

TROISIÈME PARTIE

AUTRES DOCUMENTS

PART III.

OTHER DOCUMENTS.

1.¹

REQUÊTE INTRODUCTIVE D'INSTANCE ADRESSÉE AU
GRÉFFE DE LA COUR, CONFORMÉMENT A L'ARTICLE 40
DU STATUT, PAR L'INTERMÉDIAIRE DE LA LÉGATION DE
GRÈCE A LA HAYE, LE 13 MAI 1924

[*Voir Publications de la Cour permanente de Justice internationale,*
Série C, n° 5 — I, pp. 88-91.]

2.¹

MÉMOIRE DU GOUVERNEMENT HELLÉNIQUE
(22 MAI 1924).

[*Id.*, pp. 92-132.]

2a.¹

ANNEXE AU MÉMOIRE
DU GOUVERNEMENT HELLÉNIQUE

[*Id.*, pp. 133-438.]

3.¹

PRELIMINARY OBJECTION TO THE JURISDICTION
OF THE COURT

AND

PRELIMINARY COUNTER-CASE FILED BY THE BRITISH
GOVERNMENT
(JUNE 16TH, 1924).

[*Id.*, pp. 439-455.]

4.¹

RÉPONSE DU GOUVERNEMENT HELLÉNIQUE AU
CONTRE-MÉMOIRE PRÉLIMINAIRE DU GOUVERNEMENT
BRITANNIQUE SUR LA COMPÉTENCE DE LA COUR
(30 JUIN 1924).

[*Id.*, pp. 456-464.]

¹ Voir note au début du présent volume. [*Note du Greffier.*]

¹ See note at the beginning of this volume. [*Note by the Registrar.*]

5.

MAVRommatis PALESTINE CONCESSIONS.

COUNTER-CASE

PRESENTED ON BEHALF OF THE GOVERNMENT OF HIS BRITANNIC MAJESTY TO THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

QUESTIONS IN ISSUE (GENERAL OBSERVATIONS).

1. — Since the presentation of the Case of the Hellenic Government on May 22nd, 1924, the Court has given Judgment upon the preliminary objection of His Majesty's Government. His Majesty's Government loyally accept that Judgment and propose to frame the present Counter-Case upon the basis of the findings contained therein. Before dealing with the allegations and contentions in the Greek Case it is therefore convenient to state briefly what are the questions now in issue in these proceedings. Two matters can be entirely eliminated: first, as a result of the Judgment referred to above the concessions alleged to have been obtained by M. Mavrommatis for works at Jaffa are excluded from consideration; and, secondly, all claims in respect of proposed works in the Jordan Valley have been abandoned in the Greek Case itself (*see* p. 33, 1st para.¹). It is accordingly unnecessary to deal with these matters; no further reference to them will be made herein, nor will those parts of the Greek Case that treat of them be answered, but this silence must not be taken to imply any admission on the part of His Majesty's Government.

2. — The questions now in issue relate exclusively to the Jerusalem Concessions, i.e., the two concessions for works at and near Jerusalem claimed by M. Mavrommatis. These can be briefly described as (a) a concession providing for the construction and working of an electric tramway system, and the supply of electric light and power (hereinafter referred to as the "Electricity Concession"), and (b) a concession providing for the supply of drinking water (hereinafter referred to as the "Water Concession"). The Greek Government allege that in respect of each of these concessions His Majesty's Government have wrongfully refused to recognize to their full extent the rights of M. Mavrommatis (*see* Request instituting proceedings, p. 9²). By its Judgment of August 30th,

¹ See *Publications of the Permanent Court of International Justice*, Series C, No. 5 — I, pp. 131-132.

² *Ibid.*, p. 91.

1924, the Court, whilst abstaining from expressing any opinion upon the merits of the case has held that it has jurisdiction to entertain the suit for the purpose of deciding the question whether or not His Majesty's Government have with reference to these concessions committed a breach of the international obligations mentioned in Article II of the Mandate for Palestine (set out on p. 8 of the Preliminary Counter-Case¹) by granting certain rights to third parties, namely, the so-called Rutenberg Concessions (*see Judgment, Publications of the Court, Series A, No. 2, p. 26*). The Court has also held in effect that the international obligations mentioned in Article II of the Mandate are those arising out of Protocol XII annexed to the Treaty of Lausanne, and no others (*see Judgment, Series A, No. 2, pp. 24-26*), since the obligations arising out of the Protocol are the only obligations that satisfy the test laid down in the Judgment. Further, there being a difference between the Parties as to which provisions of the Protocol M. Mavrommatis' Jerusalem concessions fall under, the Court has declared itself competent to decide this question also as being one concerning the interpretation of Article II of the Mandate (*see Judgment, Series A, No. 2, p. 27, p. 28 last para.*). It therefore appears that the issues in the present proceedings relate exclusively to the interpretation of the Lausanne Protocol, and its application (a) to the Electricity Concession and (b) to the Water Concession.

For convenience of reference a copy of the Protocol is attached hereto as Annex I.²

THE FACTS.

1. — As to Clause I of the Greek Case, His Majesty's Government are prepared (subject to the original documents being produced and found in order) to admit that the contracts relating to the Electricity Concession and the Water Concession respectively were entered into by M. Mavrommatis before October 29th, 1914, with the Ottoman Government or a local Ottoman Authority (*see Protocol XII, Article 9, p. 19 infra*³). His Majesty's Government do not propose to dispute that M. Mavrommatis is a Greek national, but they challenge the validity of the concessions on the ground that he is described therein as, and obtained them in the character of, an Ottoman subject, and in this connection, draw attention to the fact that he was obliged by the terms of the concessions to form an Ottoman company to take over all his rights and duties thereunder (*see Annex to Greek Case, Acte No. 1, Article 5*,

¹ See *Publications of the Permanent Court of International Justice, Series C, No. 5—I*, p. 450.

² See page 227.

³ Page 233 of this volume.

p. 6¹; Acte No. 2, Article 21, p. 12²) and to employ Ottoman subjects both in the construction of the works and the operation of the services (see Annex to Greek Case, Acte No. 1, Article 15,³ p. 12; Acte No. 2, *Cahier des charges*, Article 24, p. 24⁴). His Majesty's Government will require proof that M. Mavrommatis deposited £1,700 and fr. 100,000 as security under the Electricity and Water Concessions respectively, and reserve the right to object that the latter sum was not deposited in accordance with Article 18 of the Water Concession, inasmuch as it is there stipulated that the deposit should be lodged at the *Banque Commerciale de Palestine* at Jerusalem (see Annex to Greek Case, Acte No. 2, pp. 11-12⁵ and cf. Acte No. 4). Proof will also be required of the allegation that on August 12th, 1914, M. Mavrommatis sent designs and plans to the Municipality of Jerusalem, and His Majesty's Government make no admission as to the sufficiency for the purpose of the concessions of such designs and plans as may have been presented. Further, it appears from the Greek Case (p. 5, 5th para.⁶ and Annex, Acte No. 5⁷) that on July 30th, 1914, M. Mavrommatis requested the Municipality to suspend the execution of the concessions, under the provisions relating to *force majeure*, for the duration of the war, which request was acceded to. (Annex to Greek Case, Acte No. 6.⁸) In these circumstances His Majesty's Government dispute the correctness of the allegation (see Greek Case, p. 5, 4th para.⁹) that the designs and plans were at the expiration of three months considered as approved. Although under Article 6 of each concession (see Annex to Greek Case, Acte No. 1, p. 6¹⁰; Acte No. 2, p. 6¹¹) approbation of designs and plans was in the absence of modifications to be regarded as given at the expiration of three months from the date of presentation, this provision cannot, it is submitted, be considered as having been satisfied where, the execution of the concession having been suspended at the concessionnaire's request owing to *force majeure*, the designs and plans are presented during the period of suspension. For so long as such period lasted the time mentioned in Article 6 of the concessions did not run, and there was no need for the Municipality to come to a decision in regard to the designs and plans; it would have been open to the Municipality to require modifications at any time within three months of the cessation of *force majeure*. That this view is correct is shown by the very terms of the letter

¹ See Publications of Court, Series C, No. 5 — I, p. 137.

² *Ibid.*, p. 217.

³ *Ibid.*, p. 226.

⁴ *Ibid.*, p. 217.

⁵ *Ibid.*, p. 93, 3rd paragraph.

⁶ *Ibid.*, p. 229.

⁷ *Ibid.*, p. 231.

⁸ *Ibid.*, p. 93, 2nd paragraph.

⁹ *Ibid.*, p. 137.

¹⁰ *Ibid.*, p. 211.

of July 30th, 1914 (Annex to Greek Case, Acte No. 5¹), where M. Mavrommatis states that he is keeping three copies of the designs and plans (*cf.* Article 6 of the concessions) to bring with him when circumstances permit him to go to Jerusalem.

4. — Whilst His Majesty's Government must not be taken to admit their accuracy, it does not seem necessary to refer in detail to the statements contained in Clauses 2 and 3 (pp. 6 and 7²) of the Greek Case, except upon two points : First, it may be well to state here that the claim in regard to the alleged utilization by the British Military authorities in Palestine of M. Mavrommatis' designs and plans relating to the supply of water to Jerusalem having been abandoned (*see* Greek Case, Clause 24, p. 25³) it is unnecessary to deal with the allegation made in Clause 2, 3rd para., of the Greek Case (which is denied) as to the utilization of drinking water for the needs of the army. Secondly, the statement that Mr. Rutenberg was the representative of the Zionist Organization (*see* Greek Case, p. 6, last para.⁴) is incorrect and must be contradicted.

5. — In Clause 4 (p. 7) of the Greek Case reference is made to the so-called Rutenberg Concessions and it is essential that the true position in regard to this important matter should be made clear. On September 12th, 1921, the High Commissioner for Palestine granted to Mr. Rutenberg a concession for the utilization of the waters of the Auja Basin for the purpose of generating, utilizing and supplying electrical energy and for irrigation within the Jaffa district (*see* Annex to Greek Case, Acte No. 16, Clauses 1 (b) and 2, pp. 21, 22⁵). This concession neither overlaps with nor in any way affects either of M. Mavrommatis' Jerusalem concessions and is therefore irrelevant for the purposes of the present case. On September 21st, 1921, an agreement was made between the Crown Agents for the Colonies acting for and on behalf of the High Commissioner for Palestine and Mr. Rutenberg whereby it was agreed that the High Commissioner, subject to certain conditions with reference to the formation of a company by Mr. Rutenberg, would on application at any time within two years from the date of the agreement cause to be granted to the Company a concession in the terms set forth in the Schedule to the Agreement (*see* Annex to Greek Case, Acte No. 17, pp. 35, 36⁶). The concession referred to was one for the generation, supply and distribution of electrical energy in the whole of Palestine and Trans-Jordania with the exception of the Jaffa district which formed the subject of the concession mentioned above (*see* Annex to Greek Case, Acte No. 17, Clause 1,

¹ See Publications of Court, No. 5 — I, p. 229.

² *Ibid.*, pp. 94 and 95.

³ *Ibid.*, p. 121.

⁴ *Ibid.*, p. 95, 2nd paragraph.

⁵ *Ibid.*, pp. 334 and 335.

⁶ *Ibid.*, pp. 354-355.

p. 38¹). By Clause 29 of the Schedule to the Agreement of September 21st, 1921, it is provided that in the event of there being any valid pre-existing concession covering the whole or any part of the concession described in the Schedule the High Commissioner, if requested in writing by the Company so to do, shall take the necessary measures for cancelling such concession on payment of fair compensation which is to be borne by the Company (*see Annex to Greek Case, Acte No. 17, p. 48²*). The application contemplated by the Agreement of September 21st, 1921, was duly made within the prescribed period but as both the Palestine Electric Corporation, Ltd. (being the Company formed by Mr. Rutenberg in pursuance of the Agreement), and the Palestine Government desire to effect certain alterations in the text of the concession the same has not yet been granted although the Palestine Government recognize their obligation to grant the concession as soon as the points at issue are disposed of. His Majesty's Government recognize that the original draft of this concession set out in the Schedule to the Agreement of September 21st, 1921, covers in part the same ground as the Electricity Concession of M. Mavrommatis, and that if the concession, in its final form still includes Clause 29 cited above and if the Company were to address a written request to the High Commissioner under that clause the High Commissioner would as between himself and the Palestine Electric Corporation be under an obligation to annul the Mavrommatis Electricity Concession. But such a contingency can be disregarded inasmuch as the Palestine Electric Corporation has consented to M. Mavrommatis carrying out the terms of his Electricity Concession, as appears from the attached letter dated May 1st, 1924 (*Annex 2³*). His Majesty's Government are prepared, if necessary, to prove by further evidence that both Mr. Rutenberg and the Company are perfectly willing that M. Mavrommatis should put his Electricity Concession into operation. His Majesty's Government desire, moreover, to make it clear that the concession described in the Schedule to the Agreement of September 21st, 1921, has no bearing whatever upon M. Mavrommatis' Water Concession. This point was perhaps not fully appreciated in the course of the proceedings on the preliminary objection, but it is plain when the Schedule is examined (*see Annex to Greek Case, Acte No. 17, pp. 38-51⁴*) that the subject matter of the two concessions is entirely distinct and that the Palestine Electric Corporation's Concession does not encroach upon or overlap M. Mavrommatis' Water Concession in any particular. In view of the foregoing facts the position with respect to the Rutenberg Concessions can be summarized as follows: It is only one of these concessions—namely that described in the Schedule to the Agree-

¹ See Publications of Court, Series G, No. 5—I, p. 355.

² *Ibid.*, pp. 371-372.

³ See page 237.

⁴ See Publications of Court, Series G, No. 5—I, pp. 354-377.

ment of September 21st, 1921—that in any way affects the present case, and in regard to this concession : .

- (a) it does not touch the Mavrommatis' Water Concession ;
- (b) it is not in force ;
- (c). even if it had been in force in its original form no application has been nor would have been made under Clause 29 to annul the Mavrommatis' Electricity Concession ;
- (d) if and when it does come into force and assuming that the provisions of Clause 29 are retained no such application will be made.

6. — With regard to Clauses 5 to 10 of the Greek Case, whilst His Majesty's Government do not in several respects agree with the account of the negotiations there given, it does not appear to be material for the purpose of assisting the Court in its task to deal in detail, at any rate at the present stage, with the statements made. His Majesty's Government desire to point out that the correspondence referred to in the Greek Case, and annexed thereto is incomplete and they reserve the right to produce further documents if the necessity arises. For the present it seems sufficient to refer to one specific allegation and for the rest merely to summarize the general course which the negotiations took. The statement in the Greek Case (Clause 5) that the Colonial Office recognized that M. Mavrommatis had certain rights and that those rights would be respected is true. But in view of the fact that the Treaty of Sèvres was not in force and that the Treaty of Lausanne had not yet been drawn up it was not possible at that time to say exactly what those rights were and whether they would lie against His Majesty's Government or the Turkish Government, which granted the concessions. His Majesty's Government have not at any time recognized that the substantive claims put forward by M. Mavrommatis were well founded. Generally, it may be said that the negotiations as to M. Mavrommatis' claims fall broadly into three stages : —

- (1) From 1921 until July, 1922, the dispute between him and the British Government turned mainly upon the validity of the concessions under the terms of the draft Treaty of Sèvres. In regard to the Jerusalem Concessions the main questions discussed were (a) whether M. Mavrommatis was a Greek or an Ottoman national, and (b) whether his alleged concessions were or were not invalid by reason of the fact that they were obtained in the character of an Ottoman subject. Ultimately His Majesty's Government were content to deal with the case on the hypothesis that M. Mavrommatis in fact possessed Greek nationality and whilst they still considered that the validity of the concessions was open to question by reason of the

different character in which they were obtained this point was not insisted upon for the purpose of the negotiations.

(2) From August, 1922, to June, 1923, negotiations proceeded on the assumption that the Jerusalem Concessions were *prima facie* valid and fell to be dealt with provisionally on the basis of the same draft Treaty. M. Mavrommatis was encouraged to endeavour to arrange for co-operation between himself and Mr. Rutenberg or his Company.

(3) From July, 1923, to May, 1924, Protocol XII of the Lausanne Treaty having been drawn up, the basis of the negotiations was altered. The Colonial Office made it clear that the concessions could only be dealt with in accordance with the terms of that instrument and the dispute turned mainly upon the application of the Protocol thereto. On January 26th, 1924, the Greek Legation in London brought the matter officially before His Majesty's Principal Secretary of State for Foreign Affairs (Annex to Greek Case, Acte No. 45, p. 92¹). The Foreign Office replied on April 1st, 1924 (*Ibid.*, Acte No. 46, p. 93¹) and on May 12th, 1924, the Greek Minister in London informed the Secretary of State of the Greek Government's decision to submit the case to the Court (Greek Supplementary Documents, No. 8, p. 13²). The Request instituting proceedings was filed on May 13th, 1924.

7. — In order to complete the statement of facts it may be convenient for purposes of reference to mention here that Protocol XII annexed to the Treaty of Lausanne was signed on July 24th, 1923, and came into force as between Great Britain and Greece on August 6th, 1924, when the first *procès-verbal* of the deposit of ratifications mentioned in Article 143, fifth paragraph, of the Treaty was drawn up.

CONTENTIONS OF LAW.

8. — Three questions arise for decision in the present case:—

(1) Are the Jerusalem Concessions of M. Mavrommatis valid?

(2) The second question is connected with the so-called Rutenberg Concessions and may be stated thus: Have His Majesty's Government by granting those concessions contravened the international obligations mentioned in Article 11 of the Mandate for Palestine, namely, the obligations arising out of the Lausanne Protocol under which M. Mavrommatis' Jerusalem Concessions, if valid, enjoy certain rights?

¹ See Publications of Court, Series C, No. 5—1, p. 411.

² *Ibid.*, p. 468.

(3) The third question relates to the dispute as to how the Jerusalem Concessions of M. Mavrommatis, if valid, should be dealt with under the Lausanne Protocol, i.e., whether they are entitled to readaptation under Articles 4 and 5 or whether they fall under Article 6.

9. — As to question (1), His Majesty's Government refer again to the fact that M. Mavrommatis is described in the concessions as an Ottoman subject, and that he obtained them in that character. It is plain on the face of the documents themselves that the Turkish Government granted him the concessions on that understanding and subject to that condition. The contracts were based on a mistake, and this alone would, it is submitted, be sufficient to render the concessions void *ab initio*. The matter does not, however, rest there. As already pointed out the concessions were to be carried out and operated by Ottoman Companies, or an Ottoman Company, in substitution for the original concessionnaire, and worked by Ottoman employés. This shows the importance attached by the Turkish Government to the question of nationality, and moreover such conditions are, to say the least, difficult to reconcile with the terms of the Lausanne Protocol, if the concessions now in question are intended to be maintained by that instrument. But there is a more formidable obstacle to the recognition of the concessions under the Protocol. Provision is there made for the maintenance of concessions the beneficiaries of which are nationals of the contracting Powers other than Turkey. How can this apply to the Mavrommatis Concessions which were obtained by and granted to him as an Ottoman subject? It is submitted that these concessions are both invalid in themselves and disentitled to recognition under the Protocol.

10. — As to question (2), it is submitted that the terms in which the question is formulated above is a fair statement of the real point under this head because, although the Court in its Judgment of August 30th, 1924, stated that it abstained from giving a final opinion (*de se prononcer*) on the opposing contentions of the Greek and British Governments as to what were the international obligations referred to in Article 11 of the Mandate, it did decide that these international obligations were "obligations contracted having some relation to the powers granted to the Palestine Administration under the same article" (*see* Judgment, Series A, No. 2, p. 24), and there exist no obligations fulfilling the terms of this definition other than the obligations laid down in the Protocol. This point cannot, it is thought, be regarded as any longer in doubt and it is not therefore proposed to insist further upon it here.

In regard to the substance of this question it must be observed that there has, in fact, been no breach by His Majesty's Government of their obligations under the Protocol in connection with the so-called Rutenberg Concessions. As explained above (*see* Clause 6

hereof¹⁾ it is only the proposed Palestine and Trans-Jordania Concession, the grant of which to the Palestine Electric Corporation has not yet been effected, that is in any degree relevant and this concession does not, even in its terms, touch M. Mavrommatis' Water Concession. As to his Electricity Concession any conflict between it and the terms of the Corporation's proposed concession is immaterial by reason of the facts (*a*) that the latter concession is not in force and (*b*) that as already pointed out the Corporation has waived its right to call for the annulment of the Mavrommatis Concession even if it be assumed that a provision such as Clause 29 of the original draft will find a place in the Corporation's Concession as finally drawn. No difficulty accordingly exists by reason of the proposed concession. His Majesty's Government are ready and willing to carry out in regard to both of M. Mavrommatis' Jerusalem Concessions if contrary to the British contention they are held to be valid whatever obligations under the Lausanne Protocol the Court may decide to be applicable.

II. — Turning to question (3), the point in dispute is whether the Electricity Concession and the Water Concession respectively fall under Articles 4 and 5 or under Article 6 of the Protocol, and this in turn depends upon whether the concessionary contract in either case has or has not begun to be put into operation (*reçu un commencement d'application*). It is submitted that this is the only issue upon this part of the case with which the Court is called upon or competent to deal—the question as to the provisions regarding readaptation if the concessions are held to fall under Article 4, or as to the amount of the indemnity, if any, for survey and investigation work, if they are held to fall under Article 6, lies outside the Court's jurisdiction (*see Judgment, Series A, No. 2, p. 32*). Further, it may perhaps be permissible to state, for the sake of avoiding any possibility of misunderstanding, that there can be no question of the Court awarding compensation for cancellation of the concessions, because in the first place, as explained more fully below, Protocol XII does not provide for or allow cancellation, and, secondly, His Majesty's Government have not cancelled or purported to cancel either of them. Two further matters must be mentioned in connection with the definition of the terms of the third question. It is noticeable that certain time limits are specified: under Article 5 of the Protocol for the purpose of allowing an agreement to be reached between the Parties; and under Article 6, within which the concessionnaire must make his request for dissolution of the contract. But although neither of these periods has elapsed His Majesty's Government do not propose upon this ground to raise any objection to the Court deciding the question under discussion, the more so as such an objection would seem to be inconsistent

¹ Page 210.

with the view expressed by the Court in the Judgment of August 30th, 1924 (*see* Series A, No. 2, pp. 31-33, 34-45). Again, it will be observed that in view of the facts mentioned above as to the so-called Rutenberg Concessions it could be argued that the basis of the Court's jurisdiction does not in truth exist, inasmuch as it was the alleged conflict between these concessions and those of M. Mavrommatis that gave rise to the jurisdiction under Articles 26 and 11 of the Mandate for Palestine (*see* Series A, No. 2, pp. 19-23, 26, 29, 35). But His Majesty's Government, without in any way admitting that such a contention would not be well founded, do not propose to rely upon it in the present proceedings. His Majesty's Government are desirous that the Court should, if it arises, decide the issue referred to at the beginning of this clause, and hereby consent to the exercise by the Court of jurisdiction for that purpose.

12. — It is of course only if the Court decides against the contention of His Majesty's Government upon question (1) that the dispute as to the application of the Lausanne Protocol (i.e., question (3)) would arise for decision. On the assumption that the Jerusalem Concessions are valid and not excluded from recognition under the Protocol they would come within Article 9 (*see* Annex I, p. 19 *infra*¹) and therefore under Article 10 (*ibid.*) the provisions of Section I of the Protocol except Articles 7 and 8 would have to be applied to them. The relevant provisions of Section I are Articles 1, 4, 5 and 6 (*see* Annex I, pp. 16, 18) for it may again be observed that no claim is now made on behalf of M. Mavrommatis in respect of the alleged use by the British Authorities of his designs and plans relating to the supply of water to Jerusalem (*see* Greek Case, Clause 24, p. 25²) and therefore Article 3 of the Protocol (*see* Annex I, pp. 17-18³) need not be taken into consideration. Under Article 1 of the Protocol the two concessions are maintained. Under Articles 4 and 5 subject to the provisions of Article 6 the provisions of the concessionary contracts must, as regards both Parties, be put into conformity with the new economic conditions either by agreement within one year from August 6th, 1924 (the date of the coming into force of the Treaty of Lausanne), or failing such agreement in the manner decided by experts appointed for the purpose. By Article 6 concessionary contracts which have not, on July 24th, 1923 (the date of the Protocol), begun to be put into operation are excepted from the provisions relating to readaptation; the concessionary contract is either to be maintained unaltered, or it may be dissolved on the request of the concessionnaire made within six months of August 6th, 1924. In the latter case the concessionnaire is entitled, if there is ground for it, to such

¹ Page 233.

² See Publications of Court, Series C, No. 5 — I, p. 121.

³ Page 280 of this volume.

indemnity in respect of the survey and investigation work as in default of agreement between the Parties is considered equitable by the experts provided for in the Protocol.

Such is the scheme which must, if they are valid, be applied to the two concessions which form the subject-matter of this case.

13. — The Lausanne Protocol, unlike Article 311 of the Treaty of Sèvres, does not provide for the cancellation at the instance of the State, of valid pre-war concessions, and consequent compensation to the concessionnaire. The divergence was intentional and serves to emphasize what is plain on the face of the Protocol itself that the cancellation of such concessions is not contemplated thereby or permissible thereunder. That this is so is shown by the fact that it was found necessary in order to enable certain Parties to the Protocol to buy out concessions in their territory to make an express agreement to that effect (*see Annex 3¹*). Under the Protocol concessions must either be readapted under Articles 4 and 5, or maintained without readaptation under Article 6, subject in the latter case to the concessionnaire's option of demanding dissolution. As already stated His Majesty's Government are prepared strictly to carry out their obligations under the Protocol, but they submit that M. Mavrommatis' Jerusalem Concessions, if valid, come within the second category and cannot enjoy the benefit of readaptation. The reasons for this view are briefly as follows :—

Article 6 includes concessionary contracts which have not on the date of the Protocol "begun to be put into operation"—*reçu un commencement d'application*. This phrase, it is submitted, means that some part at least of the works provided for in the concessionary contract must have begun to be executed. For example, if in the case of the Electricity Concession part of the power station referred to in Article 2 of the *Cahier des charges* (Annex to Greek Case, Acte No. 1, p. 19²) had been built it could be said that the concessionary contract had "begun to be put into operation"; similarly, if in the case of the Water Concession some of the conduit pipes referred to in Article 3 of the *Cahier des charges* (Annex to Greek Case, Acte No. 2, p. 18³) had been laid by the concessionnaire. The whole purpose, however, of the special provision introduced by Article 6 of the Protocol is to exclude from the benefit of readaptation concessions which are still executory as regards the work to be done—which, in other words, have not in substance and fact begun to be put into operation. It may possibly be suggested that an argument might be founded upon the fact that Article 6 does not speak of "concessions" which have not begun to be put into operation but of "concessionary contracts". It is submitted,

¹ Page 238.

² See Publications of Court, Series C, No. 5—1, pp. 144-145.

³ *Ibid.*, p. 219.

however, that no special or restrictive significance should be attributed to the use of the word "contract". In the Treaty of Sèvres, Articles 310-316, the words "concessions", "concession contract" and "contract" are used as interchangeable terms; in the Lausanne Protocol itself the words "contracts" and "concessions" are employed as equivalent expressions in Articles 4 and 5, and it would be impossible to base upon the use of the expression "concessionary contract" in Article 6 an inference that a distinction was intended between a "concessionary contract" which had not begun to be put into operation and a "concession" which had not begun to be put into operation. The two conceptions are identical. In point of fact the reason for the use in the Protocol of the expression "concessionary contracts" was that in certain cases which had to be covered by that instrument work had been done and rights exercised in virtue of a document that did not amount to a formal concession.

Now in what manner is it suggested that the Jerusalem Concessions have begun to be put into operation? The only steps that M. Mavrommatis alleges he took were (*a*) to deposit certain sums in a French Bank (*see* Greek Case, p. 5, 4th paragraph¹) and (*b*) to send to the Municipality of Jerusalem designs and plans (*Ibid.*). His Majesty's Government submit that these two steps taken together would not constitute a beginning of operation—*un commencement d'application*—within the meaning of Article 6 of the Protocol; formal acts done in pursuance of the concessionary contract for the purpose of keeping the concession alive, go to the validity of the concession, not to its operation. If such matters as the making of deposits within the prescribed period had been aimed at, Article 6 would be devoid of meaning or effect, as in the case of every concessionary contract entered into before October 29th, 1914, deposits would have been made if the concession was to be valid at the date of the Protocol, and therefore capable of conferring a subsisting right upon the concessionnaire. Articles 4 and 5 deal with valid concessionary contracts which have begun to be put into operation; Article 6 deals with valid concessionary contracts which have not begun to be put into operation. If M. Mavrommatis' contention were correct it would follow that all valid concessions had begun to be put into operation and Article 6 would be otiose. According to the contention of the British Government, on the other hand, full effect is given to the provisions in question by extending the benefit of readaptation to concessions which have begun to be put into operation by the execution of actual work, and excluding from that benefit those concessions which, although the validity of the contract has been preserved by the performance of conditions as to deposits and the like, have stopped short of the stage where the works for the provision of which they were granted have been begun.

¹ *Ibid.*, p. 93, 2nd paragraph.

That the above interpretation of the Protocol is the true one is confirmed by the provisions of Article 6 in regard to the indemnity payable in certain circumstances to the concessionnaire. Such indemnity is limited to expenditure in respect of survey and investigation work (*travaux d'étude*). If concessions were to be regarded as having begun to be put into operation by reason only of deposits having been made and designs and plans presented, these provisions would be inoperative. The fact that the concessionnaire has made a deposit entails no loss to him inasmuch as he is entitled to the return thereof on the dissolution of the concessionary contract (see Annex to Greek Case, Acte No. 1, Article 4, p. 5¹, Acte No. 2, Article 18, pp. 11-12²). It may here be remarked that the proposition put forward in the Greek Case at p. 23³, head (c), is wholly untenable. The fact that the value of Turkish and French currency has depreciated as compared with sterling is irrelevant to the question of indemnity. The concessionnaire would in any event receive back the amount deposited by him in the currency in which the deposit was made, and any depreciation in that currency that may have occurred is attributable to general circumstances totally unconnected with the cause which gives rise to the indemnity, namely, the dissolution of the concessionary contract. The expense of preparing designs and plans, which includes that of the survey and investigation work on which they are based (conveniently described together by the expression *travaux d'étude*) is therefore the only loss or expense which the concessionnaire will have incurred. It follows that if concessions such as those in the present case were outside the terms of Article 6 there would be no concessions to which the provision as to indemnity could apply.

14. — Having outlined the legal position as it appears to His Majesty's Government attention is now directed to the legal arguments advanced in the Greek Case (*Discussion juridique*). Clause 11, 1° (p. 13⁴), refers to the attitude of the British Government which has been more fully developed above. It seems unnecessary to deal with the contentions raised in Clauses 12-17 (pp. 14-16⁵) of the Greek Case, as they have become immaterial in view of the Court's Judgment of August 30th, 1924. In Clause 18 it is stated that the objection that the Jerusalem Concessions had not begun to be put into operation was unexpected and formulated for the first time in the letter from the Colonial Office of December 15th, 1923 (Greek Case, Clause 18, 2nd paragraph⁶). This statement is misleading, and the comments based upon it (Greek Case, Clause 18,

¹ See Publications of Court, Series C, No. 5 — I, p. 136.

² *Ibid.*, p. 217.

³ *Ibid.*, p. 117.

⁴ *Ibid.*, pp. 103-104.

⁵ *Ibid.*, pp. 104-108.

⁶ *Ibid.*, p. 108.

3rd and 4th paragraphs, and p. 17, 1st to 6th paragraphs) are misconceived. It was obviously impossible for His Majesty's Government to raise the objection in question prior to the signature of the Lausanne Protocol (i.e. July 24th, 1923). During June and July, 1923, a series of interviews took place between Mr. H. G. Purchase, M. Mavrommatis' counsel, and officials of the Colonial Office, notably Mr. R. V. Vernon. About the middle of June, 1923, Mr. Vernon explained to Mr. Purchase the position of the negotiations at Lausanne and discussed the effect on M. Mavrommatis' claims of the terms of a Protocol then under consideration relating to concessions. On July 6th, 1923, another interview took place at which the draft terms of Protocol XII (the signature of which was still uncertain) were discussed. On July 31st, 1923, a further conversation was held, this being the first after the signature of the Protocol, when Mr. Purchase was told that, in the view of the Colonial Office, the Jerusalem Concessions came within Article 6.

On August 20th, 1923, the legal adviser to the Colonial Office definitely advised that the Jerusalem Concessions fell under Article 6.

On October 9th and 29th, 1923, this point was again emphasized by Sir John Shuckburgh and Mr. Vernon at further interviews with Mr. Purchase.

From the foregoing it is clear that far from being an afterthought, the objection in question was raised on behalf of His Majesty's Government at the earliest possible moment. It was the fact that this point had been discussed with M. Mavrommatis' representative that accounts for its statement in a summary form and without development in the Colonial Office letter of December 15th, 1923 (Annex to Greek Case, Acte No. 41, p. 85¹).

The remainder of Clause 18 of the Greek Case (p. 17, 7th paragraph to end, p. 18, first seven paragraphs²) is devoted to arguments for the purpose of establishing that the Jerusalem Concessions had begun to be put into operation within the meaning of Article 6. His Majesty's Government have already laid before the Court reasons why, in their opinion, this is not so.

