



Treaty Series No. 31 (1932)

Agreement

between His Majesty's Government in the United Kingdom
and the Government of Finland

for the

Submission to Arbitration

of a question connected with a claim in
respect of certain Finnish vessels
used during the War

London, September 30, 1932

*Presented by the Secretary of State for Foreign Affairs
to Parliament by Command of His Majesty*

LONDON

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AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT IN THE
UNITED KINGDOM AND THE GOVERNMENT OF FINLAND
FOR THE SUBMISSION TO ARBITRATION OF A QUESTION
CONNECTED WITH A CLAIM IN RESPECT OF CERTAIN
FINNISH VESSELS USED DURING THE WAR.

London, September 30, 1932.

THE Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Finland;

Whereas the Government of Finland have made a claim against the Government of the United Kingdom in respect of certain Finnish vessels used during the war; and

Whereas the Government of the United Kingdom consider that they are under no liability in respect of the said vessels and have so informed the Government of Finland; and

Whereas on the 30th July, 1931, the Government of Finland submitted the said claim to the Council of the League of Nations as a dispute between the two Governments; and

Whereas the Council of the League of Nations appointed a Committee to consider the question whether the claim was one which the Council should take into consideration; and

Whereas the said Committee on the 30th January, 1932, at the seventh meeting of the sixty-sixth session of the Council of the League of Nations presented a report to the Council which is annexed as Annex I to the present agreement; and

Whereas by an exchange of notes, dated the 10th May, 1932, which are annexed as Annex II to the present agreement, the Government of the United Kingdom and the Government of Finland have agreed that the first of the two questions set out in Part IV of the said Report should be submitted forthwith for decision to a person possessing the qualifications described in the first of the said notes; and

Whereas the two Governments have agreed to invite Dr. Algot Bagge, Judge of the Supreme Court of Sweden, to decide the said question in accordance with the conditions and procedure hereinafter set forth; and

Whereas the said Dr. Algot Bagge has expressed his willingness to undertake to give a decision accordingly;

Considering that it is now desirable to conclude an agreement for the submission of the first question for decision,

Have appointed as their plenipotentiaries :—

The Government of the United Kingdom of Great Britain and Northern Ireland :

The Right Honourable Sir John Allsebrook Simon, G.C.S.I., K.C.V.O., O.B.E., K.C., M.P., His Majesty's Principal Secretary of State for Foreign Affairs ;

The Government of Finland :

M. Eino Wälikangas, Finnish Chargé d'Affaires *ad interim* in London ;

Who, having communicated their full powers, found in good and due form, have agreed as follows :—

ARTICLE 1.

The Government of the United Kingdom and the Government of Finland agree to submit to the decision of Dr. Algot Bagge (hereinafter referred to as the Arbitrator) the first of the two questions set out in Part IV of the Report of the Committee of the Council of the League of Nations (Annex I), that is to say : " Have the Finnish shipowners or have they not exhausted the means of recourse placed at their disposal by British law? "

ARTICLE 2.

Within one month from the date of the signature of the present Agreement the Government of the United Kingdom and the Government of Finland shall be entitled to transmit to the Arbitrator a memorial setting out their contentions. A certified true copy of the memorial as transmitted to the Arbitrator shall be furnished to the other Government within the same period.

ARTICLE 3.

Within three months from the date of the signature of the present Agreement either of the two Governments shall be entitled, if it should so desire, to submit to the Arbitrator a counter-memorial. A certified true copy of the counter-memorial as transmitted to the Arbitrator shall be furnished to the other Government within the same period. The counter-memorials shall be confined to dealing with arguments and points raised in the memorial of the opposing Government, and should not introduce any new matter other than such as is necessary for this purpose.

ARTICLE 4.

Memorials and counter-memorials shall be transmitted to the Arbitrator at his ordinary residence.

ARTICLE 5.

