law was passed on February 16th, 1923; Article 1 reads:

"Along the entire frontier, between France and Switzerland, the national customs line shall be established at the limit of the territory of the Republic.
Consequently, and subject to the provisions of the articles hereafter, the so-called 'free zones' regions shall, in all respects and especially in respect of indirect taxes, henceforth be placed under the same regime as the whole of French territory. "

[97] Certain attempts to re-open negotiations had been made on either hand, in view of the results of the Swiss referendum of February 18th, 1923; as they had led to no result, the French Ministry for Foreign Affairs forwarded a note, dated October 10th of that year, to the Swiss Minister at Paris denouncing the provisional régime in force for the free zones as from November 10th following, in accordance with the note of December 25th, 1919, and notifying Switzerland that the law of February 16th, 1923, introducing the new customs status of the free zones of the District of Gex and Upper Savoy, would also become applicable on November 10th, 1923.

[98] The Swiss Government replied on October 17th, 1923, protesting against the French Government's decision. The note which the Swiss Minister at Paris wrote on this subject to the French Government contained inter alia the following statement:

"The Federal Government is compelled, to its great regret, to consider that all possibility of direct negotiations is excluded, for the time being. Such negotiations would only again become possible if the French Government should declare that the application of the law of February 16th, 1923, will remain definitely suspended throughout the negotiations. As it is, the Swiss Government sees no other regular way out of the dispute except by arbitration. It considers that the disputed [p134] points should be submitted to the Permanent Court of International Justice at The Hague, and it requests the Government of the Republic to be good enough to agree to that procedure. Should the last-named Government prefer some other arbitral tribunal, it would be easy to agree on that point. The substantial points at issue might be formulated as follows:

1° Are the rights which the Swiss Confederation has hitherto derived from the treaties of 1815 and 1816 still in force?

2° Can Article 435, last paragraph, of the Treaty of Versailles be invoked against the Confederation, except within the meaning and the limits laid down by the Federal Council in its note of May 5th, 1919?"

[99] A diplomatic correspondence ensued, in the course of which, inter alia, the Swiss proposal that the application of the French law of February 16th, 1923, should be suspended throughout the further negotiations, was rejected. On the other hand, on January 22nd, 1924, the French Minister for Foreign Affairs sent the Swiss Minister at Paris a draft Special Arbitral Agreement imparting the following duties to a tribunal of three arbitrators, which would have power to act as amiable compositeur:

"To determine whether the Convention concluded between the Government of the Republic and the Federal Government on August 7th, 1921, gave the latter the advantages it was entitled to expect;

To determine whether the aforesaid Convention provides the districts concerned in France and Switzerland with a customs régime regulating the conduct of trade between the said districts in a manner consistent with present economic conditions. "

[100] In his reply, dated February 14th, 1924, the Swiss Minister referred to the suggestion for international judicial proceedings which he had put forward in his note of October 17th, 1923, and indicated the difference between that suggestion and the French draft Special Agreement in the following terms:

".... the draft Special Agreement of the French Government is based, not on the idea of a legal arbitration bearing on the difference of interpretation which constitutes the crux of the dispute, but on the totally distinct idea of appointing three persons, whose chief task would be to determine, as compositeurs amiables, whether the Convention of August 7th, 1921, [p135] which the Swiss people have rejected, gave the Confederation the advantages which it was entitled to expect".

[101] Not being able to entertain the ideas advanced by the French Government, the Federal Council sent the French Government an alternative draft Special Agreement, providing for a "legal arbitration" to be undertaken by the Permanent Court of International Justice. By the terms of this alternative draft, the Court would have had to pronounce on the following questions:

"Are the provisions of the Treaty of Paris of November 20th, 1815, of the Protocol of the Conference of Paris of November 3rd, 1815, and of the Treaty of Turin of March 16th, 1816, regarding the customs régime of the free zones of Upper Savoy and the District of Gex still in force, or has Article 435 of the Treaty of Versailles, in the conditions under which the Swiss Federal Council acquiesced therein, had the effect of abrogating the said provisions?

If it is held that the said provisions are still in force, the Permanent Court of International Justice will be requested to pronounce on the second question, as follows:

Can France, by a unilateral act, abolish the régime of the free zones of Upper Savoy and the District of Gex on the ground that, in the case in point, the act is one which falls exclusively within its domestic jurisdiction ?"

[102] Following on this exchange of proposals, it was agreed in March 1924, on the proposal of the French Government, to instruct two jurists, French and Swiss, to prepare a draft Special Agreement, which would then be submitted by them for approval to their respective Governments.

[103] The jurists appointed by the two Parties, in pursuance of this agreement, drew up the Special Arbitration Agreement which was signed at Paris on October 30th, 1924, by the French Minister for Foreign Affairs and the Swiss Minister at Paris, and which came into force on March 21st, 1928, as stated above.

* * *

[104] According to Article 2, paragraph 1, of the Special Agreement, the Court shall, "by means of a single judgment rendered in accordance with Article 58 of the Court's Statute, [p136] pronounce its decision in regard to the question formulated in Article 1 and settle for a period to be fixed by it and having regard to present conditions, all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles".

[105] The question which the Court must first pass upon is, according to Article 1, paragraph 1, of the Special Agreement, "whether, as between France and Switzerland, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has abrogated or is intended to lead to the abrogation of the provisions of the Protocol of the Conference of Paris of November 3rd, 1815, of the Treaty of Paris of November 20th, 1815, of the Treaty of Turin of March 16th, 1816, and of the Manifesto of the Sardinian Court of Accounts of September 9th, 1829, regarding the customs and economic régime of the free zones of Upper Savoy and the Pays de Gex, having regard to all facts anterior to the Treaty of Versailles, such as the establishment of the Federal Customs in 1849, which are considered relevant by the Court".

[106] The expression "as between France and Switzerland" has the effect of limiting the function of the Court to that of determining the reciprocal rights and obligations arising, in connection with the regime of the free zones, for these two countries, under Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, apart from the legal relations created as between the signatories of the said Treaty resulting from this Article. That does not, however, prevent the Court from expressing its opinion on the import of Article 435, paragraph 2, as it stand, with a view to determining the effect of that clause, as between France and Switzerland.

[107] This is not disputed between the Parties. On the other hand, the latter are unable to agree as to the exact meaning and import of the question referred to the Court. The French Government contends that Article 1 of the Special Agreement, in asking the Court to say whether Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, "has abrogated or is intended to lead to the abrogation" of the provisions concerning the free zones, put forward two propositions, between which the Court must make its choice. The Swiss Government contests this view, and maintains that [p137] the Court's duty, under the terms of the said question, is to reply in the negative to both propositions, if it finds this result necessary for a correct interpretation of Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes.

[108] In order to settle this divergence, it is first of all necessary to be clear as to the meaning of the words "intended to lead to the abrogation".

[109] Neither of the Parties disputes that, if France and Switzerland succeeded in reaching the agreement provided for in Article 435, paragraph 2, of the Treaty of Versailles, and in Article 2, paragraph 1, of the Special Agreement, that agreement, whatever its contents might be, would have the effect of abrogating the former provisions as such. Both Parties appear to agree that, in the passage "is intended to lead to the abrogation", abrogation is regarded as necessary, and not merely as a possible result of the common agreement: in other words, that Switzerland would then be obliged to accept, as a basis for the future negotiations contemplated by Article 435, paragraph 2, of the Treaty of Versailles, and by Article 1, paragraph 2, of the Special Agreement, the abolition of these zones, including in particular the transfer of the French Customs line in these territories to the political frontier.

[110] It is from this standpoint that the French Government maintains that the Court must limit

itself to finding, either that the abolition has already been effected, or else that it must necessarily be effected. It is also from this standpoint that the Swiss Government contends that Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has neither abrogated nor has obliged Switzerland to consent to the abrogation of the old provisions, and that the Court must give judgment to that effect.

[111] It follows that, if the Court, in seeking to answer the question put to it by the Special Agreement, were not to construe the expression "is intended to lead to the abrogation" as meaning "is intended necessarily to lead to the abrogation", its reply would fail to remove the whole of the divergence which exists between France and Switzerland, and which has led them to have recourse to the Court. [p138]

[112] Having thus made clear the import of the question, it is necessary to add the following observations:

[113] From a general point of view, it cannot lightly be admitted that the Court, whose function it is to declare the law, can be called upon to choose between two or more constructions determined beforehand by the Parties, none of which may correspond to the opinion at which it may arrive. Unless otherwise expressly provided, it must be presumed that the Court enjoys the freedom which normally appertains to it, and that it is able, if such is its opinion, not only to accept one or other of the two propositions, but also to reject them both.

[114] This conclusion is confirmed by the words in the Preamble of the Special Agreement, which states that the Parties have been unable to agree in regard to the interpretation to be placed upon Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, and have decided to resort to arbitration in order to obtain this interpretation. It is, accordingly, the correct interpretation of Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, which the Parties ask the Court to give them, in order to remove the divergence existing between them.

[115] It is common ground that the real divergence, which has made it impossible for France and Switzerland to agree, has turned on the question whether the free zones could be abolished without the consent of Switzerland. Now, the possibility of answering both propositions either in the affirmative or in the negative could in no way prejudice the position of France; whereas the exclusion of a negative answer to both propositions would amount to deciding the merits of the question in advance against Switzerland. It is scarcely reasonable to suppose - indeed, such a supposition would be irreconcilable with the documents before the Court - that, at the moment when the dispute was about to be submitted to a judicial organ, Switzerland abandoned the legal position which she has constantly maintained in regard to the very point on which, the two Parties are now divided.

[116] The Court does not dispute the rule invoked by the French Government, that every Special Agreement, like every clause [p139] conferring jurisdiction upon the Court, must be interpreted strictly; but that rule could not be applied in such a way as to give the Special Agreement, under the guise of strict interpretation, a construction according to which it would not only fail entirely to enunciate the question really in dispute, but would, by its very terms, have prejudged the answer to that question.

[117] It follows that, if the Court arrives at the conclusion that Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has not, as between France and Switzerland, abrogated the old provisions concerning the free zones, it is not obliged to say that the clause in question has for its object their abolition, but, on the contrary, may equally say that this is not the intention of the

Article, with its Annexes.

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[118] The first point which the Court has to examine is whether, as between France and Switzerland, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has abrogated the provisions concerning the free zones.

[119] Although the question put to the Court has in view the effects of Article 435, paragraph 2, with its Annexes, it may be of advantage to consider first what is the import of this provision, disregarding the Annexes.

[120] Article 435, paragraph 2, begins by a declaration: "The High Contracting Parties also agree that the stipulations of the treaties of 1815 and of the other supplementary acts concerning the free zones of Upper Savoy and the Gex District are no longer consistent with present conditions." This declaration is linked by the actual text of Article 435, paragraph 2, to the conclusion "that it is for France and Switzerland to come to an agreement together with a view to settling between themselves the status of these territories under such conditions as shall be considered suitable by both countries". The declaration thus made by the High Contracting Parties and the conclusion which they draw from it are explained by a series of facts which had arisen between the time of the creation of the free zones and the date of the Treaty of Versailles. It is for that reason that Article 1, [p140] paragraph 1, of the Special Agreement invites the Court to discharge the duty entrusted to it, having regard to all facts anterior to the Treaty of Versailles, such as the establishment of the Federal Customs in 1849, which are considered relevant by the Court. From this standpoint, the facts referred to above, taken together, are clearly relevant to the question submitted to the Court.

[121] The text itself of Article 435, paragraph 2, of the Treaty of Versailles draws from the statement that the former provisions are not consistent with present conditions no other conclusion but that France and Switzerland are to settle between themselves the status of the free zones - a conclusion which is tantamount to a declaration of disinterestedness in regard to their status on the part of the High Contracting Parties other than France. In particular, this text does not set forth the conclusion that abrogation of the old stipulations relating to the free zones is a necessary consequence of this inconsistency.

[122] In arriving at this conclusion, the Court has not failed, in accordance with Article 1 of the Special Agreement, to have regard to all facts anterior to the Treaty of Versailles, such as the establishment of the Federal Customs in 1849, which it considers relevant; but no fact which has been brought to its knowledge seems to it calculated to weaken its conclusion. The question whether France can adduce these facts to support a claim that the old stipulations have lapsed as a result of the change in conditions will be considered below.

[123] Moreover, it must not be overlooked that Article 435, both by reason of its position in the Treaty of Versailles and of its origin, forms a complete whole: it would therefore be impossible to interpret the second paragraph without regard to the first paragraph. But, in the first paragraph, the High Contracting Parties, after noting that the provisions of these "treaties, conventions, declarations and other supplementary acts concerning the neutralized zone of Savoy... are no longer consistent with present conditions", go on to declare that "for this reason" they "take note of the agreement reached between the French Government and the Swiss Government for the abrogation of the stipulations relating to this zone", and add that these provisions "are and remain abrogated".' [p141]

[124] It follows that the expression "no longer consistent with present conditions", when used in the first paragraph of the Article, constitutes the ground on which the High Contracting Parties acquiesce in an agreement already concluded between France and Switzerland for the abolition of the neutral zone. When used in the second paragraph, these same words "are no longer consistent with present conditions" constitute the ground on which the High Contracting Parties declare that they acquiesce in a future agreement between France and Switzerland. Hence, no matter what its significance might be in other contexts, it is scarcely possible to regard the expression "are no longer consistent with present conditions" as ipso facto involving in the second paragraph of the Article the abolition of the free zones, since in the first paragraph its meaning is not such as automatically to involve the abolition of the neutralized zone.

[125] It follows from the foregoing that Article 435, paragraph 2, as such, does not involve the abolition of the free zones. But, even were it otherwise, it is certain that, in any case, Article 435 of the Treaty of Versailles is not binding upon Switzerland, who is not a Party to that Treaty, except to the extent to which that country accepted it. That extent is determined by the note of the Federal Council of May 5th, 1919, an extract from which constitutes Annex I of the said Article. It is by that instrument, and by it alone, that Switzerland has acquiesced in the provision of Article 435; and she did so under certain conditions and reservations, set out in the said note, which states, inter alia: "The Federal Council would not wish that its acceptance of the above wording [scil. Article 435, paragraph 2, of the Treaty of Versailles] should lead to the conclusion that it would agree to the suppression of a system intended to give neighbouring territory the benefit of a special régime which is appropriate to the geographical and economical situation and which has been well tested." And again: "In the opinion of the Federal Council, the question is not the modification of the customs system of the zones as set up by the treaties mentioned above, but only the regulation in a manner more appropriate to the economic conditions of the present day of the terms of the exchange of goods between the regions in question." [p142]

[126] No reservation could be more explicit. It is true that, the Federal Council's note also contains the following passage: "It is conceded that the stipulations of the treaties of 1815 and other supplementary acts relative to the free zones will remain in force until a new arrangement is come to between France and Switzerland to regulate matters in this territory." Certainly, if a new arrangement were concluded between France and Switzerland, that arrangement, whatever its contents might be, would, as observed above, abrogate the former provisions as such. But it does not appear how this admission could imply the consent of Switzerland to the abrogation of the zones, thus making the declarations and reservations in her note of no effect.

[127] As regards the French note of May 18th, 1919, which constitutes Annex II of Article 435 of the Treaty of Versailles, the following observations are called for: Although the Court's task is to interpret the said Article "with its Annexes", the Court nevertheless remains free to estimate the weight to be attached from this point of view to each of the Annexes. Whatever value may attach to the French note of May 18th, it cannot, in any circumstances, affect the conditions of the Federal Council's acquiescence in the Article in question, that acquiescence being a unilateral act on the part of Switzerland. Moreover, even if it were thought possible to attribute the same legal weight to each of the notes, they would mutually cancel each other, and the text of Article 435, paragraph 2, would again become decisive, and that text, as has been seen, does not imply the abrogation of the free zones.

[128] The Court, therefore, reaches the conclusion that Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, has not abrogated the régime of the free zones as between France and Switzerland.

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[129] The second point which the Court has to consider is whether Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, is intended to lead to the abrogation, as between France and Switzerland, of the provisions relating to the [p143] free zones. It has already been explained why the Court regards the expression "is intended to lead to the abrogation", as meaning "is intended necessarily to lead to the abrogation", i.e. to create for Switzerland an obligation to proceed, in conjunction with France, to abrogate provisions acknowledged to be no longer consistent with present conditions. Such an obligation would only be conceivable in one or other of the following eventualities:

A) If by acquiescing in Article 435 of the Treaty of Versailles, subject to the considerations and reservations set out in the note of May 5th, 1919, Switzerland had bound herself to enter into negotiations for an agreement involving the abrogation of the free zones' régime.

B) If Switzerland's consent to such abrogation were not necessary, because she had no actual right to the free zones.

[130] As regards A: As has already been observed, Article 435, paragraph 2, of the Treaty of Versailles does not draw from the statement as to the inconsistency of the former stipulations concerning the free zones with present conditions any consequence other than that it is for France and Switzerland to come to an agreement together with a view to settling between themselves the status of those territories, under such conditions as shall be considered suitable by both countries, without in any way prejudging the question of the contents of this agreement which therefore may or may not, according to the common will of the Parties, lead to the abrogation of the régime of the free zones.

[131] But, even supposing that the words "it is for France and Switzerland to come to an agreement together with a view to settling between themselves the status of these territories under such conditions as shall be considered suitable by both countries" were interpreted as a mandate involving an obligation for France and Switzerland to proceed to abrogate provisions acknowledged to be no longer consistent with present conditions - rather than as an authorization resulting from the disinterested attitude assumed by the Powers which had signed the old treaties - this mandate would not be enforceable as against Switzerland, which has not accepted it. [p144] For, in her note of May 5th, 1919, Switzerland has declared her readiness to co-operate in "the regulation in a manner more appropriate to the economic conditions of the present day of the terms of the exchange of goods between the regions in question", but she explicitly rejects the idea of a "modification of the customs system of the zones as set up by the treaties mentioned above". In these circumstances, it is impossible to interpret the above-mentioned note as an acceptance by Switzerland of a mandate to abrogate the free zones; for the régime of the free zones - that is to say the withdrawal of the French customs cordon - lies at the very root of the "customs system" which Switzerland refused to modify.

[132] As regards B: It remains then to consider whether it is possible for France to abrogate the free zones régime without Switzerland's consent.

[133] Generally speaking, the very terms of Article 435, paragraph 2, appear to presuppose the existence of a right on the part of Switzerland derived from the old stipulations. It is hard to understand why the Powers which signed the Treaty of Versailles, if they considered that Switzerland's consent was not necessary, did not declare the free zones abrogated on their own authority.

[134] Again, it is certain that Article 435 is a provision which formed the subject of negotiations entered into at the request of France between that Power and Switzerland; that Switzerland's consent was actually asked and that various proposals were submitted to her before it was obtained; finally, that the High Contracting Parties inserted, immediately after Article 435, the Swiss note of May 5th, 1919, which note is, in the Court's opinion, like the successive proposals made by France in order to obtain it, entirely based on the existence of a right on the part of Switzerland to the free zones.

[135] With particular regard to the Sardinian zone, it is to be observed that Switzerland, in her capacity as a Party to the Treaty signed at Turin on March 16th, 1816, has acquired a contractual right to the withdrawal of the French customs cordon in this region. It is true that following upon the Protocol of November 3rd, 1815, Sardinia, by a note of [p145] November 11th, gave an undertaking to the Powers to create the Sardinian zone; and to do so by means of a convention with Switzerland. But this circumstance does not deprive the Treaty of Turin of its independent value as a convention between Sardinia and Switzerland.

[136] With particular regard to the zone of Saint-Gingolph, the Court, being of opinion that the Treaty of Turin of March 16th, 1816, has not been abrogated by Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, the same is true as regards the Manifesto of the Royal Sardinian Court of Accounts of September 9th, 1829. This Manifesto, moreover, which was issued in pursuance of royal orders, following upon the favourable reception by H. M. the King of Sardinia of the request of the Canton of Valais based on Article 3 of the said Treaty of Turin, terminated an international dispute and settled, with binding effect as regards the Kingdom of Sardinia, what was henceforward to be the law between the Parties. The concord of wills thus represented by the Manifesto confers on the delimitation of the zone of Saint-Gingolph the character of a treaty stipulation which France must respect as Sardinia's successor in the sovereignty over the territory in question.

[137] With particular regard to the zone of Gex, the following is to be noted:
Pursuant to Article 6 of the Treaty of Paris of May 30th, 1814, the Powers assembled at the Congress of Vienna addressed to Switzerland, on March 20th, 1815, a "Declaration" to the effect that "as soon as the Helvetic Diet shall have duly and formally acceded to the stipulations in the present instrument, an act shall be prepared containing the acknowledgment and the guarantee, on the part of all the Powers, of the perpetual neutrality of Switzerland, in her new frontiers [FN1]". The "instrument" which forms part of this Declaration, amongst other territorial clauses, provides that the line of the French customs is to be so placed "that the road which leads from Geneva into Switzerland by Versoy, shall at all times be free [FN1]".

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet

[138] The proposal thus made to Switzerland by the Powers was accepted by the Federal Diet by means of the "act of [p146] acceptance" of May 27th, 1815; according to this act, "the Diet accedes, in the name of the Swiss Confederation, to the Declaration of the Powers assembled at the Congress of Vienna under date of the 20th March, 1815, and promises that the stipulations contained in the Transaction inserted in this Act shall be faithfully and religiously observed [FN1]".

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet

[139] On receipt of Switzerland's formal declaration of acceptance, the Powers drew up the instrument promised in their Declaration of March 20th: this instrument is the Declaration of November 20th, 1815.

[140] By this Declaration, signed inter alios by France, "the Powers who signed the Declaration of the 20th of March declare.... their formal and authentic acknowledgment of the perpetual neutrality of Switzerland; and they guarantee to that country the integrity and inviolability of its territory in its new limits, such as they are fixed, as well by the Act of the Congress of Vienna as by the Treaty of Paris of this day, and such as they will be hereafter; conformably to the arrangement of the Protocol of November 3rd, extract of which is hereto annexed, which stipulates in favour of the Helvetic Body a new increase of territory, to be taken from Savoy, in order to disengage from enclaves, and complete the circle of the Canton of Geneva [FN1]".

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet

[141] The "new limits" of Switzerland "fixed.... by the Treaty of Paris of this day" are indicated in the first article of that Treaty, the preamble and paragraph 3 of which are as follows:

"The frontiers of France shall be the same as they were in the year 1790, save and except the modifications on one side and on the other, which are detailed in the present Article.