15. — Passing to Clause 19 (p. 18³) of the Greek Case, the Hellenic Government there agree with the view expressed above that the Lausanne Protocol does not in its terms confer upon the Contracting Powers the right to buy out concessions, but they argue that this right must be implied. His Majesty's Government dissent from this argument, but it does not appear to be necessary again to elaborate the point, inasmuch as they have not adopted and do not propose to adopt such a course. It must be unequivocally denied that the British Government have, as stated in the Greek Case (p. 19, 2nd paragraph⁴) "in effect already exercised their choice

¹ See Publications of Court, Series C, No. 5—I, p. 405.

² *Ibid.*, pp. 109-110.

³ *Ibid.*, p. 111.

⁴ *Ibid.*, p. 111, 8th paragraph.

and preferred repurchase to readaptation of the concessions."

16. — The Greek Case in Clause 20 (p. 19¹) asserts that the proof of this alleged choice is "first of all furnished by the concessions granted in September, 1921, to Mr. Rutenberg." In an earlier part of the present Counter-Case (*see* Clause 5 *supra*) it has been shown, on the one hand, that one of the two so-called Rutenberg Concessions, namely, that relating to the district of Jaffa (set out in the Annex to the Greek Case, Acte No. 16, p. 21²) is entirely irrelevant to either of M. Mavrommatis' Jerusalem Concessions, and, on the other hand, that neither of the Rutenberg Concessions in any way affects M. Mavrommatis' Water Concession. It has also been explained (*see* Clause 5 above) that the Rutenberg Concession for the supply of electrical energy in Palestine and Trans-Jordania (set out in the Annex to the Greek Case, Acte No. 17, p. 38³) has not, in fact, yet been granted, and, further, that if and when it is granted it will not in any event conflict with M. Mavrommatis' Electricity Concession. But in the argument presented in Clause 20 of the Greek Case⁴, it is suggested that the very act of "granting the concessions to Mr. Rutenberg" was tantamount to cancelling, or showing the intention to cancel, the concessionary rights of M. Mavrommatis. This contention could, it is plain, only apply as between the Palestine and Trans-Jordania Concession and the Mavrommatis Electricity Concession, and having regard to the fact that the grant of the former concession has not been effected, it is, strictly speaking, unnecessary to reply to it.

But, contrary to the fact, let it be assumed for the purposes of the argument that the Agreement of September 21st, 1921 (*see* Annex to Greek Case, Acte No. 17, p. 35⁵), was equivalent to the grant of the concession in question. With regard to the suggestion made in the Greek Case at p. 19, 6th paragraph, the position was that at the time when that Agreement was made with Mr. Rutenberg the unratified Treaty of Sévres was the instrument which the British Government could legitimately regard as provisionally likely to govern the position of existing concessions in Palestine, but the Treaty was in no sense operative, and it neither could have been, nor was, the intention of the British Authorities to prejudice the rights of existing concessionnaires under whatever international agreement might ultimately become binding. By Clause 29 of the Schedule to the Agreement of September 21st, 1921 (to which the Greek Case at p. 19, last paragraph⁶, no doubt intends to refer, although it cites the corresponding clause of the Rutenberg Concession for Jaffa) it was provided that "in the event of there being

¹ See Publications of Court, Series C, No. 5—I, p. 111.

² *Ibid.*, p. 334.

³ *Ibid.*, p. 354.

⁴ *Ibid.*, p. 111.

⁵ *Ibid.*, p. 354.

⁶ *Ibid.*, p. 112, last paragraph.

any valid pre-existing concession covering the whole or any part of the present concession the High Commissioner if requested in writing by the Company so to do shall take the necessary measures for annulling such concession on payment of fair compensation . . . and the Company shall indemnify the High Commissioner against any compensation that may be due or become payable in respect of any such annulled concession to the extent to which it affects this present concession . . ." This provision, far from showing an intention to cancel pre-existing concessions, indicates the intention of treating them as effective. The carrying out of pre-existing concessions is contemplated inasmuch as it is only if the concessionnaire under the Rutenberg Concession makes a request to that effect that cancellation takes place, on the onerous condition that such concessionnaire bears the cost of the resulting compensation. There is nothing in the Agreement to suggest that this request would be likely to be made, and as already stated the Palestine Electric Corporation is in fact willing that M. Mavrommatis should carry out his Electricity Concession, and has expressed its intention not to raise any objection to this course (*see Clause 5 supra*, and Annex 2¹). But even if this had not been the case, and—still on the assumption that the Rutenberg Concession was in force—the Company had made the request referred to, it does not follow that the High Commissioner would have complied therewith. His Majesty's Government since the making of the Agreement of September 21st, 1921, with Mr. Rutenberg had entered into an international agreement, namely, the Lausanne Protocol, placing them under an international obligation to maintain pre-war concessions. This obligation was such, by reason of its nature, as to have overridden an obligation derived from a contract with a private individual. If a conflict had arisen between the two so that His Majesty's Government had been faced with the necessity of choosing which should be fulfilled they would undoubtedly have carried out the former and taken steps to indemnify the Palestine Electric Corporation for any damage resulting from the breach of the High Commissioner's obligation under the concessionary contract set out in the Schedule to the Agreement of September 21st, 1921. Finally it must be remembered that, in any event, any agreement between the High Commissioner and Mr. Rutenberg or the Palestine Electric Corporation is *res inter alios acta* as regards M. Mavrommatis and the Greek Government. The latter cannot rely upon such an agreement for the purpose of showing an intention on the part of His Majesty's Government to annul M. Mavrommatis' concessions. Partial recognition appears to be given to this consideration in the Greek Case (*see p. 20, 3rd paragraph²*), but the Hellenic Government refrain from carrying their argument to its logical conclusion.

¹ Page 237.

² See Publications of Court, Series C, No. 5—I, p. 113.

17. — In Clause 21 (p. 20¹) of the Greek Case a second reason is put forward in support of the proposition that His Majesty's Government have already in effect "expropriated" the concessions of M. Mavrommatis. But the argument on the one hand begs the question in dispute—namely, which provision of Protocol XII applies to the concessions, Articles 4 and 5 or Article 6?—by assuming that the concessions come under Articles 4 and 5. On the other hand it suggests that even on the footing of the concessions being operated without readaptation, the British Government deny to M. Mavrommatis the rights accorded to him by the concessionary contracts, and have thereby again shown their resolve to make it impossible for him to execute the works. This point is based upon Articles 38, 62, 64 and 70 of the *Cahier des charges* of the Electricity Concession (Annex to Greek Case, Acte No. 1, pp. 34-35, 44, 45, 47²) and Articles 12 and 23 of the *Cahier des charges* of the Water Concession (Annex to Greek Case, Acte No. 2, pp. 20, 24³). The former document contains no reference to metallic currency, and it would seem quite clear that when sums in Turkish currency are specified these sums must, in the absence of any readadaptation of the concession, be converted into the equivalent in the local currency at the current rate of exchange. In the case of the Water Concession it appears that Article 12 of the *Cahier des charges* fixes the maximum price of water at 4 piastres gold per cubic meter. The fact that gold piastres were mentioned escaped the notice of His Majesty's Government at the time of the negotiations with M. Mavrommatis, the difference in this respect between the two concessions never having been pointed out by his advisers (*see* Annex to Greek Case, Acte No. 42, pp. 87 [last paragraph]⁴, 88 [first paragraph]⁵). Had this been done His Majesty's Government would certainly have been willing to permit the Water Concession, if valid, to have been carried out on the basis of prices fixed in accordance with Article 12 of the *Cahier des charges*, and if the Court decides that the concession falls under Article 6 of the Protocol, he will, in the absence of a request for the dissolution of the concession, be enabled by His Majesty's Government to carry it into operation on this basis.

18. — Clause 22 (pp. 21-24⁶) of the Greek Case deals with the question of the *quantum* of the compensation claimed on behalf of M. Mavrommatis in respect of the supposed cancellation or buying out of his Jerusalem Concessions. As already pointed out, this question does not arise in the present proceedings, but His Majesty's Government think that the Court may desire to know

³ See Publications of Court, Series C, No. 5—I, pp. 113-115.

⁴ *Ibid.*, pp. 161, 171, 172 and 175.

⁵ *Ibid.*, pp. 222 and 226.

¹ *Ibid.*, p. 407.

² *Ibid.*, p. 408.

³ *Ibid.*, pp. 115-120.

their general view upon it; and, therefore, offer the following observations :—

The assumption upon which the claim is based—namely, that M. Mavrommatis finds himself confronted with a decision to buy out the Jerusalem Concessions—is, as hereinbefore explained, contrary to the fact. Again, the hypothesis adopted in the second paragraph of Clause 22¹—namely, that the concessions are entitled to readaptation—assumes that one of the main issues in the present case is to be decided against His Majesty's Government and in the Claimant's favour. Finally, it has been explained that the Lausanne Protocol neither provides for nor contemplates repurchase of concessions entitled to readaptation. The claim for compensation, however, depends upon the proposition that the silence of the Protocol can be supplemented by the application of "general legal principles", a proposition from which His Majesty's Government dissent for the reasons already given. The claim put forward in Clause 22² of the Greek Case rests upon, and assumes the validity of, this three-fold foundation, made up of elements of fact and law none of which can, in the submission of His Majesty's Government, be accepted.

Turning to the figures of the claim, the first item (under A, Greek Case, p. 22²) is a sum of £53,256 purporting to represent the expenses incurred by M. Mavrommatis from 1914 until July 20th, 1923, for the purposes of the Jerusalem Concessions. This sum comprises four components : (a) The first relates to the cost of survey and investigation work, the sum claimed being £26,835. This is made up of £6,000 fees of M. Franghia, engineer-in-chief, and £2,500, expenses of the engineers under his orders, in relation to the Electricity Concession ; and £8,000 fees of M. Franghia and £3,000 expenses of the engineers under his orders, in relation to the Water Concession. To the total of £19,500, so calculated, is, added £7,335, being interest at 5 per cent. per annum from July, 1914, to July, 1923, on £16,300 said to have been actually paid (*see* Annexe to Greek Case, Acte No. 48, p. 94³).

The following comments may be made upon these figures : (1) All the sums in question were paid in francs or other non-British currencies and M. Mavrommatis, therefore, even if entitled to a refund, is not entitled to claim that the refund should be made otherwise than in the currency in which the payments were made. (2) The fees and expenses referred to appear to be excessive, and details are absent, particularly in regard to the latter. (3) The claim for interest is inadmissible.

(b) The second item is a sum of £5,568 which includes travelling expenses of M. Mavrommatis and M. Franghia, various stamp and other duties, printing, and a sum of £3,636 for commission to

¹ See Publications of Court, Series C, No. 5—I, p. 115.

² *Ibid.*, pp. 116-118.

³ *Ibid.*, p. 413.

M. Selim Ayoub, together with interest (*see* Annexe to Greek Case, Acte No. 48, p. 95¹).

It is submitted: (1) That the point mentioned above as to the payments claimed having been made in non-British currencies applies equally here. (2) That the claim relating to travelling expenses is excessive and in any event too indirect in its relation to the subject matter of claim. There is no proof that the various journeys referred to were necessary for the purpose of obtaining the concessions. (3) That the item for printing the pamphlet *Notes sur la Palestine* is excessive and too remote. (4) That the commission to M. Selim Ayoub is inadmissible as being an improper, or, at any rate, an unreasonable payment. (5) That the claim for interest is inadmissible.

(c) This head—viz. : Loss on deposits—has been dealt with on p. 9 supra, where the claim was shown to be entirely without foundation.

(d) The last division of the claim for expenses relates to amounts totalling £5,649 alleged to have been spent by M. Mavrommatis between 1921 and 1923 (*see* Annexe to Greek Case, No. 48, p. 97²).

The comments made are: (1) That in so far as the sums claimed were paid in currencies other than sterling the objection already raised in this connection is applicable. (2) That most of the items set out are excessive. (3) That the whole of the claim is too indirect and remote to be included in any compensation for a cancellation of the concessions. In particular there is no sufficient connection between the residence of M. Mavrommatis in London and the matter for which compensation is sought. (4) No deduction is made for the living expenses of M. Mavrommatis at his usual place of residence, assuming such place to be other than London. (5) Finally this claim is, in any event, quite inadmissible in view of the claim for loss of profit. Whereas the other heads of alleged expenditure are deducted in arriving at that claim the present head is included and therefore in effect demanded twice over, inasmuch as any compensation awarded for loss of profit would be inclusive of compensation for expenses incurred for the purpose of the concessions. If the expenses now in question can be regarded as having been incurred for that purpose (which it is submitted is not the case) any claim in respect of them is covered by the claim for loss of profit ; if such expenses cannot be so regarded there can be no justification for any claim in respect of them.

Passing to the claim for loss of profits (under B, Greek Case, p. 23³), before dealing with the figures relied upon, it is necessary to make one or two general observations. It must be remembered, as already pointed out, that compensation for loss of profits cannot

¹ See Publications of Court, Series C, No. 5—I, p. 414.

² *Ibid.*, p. 416.

³ *Ibid.*, pp. 118-120.

be claimed under the Lausanne Protocol. But His Majesty's Government submit, and are prepared, if necessary, to prove that neither the Electricity Concession nor the Water Concession, would, in fact, if put into operation, yield any profit to the concessionnaire. This would have been so in the conditions prevailing in 1914 before the war, and would be so at the present time even if readaptation of the original terms took place. In the *Mémoire descriptif et estimatif* relating to the Electricity Concession, prepared by M. Franghia in June, 1921, estimates are given of capital and revenue. The total capital required is estimated at £E.399,000. From the tramways M. Franghia estimates a gross revenue of £E.148,500 per annum or nearly £E.400 per day, whereas a comparison with tramways actually in existence in places where conditions are comparable to those at Jerusalem, shows that not more than £E.25,000 to £E.30,000 per annum at the outside could, in fact, be expected. From the electricity supply M. Franghia estimates a gross revenue of £E.45,950 per annum, which is also excessive, though to a lesser extent. But even if that figure be accepted and £E.30,000 be taken for the tramways, making a gross revenue of £E.75,950 in all, the balance available after paying working expenses (which would amount to at least 60 per cent. of the receipts) would hardly be sufficient to meet the interest charges on the estimated capital. As to the Water Concession, M. Franghia in his *Mémoire* of June, 1921, estimates the capital at £E.320,000, the receipts at £E.58,000 and the net profits at £E.29,160, but the rate proposed to be charged to consumers, viz., piastres 5 per cubic metre, is not only excessive but higher than the maximum laid down in the concession (*see Annexe to Greek Case, Acte No. 2, p. 20, Article 12¹*). Moreover, no attention is paid to the necessity for providing storage for years when the rainfall is below the average. The calculations of the quantity of water available are based upon a year of abnormally high rainfall, with the result that in normal years and in dry years the scheme would break down. The above comments must not, of course, be taken as in any sense exhaustive, but are intended merely to draw attention to a few general criticisms, which arise upon the estimates of M. Mavrommatis' own expert.

Turning now to the figures in the Greek Case under B, p. 23², M. Mavrommatis calculates his claim for loss of profits entirely upon the basis of offers alleged to have been made to him for the concessions. The offer of the Banque Pétier was Fr. 5,000,000 for four concessions, viz.: the two Jerusalem Concessions and the two Jaffa Concessions. The Greek Case assumes (without giving any evidence) that the Jerusalem Concessions represent one half of this sum. But it is more important to observe that the further assumption is made that Fr.5,000,000 can be treated as the equivalent

¹ See Publications of Court, Series C, No. 5 — I, pp. 213-214.

² *Ibid.*, pp. 118-120.

of £200,000, whereas in their letter of February 14th, 1921 (Annexe to Greek Case, Acte No. 54¹) the French Company make no reference whatever to sterling.

With regard to the alleged offer by Messrs. Crisp of £50,000 for each of the Jerusalem Concessions (*see* Greek Case, p. 23, last paragraph²) no evidence is given of such an offer, nor are the conditions thereof stated. His Majesty's Government accordingly make all reservations in regard to it. They likewise consider that no useful purpose would be served by commenting upon the vague statement contained in the Greek Case (p. 24, first paragraph³) as to the financing of other concessions except to observe that here again francs are converted into sterling at par.

The point made in the Greek Case at p. 24³, second paragraph, appears to be that the fact that the Jerusalem concessions contemplate an addition of 15 per cent. to the cost of construction for the purpose of arriving at the capital of the companies which were to be formed to carry out the concessions indicates that M. Mavrommatis looked forward to receiving the whole of this addition for his personal benefit. Even assuming that persons could have been found to subscribe capital on these conditions, His Majesty's Government submit that the provision referred to is entirely irrelevant to the question under discussion.

As to the other matter, mentioned in the second paragraph on page 24³, it is necessary to point out that the indemnity referred to would be payable not to M. Mavrommatis himself, but to the company for furnishing the services for which the payment was to be made. Further, in any event, the misconception which has been pointed out before again occurs in that an alleged promise to pay Fr.60,000 per annum is taken to be a promise to pay £2,400.

In the third paragraph on page 24³ it is stated that the Zionist Organization had, in September, 1922, accepted in principle to pay M. Mavrommatis £200,000 for the cession of all his rights under the Jerusalem and Jaffa Concessions. His Majesty's Government deny the accuracy of this allegation and are prepared if necessary to prove that no offer of any such sum was ever made. They desire, further, to point out that the letter adduced in support of the statement in question affords no evidence of its truth. Moreover, it is necessary to remark that the statement as to the Colonial Office having suggested an arrangement with the Zionist Organization is incorrect.

With respect to the table of figures at the end of Clause 22 (page 24⁴) of the Greek Case His Majesty's Government submit that the sum of £11,045 cannot, in any circumstances, be included in the claim. This sum is made up of £5,649 (expenses since March, 1921),

¹ See *Publications of Court, Series C, No. 5—I*, p. 431.

² *Ibid.*, p. 118.

³ *Ibid.*, p. 119.

⁴ *Ibid.*, p. 120.

plus interest on the other three heads dealt with under A since 1921 (*see Annexe to Greek Case, Acte No. 48, pp. 94-99¹*). It has been indicated above that the inclusion of the £5,649 is inadmissible, and the same reasoning applies to the balance representing interest.

In conclusion, His Majesty's Government desire to make it clear that in laying the foregoing observations before the Court they have not attempted to do more than indicate in a general manner some of the objections they would raise in answer to the claim for compensation if it arose for adjudication which, in their submission, it does not. His Majesty's Government reserve the right to present further arguments on this question and also to produce evidence, should that become necessary or material. Moreover, it must not be taken that any admission is made as to any of the facts alleged, or as to payment by M. Mavrommatis of any of the sums referred to, in Clause 22 of the Greek Case.²

19. — As to Clause 23 (p. 25³) of the Greek Case, besides disputing the claim for £121,045, His Majesty's Government submit that the claim for interest is inadmissible both in itself, and in regard to the rate named.

20. — Clause 24 (p. 25⁴) of the Greek Case relates to the claim in respect of the alleged utilization by the British Military Authorities of M. Mavrommatis' designs and plans for the supply of water to Jerusalem. Such utilization is denied and no admission is made as to any of the matters referred to, but as the claim is abandoned it is unnecessary to consider this clause further.

CONCLUSION.

21. — For the foregoing (amongst other) reasons His Majesty's Government submit and ask the Court to decide :—

(1) That M. Mavrommatis' Electricity Concession and Water Concession are respectively invalid and not entitled to recognition under Protocol XII annexed to the Treaty of Lausanne.

In the event of the decision on this point being against His Majesty's Government, they submit and ask the Court to decide :

(2) That the British Government have not in regard either to M. Mavrommatis Electricity Concession or his Water Concession committed any breach of the international obligations referred to in Article 11 of the Mandate for Palestine.

¹ See Publications of Court. Series C, No. 5 — I, pp. 413-418.

² *Ibid.*, pp. 115-120.

³ *Ibid.*, p. 120.

⁴ *Ibid.*, p. 121.

(3) That neither of the concessionary contracts in question has begun to be put into operation within the meaning of Article 6 of Protocol XII annexed to the Treaty of Lausanne.

(4) That, therefore, the provisions of Articles 4 and 5 of the Protocol relating to readaptation are inapplicable to either of M. Mavrommatis' concessions.

(5) That both the concessions must be maintained without readaptation unless, within six months from the date of the Court's decision, M. Mavrommatis requests that the concessionary contracts should be dissolved, in which case he will be entitled if there is ground for it, to such indemnity in respect of survey and investigation work as in default of agreement between him and His Majesty's Government shall be considered equitable by the experts provided for in the Protocol.

(6) That in any event the compensation claimed is unreasonable and excessive.

(Signed) R. V. VERNON,
British Agent.

Annex I to No. I.

PROTOCOLE XII RELATIF A CERTAINES CONCESSIONS ACCORDÉES DANS L'EMPIRE OTTOMAN.

L'EMPIRE BRITANNIQUE, LA FRANCE, L'ITALIE, LA GRÈCE, LA ROUMANIE, L'ÉTAT SERBE-CROATE-SLOVÈNE ET LA TURQUIE, étant désireux de régler, d'un commun accord, les questions relatives à certaines concessions accordées dans l'Empire ottoman,

Les soussignés, dûment autorisés, conviennent des dispositions suivantes :

SECTION I.

Article premier.

Sont maintenus les contrats de concession, ainsi que les accords subséquents y relatifs, dûment intervenus avant le 29 octobre 1914 entre le Gouvernement ottoman ou toute

PROTOCOL XII RELATING TO CERTAIN CONCESSIONS GRANTED IN THE OTTOMAN EMPIRE.

THE BRITISH EMPIRE, FRANCE, ITALY, GREECE, ROUMANIA, THE SERB-CROAT-SLOVENE STATE AND TURKEY, being desirous of settling by agreement questions relating to certain concessions granted in the Ottoman Empire,

The Undersigned, duly authorized, agree as follows :—

SECTION I.

Article I.

Concessionary contracts and subsequent agreements relating thereto, duly entered into before October 29th, 1914, between the Ottoman Government or any local authority,

autorité locale d'une part, et, d'autre part, les ressortissants (y compris les sociétés) des Puissances contractantes autres que la Turquie.

Article 2.

i) Sur la demande du Gouvernement turc, seront suspendues les opérations visées aux conventions passées entre le Gouvernement ottoman et sir W. G. Armstrong, Whitworth and Co. Limited et Vickers Limited pendant les années 1913 et 1914, en ce qui concerne la constitution et la concession de la Société impériale ottomane cointéressée des Docks, Arsenaux et Constructions navales.

Des négociations seront ouvertes entre les deux Parties, ayant pour but la modification des conditions de ces conventions, ou l'octroi d'une nouvelle concession pour une entreprise d'une importance jugée égale.

Au cas où, dans un délai de six mois à dater de la mise en vigueur du Traité de paix en date de ce jour, un accord n'interviendrait pas entre le Gouvernement turc et lesdites sociétés, soit pour la modification des conditions desdites conventions, soit pour l'octroi d'une nouvelle concession, les sociétés susindiquées auront le droit de soumettre aux experts désignés conformément à l'article 5, la fixation des conditions de la nouvelle concession qui sera la compensa-

on the one hand, and nationals (including Companies) of the Contracting Powers, other than Turkey, on the other hand, are maintained.

Article 2.

(i) On the request of the Turkish Government, the operations contemplated in the agreements entered into between the Ottoman Government and Sir W. G. Armstrong, Whitworth and Company, Limited, and Vickers, Limited, during the years 1913 and 1914, relating to the constitution and the concession of the *Société impériale ottomane cointéressée des Docks, Arsenaux et Constructions navales* will be suspended.

Negotiations shall be entered into between the two Parties with a view to the modification of the provisions of these agreements or the grant of a new concession for an undertaking of equal importance.

If, within six months from the coming into force of the Treaty of Peace signed this day, an agreement shall not have been come to between the Turkish Government and the said companies, either for the modification of the provisions of the said agreements or for the grant of a new concession, the companies mentioned above shall have the right to submit to experts, appointed in accordance with the provisions of Article 5, the settlement of the conditions

tion de la résiliation des anciennes conventions.

Il est entendu, toutefois, qu'au cas où les conditions fixées par les experts pour la nouvelle concession ne seraient pas de la convenance de l'une ou de l'autre des Parties, le Gouvernement turc s'engage à verser auxdites sociétés telle indemnité que les experts jugeront équitable pour le dommage effectivement subi du fait de la résiliation de leur ancienne concession.

ii) Au cas où, dans un délai de six mois à dater de la mise en vigueur du Traité de paix en date de ce jour, la Régie générale des Chemins de fer n'aurait pas été, pour une raison quelconque, remise en possession de la concession qui lui a été donnée en 1914 pour la construction et l'exploitation du chemin de fer Samsoun-Sivas, le Gouvernement turc s'engage à accorder à cette société, sur sa demande, une nouvelle concession à titre de compensation. A défaut d'accord sur l'équivalence de cette compensation, il appartiendra aux experts, désignés conformément à l'article 5, de déterminer, en vue de cette équivalence, l'étendue et les conditions d'exploitation de cette nouvelle concession.

Il est entendu que, si la Régie générale est remise en possession de la concession Samsoun-Sivas, cette concession sera réadaptée, conformément à la procédure d'expertise prévue par l'article 5.

of the new concession to be granted as compensation for the cancellation of the old agreements.

It is nevertheless understood that, if the conditions settled by the experts for the new concession are not acceptable to one or other of the Parties, the Turkish Government undertakes to pay to the said companies such indemnity for the loss actually suffered for the cancellation of their old concession as the experts determine to be equitable.

(ii) If, within six months from the coming into force of the Treaty of Peace signed this day, the *Régie générale des Chemins de fer* shall not, for any reason, have been restored to the possession of the concession which was given to it in 1914 for the construction and exploitation of the Samsun-Sivas Railway, the Turkish Government undertakes to grant to this company, at its request, a new concession by way of compensation. In default of agreement as to the equivalence of this compensation, the extent and conditions of exploitation of this new concession necessary to give compensation will be determined by experts appointed in accordance with Article 5.

It is understood that, if the *Régie générale* is restored to the possession of the Samsun-Sivas Concession, it will be readapted in accordance with the procedure for settlement by experts provided for by

Au cas de compensation par une nouvelle concession, il sera également tenu compte de la faculté de réadaptation.

Au cas où les conditions de la nouvelle concession, déterminées par les experts, ne seraient pas de la convenance de l'une ou l'autre des Parties, le Gouvernement turc s'engage à verser à la Société telle indemnité que les experts jugeront équitable pour les dommages effectivement subis du fait de la résiliation de la concession du chemin de fer Samsoun-Sivas et pour les dépenses effectuées par la Société pour les travaux d'étude sur place des autres sections du réseau de la mer Noire.

La Turquie sera entièrement libérée de tout engagement envers la Société, soit par la remise de la Société en possession de la concession Samsoun-Sivas, soit par l'octroi de la nouvelle concession, soit, enfin, par le versement de l'indemnité, dans les conditions prévues ci-dessus.

Article 3.

Les sommes revenant, après règlement des comptes, à l'Etat ou aux bénéficiaires des contrats et accords visés aux articles premier et 2, à raison d'une utilisation par l'Etat, sur son territoire actuel, de la propriété ou des services desdits bénéficiaires, seront payées conformément aux contrats ou accords existants ou, à défaut de contrats ou accords, conformément à la procédure

Article 5. In case of compensation by a new concession due regard will also be had to the power of readaptation.

If the conditions of the new concession, as determined by the experts, are not acceptable to one or other of the Parties, the Turkish Government undertakes to pay to the company such indemnity as the experts determine to be equitable for the loss actually suffered from the cancellation of the concession for the Samsun-Sivas Railway and for the expenses to which the company has been put for the survey and investigation work on the spot in respect of the other sections of the Black Sea Railway system.

Turkey will be entirely freed from all liability to the company, either by the restoration of the company to possession of the Samsun-Sivas Concession, or by the grant of the new concession, or, lastly, by the payment of an indemnity in accordance with the provisions set out above.

Article 3.

The amount due, after settlement of accounts, to the State or to beneficiaries under contracts and agreements referred to in Articles 1 and 2, in respect of the use by the State, on the territory which it now possesses, of the property or the services of the said beneficiaries shall be paid in accordance with existing contracts or agreements or, in default of contracts or agreements, in ac-

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d'expertise prévue par le présent Protocole.

Article 4.

Sous réserve des dispositions de l'article 6, les clauses des contrats et accords subséquents visés à l'article premier seront, d'un commun accord et en ce qui concerne les deux Parties, mises en conformité des conditions économiques nouvelles.

Article 5.

Faute d'entente dans le délai d'un an à compter de la mise en vigueur du Traité de paix en date de ce jour, les Parties adopteront les dispositions qui seront considérées, tant en ce qui concerne le règlement des comptes que la réadaptation des concessions, comme convenables et équitables par deux experts qu'il appartiendra aux Parties de désigner dans un délai de deux mois à compter de l'expiration du délai d'un an prévu ci-dessus. En cas de désaccord, ces experts s'en référeront à un tiers expert désigné, dans un délai de deux mois, par le Gouvernement turc sur une liste de trois personnes ressortissantes de pays n'ayant pas participé à la guerre de 1914-1918, liste dressée par le chef du Département fédéral des Travaux publics suisse.

Article 6.

Les bénéficiaires de contrats de concession visés à l'article

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cordance with the procedure of settlement by experts provided for by the present Protocol.

Article 4.

Subject to the provisions of Article 6, the provisions of the contracts and subsequent agreements referred to in Article 1, shall by agreement, and as regards both Parties, be put into conformity with the new economic conditions.

Article 5.

In the absence of agreement within one year from the coming into force of the Treaty of Peace signed this day, the Parties will adopt the provisions regarding both the settlement of accounts and the readaptation of concessions, which are considered suitable and equitable by two experts, to be nominated by the Parties within two months from the expiration of the period of one year mentioned above. In case of disagreement, these experts will refer the question to a third expert selected within two months by the Turkish Government from a list of three persons, nationals of countries not having participated in the war of 1914-1918, prepared by the head of the Swiss Federal Department of Public Works.

Article 6.

Beneficiaries under concessionary contracts referred to

premier qui n'auraient pas reçu, à la date de ce jour, un commencement d'application, ne pourront pas se prévaloir des dispositions du présent Protocole relatives à la réadaptation. Ces contrats pourront être résiliés sur la demande du concessionnaire présentée dans un délai de six mois à compter de la mise en vigueur du Traité de paix en date de ce jour. En ce cas, le concessionnaire aura droit, s'il y a lieu, pour les travaux d'étude, à telle indemnité qui, à défaut d'accord entre les Parties, sera considérée comme équitable par les experts prévus au présent Protocole.

Article 7.

Les accords intervenus entre le 30 octobre 1918 et le 1^{er} novembre 1922 entre le Gouvernement ottoman et les bénéficiaires des contrats et concessions visés à l'article premier, ainsi que les contrats entre particuliers, comportant transfert de concession, conclus pendant cette période, demeureront en vigueur jusqu'à ce qu'ils aient reçu l'approbation du Gouvernement turc. Au cas où cette approbation ne serait pas accordée, il sera alloué, s'il y a lieu, aux concessionnaires, pour le préjudice effectivement subi, une indemnité à fixer par les experts désignés dans les conditions indiquées à l'article 5. Cette disposition ne porte pas atteinte, en ce qui concerne les contrats antérieurs au 29 octobre 1914,

in Article 1, which have not, on the date of this Protocol, begun to be put into operation, cannot avail themselves of the provisions of this Protocol relating to readaptation. These contracts may be dissolved on the request of the concessionnaire made within six months from the coming into force of the Treaty of Peace signed this day. In such case the concessionnaire will be entitled, if there is ground for it, to such indemnity in respect of the survey and investigation work as, in default of agreement between the Parties, shall be considered equitable by the experts provided for in this Protocol.

Article 7.

Agreements entered into between the 30th October 1918, and the 1st November 1922, between the Ottoman Government and beneficiaries under contracts and concessions referred to in Article 1, as well as contracts between individuals involving the transfer of a concession entered into during this period, shall remain in force until they have received the approval of the Turkish Government. If this approval should not be granted, compensation shall, if there is ground for it, be paid to the concessionnaires in respect of the loss actually suffered, the amount being fixed by experts appointed as provided in Article 5. This provision shall not prejudice, as regards contracts previous to the 24th October, 1914, the

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au droit à réadaptation prévu
par le présent Protocole.

Article 8.

Les dispositions du présent Protocole ne s'appliquent pas aux accords intervenus, depuis le 25 avril 1920, entre le Gouvernement de la Grande Assemblée Nationale de Turquie et des concessionnaires.

SECTION II.

Article 9.

Dans les territoires détachés de la Turquie en vertu du Traité de paix en date de ce jour, l'État successeur est pleinement subrogé dans les droits et charges de la Turquie vis-à-vis des ressortissants des autres Puissances contractantes et des sociétés dans lesquelles les capitaux des ressortissants desdites Puissances sont prépondérants, bénéficiaires de contrats de concession passés avant le 29 octobre 1914 avec le Gouvernement ottoman ou toute autorité locale ottomane. Il en sera de même, dans les territoires détachés de la Turquie à la suite des guerres balkaniques, en ce qui concerne les contrats de concession passés, avant la mise en vigueur du traité par lequel le transfert du territoire a été stipulé, avec le Gouvernement ottoman ou toute autorité locale ottomane. Cette subrogation aura effet à dater de la mise en vigueur du traité par lequel le transfert du territoire a été

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right of readaptation provided
for by this Protocol.

Article 8.