Within one month from the date of the expiry of the period for the delivery of counter-memorials either Government may notify the Arbitrator of its desire to submit oral arguments. A copy of any such notification shall be sent simultaneously to the other Government. Without prejudice to the provisions of Article 7, if no demand for an oral hearing is made, the pleadings shall be deemed to be closed at the expiry of the said period of one month.

ARTICLE 6.

If a demand for oral hearing is made, the date of the hearing shall be fixed by the Arbitrator in consultation with the two Governments. The hearing shall take place in London and the pleadings shall be deemed to be closed at the end of the oral hearing.

ARTICLE 7.

The Arbitrator shall have power at any time after the expiry of the period for the delivery of counter-memorials to indicate by communications addressed to both parties any points, upon which he desires further information and to make such orders as are necessary with regard to the manner and the time-limits in which the parties may present to the Arbitrator their observations upon any points so indicated by him.

ARTICLE 8.

The Arbitrator shall have the power, if he deems necessary, to extend any of the time-limits laid down in the preceding Articles.

The Arbitrator shall have power to decide any question that may arise as to the interpretation of the provisions of this agreement.

Subject to the provisions of the preceding Articles, the Arbitrator shall have power to lay down any rules that may be necessary for the conduct of the proceedings.

ARTICLE 9.

As soon as possible after the close of the pleadings, the Arbitrator shall give his reasoned decision in writing, signed copies of his decision being transmitted by him to the two Governments simultaneously.

ARTICLE 10.

The memorials and counter-memorials and oral arguments, if any, and the decision of the Arbitrator shall be in English.

ARTICLE 11.

The Arbitrator shall be entitled to receive a fee of three hundred (300) guineas, if there is no oral hearing, and a fee of six hundred

(600) guineas, if an oral hearing takes place, as remuneration, including all his expenses in respect of his services as Arbitrator.

The Government of the United Kingdom and the Government of Finland shall each pay to the Arbitrator one-half of the fee due to him as soon as the pleadings are closed.

ARTICLE 12.

The present agreement shall come into force on the date of signature.

Done in duplicate, in London, in the English language, the 30th day of September, 1932.

(L.S.) JOHN SIMON.

(L.S.) EINO WÄLIKANGAS.

ANNEX I.

(English Text.)

CLAIM MADE BY THE FINNISH GOVERNMENT WITH REGARD TO FINNISH
VESSELS USED DURING THE WAR BY THE GOVERNMENT OF THE
UNITED KINGDOM.

Report by the Representative of Spain.

I.

At the meeting of the Council on the 19th September, 1931, my predecessor, M. Lerroux, representative of Spain, had expressed the opinion that, in view of the statements made at a previous meeting by the two parties, there was one important preliminary question to be examined, namely, whether the Council dealt with questions such as the one submitted to it. He asked if he might have the collaboration of two other members of the Council in order to study the matter.

The Committee, consisting of representatives of Spain, Italy and Norway, examined this question at several meetings (the 30th September and the 1st October, 1931) and studied the communications which it received from the parties.

II.

The preliminary question to be considered by the Committee was whether the Council should, in compliance with the Finnish Government's request, examine the dispute which the latter had brought before it.

The Finnish Government did not base its request on any specific article of the Covenant, but referred to several articles. It seems that while it is not strictly necessary, when appealing to the Council, to invoke any specific article of the Covenant, the Council should, nevertheless, when recognising its competence in application of the Covenant, base it on some provision of that instrument.

III.

The Committee examined the articles which might be invoked in this particular case. It felt that it would, in view of all the circumstances of the case, be difficult to admit that the dispute pending between Finland and Great Britain comes within the category of disputes likely to lead to a rupture within the meaning of Articles 12 and 15 of the Covenant, even when it is recognised that the term "rupture" is not necessarily synonymous with "war." On the other hand, the Committee felt that it was possible

to consider paragraph 2 of Article 11, which permits of the intervention of the Council when a Member of the League, in the exercise of a friendly right, brings to its attention a circumstance which threatens to "disturb international peace or the good understanding between nations."