.....
3. In order to establish a direct communication between the Canton of Geneva and Switzerland, that part of the Pays de Gex, bounded on the east by Lake Lemane; on the south, by the territory of the Canton of Geneva; on the north, by that of the Canton of Vaud; on the west, by the course of the Versoix, and by a line which comprehends the communes of [p147] Collex-Bussy, and Meyrin, leaving the commune of Ferney to France, shall be ceded to the Helvetic Confederacy, in order to be united to the Canton of Geneva. The line of the French Customs-houses shall be placed to the west of the Jura, so that the whole of the Pays de Gex shall be without that line [FN1] "

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet.

[142] The extract from the Protocol of November 3rd which is attached to the Declaration, contains the following provision:

"The French Government having consented to withdraw its lines of custom and excise from the frontiers of Switzerland, on the side of the Jura, the Cabinets of the Allied Powers will employ their good offices for inducing His Sardinian Majesty to withdraw in like manner, his lines of custom and excise, on the side of Savoy, at least upwards of a league from the Swiss frontiers, and on the outside of the great road of Saleve, and of the mountains of Sion and Vuache [FN1]. "

[FN1] Translation taken from The Map of Europe by Treaty, 1814-1875, Hertslet.

[143] It follows from all the foregoing that the creation of the Gex zone forms part of a territorial arrangement in favour of Switzerland, made as a result of an agreement between that country and

the Powers, including France, which agreement confers on this zone the character of a contract to which Switzerland is a Party.

[144] It also follows that no accession by Switzerland to the Declaration of November 20th was necessary and, in fact, no such accession was sought: it has never been contended that this Declaration is not binding owing to the absence of any accession by Switzerland.

[145] The Court, having reached this conclusion simply on the basis of an examination of the situation of fact in regard to this case, need not consider the legal nature of the Gex zone from the point of view of whether it constitutes a stipulation in favour of a third Party.

[146] But were the matter also to be envisaged from this aspect, the following observations should be made:

It cannot be lightly presumed that stipulations favourable to a third State have been adopted with the object of creating an actual right in its favour. There is however nothing to prevent the will of sovereign States from having this object and this effect. The question of the existence of a right acquired [p148] under an instrument drawn between other States is therefore one to be decided in each particular case: it must be ascertained whether the States which have stipulated in favour of a third State meant to create for that State an actual right which the latter has accepted as such.

[147] All the instruments above mentioned and the circumstances in which they were drawn up establish, in the Court's opinion, that the intention of the Powers was, beside "rounding out" the territory of Geneva and ensuring direct communication between the Canton of Geneva and the rest of Switzerland, to create in favour of Switzerland a right, on which that country could rely, to the withdrawal of the French customs barrier behind the political frontier of the District of Gex, that is to say, of the Gex free zone.

[148] In this connection, it should be recalled that the free zone of Gex which was asked for by Switzerland as an alternative to the cession of that territory, constitutes one of the territorial stipulations contemplated by the first Treaty of Paris of 1814, and which were made effective by stages by means of the decisions of the Congress of Vienna and the second Treaty of Paris, and are referred to in the Declaration addressed by the Powers to Switzerland on November 20th, 1815.

[149] It should also be recalled that the establishment of the Sardinian zone is the counter-part of the establishment of the Gex zone, that the Powers, including France, undertook to obtain this counter-part from the King of Sardinia and that, according to the Powers' note to Sardinia of November 20th, 1815, this was to be effected by means of a convention between Sardinia and Switzerland. It is difficult to see why Sardinia should have been called upon to concede a right to Switzerland by way of a counter-part, if the Gex zone had been regarded, so far as Switzerland was concerned, as a mere benevolent concession devoid of any solid legal basis. In actual fact, throughout the long period during which the rights claimed by Switzerland have been acknowledged, no distinction would appear to have been drawn between the two zones; nor does Article 435, paragraph 2, of the Treaty of Versailles make any distinction between them. [p149]

[150] In the Court's opinion, the French Government's submission that, as Switzerland has no right to the free zones, the latter can be suppressed without her consent, is not tenable.

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[151] Accordingly, with regard to the question put by Article 1, paragraph 1, of the Special

Agreement, the Court arrives at the conclusion that, as between France and Switzerland, Article 435, paragraph 2, of the Treaty of Versailles with its Annexes neither has abrogated nor has for its object the abrogation of the provisions of the Protocol of the Conference of Paris of November 3rd, 1815, of the Treaty of Paris of November 20th, 1815, of the Treaty of Turin of March 16th, 1816, or of the Manifesto of the Sardinian Court of Accounts of September 9th, 1829, regarding the customs and economic régime of the free zones of Upper Savoy and the Pays de Gex.

[152] Having thus shown what reply must, in its view, be given to the question enunciated in Article 1 of the Special Agreement, and the Parties having been unable, within the time-limit granted pursuant to paragraph 2 of that Article, "to settle between themselves the new régime" of the territories in question "under such conditions as they may consider expedient, as provided in Article 435, paragraph 2" of the Versailles Treaty, the Court passes on to an examination of the questions ensuing from the task entrusted to it under Article 2 of the Special Agreement, the first paragraph of which is as follows:

"Failing the conclusion and ratification of a convention between the two Parties within the time specified, the Court shall, by means of a single judgment rendered in accordance with Article 58 of the Court's Statute, pronounce its decision in regard to the question formulated in Article 1 and settle for a period to be fixed by it and having regard to present conditions, all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles." [p150]

[153] As regards this task, the Court is confronted by a fundamental difference in the standpoints of the Parties. According to the French Government, the Court is required to effect, on behalf and instead of France and Switzerland, the settlement contemplated by Article 435, paragraph 2, of the Treaty of Versailles. The Court, therefore, would have the same powers and the same freedom of judgment and decision as France and Switzerland themselves have in negotiating the agreement contemplated by this Article of the Treaty. Just as France and Switzerland themselves would not have been bound by the conclusions of the Court's deliberation upon the question formulated in Article 1 of the Special Agreement, so the Court would not be bound by those conclusions. In deciding what régime shall be instituted, the Court would not be bound even in part by the stipulations of the treaties of 1815 and 1816 and the supplementary acts referred to in paragraph 2 of Article 435 of the Treaty of Versailles. The Court, on the contrary, would have to establish the régime which appeared to it to be most expedient having regard to present conditions, and it would be free, according to its view of the conditions, either to abolish the zones or to maintain them.

[154] This is the assumption upon which the French Government submitted to the Court "draft regulations", based on the abolition of the free zones, the juxtaposition of the customs cordons at the political frontier and the institution of a special frontier régime involving the permeability of the two customs cordons.

[155] The Swiss Government, on the other hand, urges inter alia that the Court must, "by a single judgment", first of all decide the question enunciated in Article 1 of the Special Agreement touching the interpretation of Article 435, paragraph 2, with its Annexes, and then settle all the questions involved by the execution of that paragraph; Switzerland therefore considers that the Court has not merely to make this settlement on grounds of expediency, but that the settlement to be established must be founded on respect for Switzerland's rights as recognized by the Court in its answer to the question enunciated in Article 1 of the Special Agreement. [p151]

[156] Since the Court has recognized that the stipulations which created the free zones conferred

on Switzerland a right to these zones, and that, as between France and Switzerland, Article 435, paragraph 2, of the Treaty of Versailles with its Annexes has not abrogated the stipulations in question and is not intended necessarily to lead to their abrogation, it follows, according to the Swiss Government, that the Court cannot execute that Article except in accordance with the interpretation thus given, and that, consequently, as long as Switzerland does not renounce her right, it cannot decide that the free zones are to be abolished. The Court might well adapt the zones' régime to present conditions, since Switzerland consents thereto, but beyond that it could not go.

[157] Accordingly, the draft decision submitted by the Swiss Government in 1930 with the request that the Court should adopt it consisted of just such an adaptation.

[158] In view of these contentions, it must be noted, firstly, that the provision whereby the Court must fulfil the task entrusted to it under Article 2 of the Special Agreement "by a single judgment", seems to indicate a connection between both parts of this task, and that the conclusion reached by the Court in answering the question in Article 1, paragraph 1, of the Special Agreement cannot be irrelevant to the fulfilment of that part of its task which consists in settling all the questions involved by Article 435, paragraph 2, of the Treaty of Versailles.

[159] In fact, it is hardly conceivable that a single judgment should contain in the first place the interpretation of Article 435, paragraph 2, of the Treaty of Versailles with its Annexes on the point whether, as between France and Switzerland, that Article, with its Annexes, abrogated or was intended to lead to the abrogation of the stipulations enumerated in Article 1 of the Special Agreement, and then go on to lay down in connection with the settlement of the question involved or the execution of the same Article, provisions which disregarded or conflicted with the interpretation given by the Court. [p152]

[160] Similarly, it seems impossible to suppose that the Parties could have desired to obtain definite indications, before the negotiations referred to in Article 1, paragraph 2, of the Special Agreement, in regard to the points indicated in the first paragraph of that Article, if, in the event of the failure of the negotiations, the Court had been free to settle the régime on a basis other than that indicated to the Parties at the close of its deliberation. The whole of the procedure contemplated by Article 1 of the Special Agreement and the interpretative notes annexed thereto would, in fact, cease to have any object if the Court, in making the settlement contemplated by Article 2 of the Special Agreement, could disregard its own interpretation of Article 435 of the Treaty of Versailles.

[161] This procedure is only explicable on the assumption that the Parties were mainly concerned to reach a friendly agreement, and thought such an agreement could not be attained as long as the questions raised in Article 1 of the Special Agreement remained unsolved, but that once that question was solved, the solution reached would serve as a basis, not only for the future agreement but also for the settlement which, in the event of the negotiations failing, the Court would have to effect.

[162] It appears from the information given about the negotiations which took place between the Parties prior to the conclusion of the Special Agreement and which were adduced before the Court during the first phase of the proceedings, that the cause of the failure of the negotiations was the difference between the Parties as to whether the zones' régime could be abolished without Switzerland's consent, and more especially, as to whether that was the effect of Article 435 of the Treaty of Versailles with its Annexes. This fact seems to be confirmed by the preamble of the Special Agreement, which reads:

"Whereas France and Switzerland have been unable to agree in regard to the interpretation to be

placed upon Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, and as it has proved impossible to effect the agreement provided for therein by direct negotiations, Have decided to resort to arbitration in order to obtain this interpretation and for the settlement of all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles." [p153]

[163] The close connection between this interpretation and the settlement which is to follow is clearly marked in this preamble and supplies a strong argument in favour of the view that the settlement entrusted to the Court is to be made on the basis of its answer to the question in Article 1 of the Special Agreement.

[164] The French argument, according to which the Court, in settling all the questions involved by the execution of Article 435 of the Treaty of Versailles, enjoys the same powers and the same freedom of judgment and decision as France and Switzerland would themselves enjoy in negotiating an agreement, cannot be upheld.

[165] While it is certain that the Parties, being free to dispose of their rights, might have embodied, in the negotiations contemplated in Article 1, paragraph 2, of the Special Agreement, and might also in any future negotiations embody in their agreement any provisions they might desire, and, accordingly, even abolish the free zones or settle matters lying outside the framework of the regime with which Article 2 of the Special Agreement deals, it in no way follows that the Court enjoys the same freedom. Such freedom, being contrary to the proper function of the Court, could, in any case, only be enjoyed by it if such freedom resulted from a clear and explicit provision which is not to be found in the Special Agreement.

[166] In fact, Article 2 of the Special Agreement does not say that the Court shall be substituted for the Parties with a view to establishing the régime of the territories in question. It says that it is for the Court to settle all the questions involved by the execution of Article 435, paragraph 2, of the Treaty of Versailles. Accordingly, the French Government itself recognized that the Court, unlike the Parties, must confine itself to settling the customs questions and that it can only deal, as indeed is clear from the reference in the Special Agreement to Article 435 of the Treaty of Versailles, with the territories referred to in that Article. The Court will return later to the questions which arise in connection with these limitations.

[167] However, other objections have been raised, based on the actual text of Article 2 of the Special Agreement. Thus it [p154] has been argued that it is "for a period to be fixed by it and having regard to present conditions" that the Court must fulfil its task of settling all the questions involved by the execution of Article 435, paragraph 2, of the Treaty of Versailles.

[168] On this point, it may be observed that "having regard to present conditions" does not mean "having regard solely to present conditions", and that these words do not imply that all the questions which have to be settled are capable of settlement on the basis of present conditions.

[169] Similarly, the words "for a period to be fixed by it" (the Court) do not mean that all the features of the settlement are to be temporary and limited. Therefore, it would not be contrary to this clause to decide, for example, that the position of the French customs line and other features of the settlement which, like the latter, are derived from the respective rights of either Party, should remain in force as long as the right from which they flow has not been abolished or modified by agreement between the Parties. All that may be inferred from the words in question is that the Parties thought that among "all the questions" referred to, there might be some which ought only to be settled for a limited period and having regard to present conditions.

[170] Another argument was put forward, based on the fact that Article 2 of the Special Agreement, unlike Article 1, refers to Article 435, paragraph 2, of the Treaty of Versailles without mentioning the Annexes. From this it was inferred that, since the provisions which the Court was to execute were not the same as those which it was to interpret, it was not bound, in proceeding to execute the Article, by the interpretation which it had placed upon the Article with its Annexes.

[171] The Court is unable to attach to this fact the force thus attributed to it, which would run counter to the foregoing considerations. In the Court's view, a more correct construction would be to regard the reference to Article 435, paragraph 2, of the Treaty of Versailles as relating to that paragraph, such as it is interpreted by the Court in its [p155] answer to the question set out in Article 1 of the Special Agreement, because that answer must determine the effect, as between France and Switzerland, of Article 435.

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[172] For the reasons given, the Court will therefore deal with the questions involved in the execution of paragraph 2 of Article 435 of the Treaty of Versailles upon the footing that it must recognize and give effect to the rights which Switzerland derived from the treaties of 1815 and the other supplementary acts relating to the free zones.

[173] In the course of the oral observations provided for by the Orders of December 6th, 1930, and August 6th, 1931, the representative of the French Government made a series of submissions based on the opposite contention; to this extent, therefore, these submissions cannot be entertained.

[174] But in the same submissions it was argued on behalf of the French Government that, irrespective of the abrogatory effect of Article 435 of the Treaty of Versailles, the old stipulations establishing the zones were no longer in force. It was submitted, as regards all the zones, that the change of circumstances has been so great as to justify the Court in holding that the treaties have lapsed, and also, as regards the Sardinian zone, that Article 3 of the Treaty of Turin of 1816 was impliedly abrogated by the conclusion between the Parties of subsequent treaties relating to Savoy which are incompatible with the continued existence of the zone.

[175] The Agent for the Swiss Government has contested the right of the French Government to put forward these arguments at the present stage, and has asked the Court to reject them as inadmissible.

[176] On the other hand, both Parties have repeatedly insisted on the essential importance of all points at issue between them on the present submission being, as far as possible, settled by the Court. For this reason, and also because the decision of an international dispute of the present order should not mainly depend on a point of procedure, the Court thinks it preferable not to entertain the plea of [p156] inadmissibility and to deal on their merits with such of the new French arguments as may fall within its jurisdiction in so far at least as they may raise questions incidental to the main issue.

[177] The argument in favour of the view that the stipulations establishing the zones have lapsed is that these zones were created in view of and because of the existence of a particular state of facts, that this state of facts has now disappeared owing to Switzerland's own action, and that in consequence the Court, which is charged with the mission of settling the dispute between the Parties, is entitled as between them to declare that the stipulations have lapsed.

[178] The fact on which the Agent for the French Government has chiefly relied in support of his argument is that in 1815 the Canton of Geneva was to all intents and purposes a free trade area, that the withdrawal of the French and Sardinian customs lines at that time made the area of Geneva and that of the zones an economic unit, and that the institution of the Swiss Federal Customs in 1849 destroyed this economic unit and put an end to the conditions in view of which the zones had been created.

[179] To establish this position it is necessary, first of all, to prove that it was in consideration of the absence of customs duties at Geneva that the Powers decided, in 1815, in favour of the creation of the zones. There is nothing in the text of the treaties to support this, and the only occasion on which the Swiss representative at the Allied gatherings in 1815 is shown to have relied on the absence of customs at Geneva was when he endeavoured to secure the withdrawal of the French customs along the whole frontier from Basle to Geneva - an effort in which he was not successful.

[180] It is true that in 1815 the duties levied on imported goods by the Canton of Geneva were trifling in amount and constituted no hindrance to commerce, but such duties existed, and therefore it cannot have been because there were no customs duties at all that the zones were created.

[181] Nor can the Court assume that what the Powers had in view in 1815 was a condition of things under which modest customs duties might be imposed, but not substantial duties, with the result that a serious increase would justify a claim [p157] that the relevant stipulations had lapsed. The resulting situation would have been much too precarious to constitute the basis of a part of the European settlement after the Napoleonic wars.

[182] The French argument that the institution of the Swiss Federal Customs in 1849 justifies a claim that, by reason of the change in the circumstances in view of which the zones were set up, the old stipulations by virtue of which the zones were created, have lapsed, therefore fails from lack of proof that the zones were in fact established in view of the existence of circumstances which ceased to exist when the Federal ' Customs were instituted in 1849.

[183] This view is fully confirmed by the fact that, eleven years after the change in the Swiss Customs legislation which took place in 1849, France, by her own act, created a free zone which was far more extensive than the zones instituted in 1815-1816, and included the Sardinian zone, and that she maintained this new zone in existence for more than sixty years. Accordingly, in the negotiations for the conventions by which Switzerland bound herself to admit goods imported from the zones free of duty for a fixed period, the granting of such a privilege was never treated as a condition on which the provisions establishing the free zones must depend for the continuance of their validity. This attitude on the part of France would be incomprehensible if the Powers, including France herself, who signed the Treaty of November 20th, 1815, and the Declaration of the same day, had thought, when concluding that Treaty and drawing up the Declaration addressed to Switzerland, that the maintenance of the customs régime existing at that time in the Canton of Geneva was a condition precedent to the withdrawal of the French and Sardinian customs lines.

[184] As regards the zone of Saint-Gingolph, the French Agent relied on the fact that no customs post at Saint-Gingolph-Valais existed between 1816 and 1850, except for a few months in one year. This was due to the introduction of an "abonnement", or commutation of the customs duties, in return for an annual sum paid by the inhabitants of the Swiss [p158] commune of Saint-Gingolph-Valais to the Federal authorities at Berne. Here again, though it appears to be true that by reason of the "abonnement" there were in fact no customs duties levied at Saint-Gingolph-Valais at the time that the Saint-Gingolph zone was created, there is no sufficient proof that the Saint-Gingolph zone was created in view of this circumstance. It seems to be a part of the general arrangements for the

withdrawal of the Sardinian customs line.

[185] It has been observed above that the establishment of the Federal Customs in 1849 was the circumstance upon which the French Government mainly relied in arguing that the old stipulations had lapsed. No doubt there have been other changes, for instance, in connection with the food supply requirements of Geneva, with the development of communications and with technical progress which have no bearing on the whole body of circumstances - circumstances essentially governed by the geographical configuration of the Canton of Geneva and of the surrounding region - which the High Contracting Parties had in mind at the time that the free zones were created; accordingly they cannot be taken into consideration.

[186] As the French argument fails on the facts, it becomes unnecessary for the Court to consider any of the questions of principle which arise in connection with the theory of the lapse of treaties by reason of change of circumstances, such as π the extent to which the theory can be regarded as constituting a rule of international law, the occasions on which and the method by which effect can be given to the theory if recognized, and the question whether it would apply to treaties establishing rights such as that which Switzerland derived from the treaties of 1815 and 1816.

[187] As regards Article 3 of the Treaty of Turin establishing the Sardinian zone, the French argument is that this Article was impliedly abrogated by the subsequent conclusion between the Parties of treaties which were incompatible with the continued existence of the Sardinian zone.

[188] The treaties relied on are: the Swiss-Sardinian Treaty of Commerce of 1851 and the Franco-Swiss Treaty of 1881. Neither Treaty makes any reference to the Sardinian zone. [p159]

[189] The earlier treaty contained a provision - Article 4 - under which, in consideration of the free exit of foodstuffs intended for consumption in Geneva through the customs posts of the Duchy of Savoy and the provinces of Chablais, Genevois and Faucigny, Switzerland agreed to admit certain Sardinian products into Switzerland free of duty. Despite the absence of all mention of the Sardinian zone in this provision, there is nothing in it incompatible with the existence of that zone, and so far as the Court is aware the Sardinian zone continued to exist throughout the period from the ratification of the Treaty to the creation of the Annexation zone in 1860.

[190] The Franco-Swiss Treaty of 1881 was concluded for the purpose of regulating the exchange of goods between the Canton of Geneva and the Annexation zone of 1860 (then called the free zone of Upper Savoy), of which the Sardinian zone formed a part. The zone of 1860 was liable to suppression by unilateral action on the part of France, and Article 11 of the Treaty made provision as to what was to happen in that event without saying anything as to the resuscitation of the Sardinian zone. The French argument is that it must therefore be assumed that the Parties intended to abolish the Sardinian zone. The Court is not prepared to draw any such deduction from the absence of all mention of the Sardinian zone in Article 11. The natural interpretation of the Article is that in the event of the abolition of the zone of 1860 the Swiss obligation to admit the produce from that area into Switzerland should come to an end altogether. No claim could be advanced against her that she was bound to admit produce from the smaller or Sardinian zone.

[191] The French argument as to the suppression of the Sardinian zone by the implied abrogation of Article 3 of the Treaty of Turin is also inconsistent with the argument which has been put forward by the French Agent that the instrument which created the Sardinian zone was the Protocol of November 3rd, 1815, and not the Treaty of Turin of 1816.

[192] For these reasons the Court cannot accept the French contention that the treaties of 1815 and

the other supplementary acts relating to the free zones, if not abrogated by [p160] the Treaty of Versailles, have nevertheless now ceased to be in force.

[193] The conclusion at which the Court has thus arrived is supported by statements made, both before and after the great war, on behalf of the French Government. The Court deems it sufficient to recall in this connection the note addressed on April 28th, 1919, by the French Embassy at Berne to the Swiss Political Department, in which it said that:

"There is no international agreement binding the French Government as regards this new zone [Annexation zone], except for a convention, purely administrative in scope, with Switzerland, which convention could be denounced upon giving one year's notice and was denounced by France some months ago.

France is therefore no longer under an obligation to any Power to respect the great free zone, but only the Gex zone and the small Sardinian zone. "

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[194] Under Article 2 of the Special Agreement, the Court, after pronouncing its decision on the question whether the old stipulations have been, or were intended to be, abrogated by Article 435, paragraph 2, of the Treaty of Versailles, is to settle all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles - the provision which stated that it was for France and Switzerland to settle the status of the territories constituting the free zones. The question which must next be considered is whether, and if so to what extent, it is within the power of the Court to fulfil this mission.