The provisions of this Protocol do not apply to agreements entered into since the 25th April, 1920, between the Government of the Grand National Assembly of Turkey and concessionnaires.

SECTION II.

Article 9.

In territories detached from Turkey under the Treaty of Peace signed this day, the State which acquires the territory is fully subrogated as regards the rights and obligations of Turkey towards the nationals of the other Contracting Powers, and companies in which the capital of the nationals of the said Powers is preponderant, who are beneficiaries under concessionary contracts entered into before the 29th October, 1914, with the Ottoman Government or any local Ottoman authority. The same provision will apply in territories detached from Turkey after the Balkan Wars so far as regards concessionary contracts entered into with the Ottoman Government or any Ottoman local authority before the coming into force of the Treaty providing for the transfer of the territory. This subrogation will have effect as from the coming into force of the Treaty by which

stipulé, sauf en ce qui concerne les territoires détachés par le Traité de paix en date de ce jour, pour lesquels la subrogation aura effet à dater du 30 octobre 1918.

the transfer of territory was effected except as regards territories detached by the Treaty of Peace signed this day, in respect of which the subrogation will have effect as from the 30th October, 1918.

Article 10.

Les stipulations de la Section I du présent Protocole, à l'exception des articles 7 et 8, seront appliquées aux contrats visés à l'article 9. L'article 3 ne s'appliquera dans les territoires détachés qu'au cas où la propriété ou les services des concessionnaires auraient été utilisés par l'État exerçant l'autorité sur ce territoire.

Article 10.

The provisions of Section I of this Protocol, except Articles 7 and 8, will be applied to the contracts referred to in Article 9. Article 3 will only have effect in detached territories where the property or the services of the concessionnaires were utilized by the State exercising authority in such territory.

Article 11.

Toute société constituée conformément à la loi ottomane et fonctionnant dans des territoires détachés de la Turquie, soit à la suite des guerres balkaniques, soit en vertu du Traité de paix en date de ce jour, et où les intérêts des ressortissants des Puissances contractantes autres que la Turquie sont prépondérants, aura, pendant cinq ans à dater de la mise en vigueur dudit Traité, la faculté de transférer ses biens, droits et intérêts à toute autre société constituée en conformité de la loi, soit de l'État exerçant l'autorité sur le territoire en question, soit de l'une des Puissances contractantes autres que la Turquie dont les res-

Article 11.

Any company formed in accordance with Ottoman law and carrying on its business in territory detached from Turkey, either after the Balkan Wars or under the Treaty of Peace signed this day, in which the interests of nationals of the Contracting Powers other than Turkey are preponderant, will have, within five years from the coming into force of the said Treaty, the right to transfer its property, rights and interests to any other company formed in accordance with the law, either of the State exercising authority on the territory in question, or of one of the Contracting Powers other than Turkey whose nationals control the first-named

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sortissants contrôlent la société précédente. La société à qui les biens, droits et intérêts auront été transférés jouira des mêmes droits et priviléges dont jouissait la société précédente, y compris ceux que lui confèrent les dispositions du présent Protocole.

Article 12.

Les dispositions de l'article 11 ne s'appliquent pas aux sociétés concessionnaires de services publics dont une partie de l'exploitation demeurerait en territoire turc.

Toutefois, lesdites sociétés pourront bénéficier des dispositions des articles 11 et 13, pour les parties de leur exploitation situées en dehors de la Turquie, en transférant lesdites parties à une nouvelle société.

Article 13.

Les sociétés auxquelles seront transférés, en vertu de l'article 11, des biens, droits et intérêts de sociétés ottomanes, ne seront soumises, sur les territoires détachés de la Turquie, à aucune taxe spéciale du fait de ce transfert ou de leur constitution en vue de ce transfert, s'il n'y est fait obstacle par des conventions internationales en vigueur. Il en sera de même sur le territoire de celle des Puissances contractantes dont ces sociétés prendraient la nationalité, à moins que cette Puissance n'y

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company. The company to which the property, rights and interests shall have been transferred will be entitled to the same rights and privileges as those to which the first-named company was entitled, including those conferred upon it by the provisions of this Protocol.

Article 12.

The provisions of Article 11 do not apply to companies holding concessions for public utility services, part of the exploitation of which remains in Turkish territory.

Nevertheless such companies will be entitled to the benefit of the provisions of Articles 11 and 13 as regards those parts of their undertaking which are exploited outside Turkey, and to transfer such parts to a new company.

Article 13.

Companies to which, in accordance with Article 11, property, rights and interests of Ottoman companies shall have been transferred will not be subjected in territories detached from Turkey to any special tax on account of such transfer or on account of their formation with a view to this transfer, except in so far as this provision may be inconsistent with international conventions in force. The same provision shall apply in the territory of the contracting Power, the nationality of which

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fasse opposition en vertu de
sa législation propre.

Fait à Lausanne, le 24 juillet
1923.

(Signed) HORACE RUMBOLD.
(") PELLÉ.
(") GARRONI.
(") G. C. MONTAGNA.
(") E. K. VENISELOS.
(") D. CACLAMANOS.
(") CONST. DIAMANDY.
(") CONST. CONTZESCO.
(") M. ISMET.
(") Dr RIZA NOUR.
(") HASSAN.

PROTOCOL XII OF LAUSANNE
is taken by such companies,
unless this Power raises objec-
tion to such exemption on
account of its own legislation.

Done at Lausanne, the
24th July, 1923.

(Signed) HORACE RUMBOLD.
(") PELLÉ.
(") GARRONI.
(") G. C. MONTAGNA.
(") E. K. VENISELOS.
(") D. CACLAMANOS.
(") CONST. DIAMANDY.
(") CONST. CONTZESCO.
(") M. ISMET.
(") Dr. RIZA NOUR.
(") HASSAN.

[Translation.]

DÉCLARATION.

Les soussignés, dûment auto-
risés, déclarent que le Gou-
vernement turc s'engage à
appliquer les stipulations de
la Section I du Protocole en
date de ce jour concernant
certaines concessions accordées
dans l'Empire ottoman, aux
sociétés ottomanes dans les-
quelles, au 1^{er} août 1914, les
capitaux des ressortissants des
autres Puissances contractantes
dudit Protocole étaient pré-
pondérants.

Fait à Lausanne, le 24 juillet
1923.

(Signed) M. ISMET.
(") Dr RIZA NOUR.
(") HASSAN.

The Undersigned, duly au-
thorized, declare that the Turk-
ish Government undertakes to
apply the provisions of Sec-
tion I of the Protocol of to-
day's date with respect to cer-
tain concessions granted in the
Ottoman Empire, to Ottoman
companies in which on the
1st August, 1914, the capital of
nationals of the other Powers
party to that Protocol was pre-
ponderant.

Done at Lausanne, the
24th July, 1923.

(Signed) M. ISMET.
(") DR. RIZA NOUR.
(") HASSAN.

Annex 2 to No. 5.

THE PALESTINE ELECTRIC CORPORATION, LIMITED, TO THE UNDER-
SECRETARY OF STATE FOR THE COLONIES.

Our Ref. 3977.

London, May 1st, 1924.

Sir,

Re Jerusalem Installation. Mavrommatis Concession.

The Board of Directors of our Company have carefully considered the position with regard to the supply of electricity to Jerusalem in connection with the alleged rights of M. Mavrommatis under his pre-war Turkish Concession for Jerusalem and compensation of £125,000 demanded by him for such rights.

Whilst not admitting the validity of the above-mentioned Concession previously annulled by H.M. Government, our Board were prepared, in order to satisfy the urgent requirements for electric energy of the Jerusalem population, to pay reasonable compensation to M. Mavrommatis.

In view, however, of the fact that the compensation of £125,000 demanded by M. Mavrommatis is unreasonable and would prove an extremely heavy and unproductive burden on the comparatively poor Jerusalem population in the form of excessively high rates for electrical energy, our Company will not expropriate M. Mavrommatis' Concession and will raise no objection to M. Mavrommatis being permitted to carry out the Jerusalem installation in accordance with the terms of his Concession.

Provided, however, that should M. Mavrommatis fail to commence and carry out the installation in the respective terms specified in his Concession, no obstacles will be placed in the way of the Palestine Electric Corporation, Limited, to proceed with the works in Jerusalem and district in accordance with the Jordan Concession.

We shall be glad if you will kindly let us know what steps H.M. Government is taking in this regard.

I am, etc.

For the Palestine Electric Corp., Ltd.:

(Signed) PINHAS RUTENBERG,
Director.

Annex 3 to No. 5.

NOTES EXCHANGED ON JULY 24th, 1923, BETWEEN SIR H. RUMBOLD
AND GENERAL PELLÉ.

No. I.

Sir H. Rumbold to General Pellé.

Lausanne, le 24 juillet 1923.

Monsieur l'Ambassadeur,

J'ai l'honneur de faire savoir à Votre Excellence que le Gouvernement de Sa Majesté britannique accepte de ne pas se prévaloir, à l'égard du Gouvernement français, en ce qui concerne les concessions de services publics, des dispositions de la deuxième Section du Protocole en date de ce jour relatif aux concessions accordées par le Gouvernement impérial ottoman.

En conséquence, et dans le délai d'un an à dater de la mise en vigueur du Traité de paix en date de ce jour, le Gouvernement français pourra, dans les territoires détachés de la Turquie, où il exerce l'autorité comme mandataire, procéder au rachat des concessions de services publics dont seraient bénéficiaires les ressortissants anglais ou les sociétés ottomanes où les intérêts de ces ressortissants seraient prépondérants.

En ce cas, le concessionnaire devra recevoir une équitable compensation.

A défaut d'un accord amiable entre les Parties sur le

Lausanne, July 24th, 1923.

Monsieur l'Ambassadeur,

I have the honour to inform Your Excellency that His Majesty's Government agrees not to avail itself as regards the French Government, in so far as concessions for public services are concerned, of the provisions of Section II of the Protocol of to-day's date, regarding concessions granted by the Imperial Ottoman Government.

In consequence, and within a period of one year from the coming into force of the Treaty of Peace of to-day's date, the French Government will have the power, in the territories detached from Turkey in which it exercises authority as mandatory, to proceed to the repurchase of concessions for public services of which British nationals, or Turkish companies in which the interests of such nationals are preponderant, may be the beneficiaries.

In this event, the concessionnaire shall receive equitable compensation.

Failing a friendly agreement between the Parties concerned

montant de cette compensation, ce montant sera fixé par des experts désignés conformément à l'article 5 du Protocole ci-dessus visé.

Veuillez, etc.

(Signed) HORACE RUMBOLD.

Son Excellence le Général Pellé,
Ambassadeur de France,
Délégué à la Conférence
de Lausanne.

as to the amount of such compensation, such amount will be fixed by experts appointed by the procedure prescribed in Article 5 of the above-mentioned Protocol.

I beg, etc.

(Signed) HORACE RUMBOLD.

His Excellency General Pellé,
Ambassador of France,
Delegate at the Conference
of Lausanne.

No. 2.

General Pellé to Sir H. Rumbold.

Lausanne, le 24 juillet 1923.

Monsieur l'Ambassadeur,

J'ai l'honneur de faire savoir à Votre Excellence que le Gouvernement français accepte de ne pas se prévaloir, à l'égard du Gouvernement britannique, en ce qui concerne les concessions de services publics, des dispositions de la deuxième Section du Protocole en date de ce jour relatif aux concessions accordées par le Gouvernement impérial ottoman.

En conséquence, et dans le délai d'un an à dater de la mise en vigueur du Traité de paix en date de ce jour, le Gouvernement britannique pourra, dans les territoires détachés de la Turquie, où il exerce l'autorité comme mandataire, procéder au rachat des concessions de services publics dont seraient bénéficiaires les ressortissants fran-

Lausanne, July 24th, 1923.

Monsieur l'Ambassadeur,

I have the honour to inform Your Excellency that the French Government agrees not to avail itself as regards the British Government, in so far as concessions for public services are concerned, of the provisions of Section II of the Protocol of to-day's date, regarding concessions granted by the Imperial Ottoman Government.

In consequence, and within a period of one year from the coming into force of the Treaty of Peace of to-day's date, the British Government will have the power, in the territories detached from Turkey in which it exercises authority as mandatory, to proceed to the repurchase of concessions for public services of which French nationals, or Turkish

çais ou les sociétés ottomanes où les intérêts de ces ressortissants seraient prépondérants.

En ce cas, le concessionnaire devra recevoir une équitable compensation.

A défaut d'un accord amiable entre les Parties sur le montant de cette compensation, ce montant sera fixé par des experts désignés conformément à l'article 5 du Protocole ci-dessus visé.

Veuillez, etc.

(Signed) PELLÉ.

Son Excellence
Sir Horace Rumbold,
Ambassadeur de Sa Majesté
britannique,
Délégué à la Conférence de
Lausanne.

companies in which the interests of such nationals are preponderant, may be the beneficiaries.

In this event, the concessionnaire shall receive equitable compensation.

Failing a friendly agreement between the Parties concerned as to the amount of such compensation, such amount will be fixed by experts appointed by the procedure prescribed in Article 5 of the above-mentioned Protocol.

I beg, etc.

(Signed) PELLÉ.

His Excellency
Sir Horace Rumbold,
Ambassador of His Britannic
Majesty,
Delegate at the Conference
of Lausanne.

6.

AFFAIRE DES CONCESSIONS MAVROMMATHIS EN PALESTINE.

RÉPLIQUE DU GOUVERNEMENT HELLÉNIQUE

Se référant en général au Mémoire déposé par lui le 22 mai 1924, le Gouvernement hellénique croit inutile de répondre en détail au Contre-Mémoire présenté le 27 décembre 1924 par le Gouvernement britannique.¹ Il se borne à l'examen de certains points qui lui paraissent devoir retenir plus particulièrement l'attention de la Cour et se réserve de compléter ses explications, au cours des débats oraux, quand il aura connu, par sa Duplique, la position définitivement adoptée par le Gouvernement britannique.

Observations préliminaires.

I. — Depuis l'Arrêt du 30 août 1924, l'affaire portée devant la Cour est limitée à la réclamation relative aux travaux de Jérusalem. Celle relative aux travaux de Jaffa en est exclue. Il n'en sera plus question au cours du présent procès.

Mais, de même que le Gouvernement britannique a noté que son silence à cet égard n'implique nullement de sa part l'admission de cette réclamation (*Counter-Case*, n° 1), le Gouvernement hellénique désire observer que si, dans le présent débat, il doit renoncer à discuter cette réclamation, il persiste à la considérer comme demeurant par ailleurs entière.

La Cour s'est bornée, à son égard, à se déclarer incomptente sur la base des dispositions du Mandat sur la Palestine. Elle n'a pas eu à se prononcer sur les mérites de la thèse du Gouvernement hellénique. Il lui a suffi, porte son Arrêt (p. 28), «de constater que si le Protocole XII, ne disant rien à l'égard des concessions postérieures au 29 octobre 1914, laisse subsister le principe général de la subrogation, on ne saurait affirmer que ce principe rentre dans les obligations internationales visées à l'article II du Mandat. L'Administration de la Palestine serait tenue de reconnaître les concessions de Jaffa non en vertu d'un engagement contracté par le Mandataire, mais en vertu d'un principe général du droit international auquel les engagements contractés par le Mandataire n'auraient pas dérogé. »

La question, donc, subsiste en dehors du Mandat. Elle porte sur le point de savoir si le Protocole XII n'implique pas, plus largement

¹ Voir troisième Partie, n° 5, page 205.

que ne l'indiquent ses termes, le grand principe de la subrogation et du respect des droits acquis, de manière à couvrir aussi les concessions de Jaffa.

Relatif à l'interprétation d'un traité international, le différend appartient à la catégorie de ceux qui, suivant l'article 13 du Pacte de la Société des Nations, sont généralement susceptibles de solution arbitrale.

A défaut de compétence obligatoire, la Cour pourrait donc en connaître ultérieurement en vertu d'un compromis spécial auquel le Gouvernement britannique, d'après les déclarations faites devant la Cour par son agent, sir Cecil Hurst (*Publications de la Cour*, Série C, n° 5 — I, documents relatifs à l'Arrêt n° 2, pp. 42 et 77), voudra bien sans doute se prêter.

2. — Une autre réserve générale doit être faite. Le Contre-Mémoire indique, en débutant (n° 2), le point essentiel de la thèse qu'il s'efforcera d'établir par la suite : la réclamation relative aux concessions de Jérusalem — unique objet désormais de l'examen de la Cour — doit être appréciée sur la base exclusive des dispositions du Protocole XII, car la Cour aurait reconnu que les obligations internationales visées à l'article 11 du Mandat pour la Palestine sont seulement celles qui résultent du Protocole.

Le Gouvernement hellénique tient à conserver au débat l'étendue qu'il lui a assignée par sa Requête introductory d'instance et désire faire remarquer que l'Arrêt du 30 août n'y a apporté — comme d'ailleurs il ne pouvait y apporter — aucune limitation.

Il persiste à penser qu'en s'entendant avec l'organisme juif pour effectuer ou exploiter certains travaux dont M. Mavrommatis était déjà concessionnaire et en ne l'indemnisant pas, l'Administration de la Palestine a méconnu les obligations internationales du Mandataire et, par là, fait assumer à celui-ci une responsabilité qui doit se résoudre par le paiement d'une indemnité correspondant à la totalité du dommage causé à M. Mavrommatis.

Appelée à statuer sur sa compétence, la Cour n'avait pas à examiner si vraiment les obligations du Mandataire ont été violées. Elle s'est bornée à constater (*Publications de la Cour*, Série A, n° 2, p. 23) «que les obligations internationales visées par l'article 11 concernent le fond du litige», que (p. 24) les «obligations internationales acceptées par le Mandataire» sont «des engagements contractés ayant un certain rapport avec les pouvoirs attribués par le même article à l'Administration de la Palestine» et que, dès lors (pp. 24-25), ils «visent, en tout cas, *et quelle que soit par ailleurs leur portée*, les stipulations qui, dans le futur Traité de paix avec la Turquie, prendraient la place des dispositions de l'article 311 du Traité de Sèvres.»

Si la Cour a admis (p. 26) que les obligations du Mandataire «comprennent certainement celles qui résultent du Protocole», elle n'a rien pu dire sur la portée des stipulations de cet acte. Le

passage de l'Arrêt ci-dessus rapporté montre qu'elle a expressément réservé la question.

C'est maintenant — en statuant sur le fond — qu'elle aura à s'en occuper. Il lui faudra examiner, sur la demande du Gouvernement hellénique, si, dans l'application du Protocole, on doit s'en tenir à sa lettre ou si, au contraire, on peut s'inspirer de son esprit pour combler, par un rappel des principes généraux du droit international, les lacunes apparentes des textes.

FAITS.

3. — Le Gouvernement hellénique prend acte de la double déclaration du Gouvernement britannique qu'il admet que les concessions de Jérusalem sont antérieures au 29 octobre 1914 et qu'il reconnaît la nationalité hellénique de M. Mavrommatis. Le Gouvernement britannique réserve, il est vrai, la reconnaissance de la régularité des concessions à la production des originaux de leurs actes. Mais ces originaux, possédés par M. Mavrommatis, sont à la disposition de la Cour, qui pourra ainsi, si elle l'estime nécessaire, vérifier l'absolute conformité des copies annexées au Mémoire.

Quant aux objections tirées par le Contre-Mémoire, contre la validité de ces concessions, du fait que M. Mavrommatis y est indiqué comme sujet ottoman et qu'il devait former une société ottomane et employer un personnel ottoman, il sera montré plus loin (n° 8) qu'elles sont absolument dénuées de valeur.

Le Gouvernement britannique annonce son intention de demander la preuve de la réalité du double dépôt, à titre de cautionnement, de 7.000 livres sterling et de 100.000 francs. Cette preuve a été déjà fournie (v. annexes au Mémoire, n°s 3 et 4). Les originaux de ces actes ont été déposés en mars 1914 à la Mairie de Jérusalem. D'ailleurs, des copies légalisées pourraient en être fournies par la Banque Périer & Cie de Paris. Le Gouvernement britannique se réserve le droit d'objecter que la susdite somme de 100.000 francs n'a pas été déposée en conformité avec l'article 18 de la Concession des eaux, car il y est stipulé que ce dépôt devait avoir lieu à la Banque Commerciale de Palestine à Jérusalem, alors qu'il l'a été à la Banque Périer. Il y a là une méprise certaine. Ledit article 18 ne dit pas que le dépôt de 100.000 francs devait avoir lieu à la Banque Commerciale. Il dit que le cautionnement provisoire de 40.000 francs déjà déposé à cette banque doit être porté à 100.000 francs, sans préciser où ce nouveau dépôt devait être fait. Il dit au contraire que si le dépôt avait lieu en titres, la Banque devait, en cas de besoin, parfaire la différence. En réalité, voici comment les choses se sont passées :

Lors de l'octroi de la Concession des eaux, le 14/27 janvier 1914, M. Mavrommatis fit au directeur de la Banque Commerciale, M. Selim Ayoub, qui alors était son représentant, une avance de 40.000 francs ; la Banque délivra à la Mairie de Jérusalem une lettre de

garantie rédigée d'après les lettres de garantie de la Banque Périer et que la Mairie trouva en règle ; ceci fut confirmé par l'article 18 de la Concession qui porte la signature du Gouvernement de la Palestine et du président de la Municipalité de Jérusalem. Deux mois plus tard, en mars 1914, longtemps avant l'expiration du terme fixé, comme la Banque Commerciale était un petit établissement au capital de 300.000 francs, offrant peu de sécurité, ce qui fut démontré en 1917 par la suspension de ses paiements, M. Mavrommatis déposa le cautionnement définitif de 100.000 francs à la Banque Périer. L'acte de dépôt fut remis au maire de Jérusalem ; celui-ci rendit à la Banque Commerciale sa garantie de 40.000 francs et le directeur de la Banque remboursa cette somme à M. Mavrommatis.

Le Gouvernement britannique annonce en outre son intention de demander la preuve du fait que, le 12 août 1914, M. Mavrommatis envoya à la Mairie de Jérusalem les plans et projets de ses concessions. Cette preuve est déjà fournie par les documents n°s 5 et 6 insérés dans les annexes au Mémoire ; ce sont la lettre de M. Mavrommatis au maire de Jérusalem annonçant le 30 juillet/12 août 1914 l'envoi des plans et projets et la décision en date du 17/30 septembre suivant du Conseil municipal de Jérusalem où il est constaté que les pièces envoyées par M. Mavrommatis sont parvenues à destination le 12/25 septembre. M. Mavrommatis possède d'ailleurs le reçu de la poste ottomane de Constantinople de son envoi du 30 juillet/12 août et l'original de la décision susdite du Conseil municipal de Jérusalem. Ces pièces pourraient, si besoin en était, être produites à la Cour.

Quant à l'objection du Contre-Mémoire que la suspension des délais et l'envoi d'un seul exemplaire des plans et projets au lieu de quatre dégageaient la Municipalité de Jérusalem de l'obligation d'approuver ou de modifier les plans et projets dans les trois mois de leur dépôt, il suffit, pour la faire tomber, de remarquer : 1° que, par sa susdite décision, le Conseil municipal, loin de se réservier le droit de statuer ultérieurement, informa M. Mavrommatis que ses plans et projets avaient été confiés à l'ingénieur municipal aux fins d'examen ; s'il avait entendu faire suspendre à son profit le délai de trois mois, passé lequel les plans et projets devaient être tenus pour tacitement approuvés, jusqu'à la conclusion de la paix, il n'aurait certainement pas manqué de le spécifier, tandis qu'il se borne à parler de la suspension des délais d'exécution des travaux.

2° Que le dépôt des plans et projets en quatre exemplaires n'était pas prescrit uniquement pour leur examen aux fins d'approbation ou de modification, mais aussi pour l'usage des ingénieurs chargés de contrôler l'exécution des travaux.

Il faut noter en outre que les invitations réitérées depuis 1920 du maire de Jérusalem à M. Mavrommatis de commencer au plus tôt les travaux (v. Mémoire, n° 2, alinéa 2) prouvent que ses plans et projets étaient tenus pour définitivement approuvés.

Aucune objection de ce chef ne fut d'ailleurs faite à M. Mavrommatis lorsqu'en avril 1921 il demanda aux autorités de Palestine la réadaptation de ses concessions aux nouvelles conditions du pays. (annexes au Mémoire, n° 13).

4. — Au sujet de l'exposé des faits contenu dans le Mémoire, le Contre-Mémoire fait deux observations qui appellent les plus expresses réserves.

1^o Il n'insiste pas sur la réclamation relative à l'utilisation des plans et projets de M. Mavrommatis par les autorités militaires britanniques pour la distribution d'eau potable à Jérusalem, puisqu'elle avait été abandonnée dans le Mémoire, mais il se borne à contester le fait de l'utilisation.

Le Gouvernement hellénique affirme à nouveau la réalité du fait et croit devoir revenir, en principe, sur la réclamation. Il y avait renoncé, dans le Mémoire, dans le désir d'éviter des délais dans le jugement définitif de l'affaire. Il est disposé à observer la même attitude si la procédure ne doit pas rencontrer de nouveaux obstacles. Mais si, au contraire, elle était interrompue pour permettre à la Cour de recueillir des preuves supplémentaires, il lui demanderait de bien vouloir faire porter son enquête sur le bien-fondé de son assertion et sur la réalité du préjudice subi de ce chef par son ressortissant.

2^o Le Gouvernement britannique oppose un formel démenti à l'affirmation que M. Rutenberg était le représentant de l'Organisation sioniste.

Ce démenti est fait pour surprendre. D'abord, que M. Rutenberg eût ou non la qualité que lui a attribuée le Mémoire, cela n'a pas grande importance. Ce qui en a, c'est que, de toute manière, M. Rutenberg avait et continue à occuper une situation particulière dans le sionisme et dans l'administration palestinienne, que les autorités britanniques ont spécialement engagé M. Mavrommatis à s'entendre avec lui, que M. Rutenberg se trouvait et se trouve toujours en rapports d'étroite collaboration avec le président de l'Organisation sioniste, le Dr Weizmann, et enfin que la société qu'il devait fonder pour exploiter ses concessions intéresse particulièrement l'organisme juif, puisque — comme la Cour a eu à le constater dans son Arrêt du 30 août 1924 (p. 20) — ses statuts devaient être approuvés par le Haut-Commissaire pour la Palestine « d'accord avec l'organisme juif ».

Mais il y a plus. Au démenti du Gouvernement britannique, on peut opposer des preuves certaines établissant non seulement que M. Rutenberg était le représentant de l'Organisation sioniste, mais que c'est précisément cette qualité qui a déterminé l'octroi des concessions par lui obtenues en 1921.

Se rendant aux conseils du Colonial Office, M. Mavrommatis fait aboucher, en novembre 1921, son agent, M. James A. Malcolm, avec le Dr Weizmann qui lui dit avoir été saisi par le Colonial Office de son désir de voir l'affaire s'arranger à l'amiable, mais le prie

d'attendre le retour à Londres de M. Rutenberg. Mais l'absence de celui-ci se prolonge. Le Dr Weizmann s'impatiente. Il s'en excuse auprès de M. J. A. Malcolm et, pour mieux dégager l'Organisation sioniste de toute responsabilité du fait de M. Rutenberg, il lui remet copie d'une lettre de reproches qu'elle lui avait adressée quelques semaines auparavant. Cette lettre, datée du 20 octobre 1921, est d'un mois postérieure aux concessions obtenues par M. Rutenberg en Palestine. Elle achève de montrer les liens qui existent, au sujet des concessions Rutenberg, entre leur bénéficiaire apparent et l'Organisation sioniste. On en trouvera le texte dans les annexes à la présente Réplique (n° 34¹).

5. — Le Contre-Mémoire s'efforce d'établir que, des deux concessions Rutenberg, celle du 12 septembre 1921 n'affecte d'aucune manière les concessions Mavrommatis et celle du 21 septembre 1921 n'a de rapport qu'avec la concession Mavrommatis relative à l'électricité, mais que d'ailleurs ce rapport est sans aucune portée pratique, parce que la concession du 21 septembre 1921 n'est pas encore en vigueur, que si elle devient jamais effective, M. Rutenberg, ainsi qu'il le déclare dans une lettre adressée le 1^{er} mai 1924 au Colonial Office, ne demandera pas l'annulation de la concession Mavrommatis, laissant au contraire à celui-ci toute liberté pour l'exécuter, et que même si l'annulation en était demandée il n'y serait pas fait droit.

On peut relever dans cette argumentation une série de contradictions qui déjà la privent de valeur :

On dit que M. Rutenberg n'usera jamais du droit que lui donne l'article 29 de sa concession de demander l'annulation de celle de M. Mavrommatis et, pour le prouver, on invoque une lettre de M. Rutenberg au Colonial Office dont on n'indique d'ailleurs ni l'origine ni les suites. On aimeraient cependant connaître les raisons qui ont provoqué cette curieuse lettre et la réponse qui y a été donnée. Mais si l'on examine ce document, on voit qu'il va à l'encontre du but qu'on s'est proposé en le produisant. On l'invoque comme preuve de la non-annulation éventuelle de la concession Mavrommatis, et il constate qu'elle a été « précédemment annulée par le Gouvernement de Sa Majesté ». On cherche pour quelle raison M. Rutenberg serait disposé à ne pas exproprier M. Mavrommatis et à ne pas éléver d'objection contre l'exécution de sa concession, et on est surpris de voir que la préoccupation à laquelle obéit M. Rutenberg n'est pas, comme on pourrait s'y attendre, la sauvegarde des intérêts dont il a la charge, mais la protection de la pauvre population de Jérusalem qui aurait à payer trop cher l'énergie électrique qu'il aurait à lui fournir si, pour exproprier M. Mavrommatis, on avait à lui payer l'indemnité demandée de 125.000 livres sterling. Mais la fin de la lettre révèle le véritable objectif de M. Rutenberg : laisser M. Mavrommatis exécuter sa concession dans les termes de son

¹ Page 292.

contrat primitif, et s'il ne réussit pas — ce qui est, dans ces conditions, à prévoir — lui substituer, sans bourse délier, la Compagnie électrique de Palestine dont M. Rutenberg est le directeur.

On dit et on répétera plus tard (Contre-Mémoire, n° 16, p. 10 *in fine*) que, quand bien même M. Rutenberg demanderait l'annulation de la concession Mavrommatis, *it does not follow that the High Commissioner would have complied therewith*, alors qu'on a constaté plus haut (Contre-Mémoire, n° 5, p. 4 *medio*) que, d'après les termes mêmes de ses engagements, le Haut-Commissaire *would be under an obligation to annul the Mavrommatis Electricity Concession*.

On affirme que la concession Rutenberg n'affecte en rien la concession d'eau de M. Mavrommatis et qu'elle n'a avec sa concession d'électricité qu'un rapport partiel et théorique, on va même jusqu'à dire que ce point n'a peut-être pas été dûment apprécié au cours des débats sur la compétence, alors que la constatation contraire a été faite par la Cour, dont l'Arrêt du 30 août 1924 (p. 19) porte que « le lien qui unit les concessions Rutenberg et celles de Mavrommatis, résultant de l'identité partielle de l'objet, apparaît comme reconnu par le fait que les autorités palestiniennes et britanniques, saisies de la question de la validité de ces dernières, avaient invité l'intéressé à s'entendre avec l'organisme sioniste et avec M. Rutenberg ». On aurait en effet peine à comprendre l'insistance de ces autorités à amener entre les deux Parties un arrangement amiable si, outre leurs concessions respectives, il n'y avait pas une suffisante contrariété pratique.

Mais l'argumentation du Gouvernement britannique n'est pas seulement affaiblie par les contradictions qu'elle implique. Elle est directement démentie par les faits.

On joue sur les mots en affirmant — sans preuve — que la concession d'électricité de M. Rutenberg n'affecte en rien la concession d'eau de M. Mavrommatis. Si, en apparence, ces deux concessions ont un objet différent, en réalité elles sont entre elles dans un étroit rapport de solidarité. En effet, pour refouler les eaux des sources d'Arroub, les faire remonter à Jérusalem et en organiser la distribution dans la ville, il faut de toute nécessité l'usine électrique prévue d'ailleurs par la concession d'eau. C'est une pareille usine que, pour assurer les besoins de l'armée en eau potable, les autorités militaires britanniques ont installée au delà des Vasques de Salomon. Or, l'article 26 de la concession Rutenberg prévoit, en contradiction avec la concession d'eau de M. Mavrommatis, que, dans toute la Palestine, nulle entreprise ou administration quelconque n'a le droit de se faire procurer de l'énergie électrique par ses propres moyens sans un accord préalable avec la Compagnie d'Électricité de Palestine dont M. Rutenberg est le directeur. Il en résulte que la concession Mavrommatis n'a pas seulement un lien évident avec celle de M. Rutenberg ; elle en est absolument dépendante, ce qui en affaiblit singulièrement la valeur pratique et financière.

Il y a en outre à tenir compte du fait qu'au point de vue de leur financement et de leur développement ultérieur, les deux concessions Mavrommatis dépendaient en grande partie l'une de l'autre : elles auraient eu des frais généraux communs, étant donné surtout que, pour l'exploitation de la concession d'eau, il eût été expécient et permis de se servir de l'énergie électrique fournie par l'autre concession.