Article 11 permits the Council to propose any measure that it may think appropriate in the circumstances.

Article 18 of the Covenant does not place Members of the League of Nations under an obligation to submit all their disputes to arbitral or judicial settlement, and hence States are not bound to consent to such settlement unless this is provided for by a general or special treaty, or unless in any given case they agree to have recourse to such settlement. In the present case, none of the undertakings subscribed to by the parties to the dispute requires them to consent to judicial or arbitral settlement. There is nothing, however, to prevent the Council from taking steps with a view to conciliation. In the opinion of the Committee, the Council possesses competence in virtue of Article 11, paragraph 2, of the Covenant.

IV.

The British Government, as appears from the memoranda which it has addressed to the Council, holds that the Finnish Government is not entitled to take up the case of its nationals who complain that, owing to the utilisation of their vessels by the British Government, they have suffered loss for which the latter should grant them compensation, since those nationals have (it is alleged) neglected to exhaust the means of recourse offered by the British courts. The Committee thinks that it would be expedient to examine first these two questions:—

- (a) Have the Finnish shipowners, or have they not, exhausted the means of recourse placed at their disposal by British law?
- (b) Did the fact that those shipowners had not exhausted the means of recourse in question constitute an obstacle such as to prevent the Finnish Government from claiming compensation from the British Government?

It is understood that the Council could, under any circumstances, subsequently make whatever proposal or suggestion it might think fit.

Such being the case, the Committee feels sure that the Council will be glad to see that the parties are agreed to seek a solution for these two questions, and that the Council will wish to ask them to keep it informed of the results of their efforts.

After examining their communications on the subject, if any point relating to these two questions still remains unsettled, the Council might ask the Permanent Court of International Justice for an advisory opinion.

(French text.)

RÉCLAMATION DU GOUVERNEMENT FINLANDAIS AU SUJET DE NAVIRES
FINLANDAIS UTILISÉS PENDANT LA GUERRE PAR LE GOUVERNEMENT
BRITANNIQUE.

Rapport du Représentant de l'Espagne.

I.

DANS la séance du Conseil du 19 septembre 1931, mon prédécesseur M. Lerroux, représentant de l'Espagne, avait, après les exposés faits à une séance précédente par les deux parties en cause, exprimé l'avis qu'une question primordiale et préalable devait être examinée, à savoir si le Conseil s'occupait de questions telles que celle qui lui était soumise. Il demandait le concours de deux autres membres du Conseil pour l'étude de cette question.

Le Comité, composé des représentants de l'Espagne, de l'Italie et de la Norvège, a examiné la question au cours de plusieurs séances (30 septembre et 1^{er} octobre 1931) et a étudié les communications qu'il a reçues des parties en cause.

II.

La question préalable que devait considérer le Comité était celle de savoir si le Conseil doit, donnant suite à la requête du Gouvernement finlandais, examiner le différend que celui-ci a porté devant lui.

Le Gouvernement finlandais n'a pas fondé cette requête sur un article déterminé du Pacte, mais il s'y est référé à plusieurs articles. Il semble que, s'il n'est pas strictement nécessaire pour faire appel au Conseil de se fonder sur un article déterminé du Pacte, le Conseil doit néanmoins, en reconnaissant sa compétence en application du Pacte, la fonder sur une disposition de celui-ci.

III.

Le Comité a examiné les articles qui pourraient être invoqués en l'espèce. Il a pensé qu'il serait difficile d'admettre en raison de toutes les circonstances du cas d'espèce que le différend pendant entre la Finlande et la Grande-Bretagne rentre dans la catégorie des différends susceptibles d'entraîner une rupture aux termes des articles 12 et 15 du Pacte, alors même qu'on reconnaît que rupture n'est pas nécessairement synonyme de guerre. Par contre, le Comité a cru qu'il était possible de retenir le paragraphe 2 de l'article 11, qui permet l'intervention du Conseil lorsque son attention est appelée par un membre de la Société, à titre amical, sur une circonstance de nature à "troubler la paix ou la bonne entente entre nations."