[195] Paragraph 2 of Article 2 of the Special Agreement provides that, if the judgment of the Court contemplated the import of goods free or at reduced rates through the Swiss or French customs barrier, the regulation of such importation should only be made with the consent of the two Parties. By this provision, the two Parties subordinated to their joint concurrence a part of the Court's judgment.

[196] An examination of the written and oral pleadings which have been submitted to the Court shows that both France and Switzerland have regarded the "permeability" of the customs [p161] line, i. e. the admission of goods free or at reduced rates, as an essential part of any settlement of the dispute as to the free zones. It has been stated in argument that no settlement would be complete unless this question of customs franchises was included. The Swiss note of May 5th, 1919, annexed to Article. 435, even treats the regulation of the exchange of goods as the only thing which is required to be done. It follows that that part of the Court's judgment which would most intimately affect the everyday life of the people concerned is made dependent on the approval of the two Parties.

[197] Such a condition, if the consent is to be subsequent to the judgment, cannot be reconciled with Articles 59 and 60 of the Statute of the Court, which provide that the judgment is binding and final.

[198] It is true that one Party - Switzerland - has given its approval in advance to any provisions which the Court may lay down, but the other has explained that, for constitutional reasons, it would be precluded from doing so. By the terms of its Constitution, any engagements which affect the State finances must be approved by the Chambers, and it would therefore be impossible for the French Government, without the concurrence of the Chambers, to give in advance its approval to any provisions relating to, customs franchises which the Court might insert in the judgment.

[199] The Court, in its Order of December 6th, 1930, drew attention to the difficulties which, in the absence of previous consent by both Parties, were created by this provision in the Special Agreement, and at that time adjourned the further consideration of the case in the hope that the Parties would come to an agreement on this subject. The Court then said that, failing agreement between the Parties, it would give its judgment on the points of law involved in the case. Unfortunately, the hope of an agreement has not been realized.

[200] After mature consideration, the Court maintains its opinion that it would be incompatible with the Statute, and with its position as a Court of Justice, to give a judgment which would be dependent for its validity on the subsequent / approval of the Parties. [p162]

[201] The contents of paragraph 2 of Article 2 of the Special Agreement and the attitude of the Parties throughout the dispute, together with the explanations which have been submitted to the Court on their behalf during the oral arguments, show how unsuitable to the role of a Court of Justice is the task which is entrusted to the Court by the first paragraph of Article 2. It is a task with which the Court would have felt hesitation in complying, even if the second paragraph of Article 2 had not been inserted in the Special Agreement.

[202] The fact that it was felt to be necessary for the Parties in this case to approve so much of the judgment as might relate to tariff exemptions is because the settlement of such matters is not a question of law, but is a matter depending on the interplay of economic interests on which no Government can afford to be controlled by an outside organ. Such questions are outside the sphere in which a Court of Justice, concerned with the application of rules of law, can help in the solution of disputes between two States.

[203] For these reasons, the Court adheres to the opinion which it expressed in the Order of December 6th, 1930, that, if the Parties failed to come to an agreement which involved their assent to matters covered by Article 2, paragraph 2, of the Special Agreement, judgment must be limited to questions of law, i. e. to questions not covered by that provision.

[204] The request of the French Government that the Court should order an expert enquiry to be undertaken and that it should arrange for an investigation on the spot by a delegation of its members, corresponds with a similar request which was made in 1930 on behalf of the Swiss Government and which has not been withdrawn. The Swiss Government however contended, in its recent observations, that, if the Court's judgment must be limited to questions not covered by Article 2, paragraph 2, of the Special Agreement, this request would cease to have any object. The Court, sharing this view, cannot, in the present circumstances, give effect to the French request. It cannot interpret the relevant provision of Article 4, paragraph 2, of the Special Agreement, [p163] as meaning that it would be bound in any event to comply with such a request.

[205] It has been argued on behalf of the French Government that if the Court finds itself unable for any reason to carry out the whole of the mission entrusted to it by the Special Agreement, it should declare itself incompetent as to the whole and give no judgment whatever. It was argued that the jurisdiction of the Court emanated from the Special Agreement and was circumscribed by it, and that the words in Article 2, "by a single judgment", showed that no distinction could be drawn between the question of interpretation dealt with in Article 1 of the Special Agreement and that covered by Article 2. For the Court to limit its judgment to part of the mission entrusted to it by the Special Agreement, was to run counter to the will of the Parties, and therefore to destroy the basis of its jurisdiction.

[206] It was also urged that the conclusion of the Special Agreement represented a compromise between the opposing views of the Parties - one of the two States being particularly interested in the legal question submitted to the Court in Article 1, and the other in the subjects dealt with in Article 2 - and that to give judgment only on the question of law submitted by Article 1 was unjust, as it destroyed the balance between the two Parties.

[207] The Court is not satisfied that these arguments should prevail. It is the Special Agreement which represents, so far as the Court is concerned, the joint will of the Parties. If the obstacle to fulfilling part of the mission which the Parties intended to submit to the Court results from the terms of the Special Agreement itself, it results directly from the will of the Parties and, therefore, cannot destroy the basis of the Court's jurisdiction for the reason that it was counter to the will of the Parties.

[208] As regards the second argument, it must not be forgotten that one of the Governments concerned has agreed in advance to whatever measures of permeability the Court might impose as to goods passing through the customs barriers. For the Government which finds itself unable for constitutional reasons to make a similar declaration to claim that the Court should, [p164] because of the consequences which the Court is bound to attribute to this provision in the Special Agreement, declare itself incompetent as to the whole dispute, would not be just to the other Government.

[209] The extent to which the Court has power to fulfil the task entrusted to it by paragraph 2 of Article 435 of the Treaty of Versailles is also limited in a further respect.

[210] If the Court, in settling the questions involved by the execution of Article 435, paragraph 2, of the Treaty of Versailles, must respect Switzerland's right to the zones, it must also respect the sovereignty of France over the zones; this sovereignty is complete in so far as it has not been limited by the provisions of the treaties of 1815 and 1816 and by the instruments supplementary to these treaties. With regards to the Pays de Gex, the old stipulations relate exclusively to the line along which the French customs offices are to be placed; and, with regard to the Sardinian zone, the situation is, under Article 3 of the Treaty of Turin, very much the same; it is a question merely of the withdrawal of the former Sardinian, now French, customs line behind the political frontier.

[211] In proceeding to state the terms of the settlement in question, the Court will be guided by the foregoing principles.

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[212] Switzerland's right to the maintenance of the zones having been recognized by the Court, but France having, in 1923, without Switzerland's consent, placed her customs line at the political frontier, France must, following the present judgment, withdraw that line in accordance with the old provisions.

[213] As regards the manner in which this obligation is to be discharged, certain differences of opinion have, however, arisen, more particularly with regard to the exact position of the inner boundaries fixed by the old provisions. Thus, while Switzerland considers that, according to a correct interpretation of Article 1 of the second Treaty of Paris, the inner limit of the Gex zone should follow the left bank of the Valserine from its source to its confluence with the Rhone and along the [p165] right bank of the latter as far as Collogny "so that the whole of the Pays de Gex, in the Ain Department, shall be outside this line", the French Government argues that that would extend this zone beyond the boundary fixed in the Treaty of Paris and disputes the Court's

jurisdiction to decide this question. The task of the Court, according to this Government, is to pass upon the régime of the territories dealt with in that Treaty, but not to delimit their boundaries.

[214] The Court considers that, in the absence of France's consent, this is a question outside the jurisdiction conferred on it by the Special Agreement. No question regarding the delimitation of the zones was submitted in that agreement, nor does it seem necessary to pass upon the demarcation of these boundaries as an incidental and preliminary question.

[215] The situation is somewhat different as regards the provision in the proposal submitted in 1930 by the Swiss Government and which contemplates a modification of the inner boundary of the Sardinian zone in order to avoid certain difficulties which would ensue from the maintenance of the line fixed by the Treaty of Turin. These modifications consist, inter alia, in the exclusion from the zone of that part of the Annemasse district which is included in the zone by the line of the Treaty of Turin, and in the adoption of a line which would also leave outside the zone the Annemasse-Évian railway which, according to the 1816 delimitation, enters and leaves the zone in several places. Accordingly, here there is no question of an interpretation of the provisions of the Treaty of Turin, but of improving the delimitation of the line therein laid down. On behalf of France, however, it has been contended that the line proposed takes in portions of French territories which, under the Treaty of Turin, were not included in the free zone, and that, consequently, the Court has no jurisdiction to accept it. This fact has not been disputed by Switzerland, which merely observes that the delimitation proposed is dictated by the configuration of the ground and that it would only slightly depart from the line of the Treaty at a few points.

[216] In these circumstances, the Court is of opinion that, in the absence of France's consent, it has no jurisdiction to entertain the amendments of the line proposed by Switzerland. [p166]

[217] Similarly, the Court is unable to regard itself as competent, without France's consent, to entertain the Swiss Government's proposal concerning the establishment of a French customs office on Swiss territory at the Geneva-Cornavin station.

[218] Finally, Article 12 of that proposal, concerning horse and other animal transport and vehicles of all kinds, also goes beyond the Court's jurisdiction in the absence of France's consent; this likewise applies to Article 13 of the Swiss proposal providing for an appeal to the Court in the event of disputes as to the interpretation or execution of the settlement established by the Court.

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[219] A question of far greater importance which arises in this connection is the following.

[220] In the course of his argument, the Swiss Agent drew attention to the control cordon (cordon de surveillance) instituted at the political frontier by the French Government during the war 1914-1918, and to the claim of the French Government to levy fiscal taxes at the frontier on imported goods. As to the latter he asked that, since the legitimacy of the control cordon had been recognized, the judgment of the Court should state what taxes may legitimately be imposed at the frontier and claimed that the importation tax (taxe à l'importation) was a customs tax in disguise.

[221] On this point, the Court makes the following observation:

[222] It follows from the principle that the sovereignty of France is to be respected in so far as it is not limited by her international obligations, and, in this case, by her obligations under the treaties of 1815 together with supplementary acts, that no restriction exceeding those ensuing from these

instruments can be imposed on France without her consent. Thus, there is no doubt that the Court is unable to restrain France from establishing at her political frontier a police cordon for the control of traffic, and this moreover does not appear to be [p167] disputed by Switzerland. On the other hand, Switzerland disputes the right of France to collect duties and taxes at her political frontier even though these charges are not duties and taxes on the importation or exportation of goods but are duties and taxes also levied on the same articles produced or manufactured in France. Switzerland, in fact, has in her draft decision (Art. 3, para. 2) proposed that imports from Switzerland to the free zones shall be free of any duties and taxes whatsoever, a suggestion which has met with lively opposition on the part of France.

[223] In this connection, the Court observes that no such limitation necessarily ensues from the old provisions relating to the free zones; that in case of doubt a limitation of sovereignty must be construed restrictively; and that while it is certain that France cannot rely on her own legislation to limit the scope of her international obligations, it is equally certain that French fiscal legislation applies in the territory of the free zones as in any other part of French territory.

[224] The legitimacy of the imposition of fiscal taxes within the zones as apart from customs duties at the frontier, is shown by Article 4 of the Manifesto of the Royal Sardinian Court of Accounts of September 9th, 1829, relating to the zone of Saint-Gingolph:

"The laws at present in force in the said communes included in the new zone relating to excise and other duties (gabelles) - with the sole exception of the laws concerning the customs - shall continue to be observed as heretofore. "

[225] A reservation must be made as regards the case of abuses, of a right, since it is certain that France must not evade the obligation to maintain the zones by erecting a customs barrier under the guise of a control cordon. But an abuse cannot be presumed by the Court.

[226] The tax to which the Swiss Agent had drawn the particular attention of the Court is the tax on importation, a form of the turnover tax which is levied at the frontier on goods imported as the result of a contract. It is impossible at present to say whether this tax, which was instituted by the French law of June 25th, 1920, is now levied at the [p168] frontier as a customs duty or as a fiscal tax, or whether the French Government would claim to continue to levy it at the frontier if the customs line were withdrawn. However that may be, the Court neither desires nor is able to consider whether the collection at the political frontier of any particular French tax is or is not contrary to France's obligations. It feels it must confine itself to stating that, in principle, a tax levied solely by reason of importation or exportation across the frontier must be regarded as a tax in the nature of a customs duty and consequently as subject to the regulations relating thereto.

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[227] If, therefore, considerations connected with its own jurisdiction and with the respect due to the sovereignty of France over the free zones prevent the Court from entertaining certain requests made on behalf of the Swiss Government, similar considerations compel the Court to refrain from entertaining the suggestion which has been made on behalf of the French Government that, in order to get over the difficulty created by Article 2, paragraph 2, of the Special Agreement, the Court should include in its judgment a provision for the withdrawal of the Swiss customs line from the frontier to the further side of the Canton of Geneva and of the commune of Saint-Gingolph. Any such decision, even if it commended itself to the Court, on its merits, would be beyond the Court's jurisdiction. The agreement which was to be concluded between France and Switzerland under Article 435, paragraph 2, of the Treaty of Versailles was for the purpose of settling the status

of "these territories", i. e. the free zones, and though it may well have been intended that the Agreement should include such matters as the permeability of the Swiss customs line, it cannot be construed as covering the withdrawal of that customs line from the frontier.

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[228] The withdrawal of the French customs line from the political frontier in the areas constituting the free zones of the Gex District and Upper Savoy, coupled with the inability of the Court to include in its judgment any provisions as to the [p169] import of goods free or at reduced rates through the Federal Customs barrier, will leave exports from the zones to Geneva without any right to exemptions from duty other than those which the Federal Government may grant spontaneously. The Swiss Government, however, throughout the present controversy and ever since its note of May 5th, 1919, has recognized the need for safeguarding the interest of the zonians and has declared that it is prepared to agree to the setting up of a more stable and more liberal régime for the admission of the zones produce into Switzerland.

[229] The Court does not hesitate to express its opinion that if, by the maintenance in force of the old treaties, Switzerland obtains the economic advantages derived from the free zones, she ought in return to grant compensatory economic advantages to the people of the zones.

[230] In the course of the oral arguments before the Court, the Swiss Agent declared, on behalf of his Government, that if the zones were maintained, the Federal Government would, if France so desired, agree to the terms of the exchange of goods between the zones and Switzerland being settled by experts, failing agreement with regard to them by the Parties. The decision of the experts should be binding on the two States and, so far as Switzerland was concerned, would j not require ratification.

[231] The terms of this declaration are as follows:

"1° By the note of May 5th, 1919 (Annex I to Article 435 of the Treaty of Versailles), Switzerland undertook - on the understanding that the free zones of Upper Savoy and the District of Gex were maintained - 'to regulate in a manner more appropriate to the economic conditions of the present day the terms of the exchange of goods between the regions in question'.

2° Should the judgment of the Court, in conformity with the principles laid down by the Order of December 6th, 1930, compel France to establish her customs barrier on the line fixed by the provisions of the treaties of 1815 and other supplementary instruments concerning the free zones of Upper Savoy and the District of Gex, Switzerland, without making any reservation for subsequent ratification, accepts the following: [p170]

(a) The Franco-Swiss negotiations designed to secure the execution of the undertaking stated in No. 1 above shall take place, should France so request within twelve months from the date of the Court's judgment, with the assistance and subject to the mediation of three experts.

(b) Failing an agreement between the Parties and upon the request of either Party, the said experts shall be appointed from amongst the nationals of countries other than France and Switzerland, by the judge at present acting as President of the Permanent Court of International Justice for the purposes of the case of the free zones, or, should he be unable to do so, by the President of the Permanent Court of International Justice, provided these persons consent to undertake this duty.

(c) It shall rest with the experts to fix - with binding effect for the Parties - in so far as may be necessary by reason of the absence of agreement between them, the terms of the settlement to be enacted in virtue of the undertaking given by Switzerland (No. 1 above). The principles of law laid down by the judgment of the Court shall be binding on the experts, save in so far as the Parties may by mutual consent authorize them to depart therefrom."

[232] If the French Government chooses to avail itself of this offer, it will be able to obtain in favour of the inhabitants of the zones an arrangement for the admission of their produce into Switzerland, which will not depend exclusively on the will of the Swiss Government.

[233] It is true that, in the course of the recent hearings, the French Agent declared the Swiss proposal to be unacceptable; but it is also true that he regarded it as an offer to conclude a Special Agreement, an offer which, in this form, he had no power to entertain. It is also true that the French Agent expressed certain doubts as to the binding character, from a constitutional point of view, of the Swiss declaration; having regard to the circumstances in which this declaration was made, the Court must however regard it as binding on Switzerland.

[234] The organization of the customs line in rear of the political frontier is a matter which necessarily must take time. It is [p171] not a question merely of returning to the customs line in use before 1923, because after 1860, the Sardinian and the Saint-Gingolph zones were merged in the Annexation zone of 1860.

[235] The Court, therefore, considers it appropriate that a reasonable period should be accorded to the French Government in which to comply with the terms of the present judgment. For this purpose, it fixes January 1st, 1934, as the date by which the French Government must have withdrawn the customs line so as to re-establish the free zones in accordance with the stipulations of the treaties of 1815 and 1816 and of the other acts supplementary thereto.

[236] The period thus granted for the organization of the customs line will afford time for determining the exemptions and facilities to be given to goods imported into Switzerland from the zones in case the French Government should decide to avail itself of the Swiss Government's offer referred to above.

[237] FOR THESE REASONS,
The Court,
by six votes to five,

decides:

In regard to the question formulated in Article 1, paragraph I, of the Special Agreement:

That, as between France and Switzerland, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, neither has abrogated nor is intended to lead to the abrogation of the provisions of the Protocol of the Conference of Paris of November 3rd, 1815, of the Treaty of Paris of November 20th, 1815, of the Treaty of Turin of March 16th, 1816, or of the Manifesto of the Sardinian Court of Accounts of September 9th, 1829, regarding the customs and economic régime of the free zones of Upper Savoy and the Pays de Gex. [p172]

In regard to the questions referred to in Article 2, paragraph I, of the Special Agreement:

That the French Government must withdraw its customs line in accordance with the provisions of the said treaties and instruments; and that this régime must continue in force so long as it has not been modified by agreement between the Parties;

That the withdrawal of the customs line does not affect the right of the French Government to collect at the political frontier fiscal duties not possessing the character of customs duties;

That, as the free zones are maintained, some provision for the importation of goods free of duty or at reduced rates across the line of the Federal customs, in favour of the products of the zones, must be contemplated;

That the declaration made in regard to this question by the Agent of the Swiss Government before the Court at the hearing on April 22nd, 1932, shall be placed on record;

That January 1st, 1934, shall be appointed as the date by which the withdrawal of the French customs line shall have been effected.

[238] Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this seventh day of June, nineteen hundred and thirty-two, in three copies, one of which shall be placed in the Archives of the Court and the others delivered to the Government of the French Republic and the Government of the Swiss Confederation respectively.

Seen.

The President of the Court:

(Signed) M. Adatci.

(Signed) D. Anzilotti,

Judge acting as President.

(Signed) Å Hammarskjöld,

Registrar. [p173]

[239] M. Altamira and Sir Cecil Hurst declare that they are unable to concur in the present judgment in so far as, availing themselves of the right conferred on them by Article 57 of the Statute, they have indicated their dissent therefrom in the following dissenting opinion.

[240] M. Yovanovitch declares that he is unable to concur in the judgment given by the Court and, availing himself of the right conferred on him by Article 62 of the Rules, appends to the judgment this statement of his dissent.

[241] M. Negulesco declares that he is unable to concur in the judgment given by the Court and, availing himself of the right conferred on him by Article 57 of the Statute, has appended to the judgment the dissenting opinion which follows hereafter.

[242] M. Eugène Dreyfus declares that he is unable to concur in the judgment given by the Court and, availing himself of the right conferred on him by Article 57 of the Statute, has appended to the judgment the dissenting opinion which follows hereafter.

(Initialed) M. A.

(Initialed) D. A.

(Initialed) Å. H. [p174]

Dissenting Opinion of M. Altamira and Sir Cecil Hurst.

[243] WE, the undersigned judges of the Court, regret that we are unable to concur in the judgment of the Court for the following reasons.

[244] Apart from other points which will be considered hereinafter, the two main questions in regard to which our opinion differs from that of the majority are the question of the interpretation of Article 435, paragraph 2, in so far as concerns the second part of the question submitted to the Court by Article 1, paragraph 1, of the Special Agreement of 1924 and the question of the interpretation of this Special Agreement, and, in particular, of Article 2, paragraph 1, thereof.

[245] Article 1, paragraph 1, of the Special Agreement asks the Court to say whether "as between France and Switzerland, Article 435, paragraph 2, of the Treaty of Versailles", etc., "has abrogated or is intended to lead to the abrogation of the provisions.... regarding the customs and economic régime of the free zones", etc. There are therefore two distinct questions. We have no remarks to make as regards the first. As regards the second (whether Article 435, paragraph 2, "is intended to lead to the abrogation"), a preliminary observation must be made: the question is so worded that it is put with regard to Article 435, paragraph 2, with its Annexes, but only from the point of view of the legal effect of that clause upon the international relations "between France and Switzerland". Accordingly, it is clear that whatever answer is given to this question cannot prejudge the interpretation of the Article outside the concrete case specifically defined by the Special Agreement in Article 1.

[246] This question of the "object", that is to say of the intention, of Article 435 in itself, was not included in the Swiss counterproposal of 1924, in which, for the first time, the idea of formulating the dispute between the two Governments in terms of an interpretation of the above-mentioned Article 435 was envisaged. It appears only in the Special Agreement, as finally worded in 1924; and so soon as the proceedings [p175] following upon the submission of this Special Agreement to the Court had begun, a modification in the wording of the question above mentioned is to be observed in the submissions appended to the Swiss Reply of 1929 (submission No. 2), where the words "is intended to lead to the abrogation" are explained as meaning whether or not it (Art. 435, para. 2) compels Switzerland to accept the abrogation of the free zones as the only possible basis of the future settlement.