Quant au fait que la concession Rutenberg du 21 septembre 1921 n'est pas encore entrée en vigueur, qu'elle n'a pas acquis de forme définitive et qu'elle n'en aura une qu'à l'issue du présent procès, il n'a au regard de M. Mavrommatis aucune importance. Car il n'en résulte pas que par là la concession Rutenberg a cessé de lui être préjudiciable. Définitive ou non, elle lui a causé un grave dommage qui, lui, est définitif. Elle a en effet entraîné l'annulation du contrat passé par M. Mavrommatis avec la Banque Périer (v. annexes au Mémoire, n° 55), la rupture de ses négociations avec la Banque Crisp (v. annexes au Mémoire, n° 56), l'arrêt de ses autres affaires, des dépenses considérables de séjour et d'avocats à Londres depuis près de trois ans et demi.

6. — Sur les négociations poursuivies entre M. Mavrommatis et le Colonial Office, le Contre-Mémoire reprend peu de chose au récit qui en a été fait dans le Mémoire et qui est ici entièrement confirmé. La correspondance dont il y a été fait usage est en effet incomplète. Il a paru inutile d'encombrer le dossier avec des documents dont la lecture n'offrait pas un intérêt immédiat. Mais puisque le Gouvernement britannique paraît être d'un avis contraire, le Gouvernement hellénique va au-devant de son désir en joignant ici toutes les pièces de la correspondance non reproduite dans les annexes au Mémoire (v. les annexes à cette Réplique, n°s 1 à 35¹).

Le Gouvernement britannique proteste au surplus contre l'assermentation du Mémoire que le Colonial Office aurait reconnu le bien-fondé des droits de M. Mavrommatis : il affirme n'avoir jamais reconnu que les réclamations de M. Mavrommatis fussent en soi bien fondées.

La Cour appréciera les allégations respectives. Elle voudra bien noter que le Mémoire s'est basé sur la lettre qu'un fonctionnaire du Colonial Office, M. R.V. Vernon, adressa le 4 août 1922 à M. O'Connor (v. annexes au Mémoire, n° 20) pour indiquer l'opinion du ministre M. Wood sur les droits de M. Mavrommatis.

Elle se souviendra aussi des déclarations faites devant elle par l'agent du Gouvernement britannique qui, au cours de sa plaidoirie (*Publications de la Cour*, Série C, n° 5 — 1, p. 28), se référant à la lettre précitée de M. Vernon, a dit que *there is no doubt that there is an article in the Treaty of Sèvres, No. 311, which would have recognized and given effect to certain rights which M. Mavrommatis enjoyed under his concessions* et qui a ajouté: *that being*

¹ Pages 261 à 292.

so it was natural that the desire of the British Government should be to do what they could to give effect to these rights, expliquant ainsi pourquoi les autorités britanniques ont encouragé M. Mavrommatis à s'entendre avec M. Rutenberg.

DISCUSSION JURIDIQUE.

7. — Le Contre-Mémoire (n° 8) analyse la thèse du Gouvernement britannique en trois questions présentées dans un ordre propre à créer une fâcheuse confusion dans les idées. Il s'efforce d'abord de montrer que les concessions Mavrommatis ne sont pas valables et que, dès lors, la réclamation portée devant la Cour doit être rejetée par la question préalable. Subsidiairement, il essaie d'établir que le Gouvernement britannique n'a assumé aucune responsabilité à l'égard de M. Mavrommatis du fait de l'octroi des concessions Rutenberg, parce que ces concessions ne sont nullement en conflit avec les siennes dont l'exécution ne rencontre d'ailleurs pas le moindre obstacle. Ayant ainsi isolé les concessions Mavrommatis des concessions Rutenberg, il les ramène dans le cadre du Protocole de Lausanne et prétend qu'elles doivent être régies uniquement par son article 6.

Il va être répondu séparément à chacune de ces trois questions. Mais il est nécessaire, pour empêcher le débat de s'égarter, de dire tout de suite que si la validité des concessions Mavrommatis est mise hors de cause, comme le Gouvernement hellénique est convaincu qu'elle doit l'être, l'ordre dans lequel les deux autres questions méritent d'être examinées est exactement inverse de celui qui est proposé par le Contre-Mémoire. En effet, reconnues valables, les concessions Mavrommatis doivent être appréciées à la lumière du Protocole de Lausanne pour savoir si elles doivent être régies, comme le prétend le Gouvernement britannique, par son article 6 ou, comme l'a dès le début soutenu le Gouvernement hellénique, par son article 4. Ce point résolu, il restera à voir si le système du Protocole ne se trouve pas, dans l'espèce, faussé et rendu inapplicable par suite de la situation que l'octroi des concessions Rutenberg a créée en Palestine et si, dès lors, le Gouvernement britannique, responsable, en sa qualité de Puissance mandataire, du tort ainsi causé à M. Mavrommatis, ne doit pas lui payer une indemnité globale adéquate au dommage subi.

Sous le bénéfice de cette observation, il sera néanmoins, pour la commodité de la confrontation des thèses respectives, répondu aux objections britanniques dans l'ordre où elles sont présentées dans le Contre-Mémoire. La Cour retrouvera, dans les conclusions de la Partie demanderesse, placées dans leur ordre logique, les questions qu'elle est appelée à trancher.

Une autre observation doit être faite. On est frappé, en lisant le Contre-Mémoire, de l'opposition qui y existe entre l'importance qu'on dit accorder aux diverses questions étudiées et l'étendue des

développements qu'on leur consacre. Moins la question est capitale, plus elle y occupe de place : quelques lignes pour la première, un peu plus pour la seconde, mais en revanche plusieurs pages pour la troisième. En dépit de toutes déclarations contraires, ce fait seul dit assez quelle est la valeur respective des points litigieux.

8. — *Validité des concessions Mavrommatis.*

Le Contre-Mémoire (n° 9) objecte que ces concessions sont nulles parce qu'elles ont été consenties à M. Mavrommatis dans la croyance qu'il était sujet turc alors qu'il était sujet grec. Si sa véritable nationalité avait été connue, le Gouvernement turc ne les lui aurait pas accordées, car tout prouve qu'il attachait une grande importance à la question de la nationalité : la société que le concessionnaire devait fonder devait être ottomane ; le personnel à employer dans l'exploitation des concessions devait également être de nationalité turque. La reconnaissance de la validité des concessions rencontrerait en outre un « formidable obstacle » dans les termes mêmes du Protocole de Lausanne qui ne déclare maintenus que les contrats de concessions obtenus par les ressortissants des Puissances contractantes autres que la Turquie. Il ne s'appliquerait donc pas aux concessions Mavrommatis, qui ont été accordées à un sujet ottoman.

La première objection n'aurait de valeur que s'il était établi qu'en Turquie, avant la guerre, seuls les nationaux pouvaient obtenir des concessions. On serait alors en droit de prétendre que la concession accordée à un étranger — dans la croyance qu'il était turc — est nulle et non avenue.

Mais, cette preuve, le Contre-Mémoire ne l'apporte pas et il ne pouvait pas la fournir. Car, non seulement il n'était pas requis, en droit turc, que le concessionnaire fût ottoman, mais sa nationalité ne jouait absolument aucun rôle. Il suffit, pour s'en convaincre, de se reporter, pour ce qui concerne spécialement les concessions Mavrommatis, à l'arrêté du ministre des Travaux publics de l'Empire ottoman, du 13 février 1911, « réglant les formalités d'un concours pour la concession d'une distribution publique d'énergie et de tramways électriques à Jérusalem », au cahier des charges type qui l'accompagnait, et à l'avis d'adjudication du 1^{er} novembre 1913 de la Municipalité de Jérusalem (v. annexe, n° 35¹). On n'y rencontre pas la moindre mention au sujet de la nationalité des concurrents, dont on exige seulement une élection de domicile. L'article 2 de l'arrêté ministériel indique en ces termes la soumission que chaque concurrent devait produire :

« Je soussigné , faisant élection de domicile à , après avoir pris connaissance de l'arrêté ministériel du 31 janvier 1326 (13 février 1911) et du cahier des charges y annexé ainsi que de l'arrêté technique du 1/14 mars 1326/1910, lesdits arrêtés et cahiers

¹ Page 293.

des charges ayant été complétés par moi en ce qui concerne les tarifs, le partage des bénéfices et le nombre des places, voitures, pour les tramways, et ensuite contresigné par moi pour acceptation, me soumets et m'engage à exécuter toutes les clauses et conditions desdits arrêtés et cahiers des charges ainsi complétés par moi, sans demander de subvention ou de garantie d'aucune sorte au Gouvernement ottoman, ni à la Ville de Jérusalem. »

Cette absence de mention au sujet de la nationalité des concurrents est d'autant plus caractéristique dans le sens indiqué que le cahier des charges type prévoit formellement celle de la société qui devra être substituée au concessionnaire, en disant (article 94) que cette société doit être ottomane. Quant au concessionnaire, il se borne à dire (article 95) qu'il fera élection de domicile à Jérusalem.

Dans ces conditions, le fait que, dans ses concessions, M. Mavrommatis a été indiqué comme étant sujet ottoman n'a aucune espèce d'importance : l'indication était à la fois inutile et erronée. Elle est due à une simple inadvertance qui se peut expliquer par l'état du droit turc sur la nationalité. D'après la loi de 1869, article 9, tout étranger résidant en Turquie est considéré comme sujet ottoman jusqu'à preuve du contraire. Cette preuve fournie, l'intéressé peut demander et les autorités turques doivent lui accorder la rectification de toute mention d'aventure erronée faite dans un acte quelconque de sa nationalité. C'est ce qui est clairement démontré dans les consultations juridiques fournies par le professeur Ali Kemal et les avocats Mehmet Hairi et N.T. Papadimitriou, avocats à Constantinople (v. annexes n° 36 et 37¹).

Privée de valeur juridique, la mention erronée de la nationalité de M. Mavrommatis est également dépourvue de valeur morale. Rien ne prouve, en effet, que le Gouvernement turc n'aurait pas accordé à M. Mavrommatis les concessions dont il s'agit s'il avait su sa véritable nationalité. Car si les autorités locales de Palestine ont pu se tromper à cet égard et procéder par ailleurs à une mention inutile, à Constantinople et dans les environs immédiats, où M. Mavrommatis résidait habituellement, on n'ignorait pas son état civil. On peut en effet voir dans l'acte d'une concession forestière obtenue par lui en 1910 (annexe n° 38²) qu'il est indiqué comme sujet grec.

Il n'y a pas davantage à tirer argument, contre la validité des concessions Mavrommatis, du fait que la société qui devait être substituée au concessionnaire devait être ottomane. Il avait là l'application d'une règle générale et d'une clause de style dans les concessions en Turquie. Toutes les sociétés formées en Turquie avec des capitaux étrangers sont considérées comme ottomanes et leurs statuts doivent être approuvés par le ministère du Commerce. A cette règle, il n'y a pas d'exception : la concession du chemin de

¹ Pages 293 et 296.

² Page 297.

fer d'Aïdin est anglaise, celles du chemin de fer de Smyrne, des docks de Constantinop'e sont françaises et cependant les compagnies qui les exploitent sont ottomanes.

Dans ces conditions, le «formidable obstacle» que le Protocole de Lausanne opposerait à la reconnaissance de la validité des concessions Mavrommatis n'est qu'un pur fantôme, car s'il était une réalité, ce serait contre le Protocole lui-même qu'il se dresserait : toute concession étrangère se traduisant en Turquie par une société ottomane, aucune ne pourrait profiter de la protection du Protocole, qui demeurerait dès lors sans application.

Mais on peut s'en rassurer en lisant son article 9 ; l'État successeur de la Turquie «est pleinement subrogé dans les droits et charges de la Turquie vis-à-vis des ressortissants des autres Puissances contractantes et des sociétés dans lesquelles les capitaux des ressortissants desdites Puissances sont prépondérants, bénéficiaires de contrats de concession passés avant le 29 octobre 1914 avec le Gouvernement ottoman ou toute autorité locale ottomane».

Après ce qui vient d'être dit, il ne saurait y avoir le moindre doute sur l'application de ce texte aux concessions Mavrommatis.

On peut bien penser d'ailleurs que le Gouvernement britannique partage lui-même au fond cet avis. Autrement on s'expliquerait mal la reconnaissance qui, en son nom, fut faite à certains moments des droits de M. Mavrommatis (v. ci-dessus, n° 6, paragraphes 2 et suivants).

9. -- *Obligations internationales du Mandataire.*

Le Contre-Mémoire (n° 10) répète ici ce qu'il a déjà affirmé auparavant, savoir que les seules obligations du Mandataire sont celles dont parle le Protocole de Lausanne. Il voudrait laisser entendre que telle est l'opinion adoptée par la Cour dans son Arrêt du 30 août 1924.

Le Gouvernement hellénique s'est déjà expliqué à ce sujet (v. ci-dessus, n° 2). Il a indiqué que, si la Cour a admis que les obligations internationales de l'article 11 du Mandat sont en substance celles du Protocole, elle n'a pas eu à dire quelle est la portée de ces dernières. Cette question — réservée jusqu'ici — devra être précisément tranchée dans la présente phase de la procédure.

Le Contre-Mémoire revient encore sur la thèse précédemment exposée au sujet du défaut de lien entre les concessions Rutenberg et les concessions Mavrommatis, pour conclure une fois de plus que le Gouvernement britannique n'a encouru aucune responsabilité du fait des concessions Rutenberg et qu'il n'a d'autre obligation vis-à-vis de M. Mavrommatis que de le laisser exécuter ses concessions dans les termes du Protocole que la Cour aura reconnu applicables en l'espèce.

Le Gouvernement hellénique ne croit pas utile de répéter ici la réfutation faite plus haut (n° 5), de ces diverses obligations. Il aura

l'occasion de montrer plus loin (v. n° 15) que M. Mavrommatis ne saurait désormais trouver une suffisante satisfaction de ses droits dans l'application du Protocole, car la situation de fait créée par l'octroi des concessions Rutenberg ne lui permet pas d'en retirer les avantages qu'autrement il en aurait eus.

10. — *Application du Protocole.*

Il s'agit de décider si les contrats Mavrommatis doivent être régis par les articles 4 et 5 ou par l'article 6 du Protocole. Cela dépend du point de savoir s'ils ont reçu ou non «un commencement d'application».

Avant d'y répondre, le Contre-Mémoire (n° 11) présente sur la compétence de la Cour un certain nombre d'observations. Les unes concernent l'avenir, et comme elles sont développées dans un passage ultérieur du Contre-Mémoire, il est inutile de les examiner dès maintenant. D'autres ont trait au passé et constituent une critique de l'Arrêt du 30 août 1924. Comme le Gouvernement britannique déclare n'avoir pas l'intention de faire rouvrir sur la compétence un débat désormais clos, il serait oiseux d'y insister. Mais il est permis de se demander dans quel but ces observations ont été présentées. Le Gouvernement hellénique se réserve de s'en expliquer là-dessus, si besoin en est, au cours des débats oraux.

11. — Le Contre-Mémoire soutient (n° 13) que les concessions Mavrommatis n'ont pas droit à la réadaptation prévue par l'article 4 du Protocole, parce qu'elles n'auraient pas reçu avant le 24 juillet 1923 «un commencement d'application».

Pour le démontrer, il s'efforce d'établir qu'avoir reçu un commencement d'application signifie avoir commencé l'exécution des travaux prévus. Or, M. Mavrommatis n'a nullement commencé à exécuter les travaux dont il était chargé.

Cette manière de raisonner ressemble à ce que les juristes appellent une pétition de principe. Car il s'agit précisément de savoir si «commencement d'application» veut dire «commencement d'exécution», en d'autres termes, si les deux expressions «application» et «exécution» sont synonymes. Le Contre-Mémoire l'affirme, mais ne le prouve pas.

Etymologiquement, il n'y a pas synonymie : les deux expressions impliquent une action qui, dans l'exécution, est plus forte que dans l'application. Appliquer, c'est employer une chose; exécuter, c'est accomplir une chose de manière complète.

La même différence se retrouve dans le langage juridique. Appliquer une loi ou l'exécuter n'est pas la même chose : l'appliquer, c'est le fait du juge; l'exécuter, c'est celui d'une autre autorité, de l'huissier, du gendarme ou du gouvernement, d'où son titre de pouvoir exécutif.

Ces considérations générales sont confirmées par le texte anglais du Protocole, où l'expression *to be put into operation* s'éloigne encore plus de l'idée d'exécution que l'expression française «commence-

ment d'application» : *to put into operation*, c'est, dans le langage juridique anglais, entrer en vigueur.

Rien n'autorise donc à substituer, comme le fait le Contre-Mémoire, le mot «exécution» au mot «application». Si les rédacteurs du Protocole avaient voulu réellement subordonner le droit de réadaptation des concessions au fait que leurs travaux ont commencé, ils l'auraient dit, en parlant de l'exécution des travaux ou tout au moins des concessions, tandis qu'ils ont parlé d'application, non pas même des concessions, mais de leurs contrats.

La force de cet argument n'a pas échappé au Contre-Mémoire. Aussi s'efforce-t-il de montrer que «contrat de concession» et «concession» sont des termes identiques dont les textes se servent indifféremment. Il y a là une méprise certaine. Si l'on peut, par abréviation, employer concession pour contrat de concession, la réciproque constituerait une incorrection de langage que les rédacteurs du Protocole n'ont pas commise.

12. — D'ailleurs, si l'on va au fond des choses, on discerne aisément les raisons pour lesquelles le Protocole n'a pas exigé un commencement d'exécution des travaux et s'est contenté d'un commencement d'application des contrats. Ces raisons, le Mémoire (n° 18, p. 17) les a indiquées et il n'y a pas lieu d'y revenir quant à présent.

Il y a été montré que les contrats obtenus par M. Mavrommatis le 27 janvier 1914 ne sont pas restés à l'état de simples projets. Leur bénéficiaire a rempli aussitôt plusieurs de ses engagements : il a présenté les plans et projets de ses travaux ; il a remplacé les cautionnements provisoires par des cautionnements définitifs.

Le Contre-Mémoire (n° 13, p. 8) objecte que ces actes ne constituent pas un commencement d'application dans le sens de l'article 6 du Protocole, car ils s'appliqueraient à la validité, non à l'application des concessions. Autrement, dit-il, l'article 6 n'aurait pas de sens, car, pour être valable à la date du Protocole, toute concession obtenue avant le 29 octobre 1914 a dû être accompagnée d'actes semblables, et dès lors il n'y en aurait pas qui serait régie par l'article 6, puisque toutes auraient reçu, dans ce sens, un commencement d'application.

L'objection est basée sur une erreur évidente. Il est, en effet, juridiquement impossible de considérer les actes dont il s'agit comme des éléments de validité des contrats. Ce qui concerne la validité est extérieur au contrat ; tout ce qui regarde au contraire l'application de ses clauses en est intérieur. Lorsque M. Mavrommatis a déposé ses plans et projets et ses cautionnements définitifs, ses contrats étaient conclus et les droits et obligations en découlant nés. En faisant ces dépôts, il se conformait à celles de leurs clauses qui y étaient relatives. Autant dire qu'il exécutait ses contrats.

Contrairement à ce qu'avance le Contre-Mémoire, pour que les concessions soient opposables aux successeurs de la Turquie, il

suffit, aux termes du Protocole, qu'ils aient été *passés* (art. 9), c'est-à-dire qu'ils soient *dûment intervenus* (art. premier) avant le 29 octobre 1914. Nulle part il n'y est dit qu'ils doivent, en outre, avoir été réalisés dans telle ou telle de leurs clauses.

Dès lors, l'article 6 conserve toute sa signification : il régit les contrats de concession dûment intervenus avant le 29 octobre 1914 qui, au jour de la signature du Protocole, n'avaient eu encore aucune suite pratique.

13. — Mais le Contre-Mémoire insiste (n° 13, pp. 8-9). Ce qui lui paraît confirmer sa manière de voir, c'est que, d'après l'article 6, l'indemnité en cas de résiliation est limitée aux frais pour travaux d'étude. Cette disposition serait inopérante si une concession dont le cautionnement définitif a été déposé devait être considérée comme ayant reçu un commencement d'exécution, car le dépôt d'un cautionnement, destiné à être rendu en cas de résiliation, ne constitue pas une perte pour le concessionnaire.

Le Gouvernement hellénique attendra les explications ultérieures du Gouvernement britannique pour répondre à cette objection dont le sens lui échappe. Il ne voit pas, en effet, comment, avec sa conception sur le commencement d'application, l'article 6 deviendrait inopérant. Il vient d'être dit (n° 12 *in fine*) quel en est le domaine.

C'est là qu'en cas de résiliation, l'indemnité est limitée aux frais pour travaux d'études. Lorsqu'au contraire on est en présence d'une concession ayant reçu un commencement d'application, il n'est pas question, en règle générale, d'indemnité, mais de réadaptation.

14. — Des développements qui précèdent, il résulte qu'il suffit, pour qu'une concession ait droit à être réadaptée, que son contrat ait été réalisé dans quelques-unes de ses clauses avant le 24 juillet 1923. Il n'est pas nécessaire que son bénéficiaire ait commencé l'exécution des travaux qu'elle comporte.

S'il pouvait subsister le moindre doute à cet égard, il devrait, dans l'espèce, céder devant la considération qu'il n'a pas dépendu de M. Mavrommatis de donner à ses contrats une suite plus large que celle qu'il leur a donnée avant la guerre. L'exécution de ses travaux avait été, d'accord avec les autorités turques, ajournée jusqu'au rétablissement de la paix. On sait que, sans attendre cet événement, il s'est rendu dès 1921 à Jérusalem et a demandé avec insistance aux nouvelles autorités de lui permettre de réaliser ses concessions. On sait aussi à quels obstacles, indépendants de sa volonté, il s'est heurté tant en Palestine qu'à Londres. Si, à la date de la signature du Protocole, il n'a pu entamer l'exécution de ses travaux, c'est uniquement à cause de l'attitude des autorités anglaises. Le Gouvernement britannique serait mal venu à le lui reprocher et à vouloir profiter d'un texte établi après coup pour le mettre dans une situation pire que celle qu'il se serait créé si son activité n'avait pas été paralysée, comme elle l'a été par son seul fait.

15. — Les concessions Mavrommatis sont donc régies par les articles 4 et 5 du Protocole. Elles ont droit à être réadaptées.

Mais la question qui se pose est si l'application du Protocole ainsi comprise est, dans l'espèce, pratiquement possible.

Le Gouvernement hellénique est fermement convaincu qu'elle ne l'est pas. Pour qu'elle le fût, il faudrait que le Gouvernement britannique pût rétablir la situation de fait où M. Mavrommatis se trouvait avant le mois de septembre 1921. Or, il ne peut pas le faire, parce qu'il s'est créé depuis lors en Palestine un état de choses qu'il n'est pas facile de modifier. Le Gouvernement britannique est désormais, bon gré, mal gré, dans la posture du pouvoir souverain qui est obligé de procéder à l'expropriation de droits individuels pour des raisons d'utilité publique et qui ne peut autrement concilier la nécessité pratique avec le respect des droits acquis qu'en payant à leur titulaire une indemnité adéquate au dommage causé.

Le Contre-Mémoire s'insurge contre pareille conclusion. Il ne peut pas être question, dit-il (n° 11, p. 7 *initio*¹), pour la Cour d'allouer une indemnité pour rachat des concessions, d'abord parce que le Protocole ne prévoit pas, n'autorise pas le rachat, et ensuite parce que le Gouvernement britannique n'a ni le désir ni l'intention d'y procéder. A diverses reprises, il insiste sur cette thèse. Il s'efforce de montrer qu'à cet égard le Protocole a innové sur le Traité de Sèvres (n° 13). Il en voit la preuve dans les lettres échangées à Lausanne entre les plénipotentiaires anglais et français, pour réservé à leurs gouvernements la faculté de rachat. Puis (n° 15) il se refuse à discuter plus longtemps, parce que, même si le Protocole lui en laisse la possibilité, le Gouvernement britannique n'a pas l'intention de racheter la concession Mavrommatis.

Sur la théorie du rachat, le Gouvernement hellénique se réfère entièrement à ce qu'il en a été dit dans le Mémoire (n°s 19 et suivants). Il persiste à penser que la faculté de rachat est trop conforme aux prérogatives de la souveraineté et aux nécessités publiques pour qu'on puisse admettre — sans preuve valable — que, par son silence, le Protocole de Lausanne a entendu en priver les États successeurs de la Turquie. Pour la condamner, il aurait fallu une clause formelle, qui n'existe pas. Les lettres invoquées par le Contre-Mémoire ont eu pour but, non de déroger au Protocole, mais de dissiper le doute que le silence des textes aurait pu faire naître dans l'esprit des gouvernements intéressés.

Quant aux intentions du Gouvernement britannique, s'il serait incorrect de les discuter, il est permis de dire qu'il ne s'agit pas ici d'une question d'intention, mais d'une question de fait. Et c'est à ce titre que, en dépit des dénégations du Contre-Mémoire (n° 16), le Gouvernement hellénique maintient et livre à l'appréciation de la Cour les développements consacrés dans le Mémoire aux faits dont il lui paraît résulter que M. Mavrommatis a été déjà

¹ Page 213 du présent volume.

exproprié de ses concessions. Il se borne à constater que le Gouvernement britannique (n° 17) reconnaît que, dans la concession d'eau, les tarifs sont fixés en piastres-or, mais qu'il continue à contester qu'il en soit de même dans l'autre concession. Cependant, à la fin du cahier des charges de cette concession, il est indiqué que le para est la quarantième partie de la piastre et la piastre la centième partie de la livre. Or, la livre turque valait avant la guerre 108 piastres; quand on disait 100 piastres la livre, on entendait, à n'en pas douter, des piastres-or.

Le Contre-Mémoire ajoute, il est vrai (n° 16, p. 10 *in fine*¹), que le Gouvernement britannique place ses obligations internationales au-dessus des obligations qu'il a pu contracter vis-à-vis de M. Rutenberg et que si ces deux catégories d'obligations se trouvaient en conflit, il exécuterait certainement les premières et prendrait des mesures pour indemniser la Compagnie d'Électricité de Palestine de tout dommage résultant de la méconnaissance des obligations assumées à son égard.

Aucun doute n'est possible à ce sujet. Mais toute la question est de savoir quelle est, dans l'espèce, l'étendue des obligations internationales du Gouvernement britannique. Il faut répéter que si elles sont indiquées par le Protocole de Lausanne, on doit, pour en déterminer la portée, ne pas se borner à la lettre des textes, mais s'inspirer de l'esprit de justice qui les anime. Et s'il est démontré, comme le pense le Gouvernement hellénique, que la situation créée en Palestine et qui, même avec la mise à néant, si elle était possible, des concessions Rutenberg, ne serait pas totalement modifiée, rend désormais les concessions Mavrommatis d'une exploitation malaisée, la seule solution conforme à l'esprit du Protocole et aux exigences de l'équité, comme à l'intérêt général bien entendu, serait de liquider définitivement les concessions de M. Mavrommatis en lui allouant une juste indemnité.

16. — Quant au montant de l'indemnité qui devrait être allouée à M. Mavrommatis, le Mémoire en a fourni les éléments avec la plus grande précision. Le Contre-Mémoire (n° 18) en conteste l'exactitude. Le Gouvernement hellénique ne croit pas nécessaire d'en reprendre l'examen. Il se borne aux observations suivantes :

1° Les débours effectués ont été indiqués à seule fin de montrer que la somme réclamée de 121.045 livres sterling ne représente pas entièrement un bénéfice : près de la moitié en a été déjà dépensée ; il y a encore à faire face à des frais d'avocats qui, en Angleterre, sont particulièrement élevés.

2° Il est exact que la majoration de 15% des dépenses prévue dans les contrats représentait un bénéfice exclusif pour le concessionnaire. L'estimation des travaux prévoit toujours un bénéfice légal d'environ 20% au profit des entrepreneurs.

¹ Page 219 du présent volume.

3° Pour prouver que des concessions similaires ont été financées avec des apports beaucoup plus importants au profit du concessionnaire, il est donné aux annexes (n°s 39 et 40) les premiers statuts des sociétés de Damas et Beyrouth, villes de même rang que Jérusalem.

4° L'objection que les frais et en général toutes sommes exprimées en une monnaie non anglaise, par exemple en francs français, [...] est tout à fait mal fondée, parce que, avant la guerre, 25 francs valaient une livre sterling.

5° Il est à nouveau affirmé que les pourparlers de M. Mavrommatis avec l'Organisation sioniste ont été un moment sur le point d'aboutir à un arrangement amiable moyennant une indemnité de 200.000 livres sterling. M. Malcolm n'aurait certainement pas adressé au Dr Weizmann la lettre reproduite dans les annexes au Mémoire (n° 23¹) s'il n'en avait discuté au préalable les bases avec lui, en présence de M. Halpern, directeur du *Jews Colonization Trust*.

6° L'accord passé en octobre 1913 avec la Banque Périer fournit un très sérieux élément pour l'appréciation de la valeur des concessions Mavrommatis. Il prévoyait le paiement d'une somme globale de 5.000.000 de francs qui, au cours de l'époque, représentait 200.000 livres sterling. Le Mémoire est resté au-dessous de la vérité en appliquant la moitié de cette somme aux concessions de Jérusalem, car en réalité leur importance était supérieure à celle des concessions de Jaffa. En 1921, la Maison Périer s'est déclarée prête à exécuter l'accord de 1913 (v. annexes au Mémoire, n° 54²), c'est-à-dire à verser à M. Mavrommatis 5.000.000 de francs d'après le cours de 1913, soit liv. st. 200.000, somme que M. Mavrommatis aurait encaissée sans la contestation de la validité de ses concessions par le Gouvernement britannique, et la moitié de cette somme, avec les intérêts courus depuis lors, monterait aujourd'hui environ au total de liv. st. 121.045 qui fait l'objet de la présente réclamation. Le Contre-Mémoire (n° 18, p. 13³) conteste la possibilité de convertir ainsi en livres une somme exprimée en francs. La lettre ci-jointe (annexe n° 41⁴) de la Maison Périer prouve que c'est bien 5.000.000 de francs-or, soit liv. st. 200.000, qu'elle était disposée à payer en 1921 à M. Mavrommatis.

7° Il est produit une nouvelle preuve de la valeur des concessions Mavrommatis (annexe n° 42⁵). C'est une lettre datée du 31 décembre 1924, adressée à M. Mavrommatis par une des plus grandes compétences anglaises en matière de travaux publics, sir Robert Perks. Elle ne confirme pas seulement que les frais d'études sont entièrement justifiés. Elle considère que l'apport de liv. st. 50.000

¹ Op. cit., page 384.

² " " 431.

³ Page 221 du présent volume.

⁴ " 313 " " "

⁵ " 341 " " "

pour chacune des concessions Mavrommatis est parfaitement raisonnable. Elle fournit en outre sur l'ensemble de l'affaire des appréciations qui méritent de retenir l'attention de la Cour.

8° L'allégation du Contre-Mémoire (n° 18, p. 13 *fine*¹) qu'il serait inexact que le Colonial Office a suggéré à M. Mavrommatis un arrangement avec l'Organisation sioniste est démentie par ce qui a été dit ci-dessus (n° 4 et 6 *fine*) et par l'Arrêt du 30 août 1924 (v. ci-dessus, n° 5). Elle est en outre contredite par un précédent passage du Contre-Mémoire lui-même (n° 6 [2]).

9° Le Contre-Mémoire (n° 19) tient la réclamation des intérêts à 6% de la somme demandée pour inadmissible tant quant au principe des intérêts qu'à leur taux. Mais il n'en donne pas les raisons. Les intérêts sont cependant un élément de réparation du dommage causé. L'évaluation présentée à la Cour a été faite en juillet 1923. Elle représentait alors la réparation adéquate du dommage. Il n'en est plus de même dix-huit mois après. Le défaut de réparation durant le temps écoulé a créé un dommage supplémentaire qui doit être aussi réparé soit par l'augmentation du principal de l'indemnité, soit par l'allocation des intérêts de la somme demandée. La jurisprudence arbitrale est dans ce sens. Quant au taux de 6%, il a été reconnu raisonnable par la Cour dans l'affaire du *Wimbledon*.

17. — Le Gouvernement hellénique maintient, dans les conditions indiquées ci-dessus (n° 4, 1^{er}), la demande d'une indemnité particulière en raison de l'utilisation par les autorités militaires britanniques des plans et projets relatifs à l'alimentation de Jérusalem en eau potable. Il s'en réfère à ce qui a été dit dans le Mémoire (n° 24) et s'en rapporte à l'appréciation de la Cour.

CONCLUSIONS.

18. — Le Gouvernement hellénique estime, en conséquence :

1° Que la validité des concessions Mavrommatis doit être tenue pour certaine;

2° Qu'elles ont droit, par application de l'article 4 du Protocole, à être réadaptées;

3° Que toutefois, même dans ces conditions, leur exécution est trop malaisée pour pouvoir être considérée comme une réparation suffisante de la violation de l'article 11 du Mandat;

4° Qu'il est, en présence de la situation créée à cet égard en Palestine, plus pratique et plus juste de procéder à leur liquidation définitive en allouant à l'intéressé une indemnité globale.

Persistant dans ses premières conclusions, le Gouvernement hellénique demande à la Cour de vouloir bien décider :

¹ Page 222 du présent volume.