L'article 11 permet au Conseil de proposer toute mesure qu'il jugerait convenir aux circonstances.

L'article 13 du Pacte n'impose pas aux membres de la Société des Nations l'obligation de soumettre tous leurs différends à un règlement arbitral ou judiciaire et par suite les États ne sont tenus de consentir

à un tel règlement que s'il est prévu par un traité général ou particulier ou si, dans un cas donné, ils tombent d'accord pour recourir à un tel règlement. Or, dans le cas présent, aucun des engagements souscrits par les parties en litige ne les oblige à consentir à un règlement judiciaire ou arbitral. Rien n'empêche, cependant, le Conseil d'exercer une action conciliatrice. Le Comité estime donc que le Conseil a compétence en vertu de l'article 11, alinéa 2, du Pacte.

IV.

Le Gouvernement britannique, ainsi qu'en font foi les mémoires qu'il a adressés au Conseil, soutient que le Gouvernement finlandais n'est pas fondé à prendre fait et cause pour ses nationaux qui se plaignent d'avoir subi, du fait de l'utilisation de leurs navires par le Gouvernement britannique, un préjudice dont celui-ci devrait leur fournir réparation, attendu que ces nationaux auraient négligé d'épuiser les voies de recours que le droit britannique mettait à leur disposition. Le Comité estime qu'il convient d'étudier en premier lieu ces deux questions :

- (a) Les armateurs finlandais ont-ils ou non épuisé les voies de recours mises à leur disposition par le droit britannique?
- (b) Le fait que ces armateurs n'auraient pas épuisé ces voies de recours était-il un obstacle à ce que le Gouvernement finlandais réclamât une indemnité au Gouvernement britannique?

Il resterait entendu qu'en tout état de cause, le Conseil pourrait faire ultérieurement telle proposition ou suggestion qu'il jugerait opportune.

Dans ces conditions, le Comité est certain que le Conseil sera heureux de voir les parties se mettre d'accord pour trouver une solution de ces deux questions et qu'il voudra bien les prier de tenir le Conseil au courant des résultats de leurs efforts.

Sur le vu de leurs communications à cet égard et pour autant qu'un point resterait encore en suspens dans le domaine de ces deux questions, le Conseil pourrait demander un avis consultatif à la Cour permanente de Justice internationale.

ANNEX II.

Sir L. Oliphant to M. Saastamoinen.

My dear Minister,

Foreign Office, May 10, 1932.

THE committee appointed by the Council of the League of Nations to examine the claim brought by the Finnish Government against the Government of the United Kingdom with regard to the Finnish ships used during the war by the Government of the United Kingdom

submitted a report on the 30th January last at the seventh meeting of the 66th session of the Council of the League of Nations. This report, after expressing the view that this difference between our Governments did not come within the category of disputes to which articles 12 and 15 of the Covenant apply, and also that His Majesty's Government in the United Kingdom were not under any international obligation, under article 13 of the Covenant or otherwise, to submit this difference to arbitration or judicial decision, expressed the opinion that the case was one which might come under paragraph 2 of article 11 of the Covenant, and that under that article the Council possessed competence to take steps with a view to conciliation. The committee, however, recalled that His Majesty's Government had raised the preliminary objection that in this particular case the Finnish Government were not entitled to take up the matter by reason of the fact that the Finnish shipowners had neglected to exhaust the means of recourse open to them in the British courts. The committee thought that it would be expedient that the following two questions should first of all be examined:—

- (a) Have the Finnish shipowners, or have they not, exhausted the means of recourse placed at their disposal by British law?
- (b) Did the fact that those shipowners had not exhausted the means of recourse in question constitute an obstacle such as to prevent the Finnish Government from claiming compensation from the British Government?