[247] This interpretation of the second question put by Article 1, paragraph 1, of the Special Agreement has been accepted by the Court, which has given expression to it by introducing the word "necessarily" which has the same effect as the words "only possible basis" used by Switzerland. It seems evident that the Court, like the Swiss Agent, in adopting this interpretation, definitely had in mind the future negotiations with a view to the conclusion of an agreement provided for by paragraph 2 of Article 435 of the Treaty of Versailles. These negotiations, to which the signatory Powers left the final settlement of the matter and likewise the carrying out in full of the terms of the Article, indicate the point at which the zones' question, originally stated in Article 435 from the point of view of the ideas and intentions of the Powers signatory to the Treaty and from that of the provisions originally establishing the zones' régime, becomes a question exclusively within the jurisdiction of the two States primarily concerned. It is also evident that the real object of this change, as expressed in the closing words of paragraph 2 of Article 435, is to prevent any attempt to force Switzerland to accept abrogation as "the only possible basis" of the agreement.

[248] The consequences which logically ensue are in our view as follows: that abrogation may be envisaged as a possible basis for the agreement, and that, even if the question put by Article 1, paragraph 1, of the Special Agreement, be answered in the terms suggested by Switzerland and adopted by the Court, it does not follow that this answer exhausts the interpretation of the question of the intention of Article 435, paragraph 2. For the answer given, as we have just shown, only has in mind the relations between France and Switzerland for the purposes of the negotiations, and cannot in any [p176] way affect the meaning which Article 435 bore in the intention of the Powers which signed the Treaty of Versailles.

[249] Accordingly, the question of the intention of the Article itself remains intact, and, in any case, the answer is not to be found in a decision relating to an aspect of it entirely different from that which emerges from the terms and tenour of the Article taken by itself. So that the conversion of the answer given on the basis of the interpolation of the word "necessarily" into an answer

where this word (and consequently also the interpretation which led to its insertion) has disappeared, does not seem justified. The answer to the question in the Special Agreement must be left with the limited scope attaching thereto - this we do not discuss - and the interpretation of the other aspect which was not envisaged in Article 1 of the Special Agreement must at the same time be left open.

[250] The question, when regarded from this other aspect, can in our view only be answered in the affirmative, that is to say that Article 435 was intended to lead to the abrogation of the zones in the sense that the signatory Powers considered that the inconsistency between the old provisions and present conditions pointed to such abolition, and that even though they did not wish to force Switzerland to accept such abolition - she not being a signatory of the Treaty - they considered that the contemplated agreement should lead to this result, just as the agreement regarding the neutralized zone had done. Moreover, the actual text of the whole Article affords, in our view, clear proof that the opinion expressed therein by the High Contracting Parties is also indicative of the object aimed at by the Article. This is true not only of the second paragraph but also of the first. A careful study of the wording of this paragraph shows that the High Contracting Parties do not confine themselves simply to acquiescing in the agreement concluded between the French and Swiss Governments, but also expressly state the reason for their acquiescence. This reason is that the High Contracting Parties consider the agreement mentioned to be in accordance with the consequence which naturally ensues from the declaration made by them regarding the inconsistency of the old provisions concerning the neutralized zone and [p177] "present conditions". The first sentence of this paragraph, in so far as is essential in this respect, says: "The High Contracting Parties, while they recognize the guarantees stipulated... in favour of Switzerland... declare... that the provisions... are no longer consistent with present conditions." This sentence in itself and by its general arrangement explains the fact that the High Contracting Parties are willing to accept - as they do in so many words - an agreement abrogating these guarantees. And to remove any possibility of doubt as to this meaning which we read into the first sentence of the paragraph, the second begins: "For this reason", i. e. for the reason that the old provisions are inconsistent with present conditions and that this had led to the abrogation of the guarantees given in 1815. It is worthy of note that the first sentence does not mention the agreement, and, accordingly, is not in itself applicable to it - the application only follows from the connection established by the words "For this reason" in the second sentence between the principle laid down in the first and the fact, not of the agreement, but of the acceptance of the agreement which is recorded by the customary formula "take note".

[251] It is certain that if the agreement had not been in accordance with the principle referred to, the High Contracting Parties would not have accepted it.

[252] This interpretation is not incompatible with that given in reply to the concrete question in the Special Agreement, because each interpretation corresponds to one of the two elements which together form the contents of the Article: the inconsistency between the provisions concerning the zones and present conditions, which inconsistency is categorically stated as a fact by the Powers, and the respect for the will of Switzerland which must have free play in the endeavour to reach an agreement since that country was not a Party to the Treaty.

[253] Furthermore, these two elements and their respective interpretations naturally lead to different consequences. In so far as concerns negotiations with a view to an agreement between France and Switzerland, there seems no doubt that it cannot be gainsaid that the latter country is so situated that [p178] abrogation cannot be forced upon her either as sole basis for negotiations or by any singlehanded action on the part of France. On the other hand, once the Parties are outside the field of negotiations, it would seem that the other aspect of the Article must predominate. This, in

our view, was what the Special Agreement contemplated and intended to make legally possible by Article 2, in the event of the further negotiations mentioned in paragraph 2 of Article 1 not resulting in an agreement. Now, these negotiations, the only ones contemplated by the Special Agreement, did not result in an agreement, nor did the further negotiations for which time was allowed by the Court in its 1930 Order. The eventuality contemplated at the beginning of Article 2 of the Special Agreement having thus materialized, the powers conferred on the Court in that eventuality come into play and must be exercised as provided in that Article.

[254] If, according to paragraph 1 of that Article, it now rests with the Court "to pronounce its decision in regard to the question formulated in Article 1" and also "to settle for a period to be fixed by it and having regard to present conditions, all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles", it is in our view evident: (1) that "all these questions" means "every one of the questions" and not only those which, in connection with the idea expressed in Article 1 of the Special Agreement, correspond to the stage of negotiation with a view to an agreement, a stage which is no longer in question in the present phase of the proceedings, and which is only related to the last sentence of Article 435, paragraph 2; (2) that "all the questions" necessarily include the question of the aim of this Article, in the intention of its authors, and accordingly the fulfilment of this aim. Otherwise it is certain that the Article will not be executed as required by the Special Agreement, and that the intention of the Parties as represented by this Special Agreement will also remain unfulfilled. For these reasons, we believe that the Court should have proceeded to settle all the questions involved by this execution (save as regards these to which paragraph 2 of Article 2 of the Special Agreement relates) and accordingly also the question of the object of Article 435 of the Treaty of Versailles, by examining it in [p179] every aspect, i. e. also in relation to "present conditions", a term common to Article 435 and to the Special Agreement, instead of confining itself to the entirely concrete and therefore partial solution contemplated by Article 1 of the Special Agreement.

[255] In our view, the fact that the power conferred on the Court by Article 2, paragraph 1, of the Special Agreement includes the possibility of executing Article 435, paragraph 2 - as we understand the execution of that clause - is proved not only by the foregoing arguments but also by the following considerations.

[256] The reason why France and Switzerland were entrusted by Article 435 with the duty of arriving at the agreement contemplated at that time, just as it was by the Court in 1929 and 1930, under the terms of the Special Agreement, appears from the opinion expressed in 1919 by the Signatories of the Treaty of Versailles when they formulated the first part of the second paragraph of Article 435. This reason is that the provisions of the old treaties, in so far as they relate to the free zones, are no longer consistent with present conditions. It is to be noted that the terms in which this opinion is expressed in the said Article are not limited in any way, nor do they attach any particular and solitary consequence to the inconsistency between the stipulations of the 1815 treaties and other supplementary instruments and any particular element in the situation which existed at the time; on the contrary, the statement as to this inconsistency is so worded as to apply to the whole of the treaty stipulations.

[257] Accordingly, no matter whether it is thought that the essential feature of the régime lay in the withdrawal of the French customs line or whether it is thought that the essential feature consisted of economic advantages which are compatible with the placing of the customs cordon at the French political frontier, the inconsistency of the régime with "present conditions" retains its full force as expressing the purpose of the Article and, accordingly, the mind of the signatory Powers. Moreover, it certainly must not be forgotten that this interpretation of Article 435, paragraph 2, was, in 1921, taken as a basis for the draft convention between Switzerland and France, under

which the zones were to be abrogated, which draft was [p180] approved by the Parliaments of the two countries, though it was later rejected by the Swiss referendum. At the same time, this draft, in our view, clearly indicated that, in adopting it, the executives of the two States believed that they were effecting the agreement contemplated in the last sentence of Article 435, paragraph 2, of the Treaty of Versailles.

[258] It is also the fact that, even after the rejection of the draft convention of 1921, the result embodied in that draft continued to be envisaged as a possible outcome of the negotiations between the Parties. The Court itself has recognized the existence of this possibility; this obviously means, once again, that the abolition of the zones is not in itself a solution essentially incompatible with the interests and economic needs of Switzerland and the zones, any more than with the meaning of Article 435 of the Treaty of Versailles. And for this reason also, we are unable (quite apart from the separate question of the terms of Article 2, paragraph 1, of the Special Agreement) to regard the limitation, which the Court holds has been imposed upon it, as an inevitable consequence of the answer to Article 1. In reality, this answer is entirely unconnected with the eventuality referred to at the beginning of paragraph 1 of Article 2 of the Special Agreement, and therefore with the task which falls to the Court, should this eventuality materialize.

[259] The absence of inter-dependence between Article 2 and Article 1 of the same Special Agreement is also to be explained by the following consideration, derived from facts which are well known and not disputed. At the time of the conclusion of the Special Agreement, designed to submit the dispute between the two Governments to the Court, France had abolished the zones - so far as their régime finds expression in the withdrawal of the customs line - by a unilateral act. France was, at that time, of opinion that Article 435 of the Treaty of Versailles, with its Annexes, had abrogated the former treaties - which were the basis of the Swiss right, - that this right had ceased to exist, and that France was, in consequence, justified in transferring her customs cordon to her political frontier, whether or not an agreement with Switzerland had been reached. It was in order to decide whether that view was correct, and solely with that purpose, [p181] that the question enunciated in Article 1 of the Special Agreement was put to the Court, and that the latter, in 1929, gave its interpretation of Article 435, paragraph 2, of the Treaty of Versailles, in the terms with which all are acquainted.

[260] Now, however, the situation is altogether different. In our view the Court's judgment should contain a settlement of the whole matter, that is to say, of all the questions raised by the execution of the said Article, which would have been settled by the Parties themselves had they reached an agreement. If the judgment fails to do this, the Court is omitting to carry out the express mandate of the Parties in regard to the new regulation of the zones' régime, which, in our view, is categorically expressed in Article 2, paragraph 1, of the Special Agreement, and also in Article 435, paragraph 2, of the Treaty of Versailles.

[261] To us, indeed, it appears clear that what the Court has received from Switzerland, as also from France, under this Article 2 of the Special Agreement, is the power to settle all the questions involved by the execution of Article 435, paragraph 2, and a part of that settlement is the establishment of the new régime; this may involve changes extending even to the modification of what has been called the "structure" of the zones, in so far as that structure is represented by the placing of the French Customs cordon in rear of the political frontier.

[262] The difference, in this respect, between the terms of Article 435 of the Treaty of Versailles and those of Article 2 of the Special Agreement is explained by the fact, which is entirely comprehensible, that the Treaty of Versailles, to which Switzerland was not a Party, had no power to provide for the establishment of the new régime (which it clearly considered as having to be

effected, taking as a basis the inconsistency between the "former provisions" and the "present conditions") in any other way than by an agreement between Switzerland and France, whereas the Special Agreement of 1924, which was drawn up, accepted, and signed by the two States, could - and did in so many words - request the Court to effect what the Parties could have effected in 1930 and in 1931, just as they did in 1921. Therefore, and without thereby prejudging [p182] the terms of the settlement which the Court would have to lay down, in conformity with its own convictions, it seems to us unquestionable that the Court can legitimately claim the same freedom of judgment as the Parties themselves in determining the system which would be most in harmony with the present conditions and with the ideas of Article 435 of the Treaty of Versailles.

[263] We said just now, "the same freedom" as the Parties, but in reality it is a wider freedom, not only in view of the very nature of the Court, but also because Governments are sometimes hampered by constitutional difficulties, or difficulties of a similar kind belonging to the sphere of domestic policy, which the Court does not have to encounter.

[264] Moreover, the Swiss note of May 5th, 1919, cannot, in view of the existence of the Special Agreement of 1924, produce the same consequences as it did prior to that Agreement. And, as the said note is merely one of the Annexes to Article 435 of the Treaty of Versailles, it does not have to be considered in interpreting Article 2 of the Special Agreement, which makes mention only of Article 435, as it stands. It is not possible, in our opinion, to add any words to those appearing in the text of that Article of the Special Agreement without distorting it, and making it say something which it does not say. It is quite impossible for us to read the text of the Special Agreement otherwise than as it was drawn up and submitted to the Court.

[265] Similarly, and in regard to the task now committed to the Court, when considered as a whole, it appears to us impossible to conceive of a Special Agreement which consists of five articles - of which two are articles of substance - being framed, still less being accepted - if the legal effects of it are to be confined to the question enunciated in one only of these articles (Art. 1, para. 1, in the present case). Yet this is the result at which we arrive, if we practically confine our answer to the Special Agreement of 1924 to the single point of law in its first Article and make the judgment asked for in Article 2 dependent upon this point alone. In our opinion, it is impossible to believe, when one takes count of human psychology and more particularly "of governmental [p183] psychology, that a Special Agreement, such as that before us, could have been adopted by two States, one of which, namely France, has from the outset maintained the view that the zones, were abrogated, and that this Special Agreement should contain an article, the interpretation and execution of which must necessarily be favourable exclusively to the opposite contention. The keeping open of both alternatives, that is to say, the possibility of applying the Article to either contention, is surely the natural construction in this case, whereas the presumption of a deliberate purpose to give preference to one of the contentions would really exceed all imaginable bounds of disinterestedness on the part of a State. As such a result would be utterly out of the question, the interpretation of Article 2, paragraph 1, as being applicable alike to the Swiss and French contentions appears to be the most justifiable. If any other interpretation should suggest itself, it would seem more reasonable, instead of putting a meaningless construction on the Special Agreement, to consider that it is rather the interpretation which is at fault.

[266] We have still to examine this question of Article 2, paragraph 1, of the Special Agreement from the point of view of the Court itself, that is to say of the Court's jurisdiction; on that point, we wish to make the following observation.

[267] We have been unable to see, either in the text or in the construction which Articles 36 and 38 of the Statute appear to us to bear, anything which, in principle, would deprive the Court of

jurisdiction to establish a settlement such as is contemplated in Article 2 of the Special Agreement, a question which is distinct from that relating to paragraph 2. Moreover, it is clear from this Article that the Parties have thereby invested the Court with the widest measure of jurisdiction compatible with Article 38 of the Statute. Finally, it is to be noted that the Parties in the case have never, on one single occasion, thrown any doubt on the competence of the Court to perform the task specified in Article 2, paragraph 1, of the Special Agreement. They were even of opinion that the Court was competent to decide on the matter referred to in paragraph 2 of that Article, though the Court very rightly refused to do so; upon the latter point, we find ourselves in agreement with the judgment. [p184]

[268] Hence, it appears to us that the competence of the Court is established in regard to paragraph 1 of Article 2 of the Special Agreement, and that the settlement which is asked for therein - whether or not it would be, as has been said, a settlement wholly of expediency - would have as its legal bases, on the one hand Article 2 of the Special Agreement, on the other hand Article 435 of the Treaty of Versailles, in their twofold capacity of international agreements and texts governing the jurisdiction of the Court in this case. It seems clear to us that the existence of these principles, the one emanating from the signatory Powers of the old provisions, the other from the two Governments parties in the case, would provide that settlement with a legal foundation in positive international law. By reason of this fact a settlement on the basis of "present conditions", although it would be governed by criteria not derived from any pre-existing law between the Parties - i. e., it would be governed by the "present conditions" - would none the less be a settlement on the basis of law, that is, of the rule which the Parties themselves laid down in the Special Agreement in order to obtain a final settlement of the case, through a judgment of the Court, taking the place of a voluntary agreement between themselves.

[269] This line of argument might encounter an objection based on the distinction that has been drawn between the structure of the zones and their economic régime. If such a distinction were not only accurate and possible, but also necessary, one might, for example, be led to the conclusion that the structure should be retained and the economic system modified. That would imply the assumption that the structure, as such, is the invariable feature of the zones, whereas the regulations, or economic advantages, are its variable features; but the former of these suppositions would be far from justified in our opinion.

[270] For indeed, although it is true - as we unreservedly admit - that, in order that the right of negotiations, which is provided for in the last sentence of Article 435, paragraph 2, of the Treaty of Versailles, may be exercised, it is necessary that the step taken by France in 1923 should be regarded as illegal, and should be cancelled, nevertheless it does not [p185] follow that the zones system must necessarily continue to be based on the withdrawal of the French Customs cordon in rear of the political frontier. The same customs advantages as are derived from the withdrawal of the customs line may be obtained, with the good-will of the State concerned, by other means, also dependent on the same factor. The Convention of 1921 showed that this was in fact possible; and, in the face of that demonstration, it cannot now be maintained that the economic benefits of the system, which have always been regarded as its essential advantage, would not be attainable unless the customs cordon and the political frontier were kept apart. That would be tantamount to arguing that it would not be possible for a State to establish a free-trade system, even if of a highly developed kind, without shifting its customs line; yet this has been frequently found possible and will continue to be so, unless some day absolute free trade should be introduced. But even in the last case, it would be unnecessary to withdraw the customs line, since the customs offices themselves would have ceased to exist throughout the territory.

[271] In conclusion, we wish to make every reservation in regard to a theory seeking to lay down,

as a principle, that rights accorded to third Parties by international conventions, to which the favoured State is not a Party, cannot be amended or abolished, even by the States which accorded them, without the consent of the third State; such a theory would be fraught with so great peril for the future of conventions of this kind now in force, that it would be most dangerous to rely on it in support of any conclusion whatever. Fortunately, in the present case, this question does not arise, since, as regards the compulsory abolition of the zones, the last sentence of paragraph 2 of Article 435 appears to place the position of the signatory Powers of the Treaty of Versailles and of Switzerland on a plane other than the above.

(Signed) Rafael Altamira.

(,) C J. B. Hurst. [p186]

Dissenting Opinion by M. Negulesco.

[Translation.]

[272] The undersigned holds that the Court should have declared that it had no jurisdiction, for the following reasons:

[273] The Special Agreement concluded at Paris on October 30th, 1924, presents certain special features. It entrusts the Court with two distinct tasks in successive phases of the proceedings. In fulfilment of the mission of mediator entrusted to it by Article 1 of the Special Agreement, the Court, by means of its Order of August 19th, 1929, made known to the Parties the results of its deliberation upon the first question put to it and granted the Government of the French Republic and the Government of the Swiss Confederation a period expiring on May 1st, 1930, to settle between themselves, under such conditions as they might consider expedient, the new regime for the territories contemplated by Article 435, paragraph 2, of the Treaty of Versailles.

[274] The negotiations between the two Governments not having resulted in an agreement, the case again came before the Court, pursuant to Article 2, paragraph 1, of the Special Agreement which defined the second mission entrusted to it. "By means of a single judgment" the Court was to pronounce upon the two questions enunciated in the Special Agreement: (a) to decide whether, as between France and Switzerland, Article 435, paragraph 2, of the Treaty of Versailles with its Annexes has abrogated or is intended to lead to the abrogation of the stipulations of the treaties of 1815; (b) to settle all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles, having regard to "present conditions" and "for a period to be fixed by it".

[275] The Court, in the second phase of the proceedings, granted the Parties a further period to settle between themselves the matter of importations free of duty or at reduced rates across the Federal Customs line. In its Order of December 6th, 1930, the Court explained that it was compelled to adopt [p187] this solution on account of Article 2, paragraph 2, of the Special Agreement. Having allowed the Parties the necessary time to come to an agreement upon the matter of imports free of duty or at reduced rates, and the Parties having failed to reach that agreement, the case again came before the Court in order that the latter might give its final judgment. In this last phase of the proceedings, the Court should have declared itself incompetent.

[276] The Court's incompetence appears from an examination of two questions: firstly, what was the intention of the Parties as expressed by the Special Agreement, and secondly, whether that intention is not inconsistent with Article 14 of the Covenant and with the Statute of the Court.

[277] It is clear that the difference of opinion which brought about the failure of the negotiations

preceding the Special Agreement was concerned solely with the interpretation to be placed on Article 435 of the Treaty of Versailles with its Annexes. France contended that, under this Article, the régime of the zones had been abolished; Switzerland, on the other hand, contended that the régime of the zones could not be abolished without her consent. It was on account of this difference that the agreement contemplated by paragraph 2 of Article 435 of the Treaty of Versailles had not been realized: "with a view to settling between themselves the status of these territories under such conditions as shall be considered suitable by both countries".

[278] The Parties, being unable to agree, had recourse to the Court and conferred upon it power, firstly, by Article 1 of the Special Agreement, to decide whether the Treaty of Versailles had abrogated or was intended to lead to the abrogation of the old provisions, and secondly, by Article 2, paragraph 1, of the Special Agreement, to settle all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles, having regard to present conditions and for a period to be fixed by it.

[279] In order to determine its competence, the Court must examine whether, in accordance with Article 14 of the Covenant, the dispute brought before it is of an international character, [p188] and then whether, in accordance with Articles 36 and 38 of the Statute, the question submitted to it is capable of a legal solution.

[280] The first question submitted to the Court concerning the interpretation of Article 435, paragraph 2, of the Treaty of Versailles is certainly an international dispute of a legal character coming within the limits of its jurisdiction.

[281] The second question enunciated in Article 2, paragraph 1, of the Special Agreement comprises several points:

- (a) its object is to secure the execution of Article 435, paragraph 2, of the Treaty of Versailles;
- (b) to this end, it confers a special power upon the Court.

[282] These two points in Article 2, paragraph 1, of the Special Agreement result in the Court's incompetence:

(a) The Parties are agreed in asking the Court to prepare customs regulations, and the difference which has arisen between them has done so in a preliminary or incidental manner in connection with these regulations. Switzerland argues that, in applying Article 2, paragraph 1, of the Special Agreement, there can be no further discussion of her right, which the Court recognized when it interpreted Article 435, paragraph 2, of the Treaty of Versailles in its Order of August 19th, 1929; France, on the other hand, maintains that, by reason of the power conferred upon it in Article 2, paragraph 1, of the Special Agreement, the Court is substituted for the Parties themselves.

[283] It is clear that the request of the Parties that the Court should regulate in their stead the customs régime between the two countries is not concerned with a dispute of a legal character. The Court is not asked to declare the law between the Parties, but to make law between them on the basis of political and economic considerations which are foreign to the attributes of a legal tribunal. The question submitted to the Court under Article 2, paragraph 1, of the Special Agreement is therefore outside its jurisdiction.