1° Qu'ayant reçu un commencement d'application, les concessions obtenues par M. Mavrommatis à Jérusalem doivent être réadaptées aux nouvelles conditions du pays et que le Gouvernement britannique a l'obligation de consentir à leur réadaptation ou de les racheter en payant à l'intéressé une équitable indemnité ;

2° Qu'ayant en fait exercé son choix, en rendant directement ou indirectement impossible l'exécution des travaux concédés au réclamant, il doit lui payer une équitable indemnité ;

3° Qu'en tenant compte de tous les éléments du préjudice causé à l'intéressé, il lui sera donné une juste et équitable indemnité en lui adjugeant une somme de 121.045 livres sterling augmentée des intérêts à 6% courus depuis le 20 juillet 1923 jusqu'à la date de l'arrêt ;

4° Qu'il lui sera en outre alloué, après enquête éventuelle en raison de l'utilisation par les autorités militaires britanniques de ses plans et projets relatifs à l'alimentation en eau de la ville de Jérusalem, une indemnité spéciale dont le montant sera fixé conformément aux prescriptions de l'article 3 du Protocole de Lausanne.

La Haye, le 7 janvier 1925.

L'Agent du Gouvernement hellénique :

(Signé) E. G. KAPSAMBELIS,

Envoyé extraordinaire et Ministre plénipotentiaire du Gouvernement de la République hellénique près S. M. la Reine des Pays-Bas.

Annexe I au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE SECRETARY OF STATE, COLONIAL OFFICE.

October 24th, 1921.

Dear Mr. Churchill,

A client of my firm, M. E. Mavrommatis, a Greek, is the owner of certain concessions at Jerusalem and at Jaffa. His agent here Mr. J. A. Malcolm wrote to you on the 1st September in regard to these concessions and received a reply from the Colonial Office under date the 4th inst. and reference number quoted above, to the effect that you were advised that for the purpose of the concession claim and [...] M. Mavrommatis must be treated as an Ottoman subject.

As you are probably aware I have some knowledge in regard to questions of nationality, more particularly relating to Greeks in the Ottoman Empire and I should be much obliged if you could see your way to granting me a short interview at which I could put before you the position of my client.

Thanking you in anticipation, etc.

(Signed) J. STAVRIDI.

Annexe 2 au n° 6.

THE COLONIAL OFFICE TO SIR JOHN STAVRIDI.

October 27th, 1921.

Dear Sir,

Mr. Churchill asks me to thank you for your letter of the 24th October, and to say that he is afraid that his time is so fully occupied just now that he cannot have the pleasure of asking an appointment to see you. He has, however, asked the Head of the Middle East Department, Mr. Shuckburgh, to see you in his stead and Mr. Shuckburgh would suggest 3.30 on Monday as a convenient time.

Yours faithfully,

(Signed) E. MARSH.

Annexe 3 au n° 6.

SIR JOHN STAVRIDI TO THE COLONIAL OFFICE.

October 28th, 1921.

Sir,

I am much obliged by the receipt of your letter of yesterday informing me that Mr. Churchill could not make an appointment with me at present. As, however, I was engaged on Monday at 3.30 I have telegraphed Mr. Shuckburgh fixing up an appointment for Tuesday at the same time.

Yours faithfully,

(Signed) J. STAVRIDI.

Annexe 4 au n° 6.

SIR JOHN STAVRIDI TO THE COLONIAL OFFICE.

December 29th, 1921.

Dear Mr. Shuckburgh,

re Mavrommatis Concessions.

After my interview with you my client, M. Mavrommatis, was informed by Mr. Malcolm who had been negotiating with the Zionist Organization on his behalf that the Organization were prepared to see him and endeavour to come to some friendly arrangement with him. He was subsequently told that it was necessary that he should await the return of Mr. Rutenberg from Paris as the latter was more au courant with all the facts relating to the Concessions.

M. Mavrommatis waited very patiently until he heard that Mr. Rutenberg was in London and that an appointment would shortly be fixed for an interview with the Zionist Organization. He has, however, been put off from day to day and Mr. Rutenberg has left London for Paris and no steps have been taken.

Under the circumstances my client has now instructed me to place all the papers before Counsel to settle the necessary proceedings that he wishes to take to have his rights to the Concessions in question legally recognized and I am therefore preparing the necessary documents which will be before Counsel during this week.

I thought it only right to let you know what has happened so that you should not be taken by surprise when the necessary proceedings are commenced.

Believe me,

Yours very truly,

(Signed) J. STAVRIDI.

Annexe 5 au n° 6.

THE COLONIAL OFFICE TO SIR JOHN STAVRIDI.

January 12th, 1922.

Dear Sir John Stavridi,

I am obliged to you for your letter of the 29th December regarding the claims of M. Mavrommatis in Palestine.

I note the action M. Mavrommatis now proposes to take.

Yours very truly,

(Signed) J. SHUCKBURGH.

Annexe 6 au n° 6.

SIR JOHN STAVRIDI TO THE COLONIAL OFFICE.

January 30th, 1922.

Dear Sir John Shuckburgh,

Referring to my letter of the 29th Dec. last I think to inform you that on Friday last the Secretary to the Zionist Organization telephoned to me and asked me to meet Mr. Rutenberg the next day with my client M. Mavrommatis.

We accordingly went on Saturday to see Mr. Rutenberg who was accompanied by a number of gentlemen including his solicitor.

At this interview Mr. Rutenberg reviewed his connection with M. Mavrommatis from the very beginning and M. Mavrommatis replied to certain statements, after which Mr. Rutenberg stated that until M. Mavrommatis' concessions were recognized by the Authorities he was not prepared to deal with him or to make any proposals for a friendly arrangement.

Mr. Rutenberg had provided a shorthand writer who took down the whole conversation and I presume a copy therefore will be forwarded to you.

Personally I am of opinion that the whole interview was unnecessary if it was merely to repeat what Mr. Rutenberg had previously stated and matters have made no progress whatsoever, my client being left to his legal remedies unless the Colonial Office are prepared to re-consider the question of his concessions.

Believe me,

Yours very truly,

(Signed) J. STAVRIDI.

Annexe 7 au n° 6.

THE COLONIAL OFFICE TO SIR JOHN STAVRIDI.

February 7th, 1922.

Dear Sir John Stavridi,

I have received your letter of the 30th of January and must thank you for letting me know of your interview with Mr. Rutenberg on the 29th in connection with the concessions claimed by M. Mavrommatis in Palestine.

Yours very truly,

(Signed) J. E. SHUCKBURGH.

Annexe 8 au n° 6.

SIR JOHN STAVRIDI TO THE COLONIAL OFFICE.

February 23rd, 1922.

Dear Sir John Shuckburgh,

re M. Mavrommatis and Mr. Rutenberg.

For your information I am sending you herewith copy of the shorthand writer's notes of the interview referred to in my letter of the 30th January.

You will find that certain parts of the transcript are underlined in red ink, thus showing the alterations made on behalf of M. Mavrommatis to the draft which was supplied to me which alterations have been accepted by Mr. Rutenberg.

My client wished to see the original transcript of the shorthand writer's notes as naturally his memory could not carry every word that was spoken at the interview, but this was refused with such persistency by Mr. Rutenberg that it has naturally given rise to a good deal of suspicion on the part of M. Mavrommatis.

I send you herewith copy of the correspondence between Mr. Rutenberg's solicitors and my firm in regard to this matter so that you will see exactly what has taken place. I enclose also copy of a letter written by M. Mavrommatis to Mr. Rutenberg on the 18th inst. which I think completes the question of the interview. You will therefore have all the facts before you.

I have suggested to M. Mavrommatis that he should supply me with complete evidence of his Greek and No-Turkish nationality which I shall hope to lay before you very shortly and by which my

client will endeavour to convince the Colonial Office that they have been wrongly advised as to his nationality.

Believe me,

Yours very truly,

(Signed) J. STAVRIDI.

Annexe 9 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-
SECRETARY OF STATE, COLONIAL OFFICE.

March 27th, 1922.

Sir,

Ref. 47864—1921.

We beg to refer to the correspondence that has taken place between you and Mr. J. A. Malcolm acting as agent for our client M. E. Mavrommatis and to the interviews you were kind enough to grant to us in this matter.

In view of the fact that the Secretary of State for the Colonies is advised that, for the purpose of the Concessions claimed by him, M. Mavrommatis must be treated as an Ottoman subject and that therefore his claim cannot now be regarded as valid, we desire to submit to you certain documents relating to our client's nationality which we think will prove that M. Mavrommatis is not and never has been either in fact or in law an Ottoman subject.

We have had the opportunity of perusing the Ottoman law of nationality of 1869 as given in Mr. George Young's work on the Laws of the Ottoman Empire (Oxford, Clarendon Press, 1905) and the author's notes setting out the Turkish Government's decisions on the various questions arising under the Law, translation of which we send herewith (No. 1¹). As it is under this law only that the decision to treat our client as an Ottoman subject could be maintained, it is necessary to consider the same somewhat in detail.

As regards the first article, it is stated that any person born of an Ottoman father is an Ottoman subject. This could not apply to our client, whose father was born a Greek subject, as is proved by the certificate of the Mayoralty of Athens (document No. 2¹) certifying "that Nicolas George Mavrommatis aged 82 is an Hellenic subject being registered in the registry of our Municipality under No. 1462 and the date of registration 26th October 1869, previous to which he was registered in the Municipality of Kea".

¹ Not reproduced in the Annexes to the Greek Reply. [Note by the Registrar.]

Articles 2 and 3 state that any person born on Turkish territory of foreign parents can within three years of coming of age claim the Turkish nationality and any person of full age having resided for five consecutive years can obtain the Turkish nationality by petition to the Ministry of Foreign Affairs. In connection with these two articles one should read the circular of the Ministry of Interior of the 26th March 1886, quoted in the Notes, which says that before a foreigner can become a naturalised [...] military service in his country of origin, and that he is not a fugitive from justice; and the Decision of the State Council of the 3rd April 1901, which states that the Census Office is not issued a certificate of nationality (*Hamidié*) to a foreign subject without the necessary order from the Ministry of Foreign Affairs. In other words, our client, in order to obtain Ottoman nationality, would have had to procure the necessary certificates of Greek nationality and consequently ask the Greek Consulate to have his name removed from the list of Greek subjects, and would also have had to obtain the consent of the Ministry of Foreign Affairs in Turkey. From a copy of the certificate (No. 3 herewith¹) under No. 16849 of the 8th October 1921 of the Municipality of Athens it is certified that our client is a Greek subject inscribed on the Register of Males under No. 27578b, and that of the Consular Section of the High Commissioner of Greece at Constantinople under No. 4600/8211 dated the 29/11th June 1921 (No. 4 herewith¹) declares that he is a Greek subject inscribed in the Registers of the Consulate and in the Electoral Booklet under No. 812 of the Municipality of Athens 1907. From these certificates it is clear that he was never removed from the Registers in Greece or at the Greek Consulate as a Greek subject, which would have been the case if he had claimed Ottoman nationality and fulfilled the requirements of the Ottoman Law to obtain same.

We also enclose herewith copy of a certificate under No. 5¹, of the Prefecture of Police of Bucharest, Roumania, certifying that throughout the War he was living in Roumania and took refuge at Jassy at the time of the enemy invasion; that he was inscribed in the books of the Roumanian Police as a "Greek citizen" and not as a "Greek subject". This differentiation was made by the Roumanian Government, which applied the words "Greek citizen" to Greeks by birth, and the appellation of "Greek subjects" to those who have become naturalised since the beginning of the War.

Article 4 of the Laws concerns those to whom the Imperial Ottoman Government grants as an exceptional favour the Turkish nationality, and the Order of the Grand Vizier of the 5th July 1894 sets out that those persons who had been converted to Islam can exceptionally obtain this nationality. These do not apply to the case of our client.

¹ Not reproduced in the Annexes to the Greek Reply. [Note by the Registrar.]

The next Articles 5, 6, 7 and 8 have nothing to do with the case in point.

As regards Article 9 it is stated that every individual residing on Ottoman territory is reputed to be an Ottoman subject and treated as such until his quality of a foreigner had been regularly ascertained. This is the only article of the Law which might be applicable to our client ; but even this clause does not make a foreigner living in Turkey an Ottoman subject, but states that until a foreigner provides proofs of his nationality the Turkish Authorities must, so long as he is on Ottoman territory, treat him as an Ottoman subject. In the author's notes, it is added, this clause in no way impairs the rights granted to foreigners by the Treaties and does not authorize the Imperial Authorities to depart from the rules derived from such Treaties in their relations with foreigners.

In 1911 when M. Mavrommatis was residing in Athens, the Turkish Authorities had recognized him officially as a Greek subject, in proof whereof we enclose herewith a copy of document (No. 6¹) being a contract exchanged between him and the Inspector-General of Mines and Forests at the Dardanelles dated 25th April 1325 (1911), ratified by the Minister of Mines and Forests at Constantinople, in which our client is stated to be a Greek subject.

In 1914 when he obtained the concessions in Palestine he had not with him at the time any of the certificates required to prove that he was a Greek subject, and the Governor of Palestine, in accordance with Article 9 of the above-mentioned Law, by which he had the right to consider any person residing on Ottoman territory as an Ottoman subject until the contrary had been ascertained, inserted his nationality as Ottoman, and as our client was engaged in the formation of a company which would have undertaken the work, he took no steps to have the statement in the concessions altered, which he has in accordance with this law, the right to do at any time.

We think it is perfectly proved by the foregoing that our client has never been an Ottoman subject, that he was and always has been a Greek subject, and that he is entitled as such to all the rights he had acquired under the concessions in question.

The originals of the documents mentioned above are in our hands, and at your disposal at any time you may wish to see them.

We beg to ask leave for our client to proceed with the formation of an English company with English capital to carry out the works in question.

We should like to add that in so far as any rights granted to Mr. Rutenberg in the concession given to him; clash with those contained in M. Mavrommatis' concessions, our client is, and always has been, willing to come to a friendly arrangement with Mr. Rutenberg, either by co-operation, or for the sale of his rights.

We are, Sir, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe IO au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY OF STATE, COLONIAL OFFICE.

April 4th, 1922.

Sir,

Ref. 47864—1921.

We had the honour to write to you on the 27th ult. in regard to M. E. Mavrommatis' nationality, but have not been favoured with a reply. We think it well to send you herewith an extract from Counsel's opinion in regard to our client's case which we will ask you to add to the other documents we sent in our above-mentioned letter.

If you are of opinion that an interview with you, at which our client would require, would serve a useful purpose, we shall be willing to attend with our client at any time you may care to fix.

We are, Sir, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe II au n° 6.

THE COLONIAL OFFICE TO MESSRS. WESTBURY, PRESTON & STAVRIDI.

April 18th, 1922.

Gentlemen,

I am directed by Mr. Secretary Churchill to acknowledge the receipt of your letter of the 4th of April and enclosure relative to the nationality of M. E. Mavrommatis, and to inform you that Mr. Churchill is in communication with the High Commissioner of Palestine in the matter.

A further letter will be addressed to you in due course.

I am, etc.

(Signed) J. E. SHUCKBURGH.

Annexe 12 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY
OF STATE, COLONIAL OFFICE. []

2 Enclosures.

May 3rd, 1922.

Sir,

Ref. No. 16226/22.

Referring to your letter of the 18th ult. in regard to the nationality of M. E. Mavrommatis, we beg to enclose herewith:

1. Translation of the Opinion of three eminent Lawyers of Constantinople.

2. Translation of the Opinion of Ali Kémal, Professor at the Faculty of Law in Constantinople and Advocate, on the interpretation of the Turkish Law of Nationality as the same affects our client's case, and shall be much obliged if you will place these documents with the others we have already sent you.

The originals are at your disposal at any time should you desire to see them.

Now that the High Commissioner of Palestine is in this country we trust the matter will be dealt with at an early date.

We are, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 13 au n° 6.

THE COLONIAL OFFICE TO MESSRS. WESTBURY, PRESTON & STAVRIDI.

May 18th, 1922.

Gentlemen,

I am directed by Mr. Churchill to acknowledge the receipt of your letter of the 3rd May, and enclosures, regarding the nationality of M. Mavrommatis, and to inform you that a further communication on this subject will be addressed to you in due course.

I am, etc.

(Signed) J. E. SHUCKBURGH.

Annexe 14 au n° 6.

May 26th, 1922.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY
OF STATE, COLONIAL OFFICE.

Sir,

Your Ref.: No. 23228—1922.

We are favoured by the receipt of your letter of yesterday, and have requested our Client, M. E. Mavrommatis, to supply us with the original Convention and other documents on which he bases his claims to concessionary rights in respect of Jerusalem, and as soon as we receive same, we will not fail to transmit them to you.

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 15 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY
OF STATE, COLONIAL OFFICE.

Enclosures.

May 29th, 1922.

Sir,

Your Ref.: No. 23228—1922.

We have the honour to refer to your letter of the 25th inst. and now beg to send you herewith the following documents, upon which our client, M. E. Mavrommatis, bases his claims to concessionary rights in respect of Jerusalem, viz.:

- (1) Print of Concession for distribution of Drinking Water to the town of Jerusalem, in French and Turkish language.
- (2) Print of Concession for Tramways and Electric Lighting in the French and Turkish language.
- (3) A copy of the Notice calling for tenders for the electric lighting of the town of Jerusalem under date the 1st November 1913, which shows that there was no special mention that Turkish subjects only could tender.
- (4) Copy of our client's application asking for a prolongation of the delays for carrying out the works owing to the commencement of the War which created a case of *force majeure*, dated 30th July 1914 (viz. 12th August 1914, new style).

(5) A translation of the decision given by the Municipal Council of Jerusalem extending the time for the construction of the works until the declaration of Peace.

We also send you for your information two printed booklets in French language, the one generally in regard to Palestine, and the other in regard to the canalisation of the waters of the Arroub.

Tusting these will be sufficient for your purpose,

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 16 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY OF STATE, COLONIAL OFFICE.

August 15th, 1922.

Sir,

Ref. 23228—1922.

Referring to previous correspondence that has taken place between us and the Colonial Office in regard to M. Mavrommatis' claim to concessions in Palestine, Mr. T. P. O'Connor, M. P., has communicated to us the letter of the 4th inst. written to him by the Colonial Office in connection with this matter.

In view of the suggestion made that M. Mavrommatis' next step is to submit to the Palestine Government, through your Department, proposals in the form of a programme of Constructional Work which he is prepared to carry out, we have the honour to submit on his behalf herewith the proposals and plans in connection at Jerusalem and Jaffa.

We submit the proposals and plans in original and hold another copy ready at your disposal should you desire it. If further copies are required we should be obliged if you would return us the originals sent herewith and we will have as many copies made as may be necessary.

The proposals relate to the following subjects:

(1) Plans and proposals in regard to Jerusalem, relating to the distribution of water to the town; tramways; electrical power and light.

The dossiers of these proposals are complete and comply with the undertakings and conditions mentioned in the Contracts (*Cahier des charges*) which resulted from the final study completed during the first six months of 1914. A copy of these schemes was forwarded by registered parcel post on the 30th July 1914, and by the Ottoman Post from Constantinople to the President of the Municipality of Jerusalem. The President of the Municipality, by

his letter of the 30th September 1914, whilst communicating to M. Mavrommatis the resolution of the Municipal Council by virtue of which all the delays mentioned in the concession would begin to run from the date of the signature of Peace, informed him at the same time of the receipt of the copies sent.

Copies of this correspondence have already been forwarded to you and the originals are at your disposal.

The descriptive memorandum and estimates accompanying the dossier of each separate business prove, we believe, quite clearly, (a) the great advantages that the carrying into effect of these undertakings will bring from the point of view of public utility, (b) the amount estimated for the carrying out of the works, (c) all the technical details and (d) the financial estimate of each undertaking.

The cost of the works has been calculated on the basis of prices ruling at the present time. These may, of course, have to be modified at the time the work is being carried out and as to which the Company, that will be substituted for the Concessionnaire, will have to produce satisfactory proofs as provided under the Conventions.

The gross receipts and the cost of working which form the basis of the financial estimates of the undertakings have been calculated in the most practical and scientific grounds known for these kinds of undertakings.

As is proved by the financial reports which form part of the description and estimates, over and above the great advantage to the public through rapid transport, communication, economical light and motive power, the capital employed in these undertakings will, from the very beginning of the working, be assured of a return of interest, a sinking fund and a surplus for further dividend.

The town of Jerusalem will have an annual revenue of approximately £25,000 as its share in the profits of the undertaking.

The dossier relating to the waters contains, over and above the description and estimates, the most complete proposal for the adduction of the waters of Arroub, the result of many years of study, prepared by M. G. Franghia, M. Mavrommatis' Chief Engineer, and late Technical Adviser to the Minister of Public Works of the Ottoman Empire.

(2) Plans and proposals for Jaffa relating to the irrigation and distribution of the water of the River El-Audja; tramways, electrical light and power.

These proposals were made during the first months of 1914 in accordance with the engagement taken in writing by M. Mavrommatis towards the General Council of Palestine of the 14th January 1914 and registered under No. 8 in the Registry of the Ottoman Government at Jerusalem.

A perusal of the descriptive memorandum and estimates accompanying the dossier of the irrigation of the waters of El-Audja will prove the great importance of this undertaking and its serious economical advantages.

As is proved by the topographical map accompanying the proposal, on an area of about 20,000 hectares forming the valley of Jaffa and which could have been transformed immediately into gardens in 1914, only 4,500 hectares, not one fourth of the superficial area of the valley, had been so transformed into gardens and were producing annually 1,800,000 cases of oranges. The reason for which the three-fourths of this area had not been transformed into gardens was the lack of water which the cultivators had to procure by means of one well for a garden of about two hectares, which well cost at that time about £550 and which would actually cost to-day £1030, as is set out in the proposal.

To transform the remainder of the superficial area of the valley or 15,000 hectares into gardens it would be necessary to sink about 7500 wells at a cost of approximately £8,000,000.

The flow of the River El-Audja being about 10,500 litres per second the waters of this River would be sufficient to irrigate nearly the whole of the valley at an inclusive cost of £400,000 instead of £8,000,000.

M. Mavrommatis sets out in his proposals for irrigation that, during the first year of the working of his concession, 6,500 hectares will be watered, but he has no doubt that, as water is there, as soon as the irrigation works shall be complete within a few years the whole of the valley will be irrigated.

By the transformation of the remaining three quarters of the superficial area of the plain of Jaffa into gardens by irrigation as set out in the concession the annual return in favour of the Public Treasury as well as of the land-owners will be quadrupled. The land-owners instead of requiring a sum of £100 per hectare for irrigation purposes by the system of wells plus a sum to cover interest and sinking fund on the capital engaged will only have to pay £20 expenses as set out in the proposal. All details and proofs of the above statements are set out in full in the proposal accompanying the dossier.

The only document that is missing in this dossier is the general plan giving the final outline of the canals and the details of the intake of the water.

Although M. Mavrommatis is entitled to deposit this plan and its supplements within a delay of one year after the signature of the Convention, which delay starts to run from the date of the signature of the Peace with Turkey, he desired to commence this work last year in order to be able to commence the final works without taking advantages of the delay granted to him; as however at the time he submitted his petition, on the 16th April 1921, to the Department of Public Works of the High Commissioner of Palestine at Jerusalem concerning his Jaffa Concessions, the question of his nationality was raised which required that he should obtain all the documents demanded by the Legal Adviser to the Palestine Government (which documents were handed in later), this obliged

him to leave the country and put off to a later date the drawing up of the plans which will require a few weeks work on the spot as is set out in his descriptive report.

As regards the dossier of the tramway, electric light and power for the town of Jaffa it is sufficient to read the descriptive reports and estimates accompanying the dossier to form a complete idea of the advantages of this undertaking.

We should draw your attention to the fact that, according to the details given by the Memoranda, the town of Jaffa, by the carrying out of these works, would increase its revenue by the sum of approximately £40,000 being its share of the profits.

As regards the suggestion of a settlement by agreement with Mr. Rutenberg we would point out that at the time of his stay in Jerusalem in April 1921, M. E. Mavrommatis in order to comply with the desire expressed by the authorities through Mr. Herrare, Director of Public Works, that he should come to a friendly arrangement with Mr. Rutenberg, presented himself to the latter and commenced negotiations with this end in view.

M. Mavrommatis showed his goodwill by accepting in principle the suggestions which were made by Mr. Rutenberg, viz.: either to form his own Companies and commence to carry out the works, purchase his motive power from the Company that would undertake the Jordan works at prices and conditions to be settled later, or to sell to the Jordan Company his rights in the concessions at a price to be settled in a friendly manner or in case of disagreement by arbitration.

In order that Mr. Rutenberg should be able to have an idea of the true value of his concessions, M. Mavrommatis handed to him all his plans and proposals which remained with Mr. Rutenberg for 15 days as can be seen by the verbatim report of the interview of the 28th January of which a copy was sent by us to you on the 23rd February last.

When M. Mavrommatis left Jerusalem on the 16th March 1921 he had come to an agreement with Mr. Rutenberg to meet him in London and continue the negotiations as soon as the question of his nationality and the validity of his concessions should have been settled. M. Mavrommatis arrived in London on the 28th July 1921 and on the 2nd August he again met Mr. Rutenberg who repeated to him that he was still prepared to negotiate as soon as our client's rights had been recognized.

In October last Mr. Rutenberg obtained the concessions of El-Audja covering the major part of our client's rights of Jaffa. Notwithstanding this M. Mavrommatis endeavoured to comply with the suggestion made by the Colonial Office that the matter should be arranged in a friendly manner between the two Parties and endeavoured to continue the negotiations.

For this purpose he addressed through his Agent in London Mr. J. A. Malcolm to Dr. Weizmann, President of the Zionist Organ-

isation, a request for an appointment and waited for three months for the return of Mr. Rutenberg, being promised that as soon as the latter arrived a friendly arrangement would be come to.

From the letter of your Department to Mr. T. P. O'Connor we see that Mr. Rutenberg was informed that the case was one which could best be settled by agreement between the Parties, but notwithstanding this he has left for Jerusalem without, we understand, informing anybody of this communication.

As however, Mr. Rutenberg stated at the interview of the 28th January 1922, that if M. Mavrommatis receives a concession from the Government he should be able to negotiate with him, we have written to his Solicitors Messrs. Herbert, Oppenheimer, Nathan & Vandyk and to the Zionist Organization informing them of the contents of your letter of the 4th inst. and inviting them to come to a friendly arrangement or to proceed by arbitration and we hope that Mr. Rutenberg will now take the matter into consideration.

Our client would, however, esteem it a favour if, with a view to avoiding any further loss of time, the Colonial Office were to inform Mr. Rutenberg of the application now made and ask him to decide within a limited time whether in virtue of Article 29 of his concessions he wishes to make use of his right to ask the expropriation of M. Mavrommatis' concessions either by friendly arrangement or by arbitration and, if not, we shall be glad to hear that the plans and proposals now deposited are approved subject to any alterations the Colonial Office or the Palestine Government may require so that M. Mavrommatis may form his Companies and commence the carrying out of the works within the delays fixed in his Convention.

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 17 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY
OF STATE, COLONIAL OFFICE.

September 29th, 1922.

Sir,

Ref : 23228/1922 *M. Mavrommatis and Mr. Rutenberg.*

We beg leave to refer to our letter to you of the 15th inst. in which we stated that our client would esteem it a favour if the Colonial Office were to inform Mr. Rutenberg of the application he had made in regard to his concessions and ask Mr. Rutenberg to decide whether he wished, under Article 29 of his concessions, to make

use of his right to require the expropriation of M. Mavrommatis' concessions.

We are informed that Mr. Rutenberg has been in this country for three weeks, but he has given no sign of life to our client, nor have his solicitor to whom we had written in August last, communicated with us on the subject.

We should be greatly obliged if you could see your way to take steps to ascertain whether Mr. Rutenberg is desirous of expropriating our client.

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 18 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY OF STATE, COLONIAL OFFICE.

November 1st, 1922.

Sir,

Ref. 48606/1922 E. Mavrommatis.

We have the honour to reply to the letter with which you favoured us under date the 21st October.

We have submitted this letter to our client who has requested us to state that he most respectfully dissents from the views expressed therein for the following reasons :—

A. — *Concessions for the town of Jaffa.*

M. E. Mavrommatis in his petition dated the 16th April 1921, deposited with the Directorate of the Department of Commerce and Industry in Palestine, explained in detail his rights to the said Concessions and inquired with what Authority he should deposit his plans and schemes for commencing the work. A copy of this petition is in the dossier which has been deposited with you.

In reply the competent Authority in Palestine in the letter from the Legal Secretary, addressed to Mr. Murr, solicitor to M. Mavrommatis, dated the 9th May 1921, raised as the only objection to the validity of his rights, the question of his nationality without mentioning any other provisions of the Treaty of Sèvres.

In the same letter M. E. Mavrommatis was informed that no objection existed to his transferring his rights to these concessions to any person or company, and this was in view of the advice given to him by the Director of Public Works, to come to a friendly arrangement in regard to his rights with Mr. Rutenberg. Mr. Rutenberg at this time had not yet obtained the concession of El-Audja

which covers the same ground and infringes the rights and concessions of M. Mavrommatis.

The dossier of this matter having been sent to the Colonial Office for their decision, M. Mavrommatis asked your Department on the 1st September 1921, through his agent Mr. J. A. Malcolm, for the ratification of his rights at Jerusalem and Jaffa. On the 4th October 1921 the Colonial Office answered him that by reason of the fact that he was considered an Ottoman subject as far as these concessions were concerned, his rights could not be recognized.

This was the only objection made by the Colonial Office and without any reservation.

Meanwhile on the 12th and 17th September 1921, the Colonial Office approved the two concessions of Mr. Rutenberg but with the provision that if other pre-existing concessions should be considered valid, they must be repurchased or expropriated by agreement or by the decision of experts, thus covering the claims of M. Mavrommatis.

On the 1st of November 1921 we had the honour of discussing verbally with Sir John Schuckburgh the question of the nationality of M. Mavrommatis and we informed him that we could deposit documents which would satisfactorily prove that M. Mavrommatis have always been and continues to be a Greek subject. It was then intimated that the desire of the Colonial Office was to see this question settled by agreement between the two Parties and that recommendations to this effect had been or would be made to Dr. Weizmann, President of the Zionist Organization. On the 27th March 1922, we deposited with you the documents proving the nationality of M. Mavrommatis.

M. Mavrommatis endeavoured on numerous occasions to meet Mr. Rutenberg and after numerous attempts succeeded in seeing him once when, as the Colonial Office is aware, nothing resulted from the interview.

On the 4th August 1922, Mr. T. P. O'Connor received the letter of that date from the Colonial Office. The spirit and contents of the letter in question obviously led our client to understand that as far as Jaffa was concerned he should come to some agreement with Mr. Rutenberg to put an end to this question; that the same recommendation were made to the latter and that as for Jerusalem, once the plans were approved as they stood, or modified according to the conditions of the Conventions, M. Mavrommatis would be able to form his companies and commence the carrying out of the works. In our letter of the 29th September we informed the Colonial Office that M. Rutenberg while in England avoided seeing our client. Meanwhile M. Mavrommatis made every effort with the Zionist Organization. Terms for an agreement were discussed by Mr. J. A. Malcolm, agent for M. Mavrommatis, with Dr. Weizmann, President of the Zionist Organization, and Dr. Halpern, Director of the Jewish Colonial Trust, on the 20th October 1922.

Your letter of the 21st October 1922, received on the 23rd, made it impossible for M. Mavrommatis to continue the negotiations. In the letter in question you notified us that according to the provision of Article 314 of the Treaty of Sèvres, you could not recognize the rights of M. Mavrommatis in the concessions of Jaffa.

May we be allowed respectfully to submit that the only objection made until to-day by the Colonial Office and the Palestine Authorities to the recognition of the rights of M. Mavrommatis was the question of his nationality which has been proved and admitted, and that it is very hard on our client that after eighteen months had been lost in endeavouring to carry out the advice and recommendation of the Colonial Office, such an objection should now be raised for the first time.

Mr. Rutenberg who had made no attempt to see our client during the two months he had been in London, when he heard of the letter in question insisted on seeing him and we had an interview with him and our client on Friday the 27th October.

He told us that he was ready to negotiate amicably the question of the electrification of Jerusalem, but that as far as Jaffa was concerned, the moment the Colonial Office did not recognize the rights of M. Mavrommatis he could not enter into negotiations until these rights should be recognized.

We believe to discuss the judicial aspect of this question for we are persuaded that the Colonial Office, in view of the preceding, will never countenance M. Mavrommatis, pioneer of all these affairs in Palestine since 1912, which have cost him considerable sums, being deprived of his rights without at least receiving adequate compensation.

We appeal then to the justice of your Department to rectify this misunderstanding.

Nevertheless, Article 314 of the Treaty of Sèvres, which has not yet been ratified, simply says that the Allied Powers shall not be bound to recognize concessions granted after the 29th October 1914. We beg to suggest that this article cannot be applicable to the case of our client who does not claim a concession granted after the 29th October 1914, but the rights acquired to a concession before that date, for which he entered into written engagements, deposited securities and made all surveys and plans required by the Authorities (see his Petition of the 16th April 1921). Moreover, according to the spirit of Articles 282 and 288 of the same Treaty, the rights of nationals of the Allied Powers should be respected.

Even if the case of M. Mavrommatis did fall under the provisions of Article 314, the said article does not necessitate the cancellation, but only gives the right to the Allied Powers to exercise it if they wish, and we trust that the Colonial Office, in view of the justice of the case of M. Mavrommatis [and] of the fact that the concession was studied and elaborated by him, long before the declaration of War, and that he is quite prepared to fall in with the

wish expressed by the Colonial Office and come to terms with Mr. Rutenberg in regard thereto, will see that it is only fair that M. Mavrommatis should be indemnified and that his concessions should be expropriated.