2. The committee suggested that His Majesty's Government and the Finnish Government should agree to seek a solution for these two questions and should inform the Council of the results of their efforts.

3. His Majesty's Government and the Finnish Government having both expressed their willingness that these two questions should be discussed in accordance with the suggestion of the committee of the Council, the Finnish Government sent a delegation to London to discuss this matter with the representatives of His Majesty's Government, it being understood that His Majesty's Government maintained all their views with regard to the merits of the question and their submission to international arbitration.

4. The discussions which we have been so fortunate as to have with you and the other Finnish delegates having shown that both parties maintain the contentions which they have made with regard to these two preliminary points, as well as in regard to the dispute generally, I write to inform you that His Majesty's Government are prepared to agree to the procedure set out in paragraphs 8 and 9 below for the settlement of these legal questions.

5. In order to answer the first question, the remedies which were open under the municipal law of this country to the Finnish shipowners must be ascertained, and also the extent to which they

availed themselves of such remedies. These are complicated questions of English law. It will then be necessary to decide whether the action which the Finnish shipowners took did or did not satisfy the requirements of the rule of international law that the municipal remedies should be exhausted. This point involves an appreciation of the exact scope of this international rule, and therefore involves to this extent a question of international law. In order to decide the question, however, a precise knowledge of the system of English law and the remedies afforded by it is clearly essential. His Majesty's Government consider, therefore, that the first question is one which can only be suitably adjudicated upon by a person who is not only conversant with public international law, but is also skilled in English law and procedure, though it is, of course, not necessary that such person should be of British nationality.

6. The second question is one which only arises at all in the event of the contention of His Majesty's Government being upheld on the first question, and the contention of the Finnish Government being rejected. Unlike the first question, it is a question of public international law only. The considerations governing the choice of a suitable person to decide the first question do not necessarily apply to the decision of the second question.

7. In any case, His Majesty's Government consider it unnecessary that the expense and delay involved in the submission of the second question for decision should be undertaken unless and until it has been ascertained, by reason of a decision having been given on the first question, that the second question arises in a practical form.

8. His Majesty's Government are prepared to agree with the Finnish Government that the first of the two questions formulated by the committee of the Council should be submitted forthwith to a competent lawyer, to be chosen by agreement between the two Governments, who fulfils the qualifications outlined in paragraph 5 above.

9. In the event of the decision on the first question being in favour of His Majesty's Government, and the Finnish Government still maintaining their contention with regard to the second question, His Majesty's Government will be ready to submit the second question also for decision, the person or body to whom the second question should be referred for decision being selected by agreement between the two Governments when it is ascertained that it is necessary for this question to be decided.

10. This is the offer which His Majesty's Government, out of respect for the recommendations of the committee of the Council and as evidence of their friendly feelings towards the Finnish Government, are prepared to make. The Secretary of State will be glad to hear from you whether the Finnish Government are

prepared to accept it, in order that His Majesty's Government may communicate to the Council of the League your reply, together with the terms of this offer.

Believe me, &c.

L. OLIPHANT.

M. Saastamoinen to Sir L. Oliphant.

Finnish Legation, London,

May, 10, 1932.

My dear Sir Lancelot,

I HAVE the honour to acknowledge the receipt of your letter of to-day's date.

Acting on the instructions of my Government, I beg to inform you that the Finnish Government have given the most careful consideration to the proposal set out in your letter. Although my Government are strongly of the opinion that it is neither desirable nor necessary to separate the two points (a) and (b) in the manner suggested, and that the report of the committee of the Council contemplates an answer being given to the two points simultaneously, they are prepared, in order to meet in the most conciliatory spirit the views of His Majesty's Government in the United Kingdom, to accept this proposal.

Believe me, &c.

A. H. SAASTAMOINEN.