(b) If it is true that the Parties, when conducting the negotiations contemplated by Article 1, paragraph 2, of the Special Agreement, had the power even to abrogate the zones, this [p189] power must have been conferred upon the Court by the express provisions of the Special Agreement.

[284] In fact, Article 2, paragraph i, of the Special Agreement gives the Court the power to "settle for a period to be fixed by it and having regard to present conditions" all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles.

[285] In order to interpret this expression, which determines the powers conferred upon the Court, it is wrong to argue that because the word "exclusively" does not figure in it, it must be inferred that the Court may give a decision going beyond the restricted powers conferred upon it. If that were the case, all texts containing an enumeration of this kind would cease to be specific and would become general whenever the word "exclusively" did not figure therein. Such a result would be contrary to the rules of legal interpretation. This is all the more so in this case because we are concerned with the interpretation of a Special Agreement which determines the Court's jurisdiction; in the present judgment the Court has laid down: "that every Special Agreement, like every clause conferring jurisdiction on the Court, must be interpreted strictly".

[286] The expression "having regard to present conditions" gives the Court power to fulfil the task entrusted to it on the basis of considerations of expediency which have nothing to do with questions of law. Similarly, the expression "for a period (to be fixed by it" shows that the Court is empowered to determine the new régime either for an unlimited period or, on the contrary, for a limited period. The zones, which are permanent in character, may therefore be maintained] or suppressed by virtue of the power conferred upon the Court.

[287] By virtue of this same power, the Court may determine all the questions relating to the exchange of goods between the two countries and may regulate them for a fixed period and having regard to present conditions.

[288] From the foregoing, it follows that, according to the intention of the Parties, the Court in the second phase of the proceedings was to deal with technical questions, particularly the regulation of imports free of duty or at reduced rates; questions of law were to be excluded, for these questions [p190] could neither be decided in accordance with present conditions nor for a fixed period.

[289] To decide that the technical questions, the customs exemptions, are not within the competence of the Court in accordance with Article 2, paragraph 1, of the Special Agreement, and to include in the expression "all the questions" only-questions of law, is to violate the text of the Special Agreement since, in that event, the terms of the power conferred upon the Court by the Special Agreement to decide in accordance with "present conditions" and for "a period to be determined by it" would cease to be applicable, and hence the expression "all the questions" could no longer refer to all the questions which arise in connection with the regulation of the régime, but only to certain questions of a specific nature.

[290] While, in principle, the regulation of the customs exemptions is a question within the reserved domain of the State and under Article 15, § 8, of the Covenant falls outside the competence of the Court, the Parties may by agreement transfer a question from that reserved domain to the domain of international law. This was held by the Court in the case of the nationality decrees in Tunis and Morocco.

[291] A study of Article 2, paragraph 1, of the Special Agreement shows clearly that the Parties intended the Court to regulate the customs exemptions. These questions, however, being of an economic and political nature and having no legal character, are not within its competence.

[292] But quite apart from the provisions of Article 2, paragraph 1, of the Special Agreement, the Court is also incompetent on account of Article 2, paragraph 2: "Should the judgment contemplate the import of goods free or at reduced rates through the Federal Customs barrier or through the French Customs barrier, regulations of such importation shall only be made with the consent of the two Parties." This text clearly lays down that it is necessary to obtain the consent not only of the Party across whose customs line the [p191] importation of goods free of duty or at reduced rates is to take place, but also the consent of the other Party.

[293] Article 2, paragraph 2, of the Special Agreement does not mean that the Court can "contemplate" the principle that exemptions must be granted, but cannot "regulate" them, i. e. that it can abstain from defining the extent and terms of this regulation, because the latter has been reserved for an agreement to be concluded between the Parties. Indeed, if the Court was incompetent as regards customs exemptions, how could it be competent to "contemplate" the principle in favour of zones' products and across the Federal Customs line ? The truth is that the expression "regulations of such importation shall only be made", in Article 2, paragraph 2, of the Special Agreement, must refer to the regulation to be made by the Court and not to that made by the Parties; for if the Parties intended to reserve this regulation to themselves, the text, instead of saying that such regulations "shall only be made with the consent of the two Parties", would have said that this regulation could not be made "except by agreement between the two Parties". The word "consent" always refers to acts of third Parties; the only word which may properly be used to designate the consent of the two Parties is the word "agreement". This interpretation of Article 2, paragraph 2, also corresponds with Article 2, paragraph 1, of the Special Agreement, where the word "settle" refers to the power conferred upon the Court. The Court is therefore empowered to "regulate" in its judgment the question of exemptions. By the words "regulation of such importation shall only be made with the consent of the two Parties", the Parties intended that when judgment had been given, if it contemplated customs exemptions it should have no executory force as long as the two Parties had not consented to the exemptions provided for and regulated by the Court. In other words, the Court is entitled to regulate the exemptions, but its decision is only to become executory with the consent of the two countries.

[294] It is true that Article 2, paragraph 2, of the Special Agreement seems only to contemplate the customs exemptions as a possibility: "Should the judgment contemplate.... ", etc. But it should be observed that the authors of the Special [p192] Agreement intended to adopt a text which would cover at once all eventualities: (a) the maintenance of the two customs cordons at the political frontier; (b) the maintenance of the Swiss customs cordon at the political frontier and the withdrawal of the French customs cordon behind the zones of Upper Savoy and the District of Gex; and (c) the withdrawal of both customs cordons to the position they occupied in virtue of the treaties of 1815, on the French side, behind the Savoy and Gex zones, and on the Swiss side, behind the frontier and as far as the other extremity of the canton of Geneva and the commune of Saint-Gingolph. Of these three possibilities, only in two of them would the Swiss cordon remain at the frontier, and the question of exemptions could arise only in these two cases; in the third possibility, where the two customs cordons would no longer be at the frontier, the question of exemption could not arise.

[295] The expression "should the judgment contemplate.... " is therefore not to be regarded as meaning that the exemptions are a possibility, but as an element of the two régimes (a) and (b), the very basis of which must be customs exemptions.

[296] The Parties having been allowed the necessary time to agree in regard to imports free of duty or at reduced rates, and having failed to agree, the position of the Court is now that, if it delivers a judgment, the assent of the Parties in regard to imports free of duty or at reduced rates will be requisite, in order that the judgment may be executory. But that is incompatible with the character of the Court's judgments. The Court itself said as much in its Order of December 6th, 1930: "Whereas it is certainly incompatible with the character of the judgments rendered by the Court and with the binding force attached to them by Articles 59 and 63, paragraph 2, of its Statute, for the Court to render a judgment which either of the Parties may render inoperative..."

[297] The situation in which the Court is placed as a result of paragraph 2 of Article 2 of the Special Agreement should not lead it to act in such a way as to prevent one of the Parties, [p193] who has not been able to assist it in the performance of its task, from availing itself of the pleas and objections open to it under the Statute and the Rules of Court.

[298] It is true that the Swiss Government gave its consent in advance to any measures which the Court might see fit to lay down in virtue of paragraph 2 of Article 2 of the Special Agreement. But the fact that France, owing to her constitutional system, was unable to give her assent before the delivery of the judgment, ought not to place her under a disability, and lead the Court to deprive her of the right to enter a plea against the Court's jurisdiction in respect of the whole of the dispute, on the ground that this would result in an injustice towards the other Party.

[299] The French Government, in failing to give its assent before the delivery of the judgment, was merely acting within its right, according to the terms of paragraph 2 of Article 2 of the Special Agreement, which leaves each of the States entirely free to give its assent before or after the judgment in regard to any regulation of customs exemptions effected by the Court.

[300] But, even if the French Government were no longer entitled to raise this objection, it could still have been raised, as of right, in virtue of the Statute, at any time during the procedure.

[301] As the Court could not regard a case as validly submitted to it, in virtue of a Special Agreement which infringes the provisions of Articles 59 and 63, paragraph 2, of its Statute, it ought to have declared that it had no jurisdiction.

[302] Moreover, if any doubt could arise regarding the interpretation of Article 2 of the Special Agreement and the power of the Court to settle customs exemptions, this doubt could no longer exist in view of the interpretation furnished by the Parties themselves. Article 2, paragraph 1, of the Special Agreement empowers the Court to settle all the questions involved by the execution of Article 435, paragraph 2, of the Treaty of Versailles. Both the Governments are agreed that the conditions have changed, and that a new customs régime ought to be introduced (Swiss note of May 5th, 1919, and [p194] French note of May 19th); as they disagree in regard to the maintenance or abolition of the zones, they have submitted two draft proposals to the Court - a French draft, which presumes the abolition of the zones, and a Swiss draft, which on the contrary presumes their retention. But in both of these drafts the customs exemptions occupy an important place, and represent an essential factor for the execution of Article 435, paragraph 2, of the Treaty of Versailles. Article 2, paragraph 1, of the Special Agreement, which empowers the Court to "settle", in the place of the Parties, the questions involved by the provisions of Article 435, paragraph 2, of the Treaty of Versailles, cannot exclude from the Court's jurisdiction matters which the Parties themselves, in their respective proposals, desired to submit to the Court.

[303] Furthermore, the exclusion of the settlement of customs exemptions from the Court's jurisdiction would be in contradiction with the principles which should form the very foundation of the zones régime.

[304] It must not be supposed that this zones regime can be restricted to the proclamation of the "right of Switzerland" and the obligation of France to withdraw her customs cordon, without the settlement of the customs exemptions, which is the vital question for the inhabitants of the zones, being dealt with at the same time.

[305] If the zones were confined, on one side by the French Customs cordon, situated in the interior of the country, and on the other side by the Federal Customs line, placed at the political frontier, the inhabitants of the zones would be sacrificed, since the products of the zones could no longer be exported freely, either to the remaining territory of France, or to Switzerland; but the idea which underlay the creation of the zones was to prevent the inhabitants of the Canton of Geneva and those of the zones of Upper Savoy and the District of Gex from being kept apart by customs barriers, and to enable them to move freely and engage in trade, to the advantage of their mutual relations.

[306] Article 435, paragraph 2, of the Treaty of Versailles, where it lays down that the new agreement between France and Switzerland was to settle the status of the territories "under [p195] such conditions as shall be considered suitable by both countries", makes it clear that the agreement in question was to pay regard to the mutual interests of the two countries.

[307] The Special Agreement itself, which, in paragraph 1 of its second Article, empowers the Court to execute this provision of the Treaty of Versailles, is animated by the same intention, since the second paragraph refers to the "consent of the two Parties"; and Article 4, paragraphs, of the Special Agreement, which lays down that the Court, in order to facilitate a settlement of the customs question, may order investigations on the spot and hear "any interested persons", shows that the Court, in order to perform its task, should not seek to solve questions of law, but should acquire information concerning the needs of the zones inhabitants, and the reasons in favour of the abolition or maintenance of the zones, and, should their maintenance be decided, specify the customs exemptions which are requisite in the interests of the populations.

[308] Even if, prior to the Treaty of Versailles, doubts may have existed regarding the character of the customs exemptions, considered as an essential factor in the working of the régime, these doubts have disappeared today in view of Article 435, paragraph 2, of the Treaty of Versailles, and the Swiss note of May 5th, 1919, taken in conjunction with the text of that Article; these two provisions were intended to obtain a better situation for France. The Memorial of the Swiss Government in 1928 holds that the régime of the zones can no longer, since 1919, be regarded as a burden resting upon France alone: "The Federal Government, in its note of May 5th, 1919, accepted Article 435 of the Treaty of Versailles, so far as regards the free zones, as an undertaking given by itself to complete the provisions of the treaties of 1815 and the supplementary instruments by a new Franco-Swiss Convention, intended to facilitate the entry into Switzerland of the products of the free zones by means of a system of exemptions more liberal and more legally stable than in the past." (Publications of the Court, Series C, No. 17 - I, p. 886.) [p196]

[309] At the hearing on November 24th, 1930, the Agent of the Federal Government stated, on behalf of his Government, that they finally acquiesced in the customs exemptions, as provided in Articles 4 to 8 of the Swiss proposals, and also in any modifications which the Court might wish to

make in them: "Moreover, Switzerland has submitted a draft Decision to the Court. This draft implies the assent of Switzerland, within the meaning of Article 2, paragraph 2, of the Special Agreement, and that assent is henceforward binding upon Switzerland, and applies, without further formalities, to all the provisions which it contains, in particular in regard to the import of French goods free of duty or at reduced rates through the Federal customs line...."

"And the assent of Switzerland, as regards all the provisions in its draft which relate to the import of goods free of duty through the Federal customs line, or to any other provision which the Court may see fit to insert in its judgment on this subject, will be valid, even if the judgment should not adopt the Swiss contention in regard to the maintenance of the zones. " (Publications of the Court, Series C, No. 19 - I, Vol. I, P. 443.)

[310] The Agent of the Government of the French Republic, without abandoning his contention in favour of the abolition of the free zones, held that the customs exemptions constituted an essential element of that régime.

[311] The two Governments are agreed on the principle of exemptions; they disagree in regard to the manner in which they are to be settled, their extent and their terms.

[312] It is difficult to believe that the Parties intended, by Article 2 of the Special Agreement, to submit to the Court the principle of exemptions, in regard to which they were agreed, and to exclude from its jurisdiction the settlement of the exemptions in regard to which they disagreed.

[313] Even admitting that, subsequently to the Order of December 6th, 1930, Switzerland retracted her declaration by reducing the customs exemptions by 50 per cent., this in no way affects the principle that customs exemptions have to form the basis of the zones system.

[314] It is beyond dispute that both Parties desired that the regulation of the customs exemptions should be undertaken [p197] by the Court. But what they desired is prohibited by the Statute of the Court; accordingly, the latter should declare that it has no jurisdiction.

[315] The Court having declared, in reply to the first question of the Special Agreement, that Article 435, paragraph 2, of the Treaty of Versailles has not abrogated and was not intended to lead to the abrogation of the treaties of 1815 and other supplementary instruments, has it power in virtue of paragraph 1 of Article 2 of the Special Agreement to order the withdrawal of the French customs cordon ?

[316] If it were necessary to read the provisions of paragraph 1 of Article 2 of the Special Agreement as implying the execution of Article 1, the determination of the position of the customs line would be included in that execution; but that is not the case, for, in the first place, Article 1 of the Special Agreement is not capable of execution; and, secondly, Article 2, paragraph 1, is not intended to provide for the execution of Article 1 of the Special Agreement, but for that of the last part of the second paragraph of Article 435 * of the Treaty of Versailles.

[317] This paragraph of Article 435 of the Treaty of Versailles consists of two parts. The first part contains the declaration of the signatories of the Treaty of Versailles to the effect that the provisions of the treaties of 1815 concerning the free zones are no longer consistent with present conditions. It was the interpretation of this clause which the Court was asked to give by the first

question referred to in the Special Agreement. This clause, which contains the opinion expressed by the signatories of the Treaty, does not lend itself to execution; whereas, on the contrary, the final clause of the paragraph, which refers to the conclusion of an agreement designed to settle the status of these territories, is capable of execution. It is this part of the paragraph which the Court is required to execute under paragraph 1 of Article 2 of the Special Agreement. In these circumstances, the position of the cordon appears to be a consequence of the [p198] interpretation given by the Court to the first question in the Special Agreement, and ought not to be included in the execution for which the Court has to provide under paragraph i of Article 2 of the Special Agreement.

[318] If we exclude the withdrawal of the customs cordon and the regulation of the customs exemptions from paragraph i of Article 2 of the Special Agreement, how much remains of the settlement to be effected by the Court ? All that remain are the legal questions that arise. But it follows from the terms of paragraph i of Article 2 of the Special Agreement, which empower the Court to settle for a period to be fixed by it and having regard to present conditions, that legal questions, which involve a permanent solution and are not dependent on present conditions, cannot be included among the matters which the Court can decide.

[319] Even if one admits that in principle the Court is competent to decide the legal questions which come under the expression "all the questions", it must be admitted that the questions thus arising are of an incidental or preliminary character. The Court has been requested by the Parties to draw up a customs régime in their place, and questions which arise in the course of regulating these matters must be regarded as incidental or preliminary; legal questions cannot therefore arise since the Court is not competent to settle the customs régime.

[320] If the Court has felt bound to declare, in the operative part of its judgment, "that, as the free zones are maintained, some provision for the importation of goods free of duty or at reduced rates across the line of the Federal Customs, in favour of the products of the zones, must be contemplated", this must not be regarded as a settlement of one of the points coming within "all the questions", but as the proclamation of a principle, accepted by both Parties, and constituting the main foundation of any customs settlement.

[321] The question raised by the Swiss Government in regard to the French fiscal cordon falls outside the Special Agreement, since there is no international obligation which has limited French sovereignty in this respect. It is not, therefore, included among "all the questions" referred to in paragraph 1 of Article 2 of the Special Agreement. [p199]

[322] As the Court finds itself unable to settle "all the questions" which are involved by the execution of Article 435, paragraph 2, of the Treaty of Versailles, and referred to in paragraph 1 of Article 2 of the Special Agreement, it ought to declare that it has no jurisdiction.

[323] If the Court is unable to answer the second question put to it by the Special Agreement, has it power, at any rate, to settle the first question, which concerns the interpretation of Article 435, paragraph 2, of the Treaty of Versailles ?

[324] It is beyond dispute that the jurisdiction of the Court only exists within the limits corresponding to the intention of the States. But the fact that, under paragraph 1 of Article 2 of the Special Agreement, the Court has to deliver "a single judgment" proves that in the intention of the Parties all the questions submitted to the Court were to form an indivisible whole.

[325] On these grounds, the undersigned considers that the Court should declare that it has no

jurisdiction in regard to both the questions submitted to it.

(Signed) Demetre Negulesco. [p200]

Dissenting Separate Opinion by M. Eugene Dreyfus.

[Translation]

[326] I regret I am unable to agree either with the grounds or with the operative portion of the judgment which has just been given, and if I were asked to summarize the reasons for my attitude in a few propositions, I should say that it was based in the first place on the fact that the circumstances in which the final judgment was reached suggest that the Statute of the Court has not been strictly observed, secondly, on the fact that the Court has not fulfilled the task entrusted to it by the Special Agreement, and lastly, on the fact that, instead of announcing that, as the inevitable result of its inability to fulfil an important part of its task, the Court was incompetent in respect of the whole, the judgment leads, contrary to the intention of the authors of the Special Agreement, to making the position of France worse today than it was in 1919, that is to say, prior to the insertion in the Treaty of Versailles of the provision of Article 435, paragraph 2, the meaning of which is in this way distorted.

[327] 1.- However unusual the Special Agreement may appear at first sight, its structure is nevertheless quite simple. The cause of the difference between France and Switzerland was at once both a legal dispute and a disagreement over the best way to organize the economic and customs regime best suited to the special situation of Geneva and that of the adjacent territories which surround it. The Governments of the two countries intended to submit to the Court both problems simultaneously and on the same footing, without attaching more importance to one than to the other: the one referred to the first part of paragraph 2 of Article 435 and raised a question of law, viz., whether, in declaring that the organic provisions relating to the zones were no longer consistent with present conditions, that provision in the Treaty, together with its Annexes, had, as between France and Switzerland, abrogated or was at least intended to lead to the abrogation of the old provisions; the other referred [p201] to the second part of that Article and was intended to ask the Court to settle, between France and Switzerland, under expedient conditions, the regime upon which the two countries had failed to agree.

[328] The Special Agreement placed these two problems side by side and asked the Court, in the event of the Parties having failed to agree after the Court had communicated the results of its deliberation on the legal problem, to deliver a single judgment which would simultaneously resolve the question of interpretation and settle, for a period to be fixed by it and having regard to present conditions, all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles.

[329] Thus, the Special Agreement emphasized the relation between the two problems and recommended that the same judges should decide, by means of a single judgment, both upon the interpretation of Article 435, paragraph 2, and upon its execution. However, this is not in fact what happened: of the twelve judges who took part in the deliberations of 1929 upon the interpretation of the text, four were absent from the second phase of the proceedings when the Court dealt with the settlement of the questions involved by the execution of Article 435, paragraph 2, of the Treaty, so that, the necessary quorum of nine not being available, recourse was had not simply to one judge to complete this quorum, but to four new judges who, although they did not take part in the first phase of the case, have nevertheless shared in the single final judgment which is intended to decide both the question argued and discussed in their absence in 1929 and the questions argued and discussed in their presence in 1930 and in 1932. Of course, these new judges have been invited to

state their opinion of the solution given to the question in 1929 by the deliberations of their predecessors; and, after studying the written proceedings and reading the verbatim report of the oral arguments, three out of four of these new judges have declared that they concur in those deliberations. But how can one concur in deliberations in which one has taken no part? And is this method of participating in a judgment without having been present at all the hearings and without having participated in the discussion which determined the [p202] opinion of the majority really in accordance with the combined provisions of Articles 13, 54 and 55 of the Court's Statute, for which the Court has to ensure respect, without regard for any declarations of the Parties? It has always appeared necessary in all jurisdictions - it is a principle of general application with which they may in no circumstances dispense - that, within the limit of the legal or regulation quorum, judges who are called upon to give a final decision shall have sat in the case from the beginning of the oral proceedings down to the pronouncement of that decision. Moreover, the Court itself, after departing from this rule and permitting the proceedings in the second phase of the dispute to be heard by a Court differently composed, subsequently emphasized the importance of this rule, when it decided - pursuant to the very Article 13 of its Statute - that, although six of its members had not been reelected, it was the old Court whose period of office came to an end on December 31st, 1930, which was to continue to try the Free Zones case until the final judgment contemplated by Article 2 of the Special Agreement had been given.

[330] II. - In view of the foregoing, it goes without saying that I adhere fully to the considerations which led me to append to the Order of August 19th, 1929, a dissenting opinion on the question of the abrogation of the stipulations which created the free zones; I continue to think that Article 435, paragraph 2, of the Treaty of Versailles has abrogated the stipulations which established the zone of the District of Gex, and that it was intended to lead to the abrogation of those provisions which relate to the zones of Upper Savoy and Saint-Gingolph. I adhere also to the considerations which supported the joint dissenting opinion appended to the Order of December 6th, 1930, by six out of the then Court of twelve judges, and whose votes, which equalled in number those of the remaining judges, were only rendered inoperative by the casting vote of the President. There is no ground for the view that the organization of the Economic and Customs regime entrusted to the Court by Article 2 of the Special Agreement, in the second phase of the proceedings, was intended by the Parties to be subject to the prior solution [p203] of the question of law concerning the abrogation of the old provisions. The preamble to the Special Agreement and the letters of October 30th, 1924, annexed thereto, show that the Parties in fact intended to conclude an Arbitration Agreement: that word itself appears in the text. In this last phase, the Court was therefore entrusted with the duties of an arbitrator; the Parties themselves had asked it to give a decision on the ground of pure expediency, and it was entirely free to organize the regime of the territories as it thought fit, by abolishing the zones if need be, should it consider their continued existence no longer consistent with present conditions.