B. — *Waterworks at Jerusalem.*

As regards the question of the Water scheme for Jerusalem, the letter of the Colonial Office to Mr. T. P. O'Connor suggested that our client should deposit his proposals which would afford a prospect of giving the town of Jerusalem its water supply.

In your letter under reply (paragraph 4) it is now stated that Mr. Churchill considers that the new economic conditions now prevailing in Palestine as a result of the establishment during the War of an efficient water supply at Jerusalem appear to have divested M. Mavrommatis' concession of any value or significance. We think the discrepancy between these two statements requires some explanation.

May we, however, be allowed to point out that our client actually spent the sum of eight thousand Turkish pounds gold for the gauging and survey of the water supply, copies of which were deposited with the Palestine Authorities actually before the War. Copies of these are to be found in the dossier we have already left with the Colonial Office. He has deposited a sum of 100,000 frs. with the Bank Périer et Cie, of 59 rue de Provence, Paris, in 1914 and which at that time represented a value of 4,000 sterling pounds whereas the present value would only represent the sum of about £400 pounds.

These two sums alone with interest at say six per cent. for the last nine years represent a loss to our client of 20,000 pounds and he has also spent an equal amount in the elaboration of the plans, stamp duties of the Turkish Public Debt, costs incurred to obtain the concession, lawyers fees and in the expenses of his stay in London for more than one year and a half.

Our client respectfully claims that he should not be deprived of his rights even if the Military Administration has been obliged during its stay in Palestine to carry out part of the works of the water supply in anticipation of his concession. He also points out that under Article 311 of the Treaty of Sèvres a concession may be bought out within six months from the date on which the territory is placed under the authority of any Power subject to equitable compensation being paid and therefore that his concession could not be cancelled.

We trust that this question may be reconsidered by the Colonial Office and that we shall hear from you on the subject at an early date.

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 19 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY
OF STATE, COLONIAL OFFICE.

November 8th, 1922.

Sir,

Ref. 48606—1922.

Sir John Stavridi, our partner who attended the two meetings between M. Mayrommatis and Mr. Rutenberg on the 27th ult. and the 2nd inst. has just had to undergo an operation. We much regret that we are unable on this account to communicate to you as yet the minutes of these two meetings. We shall, however, not fail to do so, as soon as Sir John Stavridi is able to attend to work.

The Minutes will make it quite clear that in spite of the sincere desire of our client to reach a friendly compromise with Mr. Rutenberg, a mutually satisfactory agreement between them is almost impossible.

Referring to our letter of the 1st inst. and confident that you will recognize the validity of M. Mavrommatis' case, we venture to emphasize the fact that our client is frankly desirous of reaching as soon as possible a friendly agreement with the Zionist Organization, in conformity with the instructions and the desires of the Colonial Office.

As we have already had occasion to state, we are convinced that the Zionist Organization is equally desirous of arriving at a friendly agreement with our client. The conditions of such an agreement were in process of being discussed when your letter of the 21st ult. reached us and, but for the effects of this letter, already have been on the way to a successful conclusion.

We accordingly submit that if the Colonial Office would be good enough to suggest to the Zionist Organization that they should instruct a qualified agent to resume negotiations with Mr. J. A. Malcolm, the agent of M. Mavrommatis, for the conclusion of an agreement, the desired end of the present difficulties might soon be attained.

Mr. Malcolm, who we believe is on extremely friendly terms with the Zionist Organization, had apparently been requested by the latter to endeavour to arrange for the financing of Mr. Rutenberg's project. It may therefore confidently be assumed that he will have no difficulty in reaching a definite agreement with the Zionist Organization's representative, assuming that the Colonial Office will be good enough to make the suggestion which we venture to indicate.

We trust that you will be good enough to accord to this letter your favourable consideration.

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 20 au n° 6.

THE COLONIAL OFFICE TO MESSRS. WESTBURY, PRESTON & STAVRIDI.

November 14th, 1922.

Gentlemen,

I am directed by the Duke of Devonshire to acknowledge the receipt of your letter of the 1st November relative to the claim of your client, M. Mavrommatis, to possess concessionary rights in Palestine, and to say that the statement that occurs on page 4, to the effect that the objection, founded upon the provisions of Article 314 of the Treaty of Sèvres, to the concession relating to the town of Jaffa, was raised for the first time in the letter from this Department of the 21st October No. 48606/1922 is not in accordance with fact.

(3) Furthermore, I am to say that His Grace regards as unwarrantable the assumption that, merely because a general objection on the grounds of M. Mavrommatis' nationality, comprehending all that gentleman's claims, was raised in the first instance, therefore those claims are not subject to any other objections in the future.

(4) His Grace agrees that under the provisions of Article 314 the Palestine Government have the option of recognizing M. Mavrommatis' claim to a concession in respect of the town of Jaffa. That Government, however, do not propose to exercise this option, because they consider (and in the opinion of His Grace's expert advisers—quite rightly) that M. Mavrommatis' project is technically inferior of that of Mr. Rutenberg and is less calculated to serve the interests of Palestine as a whole.

(5) With regard to the reference in your letter to your client's claim to a concession for the supply of water to the town of Jerusalem, I am to state that His Grace sees nothing to cause him to modify the views expressed in the letter from this Department of the 21st of October.

I am, etc.

(Signed) J. E. SHUCKBURGH.

Annexe 21 au n° 6.

M. E. MAVROMMATHIS TO THE UNDER-SECRETARY OF STATE,
COLONIAL OFFICE.

November 16th, 1922.

Sir,

With reference of the two letters from my Solicitors, sub No. 48606—1922 dated 1st and 8th November 1922, I have the honour to communicate to you the following :—

Waters of Jerusalem.

I am informed from Jerusalem that the Local Authorities and the Municipal Council have decided to expropriate my concession for the distribution of water and to pay me a fair compensation. If this information which I have received is correct and if your Department is of the same opinion I am equally ready to accept such a solution.

If such be the case I would respectfully pray the Colonial Office to nominate a competent to meet my representative with a view to mutual agreement on a figure after examination of the expenses incurred by me and the value of my concession.

Tramways and Electric Lighting of Jerusalem.

As far as the construction and working of these enterprises is concerned I believed to be both material and necessary to respectfully submit for your consideration the following explanations to avoid the possibility of any error.

According to correspondence received yesterday from Jerusalem I learn that there exists in official circles there a natural aversion to the construction of a tramway system owing to an erroneous belief that the trams are to run in the old town (Intra Muros) thus adversely affecting the antiquarian aspect of the Holy City.

His Excellency the High Commissioner of Palestine during his stay in London, during a conversation on the subject of a Tramway Concession, is reported to have said that he was of the opinion that the old city should remain immune from trams, but that [if] it was a question of the establishment of an Extra Muros system he had nothing to say against it. All the lines, obligatory or optional, provided for in my concessions, serve exclusively the new town (Extra Muros and not Intra Muros) and unite the Railway Station and the distant quarters of the town with the centre of the new town and Bethlehem and Jerusalem.

Electric light and power, which form part of the Tramway Concession, are among the most urgent necessities of Jerusalem; during my last stay in Jerusalem the Mayor on several occasions

impressed upon me that public lighting by petroleum was a charge on his budget five times greater than in 1914.

I take the liberty of repeating my request that approval should be given to my plans and schemes which were deposited with you on the 15th August 1922, sub No. 23228—22 by my Solicitors, either in their entirety or subject to such modifications as may be mutually agreed upon, thus enabling me to form my company and commence the works according to the rights and obligations devolving upon me by reason of my Convention and Specification dated 14th/27 January 1914, etc.

If however, the Town of Jerusalem, or any other competent authority prefers to expropriate the concession by means of an equitable compensation, I am equally prepared to accept this solution.

Jaffa Concessions.

I have the honour to revert to the explanations given in the letter from my Solicitors of the 1st instant, sub No. 48606—22, and feeling sure that your approval will be granted to me I would ask you to kindly make it known to the Zionist Organization that the interrupted negotiations for a friendly arrangement may be resumed and if possible brought to a conclusion.

I am, etc.

(Signed) E. MAVROMMATIS.

Annexe 22 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY
OF STATE, COLONIAL OFFICE.

December 7th, 1922.

Sir,

Ref. No. 54342—1922.

Ref. No. 55512—1922.

We have the honour to reply to your two letters of the 14th and 17th ult. after having had the opportunity of conferring on the matter with our partner who attends to M. Mavrommatis' business, who is still away from the office.

(3) As regards Article 314 of the Treaty of Sèvres, may we be allowed to draw your attention to the last paragraph of our letter of the 1st November on page 5, where we suggested that that article could not be applicable to the case of our client who does not claim a concession granted after the 29th October 1914, but the rights acquired to a concession before that date. We would point out that by his written undertaking of the 14/27th January

1914, a copy of which we beg to enclose herewith, our client, confirming his verbal undertaking given to the General Council of the Vilayet, undertook the construction and working of the tramways and electricity for the town of Jaffa on the same conditions as those already adopted for the town of Jerusalem, and also for the distribution of water for the town of Jaffa and the watering of the gardens with the waters of the Audja in conformity with the regulations and laws passed on the subject. He asked for a delay of four months during which to send a competent Engineer. M. Mavrommatis after his arrival at Constantinople fulfilled his engagement and immediately sent his Engineer, M. Gherby, with a technical staff to prepare the necessary plans which were subsequently completed by his Engineer-in-Chief, M. G. Franghia. On the 3rd March 1914, he deposited the provisional deposit required, 80.000 frs. (gold) for the faithful carrying out of the engagements he had undertaken for the Jaffa concessions. This is proved by the Acts signed and registered under Nos. 305 and 306 of the French Consulate at Constantinople.

We are informed that the Local Administration in accordance with Ottoman Law had the right to put the concessions up to competition. If offers received were less satisfactory than or equalled the conditions offered by M. Mavrommatis, the concessions would belong to him, and if better conditions were offered M. Mavrommatis had the refusal, but, if he did not exercise his right to the refusal, then the concessions would be accorded to the party that had offered the more favourable terms and that party would have to reimburse M. Mavrommatis all his expenses, the amount of which was to be fixed. It is therefore confidently submitted that M. Mavrommatis did not obtain the concessions during the War but that his rights were acquired as from the said 14/27th January 1914.

(4) As regards our client's concession for the supply [of water] to the town of Jerusalem, our client requests us to point out that, notwithstanding the establishment of a water supply by the Military Authorities, the rights he had acquired to the concession remain in full force. Moreover, at the time the works were begun our client protested to the Mayor of Jerusalem, who informed him in writing that the Military Administration had stated that water was brought to Jerusalem for military reasons and that his rights were not infringed. In fact our client states that no attempt has so far been made to affect the distribution of water to the houses.

(5) We trust that with this further information before you, you will be prepared to re-consider our client's claims.

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 23 au n° 6.

THE COLONIAL OFFICE TO MESSRS. WESTBURY, PRESTON & STAVRIDI.

January 18th, 1923.

Gentlemen,

I am directed by the Duke of Devonshire to acknowledge the receipt of your letter of the 9th January on the subject of M. Mavrommatis' claim to concessionary rights in Palestine.

2. His Grace observes that you have not furnished this Department with a further set of the documents relating to the Jerusalem electric concession for communication to the High Commissioner for Palestine, as suggested in paragraph 4 of the letter from this Department of the 30th December (No. 60715/22), and I am to enquire whether it is your intention to do so.

I am, etc.

(Signed) J. E. SHUCKBURGH.

Annexe 24 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY OF STATE, COLONIAL OFFICE.

January 23rd, 1923.

Sir,

With further reference to your letter No. 1889/1923 of the 18th inst., we have only to-day seen our client, M. Mavrommatis, who requests us to submit the following considerations:

He begs us to point out that the Colonial Office would appear to have misunderstood the purport of our letter of the 9th inst. He feels it accordingly to be his duty to furnish the following supplementary explanations: —

1. The provisional Administration of Palestine and His Britannic Majesty's Government, without waiting for the ratification of the Palestine Mandate abrogated, in violation, as he submits, of the principles of international law, the greater part of his concessionary rights and made these over to Mr. Rutenberg by the two Agreements signed between the latter and the Colonial Office under date of September 12th and September 21st, 1921. Article 29 in both of these Agreements makes the following express stipulation: —

"29. In the event of there being any valid pre-existing Concession covering the whole or any part of the present Concession "the High Commissioner if requested in writing by the Concessionnaire to do so shall take the necessary measures for annulling such

"concession on payment of fair compensation agreed by the Company of failing agreement determined by arbitration between the owner of such concession and the High Commissioner and the Company shall indemnify the High Commissioner against any compensation that may be due or become payable in respect of any such annulled concession to the extent to which it affects this present Concession and shall be entitled to increase the capital of the Company and the rates of charge to be made to consumers of electrical energy correspondingly and the amount of any compensation to become payable and to be paid in respect of any such annulled concession shall be paid in agreement with the Company and in default of agreement be determined by arbitration between the owner or owners of such pre-existing concession and the High Commissioner or other appropriate procedure."

2. It would appear to be clear from the foregoing that not only was a monopoly for electric power throughout Palestine conceded to Mr. Rutenberg, in infringement of M. Mavrommatis' rights (of which you had notice), but that the High Commissioner for Palestine undertook at the same time to annul and expropriate all similar pre-existing concessions that might conflict with these granted to Mr. Rutenberg.

3. On the other hand Articles 311 and 312 of the Treaty of Sèvres, while conferring on the Mandatory Power the right to approve or expropriate, at its discretion, pre-existing concessions in the mandated territory, confer no right on it to annul such concessions and make them over to third parties without fulfilling the formalities prescribed in these articles. It would appear to follow from this that the points at issue can hardly be settled by the submission of any projects for approval but only by recourse to arbitration in view of the conflict which has unfortunately arisen.

4. Nevertheless M. Mavrommatis, in deference to your wish but without prejudice to the effect of our letter of the 9th inst., has asked us to hand to you the accompanying documents and to draw your attention to the following observations:—

5. On July 30th, 1914 (O.S.), M. Mavrommatis forwarded to the Mayor of Jerusalem a complete file of the projects, in conformity with his obligations under the Convention. On September 30th, 1914, the Mayor of Jerusalem wrote to M. Mavrommatis acknowledging the receipt of the projects and stating that these had been submitted to the Municipal Engineer for his examination. In view of the fact that within the three month's time limit, specified by the Agreement, no modification was communicated to M. Mavrommatis, it necessarily follows that the projects must be regarded as having then been definitely approved.

6. On August 15th, 1922, at the request of the Colonial Office we submitted the complete file in the original. We also remarked to Mr. Vernon that if he would return the originals to us for 24 hours we would undertake to make as many copies as the Colonial Office

might consider necessary. Mr. Vernon, however, replied that this was not necessary, at any rate for the moment.

7. We now enclose copies of the following documents :—

(a) Agreement and Specifications, pertaining to the Concession for the Public Distribution of Electric Power, Light and Tramways of the Town of Jerusalem.

(b) Financial Report and Descriptive Memorandum for the Electric Power, Light and Tramways of the Town of Jerusalem.

(c) Memorandum Descriptive and Justificative for the Electric Power and Light to the Town of Jerusalem.

(d) Agreement and Specifications pertaining to the Concession for the Construction and Working of the Distribution of Drinking Water to the Town of Jerusalem.

(e) *Projet sur l'Adduction des Eaux d'Arroub.*

(f) Financial Report and Descriptive Memorandum of the Waters of Jerusalem.

8. In regard to the plans, M. Mavrommatis disposes of four copies in all. Of these two are already deposited in Jerusalem, the original is in your own hands and he has only one copy left. Should you therefore wish to have more copies, we shall be obliged if you will kindly return to us the originals. In that case we shall be able to let you have them back together with as many copies as you may require within a couple of days.

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 25 au n° 6.

THE COLONIAL OFFICE TO MESSRS. WESTBURY, PRESTON & STAVRIDI.

February 1st, 1923.

Gentlemen,

I am directed by the Duke of Devonshire to acknowledge the receipt of your letter of January 23rd on the subject of M. Mavrommatis' claims to concessionary rights in Palestine, and to inform you that His Grace has caused the documents specified in paragraph 7 thereof to be despatched to the High Commissioner for Palestine for his consideration.

I am, etc.

(Signed) J. E. SHUCKBURGH.

[Une annexe supprimée ; voir p. 355, n° 37.]

Annexe 26 au n° 6.

DRAFT AGREEMENT BETWEEN M. E. MAVROMMATHIS AND THE COLONIAL OFFICE.

Submission to Arbitration.

(1) MEMORANDUM OF AGREEMENT made this day of between M. E. Mavrommatis of 25 Linden Gardens Bayswater in the County of London of the one part, and the Colonial Office acting by of the other part.

(2) WHEREAS the said M. Mavrommatis by virtue of contracts in due form between himself and the Town of Jerusalem under date the 14/27 January 1914 is the holder of a concession for the tramways electrical power and lighting and distribution of drinking water to the town of Jerusalem AND WHEREAS M. E. Mavrommatis also holds a concession for the tramways electrical power and lighting and distribution of the water of the River El-Audja in the town of Jaffa by virtue of a decision of the Permanent Council of Palestine under the date the 5th November 1915 and the contract under the same date between the Ottoman Authorities and Youssouf Selahedin Bey acting as Attorney in the same and for account of the said E. Mavrommatis.

(3) AND WHEREAS by an indenture dated the 12th day of September 1921 between the Right Honourable Sir Herbert Samuel G. B. E. High Commissioner for Palestine by virtue of his office by the Crown Agents for the Colonies of the one part an exclusive concession was granted to the said Rutenberg for 32 years for electrical power and lighting and distribution of the water of the said river Audja in the town of Jaffa.

(4) AND WHEREAS by a similar indenture dated the 21st day of September 1921 between the Parties mentioned in Clause 3 hereof an exclusive concession was granted to the said Rutenberg for 70 years for electrical power and lighting and distribution of water of the town of JERUSALEM.

(5) AND WHEREAS by the said indentures it was agreed that the said High Commissioner should expropriate existing undertakings within the concession area on payment of fair compensation to the person expropriated.

(6) AND WHEREAS differences have arisen and are still existing between the Parties hereto touching their respective rights duties and obligations it now appears:

1. That the Colonial Office by letter dated the 4th August 1922 has recognized that the said M. E. Mavrommatis "enjoys certain rights under his concessions" in Jerusalem and that the Colonial Office would respect them: and that the said concessions in Jerusalem for the tramways, electrical power and lighting and distribu-

tion of water being definitely admitted a sum should be assessed by arbitration on a fair and equitable basis to compensate M. E. Mavrommatis for the expenses he has incurred and loss he has sustained by the expropriation of his rights and

2. That the Colonial Office does not recognize the claim of M. Mavrommatis to certain concession for the town of Jaffa, viz. the tramways electrical power lighting and distribution of the water of the River El-Audja.

(7) AND WHEREAS the Parties hereto have agreed to refer the said matters to arbitration.

(8) HOW IT IS HEREBY AGREED AND DECLARED by and between the Parties hereto that the said difference should be referred to the award and determination of a Judge of the High Court of Justice in England, viz. :

For Jerusalem:

(a) The amount of compensation due to M. E. Mavrommatis by reason of the expropriation of his rights and his loss of profits, and also for expenses incurred by him in connection with the concessions.

For Jaffa:

(b) Whether M. E. Mavrommatis has any right to an indemnity for the expropriation of his Jaffa concessions.
(c) If it is decided that such a right does reside in M. E. Mavrommatis the Arbitrator shall fix the amount of compensation he considers due to him for the said expropriation and loss of profit and also for expenses incurred by him in connection with the concessions.

(9) AND IT IS HEREBY FURTHER AGREED that the decision of the Arbitrator in regard to the said Jerusalem concessions shall be final and without appeal. As regards the claim to the Jaffa concessions the Parties hereto reserve to themselves the right to appeal within three months from the date of the Award to the International Court of Justice.

(10) AND IT IS HEREBY FURTHER AGREED that the said Arbitrator shall have all the powers given by the Arbitration Act 1889 and that the Parties hereto shall produce before the Arbitrator all books deeds papers and writings in their or either of their custody or power relating to the matters in difference.

(11) AND IT IS HEREBY FURTHER AGREED that the said Arbitrator shall make and publish his Award in writing and signed by him of and concerning the matters referred ready to be delivered to the Parties or to either of them (or their respective personal representatives if either of the said Parties due before the making of the Award) on or before next or on

or before such further days as the Arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order; and that the costs of the said reference and Award shall be in the discretion of the said Arbitrator who may award by whom, to whom, and in what manner the sum shall be paid.

Delivered

day of

1923.

Annexe 27 au n° 6.

THE COLONIAL OFFICE TO MESSRS. WESTBURY, PRESTON & STAVRIDI.

May 4th, 1923.

Gentlemen,

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 2nd May 1923, Ref. R., on the subject of concessionary rights of M. Mavrommatis in Jerusalem and Jaffa and to inform you that a further communication will be addressed to you as soon as possible.

I am, Sir, etc.

(Signed) J. E. MASTERTON SMITH.

*[Une annexe supprimée; voir p. 455, n° 37.]**Annexe 28 au n° 6.*

THE COLONIAL OFFICE TO MESSRS. WESTBURY, PRESTON & STAVRIDI.

July 25th, 1923.

Gentlemen,

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 20th July on the subject of the claims of M. E. Mavrommatis; and to inform you that a further communication will be addressed to you as soon as possible.

I am, etc.

(Signed) J. E. MASTERTON SMITH.

Annexe 29 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY OF STATE, COLONIAL OFFICE.

August 3rd, 1923.

Sir,

Ref. 36266/23.

We have the honour to acknowledge the receipt of your letter of the 2nd inst. in regard to the claims of M. E. Mavrommatis, the contents of which we note and will communicate to our client.

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 30 au n° 6.

THE COLONIAL OFFICE TO MESSRS. WESTBURY, PRESTON & STAVRIDI.

November 7th, 1923.

Gentlemen,

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 2nd November, on the subject of the claim of M. Mavrommatis, and to inform you that a further communication will be addressed to you as soon as possible.

I am, etc.

(Signed) J. E. MASTERTON SMITH.

Annexe 31 au n° 6.

THE COLONIAL OFFICE TO MESSRS. WESTBURY, PRESTON & STAVRIDI.

January 21st, 1924.

Gentlemen,

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 11th January on the subject of the claims of M. Mavrommatis to certain concessions, and to inform you that a further communication will be addressed to you as soon as possible.

I am, etc.

(Signed) J. E. MASTERTON SMITH.

Annexe 32 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY OF STATE, COLONIAL OFFICE.

January 24th, 1924.

Sir,

Ref. 45198/23.

Referring to our letter of the 11th inst. and to your formal acknowledgment thereof on the 21st inst. we think it right to inform you that, in the hope of expediting a settlement of this matter, our client is applying to his Government with a view to having his claims brought before the International Tribunal at The Hague.

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 33 au n° 6.

MESSRS. WESTBURY, PRESTON & STAVRIDI TO THE UNDER-SECRETARY OF STATE, COLONIAL OFFICE.

February 19th, 1924.

Sir,

Ref. 5066/24.

We have the honour to acknowledge the receipt of your letter dated February 1924, which reached us this morning the contents of which we have duly noted.

We have, etc.

(Signed) WESTBURY, PRESTON & STAVRIDI.

Annexe 34 au n° 6.

DR. CH. WEIZMANN TO MR. RUTENBERG.

October 20th, 1921.

Dear Mr. Rutenberg,

At the meeting of the Executive at which Mr. Naiditch was present the question of the Jordan and Audja Concessions was raised, but I regret to say it was found impossible to formulate a definite policy in regard to the carrying out of the projects. The

principal cause is the absence of adequate information from you. We are quite in the dark in regard to many important questions connected with the Concessions. A copy of the Audja Concessions has already reached us but not of the Jordan Concession, while other persons appear to be much more fully informed.

In view of the demands which you have made and are still making on us we have exerted ourselves to the utmost to meet, we consider that we have not been fairly treated by you.

We are anxious to come to a decision in regard to the work connected with your name but this is quite impossible until we receive all the documents bearing on the matter.

Yours sincerely,

(Signed) CH. WEIZMANN.

Annexe 35 au n° 6.

AVIS RÉITÉRÉ AU SUJET DE LA CONSTRUCTION D'UN TRAMWAY ÉLECTRIQUE ET DE LA CRÉATION D'UN RÉSEAU ÉLECTRIQUE POUR L'ÉCLAIRAGE DE LA VILLE DE JÉRUSALEM.

Les Sociétés qui voudront concourir à l'adjudication d'un tramway à construire à Jérusalem et pour l'établissement d'un réseau électrique servant à l'éclairage de cette même ville, suivant le cahier de charges envoyé précédemment par le ministère des Travaux publics à Constantinople et dont plusieurs exemplaires avaient été auparavant distribués par la Municipalité de Jérusalem, devront présenter leurs conditions par écrit et les mettre dans des enveloppes cachetées. Ces enveloppes seront acceptées jusqu'au 31 décembre n.s. de l'année courante par la Commission d'adjudication qui sera constituée au Conak du Gouvernement à Jérusalem et à qui on aura soin de remettre lesdites enveloppes.

La Concession sera accordée pour quarante ans seulement.

Jérusalem, le 1^{er} novembre 1923.

[Cachet de la Municipalité.]

Annexe 36 au n° 6.

CONSULTATION SUR LA NATIONALITÉ DE M. MAVROMMATHIS, FOURNIE PAR MEHMET HAIRI ET N. T. PAPADIMITRIOU, AVOCATS A CONSTANTINOPLE.

Constantinople, le 15 avril 1922.

Monsieur Euripide Nicolas Mavrommatis, sujet hellène titulaire de quelques concessions en Palestine, sur base de conventions passées

avec les autorités locales en 1914, désire faire valoir et confirmer ces concessions par les autorités britanniques. Les contrats se référant auxdites concessions mentionnant M. Mavrommatis comme sujet ottoman au lieu de sujet hellène, il est demandé quelle est d'après la loi ottomane la valeur de cette désignation et si elle modifie en quelque chose sa situation de sujet hellène.

En vertu de la disposition de l'article 9 de la loi sur la nationalité de 1869, tout étranger se trouvant sur le territoire ottoman est réputé sujet ottoman et traité comme tel jusqu'à preuve du contraire. Cette disposition ne change en rien le statut personnel d'un étranger, lequel, quoique traité par une autorité comme sujet ottoman, ne le devient point effectivement, pouvant prouver à n'importe quel moment sa nationalité étrangère par les actes voulus. Telle est l'interprétation uniforme et générale donnée à l'article 9 de la loi sur la nationalité, et chacun des soussignés a connu dans sa carrière maints exemples de personnes réputées sujets ottomans et qui ont par la suite prouvé leur sujétion étrangère.

Ainsi, des sujets étrangers habitant la Turquie étaient souvent cités devant un tribunal purement ottoman, quoique d'après les Capitulations ce tribunal n'était point le compétent. Ce n'est qu'après la production des actes officiels prouvant la nationalité étrangère du défendeur que le tribunal se déclarait incomptént et transmettait l'affaire devant le Tribunal mixte conformément aux Capitulations. Il est même à remarquer que tant les tribunaux que les autorités administratives se montraient en général très sévères et réclamaient, surtout des sujets grecs, des pièces justificatives difficiles à produire, comme par exemple certificat d'indigénat du père, ancien passeport du père, document datant d'avant 1869, etc. Dans ces conditions, il arrivait souvent que des sujets hellènes dans leurs rapports avec les autorités ottomanes soient considérés et traités comme sujets ottomans, faute par eux de pouvoir produire en temps voulu les documents nécessaires.

Dans de pareilles conditions, le Gouverneur de Palestine, ayant à traiter en 1914 avec M. Euripide Mavrommatis qui se disait sujet grec, sans pouvoir produire immédiatement tous les documents voulus pour prouver, par l'entremise du ministère des Affaires étrangères, sa nationalité étrangère ainsi que celle de son père, l'a considéré purement et simplement comme sujet ottoman, se basant sur l'article 9 précité de la loi sur la nationalité. C'est là, comme nous venons de le dire, un procédé très couramment appliqué en Turquie, mais qui ne change, bien entendu, en rien le statut juridique de l'étranger qui, malgré sa désignation comme sujet ottoman, continue à être sujet étranger ayant le droit à n'importe quel moment de présenter ses actes et demander la rectification de la désignation erronée.

M. E. Mavrommatis possède les documents suivants pour prouver sa nationalité hellénique :

1° Acte de naissance de son père, inscrit à la Mairie d'Athènes, en date du 26 octobre 1869.

2° Certificat de la Mairie d'Athènes qu'il est inscrit dans le matricule des mâles.

3° Certificat de la Section du Haut-Commissariat de Grèce à Constantinople, qu'il est sujet hellène inscrit dans les registres du Consulat, sur base de son livret électoral sub. n° 812, délivré par la Mairie d'Athènes en 1907.

Ces documents sont plus que suffisants pour prouver que M. Euripide Mavrommatis est un sujet hellène de naissance et continue de l'être.

La signature apposée par lui sur les contrats échangés en Palestine au sujet des concessions ne saurait en aucun cas lui être préjudiciable sur la question de sa nationalité et personne ne peut lui imposer la sujétion ottomane mentionnée dans ces contrats. L'article 9 de la loi sur la nationalité donne à M. Mavrommatis le droit de se présenter à n'importe quel moment et obtenir, sur base des documents qu'il possède et que toute autorité ottomane — même la plus difficile — trouverait suffisante, rectification de l'erreur mentionnée dans les contrats de *sujet ottoman en sujet hellène*, ce qui est la vraie nationalité.

NOUS CONCLUONS

Qu'au point de vue de la loi ottomane M. E. Mavrommatis, sur la base des documents qu'il possède, est sujet hellène de naissance, et que la signature apposée par lui sur les contrats des concessions de Palestine, qui le désignaient comme sujet ottoman, ne change en rien sa situation juridique comme sujet hellène.

Nous sommes donc d'avis que M. Euripide Mavrommatis n'a qu'à soumettre aux Autorités britanniques tous ses actes pour que droit lui soit donné dans le sens indiqué plus haut.

(Signé) MEHMED HAIRI, avocat.

Stamboul, Babi Ali 37.

N. T. PAPADIMITRIOU,

Docteur en droit, avocat.

Galata, Merkez Rihtim Han.

I fully agree to the above opinion. It is a correct statement of the law on the point.

(Signé) A. A. MANGOS,

Barrister at Law.

Sigorta Han Galata,

Constantinople.

Annexe 37 au n° 6.

CONSULTATION SUR LA NATIONALITÉ DE M. MAVROMMATHIS,
 FOURNIE PAR ALI KEMAL,
 PROFESSEUR A LA FACULTÉ DE DROIT DE CONSTANTINOPLE.

Constantinople, le 18 avril 1922.

Monsieur l'avocat de M. Euripide N. Mavrommatis, demandant une consultation juridique, m'a posé la question suivante :

« Une personne de la sujétion étrangère ayant conclu une convention avec le Gouvernement ottoman lui accordant une concession et mentionnant qu'elle est sujette turque, peut-elle être considérée, par suite de la susdite mention, avoir perdu sa nationalité étrangère et acquis la nationalité ottomane ? »

Mon avis juridique est comme suit :

D'après la loi ottomane sur la nationalité (Destür, tome I), pour qu'une personne de la sujétion étrangère puisse acquérir la sujétion ottomane, il faut qu'elle présente une requête au ministère des Affaires étrangères demandant l'acquisition de cette nationalité et qu'elle prouve être domiciliée en Turquie continuellement pendant cinq années à partir de la date où elle a atteint l'âge de la majorité ; et que le Gouvernement admette cette demande et donne une décision pour son acceptation à la sujétion ottomane. Sans qu'une demande à ce sujet soit présentée au Gouvernement et que celui-ci ait prise une décision spéciale sur l'admission à la nationalité, un sujet étranger ne peut nullement acquérir la nationalité ottomane.

Cette situation déterminée par la loi de nationalité est d'ailleurs conforme aux principes généraux du droit. Car, d'après le principe admis par tous les auteurs de l'Occident et notamment développé dans l'ouvrage renommé de M. André Weiss, professeur à la Faculté de Droit de Paris, la nationalité est le lien qui rattache une personne ou une chose à une Nation et son fondement juridique se base sur un contrat synallagmatique intervenu entre l'État et l'individu. Donc la nationalité doit avoir comme base le consentement réciproque de l'État d'un côté et de l'individu de l'autre. Par conséquent, on ne pourrait pas prétendre qu'une personne aurait perdu sa nationalité essentielle et acquis une nouvelle nationalité tant qu'elle n'aurait pas fait une demande pour entrer dans la sujétion d'un autre État et que celui-ci ne l'aurait pas accepté ; c'est-à-dire, tant qu'un contrat juridique ne serait pas conclu entre les deux Parties.

L'attribution de qualité de sujet ottoman à un sujet étranger faite dans un contrat conclu avec un département du Gouvernement ne peut nullement changer et impressionner l'avis ci-haut expliqué. Dans l'article 9 de la loi sur la nationalité est dit : Tout individu se trouvant dans l'Empire ottoman est considéré comme sujet ottoman et traité comme tel. S'il est sujet étranger, il doit légalement

prouver sa nationalité étrangère. » D'après le principe sur lequel cet article est basé, toute personne domiciliée en Turquie est considérée par le Gouvernement [comme] sujette ottomane jusqu'à ce que le contraire soit prouvé.

Par conséquent, si un département du Gouvernement auquel une personne s'adresse considère celle-ci comme sujette ottomane et la traite de cette manière, [il] agit conformément à l'esprit de la loi. Mais il est aussi expressément mentionné dans la susdite loi qu'une pareille considération et manière d'agir d'un département ne peut nullement avoir un caractère définitif; par conséquent, tout étranger qu'on a traité comme sujet ottoman conserve toujours son droit légal de prétendre quand il [le] désire qu'il est sujet étranger et la loi ne contient aucune restriction à ce sujet.

Donc, me basant sur les points légaux ci-haut mentionnés, je résume comme suit mon humble avis :

« Le fait qu'un sujet étranger a été considéré sujet ottoman et mentionné comme tel dans une convention de concession ne constitue pas une cause légale pour que cet individu perde sa sujexion étrangère et acquière la nationalité ottomane. »

(*Signé*) ALI KEMAL,

Professeur à la Faculté de Droit
de Constantinople
et avocat.

Pour traduction fidèle du turc.

[*Timbres et Sceaux.*]

(*Signé*) N. PAPADIMITRIOU,
Docteur en droit, avocat.

Annexe 38 au n° 6.

ACTE DE CONCESSION FORESTIÈRE OBTENUE PAR M. E. MAVROMMATHIS
EN 1910.

Number of the Contract = 1.

Cubic Metres = 20000.

Kind = Oak timber (unworked).

Price = 30.

Total Price = 600000.

Article 1. — Boundary : In the district of Biga-Tchan, and Kilissa Alani Village, on the Aghi Dagh mountain, on the North, Bostanlik, Bakirlik and Keuy Tépessi ; on the East, partly Bostanlik, Ak Dinar Alani and Oda Bachi Tchechmessi ; in the West, Mal Kaba Aghatch, Kourou Tchechmessi and Rastlik ; in the South amidst the Sakar Tépé Yoli which forms a line between the Biga and Bayramitch Districts and Sakar Tépé :

An agreement made between on one part the Ministry of Forests, on the other part M. Euripides Mavrommatis, *Greek citizen*, temporarily living at Dardanel, acting in the name of M. Jules Richerolle, to cut oak trees for four years in the zone of forest within the aforesaid boundaries, under the condition that the said trees shall be selected and surveyed according to added agreement and to be made traverse and timber, adopted that the trees to be cut will have, at least, lower circle of 1.20 m. and upwards, and a price of 30 piastres will be paid to the Ministry of Forests for every cubic feet of unworked timber.

Article 2. — Two times in every year the scientific Employé of the said Ministry shall select, show and deliver under special marks and numbers to the said Contractor 2500 cubic feet of trees making a total of 5000 cubic feet a year. But in this case the Contractor has to give to Ministry the whole price of the trees before cutting of them. If the said Mavrommatis wishes to cut more trees than the above stipulate cubic feet after payment of the necessary sum and according the marks and selection by Ministry of Forests he may cut down more trees. If during the last years no trees do remain in the said zone, whose dimensions and qualities is according to the agreement and conditions the said Contractor Mavrommatis has no right to demand more.

Article 3. — When the Forest Ministry selects and marks the trees as above-mentioned manner and show them to the Contractor Mavrommatis, the said Ministry considers the delivery of the trees has been duly performed and does not accept any liability for the damage sustained by the trees, viz. the preservation of the selected and marked trees is the duty of the Contractor.

Article 4. — Apart from the trees 120 centimetres and larger dimensions which will be selected, marked and delivered to the Contractor Mavrommatis, other trees of smaller dimension including the timber making fire-wood and charcoal will be used by Government as it likes. Only under equal conditions the Contractor will be preferred for any probable agreement.

Article 5. — If, whithin the boundaries of the said zone some causes of difficulty occur for the cutting of trees, through some military causes the performance of the using trees postponed in this zone, the Government again selects, marks and delivers the other trees instead of them, then the Contractor has no right to demand redress in otherwise.

Article 6. — The Contractor Mavrommatis has to pay yearly the price of 5000 cubic metres of unrough oak tree, which he agrees and contracts to cut down yearly. He may postpone the demand for delivery of the trees, but is under the obligation of paying the stipulated price. If there occurs any suspension of the payment the Government takes its money with due interest.

Article 7. — The Contractor shall evacuate such parts of the forest zone, in which selected, marked and paid, and delivered trees

occur to be. Such delivery of the trees to Contractor shall occur twice in one year.

Article 8. — The Contractor shall employ Turkish subjects, and preferably the inhabitants of the near villages, for the cutting and transmitting the said trees. For the opening of the necessary roads and for the bringing of driving apparatus the Contractor shall apply to the Turkish Government for formal licence. If Contractor uses steam machines for cutting traverses or other timbers, and if motor driving machines and cars [are] employed for the carrying of the said traverses and timbers, he may employ a sufficient number of foreign subjects as motor and machine drivers. The Contractor also can employ twenty-five foreign foremen to teach new methods of cutting timber to the native labourers. The list of these twenty-five foremen will be given to the Government.

Article 9. — The habitations and buildings to inhabit the labourers shall be built in an open space of the forest and every precaution will be taken to prevent fires. The price of timbers will be paid by him separately, and at the termination of the Contract this buildings shall be left to the Government without any price.

Article 10. — The labourers of the Contractor, if necessary, shall kindle their fires in preserved and sure place and take care for the forest fires. A watch will be kept for the fire.

Article 11. — If a fire occurs in the forest, the Contractor and his labourers immediately shall attempt to extinguish it at the same time warning the forester.

Article 12. — Except the selected and marked trees in the above-mentioned zone other trees fit to be used as fuel or timber will be given to the inhabitants of the near villages under the control of Forest Authorities as usual. Moreover, within the boundary of the zone, and in the places where no scientific disadvantages are seen, sheep and cattle are permitted to feed, and Contractor has no right to rise objection for it. Only if it is necessary to cut trees for the necessities of the villages, these trees will be selected separately, and marked with another colour from the Contractor's. If somebody ventures to cut trees without permission, or fires kindled by the shepherds in the forest, the Contractor or his men immediately shall warn the forest watchman. Contrary act involves liability.

Article 13. — The Contractor shall appoint a responsible Administrator in Constantinople, or in the necessary place, and within one month from the date of this agreement shall make known his name and address to the Ministry of Forests. The said Administrator will be considered as lawful substitute and attorney of the Contractor and he will be responsible for his conduct.

Article 14. — If other and more trees than the selected, marked and numbered trees will be cut by the men of Contractor he is liable and responsible for indemnities to the Forest Ministry.

Article 15. — The Contractor Mavrommatis shall deposit in Minis-

try of Forests a sum equal to the tenth part of the whole sum stipulated, or shall give a respectable bail for the said tenth part. This is a security for that the said Contractor will act in full conformity with this agreement and with the annexed conditional specification, and to pay the fine which may arise from the probable nonconformity of him or his men, also for the due payment of the price for the trees which he undertook to cut as shown in the Article 6.

Article 16. — Any disputes or cases which may arise between the Government and the said Contractor in regard to the application of this agreement or annexed specification, will be dealt at the Competent Turkish Courts.

Article 17. — Should the Contractor refuse to sign the Contract and to give the necessary bail till two months after the final conclusion of this agreement the security money which he had dispossessed for the auction shall be lost. This agreement has [been] executed and exchanged in two copies.

Dated March 22nd, 1325.

(Signed) Forest Chief Inspector :
SALIH HAYRI.

(Signed) MAVROMMATHIS Euripide, Dardanel Town, Timber-merchant, *Greek Citizen*, in the name of M. JULES RICHEROLLE, Railway-Director, French Citizen, ATHENA.

I am a bail to accept all liabilities and responsibilities of Mavrommatis which is clearly shown in this agreement and annexed specification, especially in Article 15.

April 4th, 1325.

(Signed) AHMED ZULKEFIL, Son-in-law of the Sultan, living in his Kiosk, Sali-Bazar.

We hereby do certify that the above signature is the true handwriting of Ahmed Zulkefil Pacha, a son-in-law of the Sultan, residing in his house at Sali-Bazar, and also certify that said Pacha has a monthly pay of Prs. 20.000 from Government Treasury, at the same time he is the owner of one half part of a farm, at Ismidt, known Sultant Tchiflik, estimated value more than Prs. 100.000, and, therefore, the security proposed by him is valid and creditable.

April 4th, 1325.

(Signed) AHMED FAZIL, Steward of Salihé Sultane.

(Signed) HUSSEIN HUSNI, Imam of Suhail Bey Quarter at Tophané.

It is a true copy of the Original Document.

(Sealed) Court of Registry, DARDANEL District,
June 12th, 1337.

No. 508.

I hereby certify that the above signature of the Agreement is the handwriting and the true signature of Ahmed Zulkefil Pacha, a son-in-law of the Sultan, residing at his sea-side house at Salibazar, and the security given by him in this case is lawful and creditable.

April 4th, 1325.

(*Seal*) Notary Public of Pera-Court.

[*Trois annexes supprimées; voir p. 355, n° 37.*]

Annexe 39 au n° 6.

STATUTS DE LA SOCIÉTÉ ANONYME IMPÉRIALE OTTOMANE DE
TRAMWAYS ET D'ÉCLAIRAGE ÉLECTRIQUES DE DAMAS.

[*Traduction.*]

Les soussignés :

M. FRANCOU, directeur de la Société anonyme ottomane du Gaz de Constantinople, représentant la Société générale de Chemins de Fer économiques, la Société générale belge d'Entreprises électriques, la Compagnie générale de Railways et d'Électricité,

S. Exc. MEHMED ALI BEY, conseiller légiste à la Sublime-Porte, L'Emir MOHAMED ARSLAN BEY, premier secrétaire de la Légation impériale ottomane à Belgrade;

En vue de réaliser les concessions accordées par Firman impérial en date du 10 Rédjeb 1307 et transférées à MEHMED ARSLAN BEY en vertu de l'article 19 de la Convention en date du 18 Mouharem 1321 et 3 avril 1319 pour :

1° La construction et l'exploitation à Damas et ses environs d'un tramway à condition que les lignes allant de l'Hôtel gouvernemental jusqu'au point terminus de la chaussée Missir Capoussou et de l'Hôtel gouvernemental jusqu'au mausolée de Mouheddin Arabi, soient obligatoires ; que, d'après l'article 20 de la Convention en date du 10 Rédjeb 1307, si, dans l'intervalle des dix premières années de la concession, des demandes étaient faites pour la construction, parallèlement aux lignes susindiquées, d'un tramway ou l'installation d'un service d'omnibus, la Société aurait la préférence à conditions égales ;

2° L'installation à Damas de l'éclairage électrique pour le service public et privé, à condition que si, d'après le Firman impérial en date du 27 Mouharem 1321 et l'article 21 de la Convention en date du 18 Mouharem 1321, des demandes étaient faites pour l'installation d'un téléphone, la Société aurait la préférence à conditions égales ;

3° L'obtention, d'après le Firman impérial en date du 25 Mouharem 1321, de la force électrique pour l'exploitation de ces deux

concessions et son emploi, le cas échéant, à toutes sortes d'industries; Concessions accordées par le Gouvernement impérial, et des engagements qu'elles comportent,

Forment une Société anonyme ottomane qui sera soumise aux clauses et conditions suivantes :

TITRE PREMIER.

Formation et objet de la Société. — Dénomination. — Siège.

Article premier. — Il est formé entre les soussignés et tous les propriétaires des actions ci-après créées, une Société anonyme ottomane pour l'exécution des travaux indiqués dans les conventions susindiquées ainsi que dans les cahiers des charges y annexés, à condition que la Société soit autorisée à employer la force hydraulique pour l'exécution des travaux susmentionnés.

Article 2. — La Société prend la dénomination de Société anonyme impériale ottomane de Tramways et d'Éclairage électriques de Damas et sera soumise aux lois et règlements généraux de l'Empire en qualité de société ottomane.

Article 3. — La Société aura son siège à Constantinople et pourra établir des succursales dans toute autre ville de l'Empire ottoman ou à l'étranger.

Article 4. — La durée de la Société est fixée à quatre-vingt-dix-neuf ans, terme des concessions, sauf le cas de dissolution anticipée ou de prorogation.

TITRE II.

Apport et transfert de la Concession à la Société.

Article 5. — S. Exc. Mehmed Ali Bey, agissant par procuration spéciale, au nom et pour compte de Mehmed Arslan Bey, concessionnaire, apporte à la Société la concession qui lui a été octroyée, avec tous ses droits, priviléges et avantages y attachés ou en dérivant pour l'installation conformément aux clauses des conventions et des Firmans impériaux d'un tramway et sa traction et de l'éclairage électrique et de l'emploi de la force électrique ; et la Société devient titulaire et propriétaire de ladite concession et se trouve substituée à tous les droits et obligations du concessionnaire.

Par conséquent, S. Exc. Mehmed Ali Bey est obligé de remettre à la susdite Société le Firman impérial, les conventions, tous les documents et actes s'y rattachant ainsi que le contrat passé avec la Municipalité de Damas en date du 22 avril 1903 pour l'éclairage électrique concernant le service public.

M. FRANCOU, directeur de la Société anonyme ottomane du Gaz de Constantinople et représentant de la Société générale de Che-

mins de Fer économiques, la Société générale belge d'Entreprises électriques, la Société générale de Railways et d'Électricité, s'engage à construire et à livrer à la Société susnommée :

1° Les lignes des tramways électriques qui sont obligatoires, allant de l'Hôtel gouvernemental jusqu'au point terminus de la chaussée Missir Capoussou, et de l'Hôtel gouvernemental au mausolée du Cheik Mouheddin Arabi.

2° L'éclairage public conformément à la convention susdite échangée avec la Municipalité de Damas.

3° L'usine électrique et ses ateliers, et tous les outils et appareils nécessaires pour l'exploitation des tramways et de l'éclairage, le tout sans demander aucun frais.

Article 6. — Le fonds social est fixé à 6 millions de francs, divisés en 12.000 actions de 500 francs chacune ; il pourra être augmenté de 50 pour cent par l'Assemblée générale. Il sera en outre créé 12.000 parts de fondateurs qui seront soumises aux dispositions de l'article 36. La Société aura le droit, en cas de besoin, d'émettre des obligations jusqu'à concurrence de la moitié du capital social. Elle remettra au ministère, pour être examinés, des échantillons soit des actions, soit des obligations avant leur émission, et il sera aussi donné gratuitement une part de fondateur à chaque action.

Contre les travaux énumérés au dernier paragraphe de l'article 5, la présente Société donnera à M. Francou, représentant des trois susdites Sociétés, des actions entièrement libérées pour 4 millions de francs et la quantité égale de parts de fondateurs.

Article 7. — La Société ne sera définitivement constituée qu'après la souscription de la totalité du capital et le versement du premier dixième de ce capital.

Des certificats provisoires constatant les versements seront remis aux souscripteurs pour être échangés contre des titres définitifs après le versement de la moitié du capital.

Les actions seront libellées d'une part en turc et de l'autre en français ou en toute autre langue.

Les 90 pour cent restants du fonds social seront appelés au fur et à mesure des besoins de la Société, conformément aux décisions du Conseil d'administration et après avis inséré trente jours d'avance au moins, dans certains journaux officiels ou non, se publiant en langues diverses à Constantinople et dans d'autres pays.

Article 8. — Les titres sont nominatifs jusqu'au paiement de la moitié du montant des actions ; leur négociation ne peut avoir lieu avant le versement du premier dixième. La négociation s'opère par un transfert sur les registres de la Société signé par le cessionnaire et le cédant et l'un des administrateurs ; mention de ce transfert est faite sur le titre.

Après leur libération de moitié, les actions seront au porteur.

Article 9. — Toute action est indivisible à l'égard de la Société, qui n'en reconnaît qu'un seul propriétaire.

Les héritiers ou créanciers d'un actionnaire ne peuvent, pour quelque motif que ce soit, provoquer l'apposition des scellés sur les biens et immeubles de la Société, ni s'immiscer en aucune manière dans son administration ; ils doivent pour l'exercice de leurs droits s'en rapporter aux inventaires sociaux et aux délibérations de l'Assemblée générale.

Article 10. — Tout versement en retard porte intérêt de plein droit en faveur de la Société à raison de six pour cent par an, à compter du jour de l'exigibilité et sans aucune mise en demeure.

Article 11. — A défaut de paiement des versements à leurs échéances, la Société poursuit les débiteurs et peut vendre les actions en retard.

A cet effet, les numéros de ces actions sont publiés comme défaillants par la voie des journaux, et, quinze jours après cette publication, il est procédé à la vente des actions pour le compte et aux risques et périls du retardataire, sans aucune mise en demeure ni formalité judiciaire ; cette vente a lieu dans la Bourse de Constantinople si les actions sont cotées, et, dans le cas contraire, aux enchères publiques.

Les titres ainsi vendus deviennent nuls de plein droit ; il en est délivré aux acquéreurs de nouveaux sous les mêmes numéros.

Le prix de la vente sera consacré à ce qui est dû à la Société par l'actionnaire exproprié, qui reste passible de la différence ou profite de l'excédent.

TITRE III.

Administration de la Société.

Article 12. — La Société est administrée par un Conseil d'administration composé de cinq à onze membres nommés par l'Assemblée générale.

Toutefois les premiers administrateurs seront les personnes ci-après désignées dont la nomination ne sera pas soumise à l'approbation de l'Assemblée générale et dont les fonctions ne dureront que trois ans.

S. EXC. IZZET PACHA, MM. ERNEST URBAN, JULES JACOBS, LÉON JANSEN, AUGUSTE DE LA HAULT, HERMAN STERN, GEORGES DE BAUER, CHARLES CICOGNA, EDOUARD EMPAIN, FRANÇOIS EMPAIN.

S. EXC. IZZET PACHA sera membre du Conseil d'administration, soit en personne, soit par fondé de pouvoirs, soit par droit de succession.

Article 13. — A l'expiration du mandat du Conseil statutaire, le renouvellement annuel par un ou deux des membres du Conseil d'administration se fera pour la première fois par voie de tirage au sort et ensuite par voie d'ancienneté.

Les membres sortants peuvent toujours être réélus.

Article 14. — Le Conseil d'administration se réunit aussi souvent que l'intérêt de la Société l'exige et au moins une fois par mois. La présence en personne de plus de la moitié des membres au moins est nécessaire pour la validité des délibérations.

Les délibérations sont prises à la majorité des voix des membres présents. En cas de partage, la proposition est renvoyée au Conseil suivant et alors, en cas de nouveau partage, elle est rejetée.

Article 15. — Les délibérations sont constatées par des procès-verbaux transcrits sur un registre spécial et signés par le Président et les administrateurs qui y ont pris part. Les copies ou extraits de ces délibérations, pour faire foi, doivent être signés par le Président du Conseil ou celui qui le remplace.

Article 16. — Chaque administrateur doit être propriétaire de vingt-cinq actions inaliénables pendant la durée de ses fonctions ; elles seront frappées d'un timbre indiquant l'inaliénabilité et déposées dans la caisse sociale.

Article 17. — En cas de vacance d'un ou plusieurs administrateurs par décès, démission ou autre cause, le Conseil pourvoit provisoirement au remplacement jusqu'à la prochaine Assemblée générale qui procède à l'élection définitive.

Article 18. — Chaque année le Conseil nomme parmi ses membres un Président et un Vice-Président.

En cas d'absence du Président et du Vice-Président, il désigne celui de ses membres qui doit remplir les fonctions de Président.

Article 19. — Les administrateurs qui résident à l'étranger et ceux qui seront provisoirement absents, peuvent se faire représenter dans les délibérations par un de leurs collègues, sans que celui-ci puisse réunir plus de deux votes y compris le sien.

Article 20. — Le Conseil a les pleins pouvoirs pour l'administration des biens et affaires de la Société, il peut même transiger et compromettre, il arrête les comptes qui doivent être soumis à l'Assemblée générale et propose la quantité du bénéfice à distribuer.

Le Président du Conseil d'administration représente, soit personnellement, soit par un mandataire, la Société en justice tant en demandant qu'en défendant.

Article 21. — Le Conseil peut déléguer tout ou partie de ses pouvoirs à un ou plusieurs de ses membres, par un mandat spécial pour des objets déterminés ou pour un temps déterminé.

Il peut aussi les déléguer, pour l'expédition des affaires courantes, à une ou plusieurs personnes prises en dehors de son sein.

Article 22. — Les administrateurs reçoivent des jetons de présence dont la valeur est fixée par l'Assemblée générale, indépendamment de la quote-part qui leur est allouée dans les bénéfices nets.

TITRE IV.

Assemblées générales.

Article 23. — L'Assemblée générale régulièrement constituée représente l'universalité des actionnaires.

Article 24. — Il est tenu une assemblée générale ordinaire chaque année, dans le courant du premier semestre. Le lieu de la réunion est fixé par le Conseil d'administration. Le jour de l'assemblée sera fixé par le Conseil d'administration.

L'Assemblée générale peut en cas de besoin être convoquée extraordinairement par le Conseil d'administration.

Article 25. — L'Assemblée générale se compose des actionnaires qui possèdent soit à titre de propriétaires, soit à titre de mandataires, dix actions au moins.

Tout membre de l'Assemblée générale a droit à autant de votes qu'il possède comme propriétaire ou comme mandataire de fois dix actions, mais sans qu'il puisse jamais réunir plus de cent voix.

Article 26. — Les convocations doivent être faites par un avis annoncé par la voie de la presse, un mois au moins avant l'époque de la réunion, ainsi qu'il est dit à l'article 7.

Article 27. — L'Assemblée est régulièrement constituée, lorsque les membres présents ou représentés réunissent le quart du fonds social.

Pour vérifier si le quart du fonds social est représenté, tous les actionnaires ayant droit de prendre part à l'Assemblée sont invités par les avis de convocation à déposer leurs titres dans les dix jours aux lieux indiqués par le Conseil.

Si à la première réunion le nombre d'actions représentées soit en personne soit par mandataire n'est pas suffisant, l'Assemblée est convoquée pour la seconde fois et elle délibère valablement quelle que soit la portion du capital représentée par les actionnaires présents, mais seulement sur l'ordre du jour de la première convocation ; les délibérations faites de la sorte seront valables.

Cette nouvelle réunion doit avoir lieu à quinze jours au moins et un mois au plus d'intervalle et les convocations ne peuvent être faites que vingt jours à l'avance.

Article 28. — L'Assemblée générale est présidée par le Président du Conseil, ou à son défaut par un administrateur désigné par le Conseil.

Deux des plus forts actionnaires présents remplissent les fonctions de scrutateurs.

Le Secrétaire est désigné par le Président et les scrutateurs.

Article 29. — Les délibérations sont prises à la majorité des voix.

L'ordre du jour est arrêté par le Conseil.

Il n'y est porté que les propositions émanant du Conseil et celles

qui lui auront été communiquées vingt jours au moins avant la réunion avec la signature d'actionnaires représentant au moins dix pour cent du capital.

Il ne peut être mis en délibération que les objets portés à l'ordre du jour.

Article 30. — L'Assemblée générale désignera, soit parmi les actionnaires, soit parmi les personnes étrangères à la Société, un ou plusieurs commissaires chargés de la vérification des comptes.

Article 31. — L'Assemblée générale annuelle entend le rapport que le Conseil doit lui présenter chaque année sur la situation des affaires de la Société et celui des commissaires sur les comptes.

Elle discute, approuve ou rejette les comptes.

Elle fixe le dividende.

Elle nomme les administrateurs à remplacer.

Elle délibère et statue souverainement sur tous les intérêts de la Société et confère au Conseil d'administration tous les pouvoirs supplémentaires qui seraient reconnus utiles.

L'Assemblée ne peut décider l'augmentation du capital qu'avec une majorité d'actionnaires présents ou représentés réunissant des actions dont la valeur représente au moins les deux tiers du capital social.

Article 32. — Les délibérations de l'Assemblée générale sont constatées par les procès-verbaux inscrits sur un registre spécial et signés par les membres du Bureau.

Une feuille de présence contenant les noms et domiciles des actionnaires qui assistent à chaque séance et le nombre d'actions dont chacun est porteur, est signée par les membres présents et annexée au procès-verbal pour être communiquée en cas de demande à tout ayant droit.

Article 33. — Les copies ou extraits des délibérations, pour faire foi, doivent être signés par le Président du Conseil ou celui qui le remplace.

Article 34. — Les décisions de l'Assemblée générale, prises en conformité des présents Statuts, sont obligatoires même pour les actionnaires absents ou dissidents.

TITRE V.

Inventaires et Comptes annuels.

Article 35. — L'année sociale financière commence le 1^{er} janvier et finit le 31 décembre.

Par exception, le premier exercice comprendra le temps écoulé entre la constitution définitive de la Société et le 31 décembre suivant.

A la fin de chaque année sociale, il est dressé par les soins du Conseil un inventaire général de l'Actif et du Passif.

Cet inventaire ainsi que le bilan et les comptes seront mis à la

disposition des commissaires quarante jours avant l'Assemblée générale annuelle. Ils seront ensuite présentés à l'Assemblée.

Tout actionnaire ayant droit de prendre part à l'Assemblée peut en prendre communication.

TITRE VI.

Partage des Bénéfices et Amortissement.

Article 36. — Sur les bénéfices nets annuels, il est prélevé :

1° La somme nécessaire pour payer aux actions un intérêt de cinq pour cent par an sur le montant versé des actions ;

2° cinq pour cent du restant pour le fonds de réserve et le reste dans la proportion suivante :

- 10 pour cent aux administrateurs à parts égales ;
- 20 pour cent aux actionnaires à titre de dividende et
- 70 pour cent aux parts de fondateurs.

Ceux qui possèdent des parts de fondateur n'auront pas le droit (à ce titre) de se mêler des affaires de la Société ni d'en émettre une opinion.

Article 37. — L'Assemblée générale pourra prélever chaque année une somme convenable sur les bénéfices nets pour amortir un nombre déterminé d'actions à échoir par voie de tirage au sort. Les actions amorties continueront à jouir du dividende, mais n'auront pas droit à l'intérêt.

TITRE VII.

Fonds de Réserve.

Article 38. — Le fonds de réserve se compose de l'accumulation des sommes prélevées sur les bénéfices annuels en conformité de l'article 36.

Il est destiné à faire face aux dépenses extraordinaires ou imprévues.

Lorsque le fonds de réserve aura atteint le dixième du capital, le prélèvement sera suspendu.

Article 39. — En cas d'insuffisance des produits d'une année pour donner un intérêt de cinq pour cent par action, le déficit pourra être complété sur le fonds de réserve.

Article 40. — A l'expiration de la Société et après la liquidation de ses engagements, le fonds de réserve sera partagé entre toutes les actions.

TITRE VIII.

Prorogation. — Dissolution. — Liquidation.

Article 41. — Le Conseil d'administration peut à toute époque et pour quelque cause que ce soit, proposer à l'Assemblée générale, convoquée à cet effet, les modifications aux Statuts de la Société, la prorogation, la dissolution et la liquidation de la Société, ainsi que tout projet de fusion avec d'autres Sociétés. Toutefois les modifications, la prorogation ou la fusion de la Société avec d'autres Sociétés, s'il y a lieu, ne pourront se faire qu'avec l'autorisation du Gouvernement impérial.

Lors de la liquidation de la Société, après avoir fait effectuer intégralement le paiement des versements appelés sur les actions, l'excédent sera partagé (après remboursement du capital) à raison de 25 pour cent aux actions et 75 pour cent aux parts de fondateurs, et les sommes qui resteront au fonds de réserve seront seulement partagées entre les actionnaires d'après l'article 40.

Article 42. — En cas de perte des trois quarts du fonds social, les administrateurs convoquent l'Assemblée générale à l'effet de statuer sur la question de savoir s'il y a lieu de prononcer la dissolution de la Société ou de continuer ses opérations.

Article 43. — A l'expiration de la Société ou en cas de dissolution anticipée, l'Assemblée générale convoquée règle le mode de liquidation et nomme un ou plusieurs liquidateurs.

Pendant la liquidation, les pouvoirs de l'Assemblée générale continuent comme pendant l'existence de la Société.

Les liquidateurs peuvent, en vertu d'une délibération de cette Assemblée et avec l'autorisation du Gouvernement impérial, faire le transfert à toute Société ou à tout particulier des droits, actions et obligations de la Société dissoute.

Article 44. — Les Assemblées générales extraordinaires appelées à statuer sur les objets indiqués au présent titre, ne seront valablement constituées que si elles réunissent un nombre d'actions représentant la moitié au moins du capital social.

Annexe 40 au n° 6.

RAPPORT DU CONSEIL D'ADMINISTRATION DE LA SOCIÉTÉ ANONYME
OTTOMANE DES TRAMWAYS ET DE L'ÉLECTRICITÉ DE BEYROUTH,
POUR L'EXERCICE 1906-1907.

Messieurs,

En conformité de nos Statuts, nous avons l'honneur de vous faire rapport sur les opérations de notre Société durant son premier exercice social se terminant le 31 décembre 1907.

Mais avant d'aller plus loin, nous nous faisons un devoir et une joie de présenter en votre nom et au nôtre, à Sa Majesté impériale le Sultan, l'expression de notre gratitude pour la bienveillance qu'il Lui a plu de témoigner à notre œuvre, due d'ailleurs à Sa Haute initiative et à l'incessante sollicitude qu'Elle daigne accorder aux entreprises d'utilité publique. Nous vous convions donc, Messieurs, de prier S. Exc. le Commissaire auprès de notre Société, de transmettre à Sa Majesté impériale l'humble expression de nos remerciements les plus vifs ainsi que nos vœux les plus sincères pour la conservation de Ses jours précieux.

Abordons maintenant, si vous le voulez bien, l'exposé de nos opérations.

Dès la constitution de notre Société, qui date du 22 mai 1906, nous avons fait le nécessaire pour que nos Statuts soient approuvés par les autorités compétentes. Par une lettre du 29 août 1906, que nous déposons ici sur le bureau, le Gouvernement impérial a reconnu que notre Société a bien été constituée en conformité de la convention de concession et des lois du pays ; elle est donc bien régulièrement titulaire et propriétaire de la concession accordée à S. Exc. Selim Raad Effendi par Firman impérial du 30 avril 1906.

Au 31 décembre dernier, ainsi que le montre le bilan soumis à votre approbation, le capital primitif de frs. 3.600.000.— était libéré de frs. 3.405.970.—

Au 31 mars, il ne restait plus à verser pour solde de libération que frs. 88.000.—

Aussitôt constituée, notre Société s'est mise à l'œuvre ; les plans ont été dressés par les soins de l'Entreprise générale des Travaux et du Trust franco-belge de Tramways et d'Électricité, avec lesquels nous avons traité pour la direction technique des travaux, et dès l'approbation de ces plans par les autorités, nous avons commandé le matériel et entamé les travaux.

Le réseau de tramways comporte 12 kilomètres avec 4 lignes ; 10 kilomètres environ sont construits avec double voie en rails à gorge en acier de 41 kgs. au mètre courant. La ligne aérienne sera posée sur poteaux en fer et un certain nombre de poteaux sont déjà placés.

Les bâtiments de l'usine, des remises et de l'atelier sont terminés. L'usine comportera l'installation de 3 moteurs à gaz pauvre de 250 chevaux commandant directement des dynamos pour la production de l'électricité. Le gaz sera fourni par trois gazogènes perfectionnés, système Fichet et Huertey. Une batterie d'accumulateurs sera installée pour garantir la régularité de la marche des moteurs et du tramway.

Un atelier pour les réparations est en construction à côté des remises à voitures. 25 voitures motrices à 2 moteurs électriques de 33 chevaux ainsi que 12 voitures de remorque sont en construction et seront expédiées prochainement.

Nous avons jugé, d'accord avec les autorités, qu'il était utile,

au point de vue de la régularité des services, que les lignes soient en majeure partie à double voie. Mais cette décision importait la nécessité de procéder à des élargissements de rues. Et comme, d'autre part, la Municipalité de Beyrouth était désireuse de pouvoir mener à bonne fin la création qu'elle projetait d'une nouvelle avenue reliant le centre de la ville à la place des Canons, nous nous sommes entendus avec elle au sujet de ces travaux, par une convention en date du 22 janvier 1907, qui stipule que la Municipalité prend à sa charge, moyennant l'intervention de notre Société pour une somme forfaitaire de 6.400 livres turques, l'élargissement des rues pour les lignes obligatoires à concurrence de 9 m. 50 et la création de la nouvelle avenue susmentionnée, moyennant un prêt de 3½ % d'intérêt l'an que notre Société lui a fait d'une somme de 8.000 livres turques remboursables en dix annuités par paiements mensuels garantis par la taxe établie sur les pétroles à Beyrouth.

Les stipulations de cette convention sont en voie d'exécution ; la percée de l'avenue nouvelle peut être considérée comme achevée et, d'autre part, l'élargissement des passages les plus étroits est en voie d'exécution.

Tout nous permet donc d'espérer, Messieurs, que nous pourrons procéder aux essais dès le commencement du mois d'août prochain et que l'inauguration de l'exploitation pourra se faire vers la fin du même mois. Nous avons confiance que, dès les premiers jours, elle répondra à nos prévisions et que le développement de ses résultats sera rapide et satisfaisant.

Nous vous dirons maintenant quelques mots de l'éclairage électrique et de la production de l'énergie pour les besoins industriels. Aux termes de notre convention de concession, nous estimions avoir le privilège exclusif de la production de l'énergie électrique ainsi que de l'éclairage électrique, la Société du Gaz n'ayant droit de préférence qu'en ce qui concerne l'éclairage électrique public. Néanmoins le Gouvernement impérial vient de reconnaître à la Société du Gaz des droits plus étendus sous ce rapport. Nous avons donc protesté auprès de lui et nous avons la conviction que la légitimité de notre réclamation sera reconnue ; nous avons pleine confiance dans la décision finale que le Gouvernement impérial prendra à cet égard.