[331] III. - By entrusting the Court, in Article 2 of the Special Agreement, with a task aiming at the settlement, for a period to be determined and having regard to present conditions, of all the questions involved by the execution of Article 435, paragraph 2, of the Treaty of Versailles, the authors of this Special Agreement clearly showed that this strictly limited task was not to embrace any other questions, especially questions of law which are essentially of a definitive character and do not depend upon present conditions. Consequently, it is difficult to understand how the Court, with its jurisdiction so closely limited by the actual intention of the Parties, decided to examine if not to settle, in the operative part of its judgment, certain questions of pure law, especially that of the abrogation of the stipulations of 1815 and 1816, as the result of the Treaties of June 8th, 1851, and June 14th, 1881. Such questions are not among those involved by the execution of Article 435, paragraph 2, which is concerned only with the result of changed conditions and with the organization of a regime on lines of expediency. It is even questionable, notwithstanding what the

Court may have said, whether the decision concerning the position of the customs cordon has its legal basis in Article 2 of the Special Agreement, the terms of which do not lend themselves to a wide interpretation.

[332] There is however one problem which is at once one of law and one of expediency, and which must be solved in this second phase of the proceedings, viz., the problem [p204] concerning the lapse of the old stipulations as a result of changed conditions. This question is very relevant to the execution of that part of Article 435, paragraph 2, which declares that these stipulations are no longer consistent with present conditions: in deciding it, regard must be had to these conditions and the Court rightly examined it, although it did not feel called upon to embody its decision upon it in the operative portion of its judgment.

[333] In its Order of August 19th, 1929 (p. 16), the Court had already declared that facts antecedent to the Treaty of Versailles, and particularly the establishment of the Federal Customs in 1849, were clearly relevant in the case, in that they had led the Powers signatory to the Treaty of Versailles to declare solemnly, in Article 435, paragraph 2, that the stipulations concerning the free zones were no longer consistent with present conditions. This relevance having been affirmed in this way, it seemed - since there was no longer any question of estimating the abrogative effect of Article 435, paragraph 2, but of ensuring the execution of that Article - that logically, it was bound to lead to the result which it contemplated, viz. a decision that the stipulations had lapsed as a result of changed conditions.

[334] With an inconsistency, which it is not for me to explain, the Court has decided otherwise; it has refused to give any practical effect whatever to this relevance, which nevertheless it described as clear. In fact, it has held that the change in conditions is no longer relevant since it is not such as to dispel the object for which the zones were created a hundred and fifteen years ago, nor such as to impede or change the nature of their function.

[335] At the time when the zones were established, the reason put forward during the negotiations - this has not been seriously contested, and proof, if need be, may be found in Article 4 of the Treaty of Turin of March 16th, 1816 - was the necessity of ensuring the food supply of Geneva which was encircled and moreover unable, on account of Cantonal customs, to obtain its food supply in Switzerland. Today the position is quite different. During the negotiations of 1931, M. Stucki, the leader of the Swiss delegation, stated in so many words: [p205]

"It is indeed beyond dispute that the inhabitants of the zones have one paramount interest, namely the opportunity to sell their produce to Geneva, and this interest is augmented by the fundamental changes which have taken place in the conditions which prevailed before the war. Owing to agricultural over-production, not only can Geneva dispense with the zone products, but it is in our interest to protect Swiss agriculture from the competition of the zones. "

[336] And further on:

"The question of the food supply has for the moment ceased to be of practical importance, as Switzerland is in a position to feed Geneva. "

[337] Thus, on the admission of the Swiss Government itself, the paramount reason which, in 1815 and 1816, led to the withdrawal of the French and Sardinian customs lines no longer exists; the position is reversed, since Geneva no longer needs zones' products for its food supply. The essential reason for the institution of the free zones having disappeared, should it not be inferred that the substance of the stipulations which created them has been undermined ?

[338] The food supply of Geneva has been rendered possible by the abolition of the Cantonal customs in 1849. The latter, moreover, produced another change: originally, the zones market was free to Geneva products alone; henceforth, products from the whole of Switzerland and even from other countries passing through Swiss territory in transit were in a position to enter the zones unimpeded. That is not the situation which was invoked in 1815 and which actuated the withdrawal of the customs line solely in favour of Geneva.

[339] As regards the establishment of the Federal customs at that period, it reversed the situation also in other respects: henceforth the zones were enclosed between two customs barriers; they no longer found the free outlet in the Geneva market which they had had for thirty-five years for their natural or manufactured products and, further, the outlet for these products was impeded by the necessity of having to pass through the French customs cordon situated in the interior of the country. The abolition of commercial freedom between the zones and Geneva thus constituted a radical [p206] deviation from the situation of 1815-1816 which the treaties certainly had in mind when they constituted an economic unit of the regions adjacent to Switzerland and facing that country, which was a free market for zones products, by withdrawing the French customs cordon and ensuring the free entry of zones products into the Canton of Geneva.

[340] Lastly, it has never been disputed that the zones were established in order to disencircle the territory of Geneva. Can we today reasonably speak of encirclement when means of communication, roads and railways, and methods of transport have developed to a stage of perfection which could not possibly have been foreseen one hundred and fifteen years ago ?

[341] All these considerations apply to all three zones, quite apart from the very special position which once obtained for Saint-Gingolph but which also has disappeared. The reasons which led to their establishment at the beginning of the last century have therefore entirely ceased to exist. Nevertheless, this relic of another age is to subsist, without any appreciable advantage to Geneva and to Switzerland, although, on the contrary, it is calculated to entail the gravest difficulties for the populations of the neighbouring territories.

[342] IV. - After having given the Court the power to settle, for a period to be fixed and having regard to present conditions, all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles, i. e. after having, in short, asked it to frame a customs and economic régime - the Parties themselves had failed to frame one - which was to be adapted to the present situation of Geneva and the zones, Article 2 of the Special Agreement, in paragraph 2, singled out one of these questions for special treatment. I refer to the import of goods free or at reduced rates through the Federal customs barrier or through the French customs barrier, the regulation of which, says the Special Agreement, shall only be made with the consent of the two Parties.

[343] This provision, it may well be admitted, has been the stumbling block which ultimately caused the Court to fail in the task upon which it embarked in order to comply with [p207] the Special Agreement. Nevertheless, the purport of the provision is clear: its only aim was to ensure in both countries respect for the prerogatives of Parliament, which is entitled to say the last word on questions of customs tariffs.

[344] But the Court saw in this provision a means whereby the Party which might possibly be dissatisfied with the future judgment could render its execution nugatory, and it considered that such a result would be both damaging to its prestige and incompatible with the binding force attached to its judgments by Article 59 of its Statute. After having decided in principle that the zones should be maintained, it invited the Parties, in 1930, to come to an agreement upon the

matter of importations free of duty or at reduced rates across the Federal customs line and, since this agreement preceding the judgment was not realized, it has decided merely to lay down that some provision on this point should be contemplated: it had said that Switzerland should grant zones' inhabitants in respect of their products freedom from duty or reduction of rates across the Federal customs line, but it has stated that it cannot define the extent and terms of these exemptions and, in spite of the failure of the preceding negotiations, it has left it to the Parties to organize a customs regime as they see fit. The Court has thus refused to fulfil the most important part of its task.

[345] The result is all the more regrettable because it might perhaps have been avoided. It appears that the judgment, after fixing either immediately, or after considering the results of an expert enquiry, the extent and conditions of the exemptions, might have reserved, in order to comply with paragraph 2 of Article 2 of the Special Agreement, the consent of the two Parties, while giving a definitive and final ruling upon the position which would ensue for both Parties in the event of refusal of consent either by the Party in whose favour the exemptions were established or by the Party which was required to concede these exemptions. In other words, the Court, after having completed the whole of its task, would have decided that if Switzerland did not grant exemptions in accordance with the strict terms of the judgment, the customs cordon would be maintained at the political frontier, and that if, on the other hand, France did not accept them, she would have [p208] to withdraw her customs cordon to the rear and would be unable to claim in the form of exemptions or importations at reduced rates any compensation under the judgment.

[346] This device, which is somewhat similar to the doctrine of *astreinte comminatoire* in French law, did not prevail, and the Court refused to draw up a regime of total or partial exemptions. In stating that it was incapable of regulating this matter, which the Parties regarded as essential, it would seem that the Court ought in consequence to have declared itself incompetent to give a decision on the other parts of the dispute, since the Special Agreement, which brought the matter before it, formed an indivisible whole and made it incumbent on the Court, following a rule which it has itself frequently asserted, to give a decision upon the whole of the dispute or to give no decision at all.

[347] V. - The Court has, however, retained its cognizance of the other questions which were submitted to it, or which it has had under consideration, and to justify this course, it has taken the view that France has no ground for complaint, since it is the Special Agreement itself which, by making the regulation of customs exemptions conditional upon the assent of the Parties, has prevented the Court from deciding on this point. This reasoning is far from satisfying me, since it throws on one Party the entire responsibility for having inserted a clause, incapable of execution, in the Special Agreement, which clause, moreover, according to the terms of the judgment itself, is "outside the sphere of a Court of Justice", and it makes France alone suffer the injurious effects of its insertion. It was not France; alone that included the provision of paragraph 2 of Article 2 in the Special Agreement; Switzerland has an equal share in the responsibility. The fault was common to both Parties and the consequences should fall equally on both Governments. The Court should have declared that it was incompetent in respect of the whole, and dismissed both the Parties on equal terms, leaving them free, if they thought fit, to submit a new Special Agreement, all the clauses of which would, this time, be capable of execution. [p209]

[348] It is true that the Swiss Government had announced, during the proceedings before the Court, that it was prepared to ratify, in advance, such measures as the Court might see fit to adopt in regard to imports free of duty, or at reduced rates; and the inference was that the said Government had, so far as lay in its power, enabled the Court to discharge its mission, and that the French Government had only itself to blame for not having given its assent in advance to a settlement of

this kind. No doubt the Federal Decree approving the Special Agreement concluded on October 30th, 1924, has invested the Federal Council with the necessary powers to settle, if circumstances so require, the questions referred to in Article 2, paragraph 2, of the Special Agreement. But no such powers were conferred upon the French Government. Switzerland never asked that this should be done; on the contrary, in signing Article 2, paragraph 2, of the Special Agreement, she consented to the French Parliament retaining its sovereign right, in accordance with the French constitutional law, to pass upon any questions of imports free of duty or at reduced rates. Switzerland could not in fairness claim to benefit by a situation to which she had freely assented, or to obtain, by a round-about method, the withdrawal of the Customs cordon to the interior of the territory, without being herself under any obligation to render her own customs line permeable to zone products.

[349] I am quite aware that the Swiss Government has declared its readiness to negotiate with the French Government, through the intermediary of three experts, with a view to regulating, in a manner more appropriate to the economic conditions of the present day, the terms of the exchange of goods between the regions in question, and that the Court has placed this declaration on record. But it is open to question whether this declaration is binding upon Switzerland. Here it is no longer a question of regulating, in practice, a scheme of exemptions, such as the Court might decide upon in execution of Article 2, paragraph 2, of the Special Agreement; the judgment has not elaborated any such scheme, and the Special Agreement has now ceased its effects. The whole judicial procedure is terminated, and it will be necessary, as the Agent of the Swiss Government has [p210] himself pointed out, to find some way of making enforceable in practice the undertaking assumed by Switzerland in her note of May 5th, 1919, annexed to Article 435 of the Treaty of Versailles; the judgment does not attribute any binding character to this undertaking, and, according to the Swiss declaration, such binding character would only attach to the regulation which the experts might draw up. It would therefore be a new extra-judicial convention, which, as it would only come into being after the dispute had been settled and the Court had finally relinquished cognizance of the case, would necessarily have to be submitted to the Federal Assembly and to a popular referendum, if its duration was to be for more than fifteen years. The Swiss people might reject it once again and France, having established her customs line in the position prescribed by the organic provisions constituting the zones, would risk failing to obtain any of the compensations to which she is entitled, as Switzerland herself admits. The fact that the Swiss declaration was placed on record accordingly does not afford France any effective guarantee.

[350] VI. - It is in this respect that the situation in which France is placed by the judgment is most peculiarly open to criticism. By including the provision of Article 435, paragraph 2, in the Treaty of Versailles, the signatory Powers intended, beyond all question, to obtain for France the abolition of the zones, because, in their opinion, the existence of the zones was no longer consistent with present conditions; the Swiss Government, though not agreeing to such a radical measure, yet being fully conscious that the change in circumstances which had taken place prior to the Treaty of Versailles - and for which Switzerland herself was largely responsible, owing to the establishment of the Federal Customs - obliged her to adopt such an attitude, declared herself ready, in her note of May 5th, 1919, and in the long series of diplomatic conversations which followed it, to negotiate with France with a view to providing the zones territories with a more stable and more liberal regime than that which resulted from the Convention of June 14th, 1881, the Regulation of October 20th, 1906, and the Federal Decree of June 19th, 1908. [p211]

[351] The Parties agreed and, on August 7th, 1921, concluded a Convention which regulated the commercial and neighbourly relations between the old free zones and the adjacent Swiss cantons, and which abolished the zones. Unfortunately, the Swiss people rejected the Convention in the referendum, and both Governments, inspired throughout by the same conciliatory spirit, submitted

their dispute to the Permanent Court of International Justice, asking it to decide between them on a question of law but also to frame on their behalf and in their stead the new customs regime which they both acknowledged to be necessary and just, but which they themselves had been unable to establish by joint agreement.

[352] The Court has fulfilled only a part of its task, it has settled the question of law, it has further decided that the French customs line shall be withdrawn to the rear; but it has declared that, in view of the terms of the Special Agreement, it is unable to fix the matter of importations free of duty or at reduced rates across the Federal customs line, and it does not secure for France the counterpart to which it nevertheless acknowledges the latter is entitled.

[353] No doubt, it expresses the opinion that Switzerland must accord economic advantages to the zones inhabitants, and it anticipates some provision for importation free of duty or at reduced rates across the Federal customs line. But what practical value can such a provision have in the matter ? A judgment is not executory when it merely expresses an opinion in its statement of reasons and contemplates some provision in its operative portion. What the Parties expected of the Court and what it was just and fair that France should obtain was a concrete system of exemptions, more extensive, more stable and more liberal, such as Switzerland had declared her willingness to accord. No such system is provided by the judgment: the latter once more recommends the Parties to negotiate, as if the two experiments, one in 1930 and the other in 1931, had not sufficiently proved that on that basis the two neighbouring peoples cannot agree. In eighteen months time, the customs line is to be withdrawn: the inhabitants of the zones, faced with the customs barrier which the Federal Government erected in 1849, in disregard, if not of their strict rights, at least of a *de facto* situation which had existed for [p212] thirty-five years, will be unable to dispose of their products and, embarrassed by the customs which will be established in the interior of the country, they will be liable to be ruined. If no arrangement intervenes, it is to be feared that at both frontiers, especially in regard to traffic, a régime of mutual annoyance may be set up, which would be prejudicial to friendly relations and make trade difficult.

[354] No doubt the strict law will have been observed, but did the Parties ask the Court to ensure, at any cost, the rigorous respect for the law regardless of expediency ? It was an Arbitration Agreement which France and Switzerland concluded on October 30th, 1924; the idea of adapting the regime to present conditions is uppermost in this Agreement. Both Parties had asked the Court to send one or three of its members to investigate on the spot, and their purpose in doing so was certainly not to elucidate a question of law, but, as the Special Agreement says, to carry out investigations on the régime to be established and to hear the interested Parties. Lastly, Article 38 of its Statute empowers the Court, either by itself or with the assistance of experts, to decide all these questions *ex œquo et bono*, i. e. to play the part of an arbitrator in order to reach the solution which, in the light of present conditions, appeared to be the best, even if that solution required the abolition of the zones.

[355] The Court has taken a different view of its task; it has settled the dispute only in part, guided solely by the rules of *summum jus*, and it has left the two Governments face to face, without imposing on them, on an essential point, the settlement which it nevertheless considered necessary to the economic life of the zones. That is a result which is little calculated to maintain harmony between the Parties: it is all the more regrettable since arbitration on a wide basis would have sufficed to avoid it.

(Signed) Eugène Dreyfus. [p217]

Appendix 2.

Documents Submitted to the Court.

1 - In 1928-1929.

A. - Documents Filed During the Written Proceedings.

I. - By the Agent of the French Government:

1. - Extract from the Protocol of November 3rd, 1815, annexed to the Declaration of November 20th, 1815.
2. - Note of the Plenipotentiaries of England, Prussia, Russia and Austria to Pictet-de Rochemont (Nov. 7th, 1815).
3. - Note from Pictet-de Rochemont to the Plenipotentiaries of England, Prussia, Russia and Austria (Nov. 13th, 1815).
4. - Reply of the Plenipotentiaries of the Great Powers to Count de Thaon-Revel (Nov. 20th, 1815).
5. - Treaty of Peace between Austria and France signed at Paris on November 20th, 1815.
6. - Instructions sent by the Directoire fédéral to Pictet-de Rochemont (Dec. 12th, 1815).
7. - Letter from the Directoire fédéral to the State Council at Geneva (Dec. 12th, 1815).
8. - Treaty of territorial cession and delimitation between Sardinia and Switzerland signed at Turin on March 16th, 1816.
9. - Manifesto of the Royal Court of Accounts of September 9th, 1829.
10. - The Minister of Foreign Affairs to the French Minister at Berne (April 17th, 1851).
11. - The Minister of France to the President of the Swiss Confederation (April 30th, 1851).
12. - The Minister of France at Berne to the Minister of Foreign Affairs (May 9th, 1851).
13. - The Minister of Foreign Affairs to the French Minister at Berne (Sept. 10th, 1852).
14. - The French Minister to the President of the Swiss Confederation (Sept. 24th, 1852).
15. - Note by the President of the Swiss Confederation to the French Minister (July 29th, 1853).
16. - Note from the French Minister to the President of the Swiss Confederation (Aug. 11th, 1853).
17. - Treaty between France and Sardinia signed at Turin on March 24th, 1860.
18. - Decree of June 12th, 1860, in regard to customs tariffs in Savoy.
19. - Declaration in regard to the exportation of salt, signed on March 25th, 1861, between France and Switzerland.
20. - Regulations in regard to the District of Gex annexed to the Treaty of Commerce concluded on June 30th, 1864, between France and Switzerland. [p218]
21. - Convention in regard to the customs régime between the Canton of Geneva and the free zone of Upper Savoy signed at Paris on June 14th, 1881.
22. - Convention in regard to neighbourly relations and the inspection of adjacent forests signed on February 22nd, 1882.
23. - The Minister of Foreign Affairs to the French Ambassador at Berne (April 18th, 1893).
24. - The law of March 31st, 1889, modifying the Decree of June 12th, 1860, relating to the delimitation of the French customs' frontier in Savoy.
25. - Commercial Convention signed at Berne on October 20th, 1906. Annex C: Regulations in regard to the District of Gex.
26. - Note from the French Embassy to the Federal Political Department (Dec. 18th, 1918).
27. - Note from the Federal Political Department to the French Embassy (Jan. 14th, 1919).
28. - The Minister of Foreign Affairs to the Swiss Minister at Paris (Feb. 6th, 1919).
29. - Note from the Federal Political Department to the French Embassy (Feb. 17th, 1919).
30. - Note from the Ministry of Foreign Affairs to the Swiss Legation (Feb. 24th, 1919).
31. - Note from the French Embassy to the Federal Political Department (April 26th, 1919).

32. - Draft proposal for a convention communicated to the Federal Political Department on April 28th, 1919.
33. - Note from the French Embassy to the Federal Political Department (April 28th, 1919).
34. - Letter from M. Pichon, Minister of Foreign Affairs, to M. Ador, President of the Swiss Confederation (April 29th, 1919).
35. - Text agreed upon with M. Dunant, April 30th, 1919.
36. - Note from the Federal Political Department to the French Embassy (May 2nd, 1919).
37. - Note from the Federal Political Department to the French Embassy (May 5th, 1919).
38. - Note from the Ministry of Foreign Affairs to the Swiss Legation (May 18th, 1919).
39. - Note from the Federal Political Department to the French Embassy (May 29th, 1919).
40. - Note from the French Embassy to the French Political Department (June 14th, 1919).
41. - Note from the Federal Political Department to the French Embassy (July 1st, 1919).
42. - Note from the Federal Political Department to the French Embassy (Oct. 1st, 1919).
43. - Note from the French Embassy to the Federal Political Department (Oct. nth, 1919).
44. - Note from the Swiss Political Department to the French Embassy (Nov. nth, 1919). [p219]
45. - Note from the French Embassy to the Federal Political Department (Nov. 17th, 1919).
46. - Note from the Federal Political Department to the French Embassy (Nov. 25th, 1919).
47. - Note from the Swiss Legation to the Ministry of Foreign Affairs (Dec. 19th, 1919).
48. - Note of the Minister of Foreign Affairs to the Swiss Legation (Dec. 25th, 1919).
49. - Letter from the Minister of Foreign Affairs to the French Ambassador at Berne (Aug. 4th, 1920).
50. - Letter from the Director of the Federal Political Department to the French Ambassador (Feb. 25th, 1921).
51. - Letter to M. Motta and note from the French Embassy to the Federal Political Department (March 26th, 1921).
52. - Note from the Swiss Political Department to the French Embassy (April 19th, 1921).
53. - Note from the Minister of Foreign Affairs to the Swiss Legation (May 10th, 1921).
54. - Convention of August 7th, 1921, governing the relations of commerce and good neighbourly relations between the free zones of Upper Savoy and the District of Gex and the adjacent Swiss cantons.
55. - Law of February 16th, 1923, modifying the customs' regulations of the free zones of the District of Gex and Upper Savoy.
56. - Letter from the Swiss Minister to the Minister of Foreign Affairs (March 19th, 1923).
57. - Letter from the Minister of Foreign Affairs to the Swiss Minister (March 21st, 1923).
58. - Letter from the Swiss Minister to the Minister of Foreign Affairs (March 26th, 1923).
59. - Letter from the Minister of Foreign Affairs to the Swiss Minister (March 27th, 1923).
60. - Letter from the Swiss Minister to the Minister of Foreign Affairs (April 15th, 1923).
61. - Letter from the Minister of Foreign Affairs to the Swiss Minister (April 17th, 1923).
62. - Letter from the Minister of Foreign Affairs to the Swiss Minister (Oct. 10th, 1923).
63. - Decree of October 10th, 1923, putting the law of February 16th, 1923, into operation.
64. - Letter from the Swiss Minister to the Minister of Foreign Affairs (Oct. 17th, 1923).
65. - Letter from the Minister of Foreign Affairs to the Swiss Minister (Oct. 25th, 1923).
66. - Letter from the Swiss Minister to the Minister of Foreign Affairs (Oct. 30th, 1923).
67. - Letter from the Minister of Foreign Affairs to the Swiss Minister (Nov. 7th, 1923). [p220]
68. - Letter from the Swiss Minister to the Minister of Foreign Affairs (Nov. 12th, 1923).
69. - I. Letter from the Minister of Foreign Affairs to the Swiss Minister (Jan. 22nd, 1924).

II. Draft Special Agreement (Jan. 22nd, 1924).

70. - I. Letter from the Swiss Minister to the Minister of Foreign Affairs (Feb. 14th, 1924).

II. Swiss Draft of Special Agreement (Counter-proposal, Febr. 14th, 1924).

71. - Letter from the Minister of Foreign Affairs to the Swiss Minister (March 19th, 1924).
72. - Letter from the Swiss Minister to the Minister of Foreign Affairs (March 31st, 1924).
73. - Minutes of July 4th, 1816, relating to the handing over of part of the District of Gex to Switzerland.
74. - The French Minister at Berne to the Minister for Foreign Affairs (Sept. 24th, 1852).
75. - *Idem* (Sept. 28th, 1852).
76. - Note of the French Chargé d'affaires (Oct. 25th, 1926).

II. - By the Agent of the Swiss Government;

1. - Letters patent from the Duke Louis de Savoie.
2. - Declaration by His Majesty in favour of the citizens and burgesses of Geneva exempting them from customs and from billeting military persons as regards their houses coming under the definition of l'Ancien Dénombrement (June 15th, 1754).
- 3 A. - Regulations concerning the levy of toll dues on the Rhône.
- 3 B. - Regulations in regard to market dues at Geneva of December 18th, 1689.
- 3 C. - Scale of market dues at Geneva, 1704.
- 3 D. - Édít of pacification, 1782.
- 3 E. - Édít of pacification, 1782.
- 3 F. - Genevese Code approved by the Petit and Grand Conseils on the 2nd, 9th and 11th November, 1791, and by the Conseil Souverain of 14th November, 1791.
- 3 G. - Constitution of Geneva promulgated by the Sovereign on February 5th, 1794 (Year III of the Republic); modified and supplemented on October 6th, 1796 (Year V), as a result of the vœu expressed by a very large number of the citizens on August 31st, 1795 (Year IV); followed by the existing laws and édits promulgated from December 12th, 1792 (Year I), up to and including the law of December 16th, 1797 (Year VI); together with a general alphabetical index of the contents.
4. - Resolution of the Committee of Public Safety (16th Germinal, Year III).
5. - Congress of Vienna. Declaration by the Powers concerning Switzerland, March 20th, 1815 (Annex No. 11 to the Act of the Congress of Vienna).
6. - Draft proposal for the cession of a part of the District of Gex to Geneva, and the creation of a custom's zone between Geneva and Basle. Paris, October 10th, 1815. [p221]
7. - Extract from the Protocol of the Conference of November 3rd, 1815.
8. - Peace Treaty of Paris of November 20th, 1815, between France of the one part and Great Britain, Austria, Prussia and Russia of the other.
9. - Treaty between His Majesty the King of Sardinia, the Swiss Confederation and the Canton of Geneva. Turin, March 16th, 1816.
10. - Manifesto of the Royal Court of Accounts of September 9th, 1829.
11. - Resolution of the Supreme Diet of August 1st, 1816, relating to the Federal customs.
12. - Law re-instating the cantonal customs (Nov. 4th, 1815).
13. - Law re-instating the customs (May 30th, 1816).
14. - Resolution of the Council of State of August 24th, 1816. Regulations in regard to customs and tolls.
15. - Extract from a letter partly in cipher from the syndic Turrettini to Pictet-de Rochemont (Oct. 20th, 1815).
16. - Article VI of the Treaty between His Majesty the King of Sardinia, the Swiss Confederation and the Canton of Geneva. Turin, March 16th, 1816.
17. - Extracts from the Treaty of Turin, March 24th, 1860.
18. - Regulations in regard to the District of Gex annexed to the Treaty of Commerce concluded between Switzerland and France, June 30th, 1864.

19. - Regulations in regard to the District of Gex of October 20th, 1906.
20. - Note from the Chargé d'affaires for Sardinia to the President of the Confederation (June 23rd, 1850).
21. - Note from the Federal Council to the Chargé d'affaires for Sardinia (Jan. 31st, 1851).
22. - Treaty of Commerce between the Swiss Confederation and H. M. the King of Sardinia (June 8th, 1851).
23. - Convention in regard to the customs régime between the Canton of Geneva and the free zone of Upper Savoy, concluded on June 14th, 1881, ratified by Switzerland on April 28th, 1882, and by France on June 12th, 1882.
24. - Federal Resolution concerning imports from the free zones of Upper Savoy and Gex (June 19th, 1908).
25. - Draft convention transmitted by the French Embassy at Berne to the Federal Political Department, April 26th, 1919.
26. - (1) Draft convention remitted to the French Embassy at Berne on October 15th, 1919.
(2) Note transmitting this draft to the French Embassy.
27. - Preliminary draft of convention remitted to the Federal Political Department by the French Embassy at Berne on January 24th, 1921.
28. - New French draft remitted to the Swiss representatives, May 24th, 1921.
29. - Swiss counter-proposal, remitted on June 2nd, 1921, to the French representatives.
30. - French proposal remitted by the French Embassy at Berne to the Federal Political Department on June 2nd, 1921.
31. - Convention between Switzerland and France governing the relations of commerce and good neighbourhood between the ancient free zones of Upper Savoy and the District of Gex and the adjacent Swiss cantons, concluded on August 7th, 1. 921. [p222]
32. - Bill relating to the reform of the customs' regulations of the free zones of the District of Gex and Upper Savoy, filed in the Chamber of Deputies on December 2nd, 1922.
33. - Report made on behalf of the Committee for Customs and Commercial Conventions entrusted with the consideration of the Bill adopted by the Chamber of Deputies, concluded at Paris, August 7th, 1921, between France and Switzerland, and governing the relations of commerce and good neighbourhood between the ancient free zones of Upper Savoy and the District of Gex and the adjacent Swiss cantons, by M. Noel, Senator, dated February 9th, 1923.
34. - Law under which the Convention, concluded at Paris on August 7th, 1921, between France and Switzerland, governing the relations of commerce and good neighbourhood between the ancient free zones of Upper Savoy and the District of Gex and the adjacent Swiss cantons, was approved (Feb. 16th, 1923).
35. - Law relating to the reform of the customs regulations of the free zones of the District of Gex and of Upper Savoy, February 16th, 1923.
36. - Special Agreement concluded on October 30th, 1924, between Switzerland and France in regard to the free zones of Upper Savoy and the District of Gex.
37. - Notes exchanged on October 30th, 1924, between the Swiss Minister at Paris and the President of the Council, Minister for Foreign Affairs of the French Republic, at the time of the signature of the Special Agreement.
38. - Note addressed on May 29th, 1919, by the Federal Political Department to the French Embassy at Berne.
39. - Note addressed on July 1st, 1919, by the Federal Political Department to the French Embassy at Berne.
40. - Message from the Federal Council to the Federal Assembly in regard to the agreement concluded between the Federal Council and the French Government as it appears in Article 435 of the Treaty of Peace between the Allied and Associated Powers and Germany (Oct. 14th, 1919).
41. - Message from the Federal Council to the Federal Assembly in regard to the Convention between Switzerland and France governing the relations of commerce and good neighbourhood

between the ancient free zones of Upper Savoy and the District of Gex and the adjacent Swiss cantons, signed at Paris on August 7th, 1921 (Oct. 10th, 1921).

42. - Message from the Federal Council to the Federal Assembly in regard to the acceptance of the Special Agreement concluded on October 30th, 1924, between Switzerland and France, in respect of the free zones of Upper Savoy and the District of Gex (Nov. 25th, 1924).

43. - Report of the State Council of Geneva, dated October 9th, 1920, submitted to the Grand Conseil on October 16th, 1920.

44. - Report of the Geneva State Council, dated February 8th, 1921, submitted to the Grand Conseil on February 12th, 1921.

45. - Report of the Geneva State Council of September 1921, submitted to the Grand Conseil on September 28th, 1921.

46. - Note from the Plenipotentiaries of England, Prussia, Russia and Austria to Pictet-de Rochemont (Nov. 7th, 1815).

47. - Note from Pictet-de Rochemont to the Plenipotentiaries of England, Prussia, Russia and Austria (Nov. 13th, 1815).

48. - Note by Count de Thaon-Revel, Sardinian Envoy at Paris, to the Plenipotentiaries of the Great Powers (Nov. 11th, 1815). [p223]

49. - Note from the Plenipotentiaries of the Great Powers to the Count de Thaon-Revel, Sardinian Envoy at Paris (Nov. 20th, 1815).

50. - Law of the Canton of Vaud of June 6th, 1812, in regard to a scale of toll-dues.

51. - Law of the Canton of Vaud of December 20th, 1833, in regard to a scale of toll-dues.

52. - Report on a draft proposal made by the Canton of Geneva in regard to toll-dues of the Swiss Confederation.

53. - Extract from the supplementary arrangements under Article 5 of the Declaration of the Congress of Vienna in regard to the Canton of Geneva.

54. - Letter from the Minister of France at Berne (Sept. 29th, 1852), with the annexed schedules and observations.

55. - Resolution relating to the levy of import dues at the frontier of the Confederation (Aug. 16th, 1819).

56. - Convention relating to the extension of the levying of Federal import dues provided for on August 7th, 1840, and put into force on July 17th, 1843.

57. - Regulations putting into operation the levy and the control over Federal import dues. Resolution of September 2nd, 1841.

58. - Nominal schedule of merchandise imported in 1849 to the canton, some of which originated from abroad and some from Switzerland; the former of these having to pay cantonal and Federal dues, whereas the latter only paid cantonal dues.

59. - Document relating to proposal made by the State of Geneva concerning the Federal import dues sent for purposes of information to the Members of the Grand Conseil (April 14th, 1849).

60. - Extract from the Federal law relating to tolls in the Swiss Confederation (June 30th, 1849).

61. - Extract from the minutes of the eleventh Conference of the Commercial Negotiations between France and Switzerland (March 25th, 1863).

62. - Geographical outline by Professor Chaix.

Maps and sketches:

1. View of the Geneva basin.
2. Network of roads in the Geneva basin.
3. Railways (trains and tramways).
4. Agricultural divisions of the Geneva basin.
5. The Gex zone.
6. The Sardinian zone (small).

63. - Minutes of the Franco-Swiss negotiations of January 1920. 64 - Minutes of the Franco-Swiss negotiations of July 1920.

65. - Exchange of notes which took place in 1917 between the Federal Political Department and the French Embassy at Berne in regard to the police cordon set up during the war.

66. - Convention relating to the control of liquor traffic between France and Switzerland of August 10th, 1877; declarations and resolutions relating to the application of the Convention.

67. - "Toujours à propos de la dette interalliée de 1594", by Francis De Crue. [p224]

68. - Memorandum addressed by the syndics généraux des trois ordres of the District of Gex to the Contrôleur général (March 23rd, 1775), registered on March 25th in the book of the Syndics et Conseil du Tiers-État.

B. - Documents Filed During the Oral Proceedings or Furnished On Request.

By the Agent of the Swiss Government:

Note from the Federal Political Department to M. Hennessy, French Ambassador at Berne (Nov. 5th, 1926).

C - MAPS FILED "HORS TEXTE".

I. - By the Agent of the French Government:

1. - Zones franches de la Haute-Savoie et du Pays de Gex (extract from the map of France, 1: 200, 000, published by the Service géographique de l'Armée).

2. - Territoire de la République de Genève d'après les Traités de 1749 et de 1754; territoires acquis sur la France et la Sardaigne; zones convention-nelles (extract from the map, 1: 200, 000, published by the Service géographique de l'Armée).

II. - By the Agent of the Swiss Government:

Pays de Genève (scale 1: 90, 000), with limits of the petites zones franches (drawn by André Chaix, Dr. sc).

2. - In 1930.

A. - DOCUMENTS FILED DURING THE WRITTEN PROCEEDINGS

I. - By the Agent of the French Government:

1. - Proposal for a settlement in seventeen articles.

2. - Note concerning various historical considerations cited in favour of the régime of the free zones.

I. The participation of Geneva in the Savoy war (1589-1601) and Geneva's alleged historical rights in respect of the District of Gex.

A. The conditions on which Geneva entered the war.

B. The Treaty of April 19th, 1589. The departure of Sancy's mercenaries. The defection of the Bernese.

C. The first retreat of the Savoy troops. The end of the Savoy offensive and the alleged conquest of

the Gex District by Geneva. Geneva's sacrifices in the war.

D. Examination of the alleged legal titles of Geneva to the possession of the District of Gex.

II. The customs régime between France and Geneva in the XVIIth and XVIIIth centuries (1601-1775).

III. The letters patent of January 20th, 1776, and the régime of separation.

IV. The free zones viewed as compensation for the loss of Mulhouse.

V. Origin of and justification for the Sardinian free zone.

Map of the political and economic enclaves of the Republic of Geneva in the XVIIth and XVIIIth centuries.

3. - Minutes of the Franco-Swiss negotiations in December 1929.

4. - Note of the Head of the Federal Political Department to the French Ambassador at Berne (March 7th, 1930). [p225]

5. - Note of the French Ambassador at Berne to the Head of the Federal Political Department (March 12th, 1930).

6. - List of 32 communes in the arrondissement of Gex.

7. - List of communes in the small Sardinian zone.

8. - Map of communes in the arrondissement of Gex and the small Sardinian zone.

9. - Opinion of the Council of State of April 6th, 1819.

10. - Decision of the Minister of Finance of May 7th, 1819. 11. - Manifesto of the Royal Sardinian Court of Accounts of April 12th, 1822.

12. - Decision of the Minister of Finance of October 13th, 1828.

13. - Extract from the report of the Sub-Prefect to the Council of the arrondissement of Gex for the first part of the session of 1847.

14. - Extract from the record of the proceedings of the Council of the arrondissement of Gex for the first part of the session of 1847.

15. - Report of the Sub-Prefect to the Council of the arrondissement of Gex for the first part of the session of 1848.

16. - Extract from the record of the proceedings of the Council of the arrondissement of Gex for the first part of the session of 1848.

17. - Extract from the record of the proceedings of the Council of the arrondissement of Gex for the session of 1849.

18. - The law of the Canton of Vaud of June 6th, 1812, regarding tariffs for tolls.

19. - Table of the export duties at present in force in France and those provided for by the laws of December 17th, 1814, and April 28th, 1816.

20. - Tariff of the Sardinian Customs of March 14th, 1818, in respect of certain foodstuffs.

21. - The Genevese law of November 4th, 1815, regarding the re-establishment of the cantonal customs.

22. - Genevese law of May 30th, 1816, regarding the re-establishment of the customs.

23. - Decree of the Upper Diet of August 1st, 1816, regarding the Federal Customs.

24. - Decree of the Genevese Council of State of August 24th, 1816, regulating the customs and tolls.

25. - Table of goods paying duty during the year 1841.

26. - Estimated receipts from the cantonal and federal customs in the Genevese budgets from 1816 to 1850.

27. - Extract from the Federal law of June 30th, 1849, regarding tolls.

28. - Tariff of tolls annexed to the law of June 30th, 1849.
29. - Tariff of tolls annexed to the law of August 27th, 1851
30. - Products exempt from duty from 1816 to 1849 and taxed by the Federal laws of June 30th, 1849, and August 27th, 1851.
31. - Position of the customs offices on the left bank in 1849 (Genevese offices) and in 1851 (Federal offices). [p226]
32. - Customs offices of the VIth arrondissement since 1888.
33. - Portion collected in the Canton of Geneva of the total yield of the Federal customs from 1850 to 1927.
34. - Graphic of customs receipts collected upon goods entering the Canton of Geneva.
35. - The Minister for Foreign Affairs at Turin to the Sardinian Chargé d'affaires at Berne (Feb. 7th, 1850).
36. - The Sardinian Chargé d'affaires at Berne to the Ministry for Foreign Affairs at Turin (Feb. 18th, 1850).
37. - The Ministry for Foreign Affairs at Turin to the Sardinian Chargé d'affaires at Berne (June 6th, 1850).
38. - Note of the Sardinian Chargé d'affaires to the President of the Swiss Confederation (June 23rd, 1850).
39. - Extract from the report of the Sub-Prefect to the Council of the arrondissement of Gex for the first part of the session of 1850.
40. - Memorial addressed to the members of the Council of the arrondissement of Gex and of the General Council of the Ain (Aug. 14th, 1850).
41. - Extract from the record of the proceedings of the Council of the arrondissement of Gex for the first part of the session of 1850.
42. - The Minister for Foreign Affairs at Turin to the Sardinian Chargé d'affaires at Berne (Dec. 13th, 1850).
43. - The Sardinian Chargé d'affaires at Berne to the Ministry for Foreign Affairs at Turin (Dec. 18th, 1850).
44. - Letter from M. de Barral to the Minister for Foreign Affairs at Turin (Jan. 7th, 1851).
45. - The Ministry for Foreign Affairs at Turin to the Sardinian Chargé d'affaires at Berne (Jan. 13th, 1851).
46. - Note from the Swiss Federal Council to the Sardinian Chargé d'affaires at Berne (Jan. 31st, 1851).
47. - The Ministry for Foreign Affairs at Turin to the Sardinian Chargé d'affaires at Berne (Feb. 2nd, 1851).
48. - The Sardinian Chargé d'affaires at Berne to the Ministry for Foreign Affairs at Turin (Feb. 7th, 1851).
49. - The Minister for Foreign Affairs to the French Minister at Berne (April 17th, 1851).
50. - The French Minister at Berne to the Minister for Foreign Affairs (May 9th, 1851).
51. - M. de Barral to the Minister for Foreign Affairs at Turin (May 16th, 1851).
52. - The French Minister at Berne to the President of the Swiss Confederation (April 30th, 1851).
53. - Treaty of commerce of June 8th, 1851, between] Switzerland and Sardinia.
54. - The Torelli report on the Treaty of commerce of June 8th, 1851, submitted to the Sardinian Parliament on June 23rd, 1851.
55. - Speech of the Deputy Montgellaz in the Parliament at Turin (June 23rd, 1851). [p227]
56. - Extract from the record of the proceedings of the Council of the arrondissement of Gex for the first part of the session of 1851.
57. - M. de Barral to the Ministry for Foreign Affairs at Turin (Aug. 19th, 1851).
58. - Minutes of the proceedings of the Divisional Council of the Administrative Division of Annecy (Oct. 22nd, 1851).
59. - The Sardinian Consul at Geneva to the President of the Council and Minister for Foreign

Affairs (Dec. 3rd, 1851).

60. - The Director of the Customs Administration to the Minister of Agriculture and Commerce (Dec. 15th, 1851).

61. - Statements of Cavour in the Sardinian Parliament (Jan. 8th, 1852).

62. - Extract from the report of the Sub-Prefect to the Council of the arrondissement of Gex for the first part of the session of 1852.

63. - Extract from the record of the proceedings of the Council of the arrondissement of Gex for the first part of the session of 1852.

64. - The Minister for Foreign Affairs to the French Minister at Berne (Sept. 10th, 1852).

65. - The French Minister at Berne to the Minister for Foreign Affairs at Paris (Sept. 24th, 1852).

66. - The French Minister at Berne to the President of the Swiss Confederation (Sept. 24th, 1852).

67. - The French Minister at Berne to the Minister for Foreign Affairs at Paris (Sept. 28th, 1852).

68. - The French Minister at Berne to the Federal Councillor Frei-Hérosé (Sept. 29th, 1852).

69. - Schedule of the products of the Cantons of Geneva and Vaud imported into the District of Gex in the years 1845 to 1852 inclusive.

70. - Schedule of the products of the District of Gex exported into the Cantons of Geneva and Vaud in the years 1845 to 1852 inclusive.

71. - Note from the President of the Swiss Confederation to the French Minister at Berne (July 29th, 1853).

72. - Extract from the record of the proceedings of the Council of the arrondissement of Gex (Aug. 1st, 1853).

73. - Note from the French Minister at Berne to the President of the Swiss Confederation (Aug. nth, 1853).

74. - Extract from the report of the Sub-Prefect to the Council of the arrondissement of Gex for the first part of the session of 1854.

75. - The French Minister at Berne to the Vice-President of the Confederation (Jan. 15th, 1856).

76. - Extract from a letter of the French Minister at Berne to the Minister for Foreign Affairs at Paris (Feb. 29th, 1856).

77. - Extract from the report of the Sub-Prefect to the Council of the arrondissement of Gex (first part of the session of 1858).

78. - Record of proceedings of the Council of the arrondissement of Gex for the first part of the session of 1858.

79. - Petition addressed to the Emperor of the French by M. Créatin, maker of packing-cases, at Divonne (Dec. 25th, 1858). [p228]

80. - Summary of the request sent to Napoleon III by all the Mayors of the District of Gex (April 7th, 1859).

81. - General Council of Upper Savoy (meeting of Aug. 29th, 1862).

82. - The Prefect of the Ain to the Minister for Foreign Affairs (Aug. 1st, 1863).

83. - General Council of Upper Savoy (meeting of Aug. 26th, 1863).

84. - Settlement regarding the District of Gex, annexed to the Treaty of commerce of June 30th, 1864.

85. - General Council of Upper Savoy (meeting of Aug. 28th, 1866).

86. - Customs Arrangement between France and the Canton of Geneva, November 24th, 1869.

87. - The Prefect of the Ain to the Minister for Foreign Affairs (April 8th, 1875).

88. - The Council of the arrondissement of Gex to the Prefect of the Ain (April 5th, 1875).

89. - The free zone of the District of Gex and the establishment of the Federal Customs, and the Franco-Swiss Treaty of 1864. - Dr. Gros-Gurin, Deputy, to the Minister of Agriculture and Commerce (June 27th, 1879).

90. - The League for the protection of the interests of Gex. - Enquiry into the Franco-Swiss Treaty of commerce of 1864 (Sept. 1st, 1879).

91. - Convention of June 14th, 1881.
92. - Treaty of commerce between France and Switzerland of February 23rd, 1882.
93. - Settlement concerning the District of Gex annexed to the Franco-Swiss Commercial Arrangement of July 23rd, 1892.
94. - Decree of the Federal Council of December 27th, 1892.
95. - The privileges of the District of /Gex and the rupture of the Franco-Swiss Treaty, by Léon Modas (Jan. 1893).
96. - Petition circulated in the zone of Gex at the beginning of 1893.
97. - The Minister for Foreign Affairs to the French Ambassador at Berne (April 18th, 1893).
98. - The delegates of the commune of Saint-Jean-de-Gonville to the Prefect of the Ain (July 16th, 1893).
99. - Extract from the record of the proceedings of the Municipal Council of Prévessin (July 20th, 1893).
100. - M. Bizot, Deputy, to the Minister for Foreign Affairs] (July 29th, 1893).
- 101 to 110. - Protests annexed to this letter.
111. - The watch-makers of Scionzier to the Minister for Foreign Affairs (March 14th, 1894).
112. - Address of Members of Parliament for Upper Savoy to the inhabitants of the zone (Dec. 23rd, 1894).
113. - Decree of the Federal Council of February 23rd, 1895.
114. - Resolution of the General Council of the Ain of February 28th, 1895.
115. - The Prefect of the Ain to the Minister of the Interior (March 1895). [p229]
116. - Extract from the record of the proceedings of the Municipal Council of Thoiry (March 24th, 1895).
117. - Extract from the record of the proceedings of the Municipal Council of Collonges (March 27th, 1895).
118. - The Members of Parliament for Upper Savoy to the Minister for Foreign Affairs (March 18th, 1895).
119. - Extract from the record of the proceedings of the Municipal Council of Peron (May 19th, 1895).
120. - The Prefect of the Ain to the Minister for Foreign Affairs (July 4th, 1895.)
121. - Memorial of the Members of Parliament for Upper Savoy regarding "the extension of the Franco-Swiss Convention of June 14th, 1881 (Sept. 16th, 1905).
122. - Settlement regarding the District of Gex, annexed to the Commercial Convention of October 20th, 1906.
123. - Federal Decree of June 19th, 1908, regarding imports from the free zones of Upper Savoy and the District of Gex.
124. - Decree of the Minister of Finance, July 25th, 1860.
125. - Settlement of May 31st, 1863.
126. - Opinion of the Council of State, May 27th, 1891.
127. - Notification of the ministerial decision of January 25th, 1893 (opening of the internal customs cordon in respect of certain agricultural products).
128. - Notification of the ministerial decision of April 1st, 1893 (opening of "the internal customs cordon to all agricultural products).
129. - The Bill of March 29th, 1914.
130. - Report of the Geneva Chamber of Commerce (Oct. 1923).
131. - Exports from the zones into Switzerland in 1913 free of duty, at reduced rates and at the ordinary rate.
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150. - The Mayor of Sauverny to the Mayor of Saint-Jean-de-Gonville (Feb. 7th, 1930).
151. List of the industries of the District of Gex at the beginning of 1930.
152. - Consequences of the encircling of the District of Gex in so far as concerns the commune of Ferney-Voltaire.
153. - M. Donnet to the Mayor of Saint-Jean-de-Gonville (Jan. 25th, 1930).
154. - M. Jules Gros to the Mayor of Saint-Jean-de-Gonville (Feb. 5th, 1930).
155. - M. Lehmann to the Mayor of Saint-Jean-de-Gonville (Feb. 11th, 1930).
156. - M. Monnier, Mayor of Thoiry, to the Mayor of Saint-Jean-de-Gonville (Feb. 12th, 1930).
157. - The Mayor of Gex to the Mayor of Saint-Jean-de-Gonville (Feb. 12th, 1930).
158. - Note of the "L'Énergie électrique Rhône et Jura" (April 29th, 1930).
159. - Statement of the "Établissements Schutz" (Feb. 10th, 1930). 160. - Statement of the firm "Les fils de J. Philippe" (Feb. 3rd, 1930). 161. - Distribution of tourists according to country of origin.
162. - Yield of the residence tax (taxe de séjour) in the commune of Divonne-les-Bains.
163. - Report on tourist traffic (Feb. 11th, 1930).
164. - Census of commercial establishments.
165. - Statement by M. Jean Rive, banker at Bourg (Feb. 12th, 1930).
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168. - Table comparing the population of the communes of the small Sardinian zone in 1815, 1913 and 1926.
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172. - The assistant of the Mayor of Cruseilles to M. Paul Roden (Feb. 7th, 1930).
173. - Statistics of industries.
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176. - Data furnished by certain industrial undertakings from the point of view of their exports to Switzerland and France.
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185. - Traffic in the railway station of Annemasse.
186. - The Minister of Posts to the Minister for Foreign Affairs (April 29th, 1930), regarding the operations of savings-banks in the Sardinian zone.
187. - Works undertaken since 1923 or to be undertaken in the small zones.
188. - The electrification of the small zones.
189. - Manifesto of the Royal Chamber of Accounts of January 23rd, 1830.
190. - Comparative enumeration of internal taxes in force in 1815 and those existing at the present time.
191. - Amounts collected by the French customs on behalf of other services.
192. - Epizootic diseases of foreign origin noted before the war in the zone of Upper Savoy.
193. - Determination of the present average incidence of the French customs duty in respect of Swiss products exported to the zones in 1913.
194. - Determination of the value of products of the small zones which, whilst legally liable to duty on entry into Switzerland, were admitted free of duty in 1913 (other than the products of agriculture and forestry).
195. - Determination of the incidence of the present Swiss customs duties in relation to the value of the products of the small zones and the large zone which, whilst legally liable to duty on entry into Switzerland, were admitted free of duty in 1913 (other than the products of agriculture and forestry).
196. - The Sardinian Minister at Berne to the Minister for Foreign Affairs at Turin (April 19th, 1849).
197. - Record of the proceedings of the Municipal Council of Saint-Julien (Jan. 24th, 1860).
198. - Meeting of the Swiss Chamber of Commerce at Geneva on November 7th, 1877).
199. - The Geneva Chamber of Commerce and the plan for making Geneva a free port (March 17th, 1930).
200. - In the free zone of Fiume.
201. - In the free zone of Zara.
202. - The small free zones of Upper Savoy and the District of Gex (1850-1923). [p232]

II. - By the Agent of the Swiss Government

:

I. - Swiss proposal for the settlement of the régime of the territories mentioned in Article 435, paragraph 2, of the Treaty of Versailles.

II. - Minutes of the Franco-Swiss negotiations in December 1929.

III. - Note addressed on March 7th, 1930, to the French Ambassador at Berne by the Head of the Federal Political Department.

IV. - Note addressed on March 12th, 1930, to the Head of the Federal Political Department by the French Ambassador at Berne.

V. - Publications of the Swiss Committees in favour of the maintenance of the free zones of 1815 and 1816:

1. - Bulletin of the Nouvelle LLL Société Helvétique: Que faut-il penser de la Convention franco-suisse sur les zones? by Paul Pictet (Sept. 7th, 1921).
2. - La question des zones franches, by Edmond Boissier (speech made before the Grand Council of L Geneva, Oct. 1st, 1921).
3. - Petition addressed by the Association patriotique Philibert Berthelier of Geneva to the National Council and Council of States of the Swiss Confederation (Oct. 10th, 1921).
4. - Une capitulation du Conseil fédéral: L'abandon des zones franches, by Lucien Cramer (pamphlet - Oct. 1921).
5. - Les zones francheLà la Chambre de commerce de LLLGenève (Nov. 29th, 1921).
6. - List of pamphlets regarding the Franco-Swiss Convention of August 7th, 1921, abolishing the free zones.
7. - Petition of the League of retail traders (?) to the Federal Chambers (Nov. 1921).
8. - Genevese Committee for the maintenance of the Zones of 1815 and 1816: Six tracts distributed at Geneva in favour of the petition calling on the Federal Chambers not to ratify the Convention of August 7th, 1921.
9. - Genevese Committee for the maintenance of the Zones of 1815 and 1816: La question des zones et la Société des Nations (letter accompanying the petition to the Federal Chambers, Jan. 1922).
10. - Genevese Committee for the maintenance of the Zones of 1815 and 1816: Pourquoi nous combattons la Convention du 7 août 1921 (1922). No. 1. - Notre bon droit.
11. - Idem. No. 2. - Les négociations de 1921 d'après les documents officiels.
12. - Idem. No. 3. - Le plat de lentilles.
13. - Idem. No. 4. - L'encerclement.
14. - Genevese Committee for the maintenance of the Zones of 1815 and 1816: Pression officielle (tract - March 8th, 1922).
15. - Genevese Committee for the maintenance of the Zones of 1815 and 1816: Referendum! (tract - March 31st, 1922).
16. - Genevese Committee for the maintenance of the Zones of 1815 and 1816: Circular (1922).
- 17 and 18. - Form for signature and list of depots for the collection of signatures in favour of a referendum (1922). [p233]
19. - Referendumskomitee Zürich: Aufruf zum Referendum gegen das Zonenabkommen (May 1922).
20. - Baselstädtische Referendumskomitee: Aufruf für das Referendum gegen das Zonenabkommen (1922).
21. - La thèse de M. Albert Picot sur la Convention des zones, by Paul Pictet (separate edition of the Journal de Genève, June 27th, 1922).
22. - Genevese Committee for the maintenance of the Zones of 1815 and 1816: A letter refused by the Courrier de Genève (tract - June 30th, 1922).
23. - Les zones: La question de Saint-Gingolph, by Lucien Cramer (extract from the Journal de LLLGeneve, July 6th, 1922).
24. - La question des zones et une falsification du journal La Suisse, by Charles Henneberg (tract - July 1922).
25. - Warum muss man das Zonenabkommen verwerfen? by Paul Pictet (separate edition of articles published in the Schweizer Demokrat, Aug. 30th - Sept. 20th, 1922).
26. - Circular for the distribution of this pamphlet.
27. - Genevese Association for the maintenance of the Zones of 1815 and 1816: Circular (Oct. 1922).
28. - Genevese Association for the maintenance of the Zones of 1815 and 1816: Card of convocation to a meeting.
29. - Central Swiss Committee for the rejection of the Convention of the zones and Genevese

Committee for the maintenance of the Zones of 1815 and 1816: Pour Genève (circular to obtain funds, Jan. 1st, 1923).

30. - Avant le vote populaire sur la Convention supprimant les zones avoisinant Genève, by Alfred Georg (pamphlet - Jan. 1923).

31. - Genevese Association for the maintenance of the Zones of 1815 and 1816: La promesse du capitaine Jeanneret (tract).

32. - Genevese Association for the maintenance of the Zones of 1815 and 1816: La Défense des Zones de 1815 et 1816 (special newspaper). - No. 1 (Jan. 20th, 1923).

33. - Idem. - No. 2 (Jan. 31st, 1923)

34. - Idem. - No. 3 (Feb. 12th, 1923).

35. - Nouvelle Société Helvétique: déclaration relative à la Convention des zones (1923).

36. - Contre la Convention des zones, by Me Sidney Schopfer (pamphlet - Feb. 1923).

37. - Central Swiss Committee for the rejection of the Zones Convention: Appel au peuple suisse (Feb. 12th, 1923).

38. - Idem. - German text.

39. - Referendumskomitee Zürich: Ein Nein dem Zonenabkommen (appeal - Feb. 1923).

40. - Voting paper for Geneva (Feb. 1923).

41. - Genevese Association for the maintenance of the Zones of 1815 and 1816: Le moment est venu de parler net! (tract - Feb. 28th, 1923).

42. - Edgar Junod n'est pas content! by Albert Trachsel (tract - 1923).

43. - Sur le chemin de l'arbitrage, by Paul Pictet (pamphlet - Jan. 16th, 1924). [p234]

44. - La ligne droite, by Paul Pictet (pamphlet - Sept. 26th, 1924).

45. - L'influence d'un Genevois au Congrès de Paris de 1815, by Henri Bartholdi (pamphlet - Sept. 1924).

46. - Réponse à une suggestion inopportune, by Paul Pictet (extract from the Bulletin commercial et industriel suisse, July 15th, 1925).

47. - L'explication d'une erreur historique, by Paul Pictet (extract from Journal de Genève, March 20th, 1927).

48. - Le différend des zones tranches: son importance grandit, by Paul Pictet (extract from the Bulletin commercial et industriel suisse, Nos., 7-8, April 15th, 1927).

49. - M. Fernand David et Genève, by Tacite (extract from Le Citoyen, Sept. 15th, 1927).

VI. - Annexes to the Reply of the Swiss Government:

1. - Letter of the President of the Council of State of the Republic and Canton of Geneva to the Federal Political Department (May 13th, 1930).

Appendix to Annex 1: Table attached to the said letter (incomes and fortunes in Geneva, 1923-1929).

2. - Letter of the Council of State of the Republic and Canton of Geneva to M. Motta, Head of the Federal Political Department (May 23rd, 1930).

3. - Trade between Switzerland and the zones.

4. - Letter of the General Administration of the Customs to the Trade Division of the Federal Department of Public Economy (Aug. 21st, 1930).

5. - Letter of the General Administration of the Customs to the Foreign Affairs Division of the Federal Political Department (July 2nd, 1930).

6. - Population of the Canton of Geneva.

7. - „ „, Switzerland without the Canton of Geneva.

8. - Average populations (1913, 1922 to 1929)

9. - Authorizations to build at Geneva. 10. - Buildings completed in Switzerland.

11. - Number of habitations to be built (authorizations given) and of habitations built in large Swiss

towns (1926 to 1929).

12. - Number of habitations built at Geneva (town) and Lausanne (1913 to 1929).

13. - Statistics of factories and factory workers. - Number of undertakings subject to the law relating to factories.

14. - Number of factory workers.

15. - Yield of the income tax in the Canton of Geneva.

16. - Total amount liable to the income tax at Geneva.

17. - Table showing the rates of the income tax at Geneva.

18. - Movement of travellers (number of persons) stopping Geneva.

19. - Passenger and goods traffic in the port of Geneva. [p235]

20. - Federal supervision of watch cases. - Geneva office.

21. - Volume of traffic of the State bonded warehouses (the free ports of Rive and Cornavin).

22. - Volume of traffic at the Vollandes station.

23. - The Geneva Electric Tramway Company.

24. - The Geneva-Veyrier Railway Company.

25. - Index figure of the cost of living at Paris.

26. - Report of the Geneva Chamber of Commerce on the economic value of the small zones of 1815-1816 as an outlet for the industry and commerce of Geneva (Aug. 19th, 1930).

27. - Extract from a confidential circular attached to *Considérations sur la question des zones*, published in 1894 by the Geneva Chamber of Commerce.

28. - Observations regarding certain documents adduced in the French Observations in connection with the "present" economic situation of the small zones.

29. - Letter of the General Administration of the Customs to the Federal Political Department (Aug. 26th, 1930).

30. - Statistics prepared by the Federal Department of Public Economy.

31. - Statistics of the exportation of certain agricultural products of the zones into Switzerland and from Switzerland into the zones.

32. - Note on international servitudes (doctrine and precedents).

B. - Documents Filed During The Oral Proceedings or Filed On Request.

I. - By the Agent of the French Government:

1. - Extract from the proceedings of the General Council of the Ain (May 28th, 1930).

2. - Draft resolution adopted by the General Council of Upper Savoy at its session in May 1930.

3. - Resolutions of municipal councils of the Gex zone (extracts from the records of proceedings of the municipal councils).

4. - Resolutions of municipal councils of the Sardinian zone (extracts from the records of proceedings of the municipal councils).

5. - List of persons convened to the meeting of August 24th [p1930] at Annemasse.

6. - List of persons present at the meeting of August 24th [p1930] at Gex.

7. - List of the petitions of 1929.

8. - Petition of the Chamber of Commerce of Bourg and the economic units approving it.

9. - Application of the inhabitants of the District of Gex:

A. Letter to M. Bernier (Saint-Genis-Pouilly, June 17th, 1929).

B. Text of the application.

10. - Resolutions of the municipal councils of the Gex zone (extracts from the records of proceedings of the municipal councils). [p236]

11. - Various resolutions:

- I. The Syndicat départemental des Boulangers de l'Ain.
- II. Ligue des Droits de l'Homme (Sections de Gex-Ferney et de Divonne-les-Bains).

12. - Resolutions of municipal councils of the Sardinian zone:

- I. Letter to the Prefect of Upper Savoy (Annemasse, Oct. 22nd, 1929).
- II. The Council of the arrondissement of Thonon-les-Bains (second part of the session of 1929).
- III-XVIII. Extracts from the records of proceedings of municipal councils.

13. - Petitions of inhabitants of the Sardinian zone.

14. - The Foreign Minister to M. Victor Bérard, Rapporteur to the Senate (March 1st, 1928).
15. - Opinion submitted on behalf of the Commission for Customs and Commercial Conventions by M. Haudos, Senator.

II. - By the Agent of the Swiss Government:

French customs' receipts.

C. - Petitions and Applications Submitted to the Court.

1. - Application of the inhabitants of the District of Gex:

- I. M. H. Roupf to the President of the Court (June 17th, 1929).
- II. Idem (July 5th, 1929).
- III. Application.
- IV. Total number of signatories.
- V. M. Berthod, of Péron, to M. Roupf (June 18th, 1929).
- VI. Application by Senator A. Fouilloux (Nov. 20th, 1930).

2. - I. The Savoyan Committee for the maintenance of the Zones to the President of the Court (undated).

II. Claim of the inhabitants of the free zones.

3. - M. Antonelli, Deputy of Upper Savoy, to the President of the Court (Nov. 6th, 1930).
4. - Petition regarding the situation of the village of Saint-Gingolph • I. M. A. Bonnaz to the Registrar (April 29th, 1930). II. Text of the petition (Dec. 3rd, 1929).
5. - Petition in the name of a number of inhabitants of the communes of Douvaine. Veigy-Foncenex. Ballaison, Massongy, Chens and Messery:

- I. Petition sent by M. Rossier (received at the Registry on April 30th, 1930).
- II. Total number of signatories of the petition.

6. - Petition of the "Comité de Renaissance régionale" at Geneva (April 25th, 1930).

D. - Maps Filed "Hors Texte".

By the Agent of the Swiss Government:

1. - Genève (extract from the topographical map of Switzerland, scale 1: 100. 000 - Federal

Topographical Service, Berne) (annex to the Documents, Proposal and Observations of the Swiss Government). [p237]

2. - Pays de Genève (1: 90. 000), with limits of the petites zones franches (drawn by André Chaix, Dr. sc.) (annex to the Documents, Proposal and Observations of the Swiss Government).

3 - In 1931-1932.

A. - Documents Filed During the Written Proceedings.

I. - By the Agent of the French Government:

1. - French proposals of April 15th, 1931.

2. - Swiss draft settlement of expediency.

3. - Draft submitted by M. Stucki, Swiss delegate, "taking account of the strict law".

4. - Minutes of the Franco-Swiss negotiations of April 1931: meetings of April 13th, 14th and 15th.

5. - Reply of the Federal Council to the French proposals of April 15th,

6. - Minutes of the Franco-Swiss negotiations of June 1931: meetings of June 13th (morning) and 15th (morning and afternoon).

7. - Minutes of the Franco-Swiss negotiations of July 1931: meetings of July 2nd and 3rd.

8. - Note from the Federal Council dated July 20th, 1931.

9. - Note from the French Ambassador dated July 28th, 1931.

II. - By the Agent of the Swiss Government:

1 to 8. - Minutes of the Franco-Swiss negotiations of April, June and July, 1931: meetings of April 13th, 14th, 15th, June 13th, 15th (morning and afternoon), July 2nd and 3rd.

9. - French Note of April 15th, 1931.

10. - Swiss ,, , May 14th,, ,.

11. - ,, ,, ,, July 20th, ,, .

12. - French,, verbale of July 28th, 1931.

13. - Report of the Geneva Chamber of Commerce (Aug. 1931).

B. - Documents Filed During the Oral Proceedings or Furnished on Request.

I. - By the Agent of the French Government

I) Texts of legislative or administrative acts:

1. - The law of April 7th, 1932, concerning the tax on mineral oils.

2. - The decree of March 31st, 1932, concerning the tax on imports.

3. - Article 32 of the financial law of March 31st, 1932, concerning the rate of the tax on imports.

4. - The decree of December 28th, 1926, codifying legislation regarding the turnover tax.

5. - Extracts from the financial law of December 27th, 1927.

6. - Extracts from the law of March 19th, 1928, opening and cancelling credits for the financial year 1927. [p238]

7. - Extracts from the law of July 31st, 1929, providing for reductions in taxes.

8. - Extracts from the law of December 29th, 1929, providing for reductions in taxes.

9. - Extracts from the law of April 16th, 1930, establishing the general budget for the financial year 1930-1931.

10. - Extracts from the law of April 26th, 1930, providing for reductions in taxes.

11. - The law of July 17th, 1930, establishing a single tax instead of the turnover and the import tax on resinous products.

12. - The law of March 31st, 1931, establishing the general budget for the financial year 1931-1932.

13. - Decrees codifying the legislation concerning indirect taxation. II) Supplementary written note of May 13th, 1932.

II. - By the Agent of the Swiss Government:

1. - Written note of May 5th, 1932.

Annexes:

I. Federal Law on Alcohol (June 29th, 1900).

II. Decree of the Federal Council on the collection of monopoly duties on alcoholic products (July 1st, 1930).

III. Opinion of the Directorate General of Customs, dated May 5th, 1930, concerning monopoly duties on spirits, etc.

IV. Extract from the Swiss Customs Tariff which came into force on July 1st, 1921 (pp. 23-24; see statement on p. 24).

2. - Request dated February 1932, addressed to the Swiss Federal Council on behalf of the Chambres syndicates agricoles of Bas-Chablais.

C. - Petitions And Requests Transmitted to the Court.

1. - Statement of the Syndicat des Agriculteurs of the Sardinian zones (April 1932).

2. - Documents transmitted by the Mayor of Saint-Gingolph (three extracts from the record of proceedings of the Municipal Council, a recommendation from the Group of Manufacturers and Merchants, and a petition).

D. - Map Filed "Hors Texte".

By the Agent of the Swiss Government:

Railway map.

E. - Documents Collected by the Registry.

Treaties concluded in Paris on May 30th, 1814, between France on the one hand, and on the other hand Austria, Great Britain, Prussia and Russia respectively.

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