Le bilan que nous vous présentons porte à l'actif, en outre des versements restant à faire par nos actionnaires à la date du 31 décembre, le montant des dépenses faites en exécution de nos engagements statutaires et en travaux de toute nature, puis le disponible en numéraire en caisse et chez nos banquiers. Au passif figure notre capital social et divers créateurs. Le montant total tant à l'actif qu'au passif s'élève à la somme de frs. 3.623.824,95, soit, au change moyen de 4,40 % adopté pour nos écritures: Piastres-or 15.944.829,80.

Au compte de Profits et Pertes, nous avons transcrit au débit du Compte de construction, sous déduction d'intérêts divers perçus,

SOCIÉTÉ ANONYME DES TRAMWAYS ET DE L'ÉLECTRICITÉ DE BEYROUTH

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BILAN AU 31 DÉCEMBRE 1907

ACTIF

PASSIF

	Francs	Piastres		Francs	Piastres
Actionnaires	194.030,00	853.732,00	Capital: 36.000 actions de frs. 100	3.600.000,00	—
Frais de constitution	49.174,42	216.367,45	au cours d'enregistrement de 4,40		
Apports et concessions ..	1.844.262,00	8.114.752,80	Créditeurs divers	23.824,95	15.840.000,80
Travaux en cours.....	894.199,84	3.934.479,31			104.829,00
Terrains.....	124.099,74	546.039,00			
Cautionnement.....	22.727,28	100.000,00			
Mobilier.....	3.805,79	16.745,50			
Caisse banquiers et débiteurs	486.844,07	2.142.113,74			
Comptes débiteurs	4.681,81	20.600,00			
Cautionnements en garantie de gestion					
		Pour mémoire			
	3.623.824,95	15.944.829,80			
				3.623.824,95	15.944.829,80

ANNEXES À LA RÉPLIQUE HELLÉNIQUE

COMPTE DE PROFITS et PERTES

DÉBIT

CRÉDIT

	Francs	Piastres		Francs	Piastres
Frais généraux et d'administration	77.344,70	340.272,63	Intérêts divers	4.816,90	21.194,37
Déférence de change sur le cours du franc.....	6.446,30	28.363,71	Transfert au compte construction	78.964,10	347.441,97
	83.781,00	368.636,34		83.781,00	368.636,34

le montant de nos frais généraux pendant la période de construction et les pertes de change.

Nous vous demandons, Messieurs, d'approuver le bilan ainsi établi.

Le troisième objet à l'ordre du jour de notre séance porte sur notre situation financière. A cet égard, nous avons à vous faire part de ce qu'ensuite des décisions prises par votre Conseil d'administration d'établir sur toutes nos lignes des voies doubles au lieu de la voie simple primitivement prévue, à l'exception de quelques petits tronçons, puis d'assurer le percement immédiat de l'avenue nouvelle reliant le centre de la ville à la place des Canons, le capital mis à notre disposition à l'origine se trouve être insuffisant et qu'il y a lieu d'aviser à l'obtention de ressources nouvelles.

A la rigueur, nous pourrions y pourvoir par une émission d'actions, puisque sur notre capital de frs. 6.000.000.— il n'a été émis jusqu'ici que frs. 3.600.000.—, mais, vu l'état du marché financier, nous estimons préférable de créer un capital-obligations, ainsi que le permet l'article 6 de nos Statuts, et nous vous proposons de nous autoriser à émettre des obligations jusqu'à concurrence d'un capital de frs. 2.400.000.—.

Il nous reste enfin à vous demander de vous prononcer sur la nomination d'administrateurs et commissaires de la Société.

Tout récemment, nous avons eu à déplorer bien vivement la perte de l'un de nos collègues, S. Exc. Philippe Effendi Melhamé, dont nous nous trouvons séparés à notre très grand regret ; d'autre part, M. Isaac Fernandez, pour des motifs de convenance personnelle, nous a exprimé l'intention formelle de se retirer du Conseil, malgré nos vives insistances pour le prier de revenir sur sa détermination.

Vous aurez donc, Messieurs, pour compléter le nombre de neuf administrateurs fixé par les Statuts, à procéder à la nomination de deux nouveaux administrateurs.

En outre, nos Statuts nous imposent l'obligation de nommer un ou plusieurs commissaires. Vous voudrez bien en fixer le nombre et pourvoir à la nomination d'un ou de plusieurs titulaires.

Annexe 4I au n° 6.

MM. BAUER, MARCHAL & C^{ie} A M. E. MAVROMMATIS.

Paris, le 31 décembre 1924.

Cher Monsieur,

En réponse à votre lettre en date du 29 décembre, nous avons l'honneur de vous confirmer par la présente que d'après notre lettre du 14 février 1921, nous étions disposés à vous payer à cette

époque-là, comme apport pour vos quatre concessions de Palestine, 5.000.000 de francs d'après le cours du change d'avant-guerre.

Vous n'avez qu'à relire notre lettre du 14 février 1921 qui dit clairement : « sur les mêmes bases de notre accord de novembre 1913 », ce qui vous a été d'ailleurs verbalement confirmé en juillet de la même année.

Pour les motifs allégués par notre lettre en date du 2 décembre 1921, nous étions obligés à notre regret d'abandonner à tout jamais le financement de vos susdites concessions.

Veuillez agréer, etc.

(Signé) BAUER, MARCHAL & C^{ie}.

Annexe 42 au n° 6.

SIR R. W. PERKS TO M. E. MAVROMMATIS.

December 31st, 1924.

Dear Mr. Mavrommatis,

I much regret to hear that you have not been able to arrive yet at a satisfactory settlement with the Colonial Office of your claims caused by the Palestine Government granting to Mr. Rutenberg, concessions for Electric Power and Water Works which had previously been granted to you.

I am sorry that you found it necessary to invoke the assistance of the Greek Government and the Hague Tribunal, after you had received the assurance of the Colonial Office that so far as the Jérusalem Concessions were concerned they were satisfied as to the validity of your Concessions, subject to your proving your Greek nationality, as you have evidently done.

But you cannot go on for ever disputing with our Government, especially in view of the conclusion to which they have come (as I think erroneously) about the validity of your Jaffa Concessions : and therefore, I think you were advised to appeal to the Hague Tribunal.

I am glad to know that the Hague Tribunal has decided that such disputes fall within their jurisdiction. This decision is important for British, also other European Contractors who undertake Foreign Works, and also for the Banks and Finance Houses, which issue the necessary securities, for unfortunately our Government has not hitherto shown much, if any, disposition to assist British Contractors or Bankers when disputes with Foreign Governments have arisen. It is well, therefore, to feel that such questions in future can be referred to a powerful and independent Tribunal such as that at The Hague, with a certainty of receiving prompt and impartial attention.

Now as to the particular point on which you ask my opinion—viz., the engineering and other expenses you have incurred in obtaining your four concessions, and the compensation you claim owing to the action of the Palestine Government—I have read the reports of Messrs. Kincaid, Waller & Co. also Messrs. Rofe & Son carefully, and I have no hesitation in saying that I agree entirely with them in thinking that the expenses incurred in the preparation of the plans and detailed schedules of quantities and costs are very reasonable.

Had it been my duty to advise any British Finance House on this subject prior to an Issue, I should have told them two things—*first* that the charges made by the Engineers were moderate and very fair, and *second*, that the amounts (i. e. Frs. 5,000,000 or £50,000 for each of the four Concessions) which the Paris Bankers Messrs. Périer & Co. undertook to pay for the acquisition of these Concessions, was a proper one, and one which the estimated earnings of the enterprise should fully justify.

I am not surprised that people who are not accustomed to deal with Public Works are often astonished at the expense incurred in the preliminary stages—for Engineering, Plans, Surveys, Parliamentary and other expenses.

Three years ago I very carefully examined the plans and estimates for the works contemplated in the four Concessions at Jerusalem and Jaffa. These plans were prepared in great detail and must have entailed a very great amount of work by competent engineers and surveyors.

I have, as you know, been associated with many works of considerable magnitude, such as the Manchester Ship Canal, the Buenos Aires Port Works, Barry Dock and Railway, the Rio Janeiro Harbour Works, the London Tube Railways, Docks at Alexandria and other Works. The cost of the preliminary engineering work, and the securing of the necessary statutory and other powers in all these instances exceeded very considerably the percentage on the estimated cost of the work claimed by you.

In the present case the Palestine Government has thought it desirable to practically take away the concession from one Party to whom it had been legally granted, and who was perfectly capable, either from a constructional or financial standpoint, to carry out his bargain—and to give it for political, or economic reasons, to another person. It is only reasonable that under such circumstances the Palestine Government should bear the cost of such procedure, especially as it is evident, from the unusual clauses inserted in the Rutenberg concession to meet such a contingency, that they expected to do so.

I am, etc.

(Signed) R. W. PERKS.

7.

REJOINDER

PRESENTED ON BEHALF OF THE GOVERNMENT OF
HIS BRITANNIC MAJESTY TO THE PERMANENT COURT
OF INTERNATIONAL JUSTICE.

His Majesty's Government join issue upon the Reply of the Hellenic Government and maintain their position as indicated in the Counter-Case.

The following observations are offered by way of Rejoinder but it must not be taken that matters not specifically referred to are in any way admitted.

PRELIMINARY OBSERVATIONS.

1. — In regard to the Jaffa Concessions (Reply, Clause 1) H.M. Government take note of the fact that the Greek Government recognize that these concessions are outside the purview of the present case, and therefore any discussion as to them is irrelevant to the questions now before the Court. It may, however, be observed that the passage from the Court's Judgment of August 30th, 1924, cited in Clause 1 of the Reply confirms the principle relied upon by the British Government that the only obligations material to this case are those specified by express international agreement. In the passage in question the Court holds that the claim in respect of the Jaffa Concessions falls outside its jurisdiction because although the Lausanne Protocol, by its silence, leaves intact the general principle of subrogation, Great Britain has not contractually undertaken to be bound by this principle and therefore there is no international obligation, in the sense of Article 11 of the Mandate, to maintain the concessions. This is an actual decision as to the nature of the obligations material to the present proceedings, which strongly bears out the view put forward by His Majesty's Government in the Counter-Case and in the following clause of this Rejoinder.

In the 4th to 6th paragraphs of Clause 1 the Greek Government make suggestions for the future submission of the Jaffa claims to judicial settlement, a matter which is in no way material to the questions now before the Court. But as certain declarations of the British Agent at the preliminary hearing are referred to, H.M. Government are bound to point out that those declarations were confined to expressing the readiness of H.M. Government to provide for the independent decision of genuine differences as to the interpretation of the Lausanne Protocol, whereas the argument advanced by the Greek Government as to the Jaffa Concessions

is not based upon any provision in the Protocol, but upon something not contained therein which the Greek Government think ought to have been. Such a dispute H.M. Government are not willing to refer to arbitration.

2. — As to Clause 2 of the Reply, H.M. Government desire to re-affirm their view that the claim now before the Court must be dealt with entirely upon the basis of the stipulations of Protocol XII. They disagree with the opinion of the Hellenic Government that the Judgment of August 30th, 1924, has not narrowed the field of debate as formulated in the Request instituting Proceedings. Although it is freely recognized that the Judgment on the preliminary objection was not intended to, and does not, prejudice the decision on the merits of the issues reserved for final adjudication as being within the jurisdiction of the Court, it was necessary for the purpose of determining the limits of that jurisdiction to decide certain questions, not provisionally, but finally. One of these questions was that of the scope of the international obligations mentioned in Article II of the Mandate, a question which went to the root of the matter inasmuch as upon its answer depended the extent of the jurisdiction. The Court had no alternative but to decide, and did decide, this question, as appears from the passage already cited in the Counter-Case, viz.: "In the opinion of the Court the international obligations mentioned in Article II are obligations contracted having some relation to the powers granted to the Palestine Administration under the same article." (Publications of the Court, Series A, No. 2, p. 24.) This is a clear pronouncement defining the obligations in question and H.M. Government accept it and are prepared to abide by it. The obligations must fulfil two conditions: (1) they must be contracted, (2) they must have relation to the powers granted to the Administration under Article II of the Mandate. As stated in the Counter-Case there are in existence no obligations which fulfil these conditions except those laid down by the Protocol. And further, inasmuch as the obligations must be obligations that are *contracted*, it is idle to contend, as the Greek Government attempt to do, that where the Protocol is silent, recourse may be had to "general principles". Great Britain, as a Contracting Party to this instrument, agreed to be bound by the stipulations which are contained therein, but did not contract to observe other rules, not specified or referred to, which it is sought to imply, not from any provision to be found in the Protocol, but from its silence.

Nothing could be more important to the cause of international justice than that the Tribunal should interpret international engagements according to sound principles of law, giving effect to the provisions which they contain. H.M. Government by reason of their high regard for the judicial character of the Court are confident in asking it to reject the Greek contention that the Protocol

can be "interpreted" by giving effect to supposed rules which are nowhere to be found among its provisions.

The passages from the Judgment which are cited in Clause 2 of the Reply do not, it is submitted, in any way displace the conclusion that the point referred to above has been definitely decided by the Court. Those passages contain reservations for the purpose of leaving open the question whether there are in fact international obligations coming within the definition laid down by the Court, other than those specified in the Protocol. Thus it would be open to the Greek Government to show that there is some other treaty or international agreement containing provisions that comply with the definition and if such provisions could be found the Court would be at liberty, under its Judgment of August 30th, 1924, to consider and give effect to them. But it can now be taken as established that no such other instrument exists, and therefore it is only the provisions of the Protocol that are material or need be considered.

FACTS.

3. — In Clause 3, 3rd paragraph, of the Reply it is stated that the Counter-Case (Clause 3, p. 3) is mistaken with regard to the point there mentioned as to the deposit under the Water Concession, but H.M. Government beg to refer the Court to Article 18 of the Concession (Annex to Greek Case, Acte No. 2, pp. 11-12¹) the terms of which, in their opinion, bear out what was said in the Counter-Case. The only bank referred to in Article 18 is the *Banque Commerciale de Palestine*, and the natural meaning of the article appears to be that the balance of the deposit was to be lodged at the same bank as the provisional security. H.M. Government accordingly maintain the reservation made in the Counter-Case upon this subject.

The propositions advanced in the 6th paragraph of Clause 3 of the Reply do not, it is submitted, in any way meet the objection stated in Clause 3 of the Counter-Case with regard to the non-approval of the designs and plans. The fact that the Municipality of Jerusalem informed M. Mavrommatis that the designs and plans had been handed to their engineer for examination shows that the right to propose alterations was reserved. It was unnecessary for the Municipality to state expressly that the three months period provided for approval of the plans was suspended, because M. Mavrommatis himself had demanded in his letter of July 30th, 1914, the suspension of all his engagements under the concessions (See Annex to Greek Case, No. 5, p. 4²) and this obviously involved a corresponding suspension of the other Party's obligations.

¹ *Publications of the Permanent Court of International Justice, Series C, No. 5 — I*, p. 217.

² *Id.*, p. 229.

The Greek Government have not adduced any evidence in support of the statement in the Reply (Clause 3, 8th paragraph) that the Mayor of Jerusalem since 1920 repeatedly invited M. Mavrommatis to begin the works and this statement seems strangely inconsistent with the allegations made in Clause 14. H.M. Government suggest for the consideration of the Court that the real truth of the matter is that M. Mavrommatis has never desired to carry out his concessions.

Finally, it may be convenient to indicate generally the legal bearing of the above points relating to the deposits and the approval of the designs and plans. These are preliminary matters, going to the validity of the concessionary contracts at the date of the subrogation of Great Britain to Turkey under the Lausanne Protocol. Various objections having been raised in the Counter-Case with regard to the proper fulfilment of the contracts, it lies with the Hellenic Government to satisfy the Court that at the material date M. Mavrommatis enjoyed subsisting rights giving rise to corresponding obligations on the part of Turkey capable of being transferred to and binding upon Great Britain.

4.—With respect to Clause 4, 1°, of the Reply H.M. Government take note of the fact that the Greek Government do not propose to raise the question of the alleged utilization by the British Military Authorities of M. Mavrommatis' designs and plans for the distribution of drinking water to Jerusalem unless the present proceedings should encounter what are described as fresh obstacles, by which it is assumed is meant an adjournment in the forthcoming oral proceedings, or a delay in the presentation of this Rejoinder. H.M. Government are anxious to assist in every way the progress of the present case and are accordingly delivering the Rejoinder within the time fixed by the Court, although if this question were to be raised an extension of time would have been essential in order to allow the necessary evidence to be obtained in Palestine. It must, however, be stated that the claim in question having been definitely abandoned in the Greek Case (See Clause 24, p. 25¹) H.M. Government would, in any event, object to its revival.

In Clause 4, 2°, of the Reply various allegations are made with regard to the supposed relations between Mr. Rutenberg and the Zionist Organization. Although this question does not appear to have any legal relevance to the issues before the Court, H.M. Government are bound again to assert that Mr. Rutenberg is not and never has been directly or indirectly the representative of the Organization and further that it was not due to any connection between him and that body that he was offered his concessions. In granting or proposing to grant him a concession, the Adminis-

¹ *Publications of the Permanent Court of International Justice, Series C, No. 5—1,* p. 121.

tration of Palestine was neither in fact nor in law dealing with the Organization. The fact, referred to in the Judgment of August 30th, 1924, to which attention is called in the Reply, that the documents relating to the Rutenberg Concessions provided for the approval of the constitution of the companies which were to operate the concessions by the High Commissioner in agreement with the Jewish Agency, is an application of the principles expressed in Article 4 of the Mandate (See Preliminary Counter-Case, p. 7) and actually in operation ever since the institution of a British Administration in Palestine; it throws no light whatever upon the relations between Mr. Rutenberg and the Zionist Organization, still less does it indicate that he was their representative.

The allegations contained in the last paragraph of Clause 4 of the Reply are also inaccurate and the letter of October 20th, 1921, from Dr. Weizmann to Mr. Rutenberg there referred to and set out in Annex No. 36 to the Reply does not support the construction put upon it in the Reply.

The whole of Clause 4, 2°, contains so many false suggestions that it appears to be advisable to give a general explanation of the true position in regard to the subject dealt with. The Zionist Organization, as the Jewish Agency mentioned in the Mandate, is entrusted thereunder with certain functions (which it was already in fact discharging) described in Article 4 (See Preliminary Counter-Case, p. 7), to which it was the duty of the Palestine Administration to give effect. Any reference by the Colonial Office to the Organization in the course of the negotiations with M. Mavrommatis was founded upon the necessity of performing this duty. The position entrusted to the Organization made it equally necessary for Mr. Rutenberg to consult and co-operate with it. But the Organization is an entirely distinct body, independent of Mr. Rutenberg or the Palestine Electric Corporation, and Mr. Rutenberg is not their representative or under their control. The Palestine Administration was bound to seek the advice and co-operation of the Organization both in connection with the Rutenberg Concessions and in connection with the Mavrommatis Concessions, but the functions of the Organization are exclusively the public functions entrusted to it under the Mandate.

5. — The Reply in Clause 5 advances a number of grounds for disputing the position on the subject of the Rutenberg Concessions as established in the Counter-Case.

First, as to the letter of May 1st, 1924, from the Palestine Electric Corporation to the Colonial Office (Counter-Case, Annex 2) the Greek Government appear to be under a misapprehension. That letter was produced for the purpose of showing that the concessionnaire under the proposed Palestine and Trans-Jordania Concession did not intend in any circumstances to exercise the right given by Clause 29 of the Schedule to the Agreement of September 21st, 1921 (See Annex to Greek Case, No. 17, p. 48) to call for the

expropriation of M. Mavrommatis' Electricity Concession. It is sufficient to peruse that letter to see that it has this effect. The fact that it contains an erroneous statement that the last mentioned concession had been "previously annulled by H.M. Government" has nothing to do with this point. Nor have the insinuations made in the Reply. H.M. Government repeat, as they have already stated in the Counter-Case, that they are prepared to prove, if necessary by evidence independent of the letter, although this in itself would seem to be sufficient, that Mr. Rutenberg and his Company will make no objection to M. Mavrommatis carrying out his two concessions.

The 4th paragraph of Clause 5 is also misconceived. Two passages of the Counter-Case are contrasted with the object of showing that they contradict each other, but the passage from page 4 is incorrectly quoted. The argument presented in the Counter-Case is perfectly simple and free from inconsistency: on page 10 of that document it is said that if a conflict had arisen between the private obligation of the Palestine Administration under an agreement with the Palestine Electric Corporation and the international obligation of the British Government under the Lausanne Protocol the latter would have prevailed, whereas on page 4 it is stated that if the Palestine and Trans-Jordania Concession became effective and contained Clause 29, and if the Palestine Electric Corporation made the request contemplated by that clause, the High Commissioner would as between himself and the Corporation be under an obligation to annul the Mavrommatis Electricity Concession. It is hardly necessary to repeat that these two propositions are hypothetical, and in no way contradictory.

The 5th, 6th, 7th and 8th paragraphs of Clause 5 of the Reply deal with the question of the relation between the proposed Palestine and Trans-Jordania Concession and the Mavrommatis Water Concession. At the outset H.M. Government take note of the fact that the Greek Government appear to recognize that the Jaffa Concession granted to Mr. Rutenberg has no bearing upon the Mavrommatis Jerusalem Concessions and can therefore be definitely left out of this case. The passage cited, in the 5th paragraph, from the Judgment of August 30th, 1924, confirms the statement in the Counter-Case that it was not made clear to the Court at the preliminary hearing that the Palestine and Trans-Jordania Concession and the Water Concession were entirely independent in their subject-matter. The two so-called Rutenberg Concessions on the one hand, and the four Mavrommatis Concessions on the other, were throughout treated for the purposes of the preliminary question as joint groups which could be regarded as inconsistent to one another. But from the closer examination which has now become necessary and which is presented to the Court in the Counter-Case (Clause 5) it is hoped that the true position has been made apparent

in greater detail. It must further be noticed that the suggestion in the Reply that the British and Palestinian Authorities sought to bring about an arrangement between the Parties *in regard to the Water Concession* is not in accordance with the facts. Throughout the negotiations there has never been any question of an arrangement between M. Mavrommatis and Mr. Rutenberg for co-operation or expropriation in respect of the Water Concession. Mr. Rutenberg and his Companies have never raised any objection to M. Mavrommatis carrying his Water Concession into operation independently of them.

The 7th paragraph is devoted to showing the alleged connection between the two concessions. H.M. Government refer to the documents (Annex to Greek Case, Acte No. 2 and Acte No. 17) and submit that these constitute the best proof of their assertion that the concessions are entirely independent. The Reply states that to bring the waters of Arroub to Jerusalem and organize the distribution in the City an electric power station was an absolute necessity. If so, it is curious that the concession should not have provided for it in terms corresponding to this situation. Article 4 (See Annex to Greek Case, Acte No. 2, p. 5) states that "exclusively for the service of his concession it shall be open to the concessionnaire either to establish himself a hydro-electric power station not exceeding 1000 kilowatts, or to hire energy from a central power station not forming part of the present concession, or to establish an *usine thermique* of sufficient power for the services of his concession". Under this provision M. Mavrommatis has the choice of three distinct methods, two of which the Court is now asked to assume were useless, although as a matter of fact the waters of Arroub are at the present time brought to Jerusalem without using electrical power of any kind. The Greek Government argues that Clause 26 of the proposed Palestine and Trans-Jordania Concession (See Annex to Greek Case, Acte No. 17, p. 47) is in contradiction with the Water Concession, but it is submitted that this clause on its true construction would not preclude M. Mavrommatis from establishing an electric power station. H.M. Government refer to the terms of Clause 26 and submit that they are limited to preventing the grant of a fresh concession, subsequent to the Palestine and Trans-Jordania Concession, for any of the five purposes mentioned. They do not apply to existing concessions. But further, if M. Mavrommatis were to establish an electric plant solely for the purposes of his Water Concession under Article 4 thereof, this could not be regarded as a "Concession for any of the purposes" mentioned in the said Clause 26. It would not be a "concession to supply electrical energy" within the meaning of that clause. The concession is for the supply and distribution of water and any power station established in connection with it would be merely ancillary to that purpose. But the correctness of the contention of the British Government is conclusively proved by Clause 34 of the Palestine

and Trans-Jordania Concession (see Annex to Greek Case, Acte No. 17, p. 49) which states that "Nothing herein contained shall prevent . . . any person or persons or any firm or company generating electrical energy and using the same for his or their own purposes within the concession area but so that no such electrical energy shall be sold or otherwise disposed of within such area." In the face of this provision no further doubt is possible.

The 8th paragraph of Clause 5 of the Reply is framed in such a way as to suggest that the impossibility of carrying out the Jerusalem Concessions is an accomplished fact, whereas H.M. Government, on the contrary, maintain and have shown that there is no reason why M. Mavrommatis should not, if he wishes it, proceed therewith in accordance with the Lausanne Protocol. The truth appears to be that he has never been desirous of carrying out his concessions.

As to the 9th paragraph H.M. Government take note of the fact that the Hellenic Government admit that the concession annexed to the Agreement of September 21st, 1921, with Mr. Rutenberg is not in force, and that with a view to escaping from the consequences of this admission a new position is taken up. As it cannot now be alleged that H.M. Government committed a breach of their international obligations under Article 11 of the Mandate by granting a concession to Mr. Rutenberg, the Greek Government put forward the claim that the bare existence of this non-effective concession has caused M. Mavrommatis damage in that it led the Banque Périer to annul their agreement to buy his concessions, and brought about the rupture of his negotiations with Messrs. Crisp, and other losses. Whilst making no admission as to the reality of the damage alleged or as to the true cause thereof, H.M. Government submit for the reasons stated below (See Clause 7) that such a claim is outside the jurisdiction of the Court.

6. — It does not seem necessary to refer in detail to Clause 6 of the Reply. H.M. Government adhere to the statement made in Clause 6 of the Counter-Case, which is confirmed by the terms of Mr. Vernon's letter of August 4th, 1922 (Annex to Greek Case, Acte No. 20, p. 55¹).

CONTENTIONS OF LAW.

7. — The criticism contained in Clause 7 of the Reply, revealing as it does the misconception that lies at the root of the Greek thesis, affords a convenient opportunity for stating in general terms the legal position, as it appears to the British Government.

¹ *Publications of the Permanent Court of International Justice*, Series C, No. 5 — I, p. 378.

It is submitted that throughout the Reply the essential considerations of law by which the decision of this case must be governed are ignored.

The jurisdiction of the Court in this case, except in so far as the British Government have consented to its extension, is confined to deciding disputes between the two Governments "relating to the interpretation or the application of the provisions of the Mandate" (See Article 26, set out in the Preliminary Counter-Case, p. 11¹). By its Judgment of August 30th, 1924, the Court held that the grant of the Rutenberg Concessions was an exercise of the power of the Palestine Administration to provide for public control of the public works, services or utilities of Palestine referred to in Article 11 of the Mandate (set out in the Preliminary Counter-Case, p. 8) and that, therefore, if the Rutenberg Concessions overlapped with the Mavrommatis Concessions, and if the international obligations accepted by the Mandatory protected the Mavrommatis Concessions from such interference, a question would arise as to the interpretation or application of the Mandate (viz. Article 11) which the Court would have jurisdiction to decide (See Publications of the Court, Series A, No. 2, pp. 19, 21-22, 26). The Court expressly stated, what is indeed obvious, that the Mavrommatis Concessions in themselves are outside the scope of Article 11 (see *ibid.*, p. 19) and it is therefore only in so far as there has been a breach of the international obligations mentioned in Article 11 *by reason of the Rutenberg Concessions* that the compulsory jurisdiction of the Court arises at all. It is the Rutenberg Concessions alone which make it necessary to ascertain what are the international obligations in question, although once this basis for the exercise of jurisdiction has been established the Court has power, according to the Judgment, to decide the dispute as to how those international obligations are to be applied to the Mavrommatis Concessions (See *ibid.*, pp. 26, 28, 29, 30, 31, 32). Finally it is hardly necessary to repeat that it has been established that the international obligations in question are those laid down in Protocol XII.

With these principles in mind let the three questions in issue (See Counter-Case, Clause 8) be considered.

Question (1) which relates to the validity of the concessions is a preliminary one the decision of which is necessary in order to ascertain whether any claim is possible.

Question (2) raises the issue whether the acts of the British Authorities in regard to the only material Rutenberg Concession involve any breach of the obligation under the Protocol to maintain the Mavrommatis Concessions. It only arises, of course, if the latter are found to be valid. But little space is devoted to this question in the legal discussion in the Counter-Case for the reason that upon

¹ *Publications of the Permanent Court of International Justice, Series C*, No. 5—I, p. 454.

the facts stated in the earlier part of that document it is clear that no such breach took place. Nevertheless this is the capital question from the point of view of the jurisdiction under the Mandate. H.M. Government desire again to point out (a) that the only act done was, on September 21st, 1921, to make an agreement for the grant of a future concession to a company to be formed by Mr. Rutenberg; (b) that at that date the Lausanne Protocol was not in existence or even in contemplation, and therefore even if the last mentioned concession had conflicted with the Mavrommatis Concessions there would have been no breach of the international obligations mentioned in Article 11 of the Mandate; (c) that as from the date of the signature and coming into force of the Protocol (which latter date is alone material in law as marking the acceptance of the international obligations in question) there has never been any conflict between the Rutenberg Concession and the Mavrommatis Concessions, not only because the former is not in force but also because the proposed concessionnaire is ready and willing to allow M. Mavrommatis to carry out his concessions. For these reasons, as well as the others mentioned in the Counter-Case, it is clear, in the opinion of H.M. Government, that there is no legal foundation whatever for holding that they or the Palestine Administration have committed any breach of the Protocol in the matter of the Rutenberg Concession, and therefore there is no basis for the exercise by the Court of its jurisdiction under Article 26 of the Mandate.

As to question (3), the position is that H.M. Government have, under the terms of the Counter-Case (see Clause 11, p. 7), consented to the Court exercising jurisdiction for the purpose of deciding whether the Mavrommatis Concessions come under Articles 4 and 5, or under Article 6 of the Protocol, and if they are right in their contention under question (2) it is clear that question (3) could not, but for such consent, be dealt with. It is just because, in consequence of the above attitude, this issue is bound to arise for consideration on its merits that the arguments upon it have been developed at some length in the Counter-Case. Moreover, it is plain that the logical order of the questions is the one adopted there—before embarking upon the dispute as to the detailed application of the provisions of the Protocol, a dispute voluntarily referred to the Court, it is surely reasonable to dispose of the question which gave rise to the present proceedings: namely, whether the matter of the Rutenberg Concessions constituted a breach of the international obligations mentioned in Article 11 of the Mandate. Under that question, moreover, the only provision of the Protocol which is material is the general principle laid down therein that pre-war concessions must be maintained, whereas under question (3) it is necessary to examine in detail the particular application of the various articles. Finally, H.M. Government think it important to point out that with regard to question (3) there can be no suggestion of a breach on their part of the obligations laid down by the Protocol.

The dispute is one as to what provisions of that document the Jerusalem Concessions fall under, a dispute turning upon questions of interpretation open to honest differences of opinion, and H.M. Government have consented to the submission of this dispute to the Court at the earliest opportunity available to them after the coming into force of the Protocol.

8. — Turning to Clause 8 of the Reply, H.M. Government do not agree that the point made in Clause 9 of the Counter-Case would only be sound if it was shown that before the War Turkish nationals alone could obtain concessions in Turkey. The basis of the contention in the Counter-Case is that the concessions were invalid because they were founded upon a mistake. The two Parties were not *ad idem* inasmuch as the Turkish Authorities thought they were granting the concessions to an Ottoman subject and must be taken to have conceded the rights described therein upon the faith of that understanding. H.M. Government dispute the effect attributed by the Reply to Article 9 of the Ottoman Nationality Law of 1869, and reserve the right to refer to the terms thereof in order that its true construction may be ascertained. It will, moreover, be noticed that the legal opinions annexed to the Reply (Annexes Nos. 38 and 39) do not meet the point relied upon by the British Government, but are directed principally to establishing that the fact of M. Mavrommatis being described in the concessions as an Ottoman subject does not affect his legal status as a Greek national.

9. — In answer to the first three paragraphs of Clause 9 of the Reply the British Government need only observe that they adhere to the view stated in Clause 10 of the Counter-Case and again developed in the present Rejoinder as to the obligations by which they are bound in regard to the Mavrommatis Concessions.

The fourth paragraph confirms the comment already made that M. Mavrommatis is not concerned to carry out his concessions. The Greek Government say that he would not henceforward find sufficient satisfaction of his rights in the application of the Protocol ; but the application of the Protocol is the only duty incumbent upon the British Government. It has been shown that the proposed Rutenberg Concession in no way prevents or interferes with such application, and H.M. Government repeat that they are prepared to give effect in regard to the Mavrommatis Concessions to whatever provisions of the Protocol the Court may decide to be applicable. There is no legal basis for demanding more. In reality the claim now made is that H.M. Government should indemnify M. Mavrommatis in respect of the profits which he thinks he would have made by selling his concessions if there had been no war, and Turkey had retained its sovereignty and possession of Palestine.

10. — As to Clause 10 of the Reply, H.M. Government desire to correct the statement that any observations in Clause 11 of the Counter-Case constitute a criticism of the Judgment of August 30th, 1924. In Clauses 2 and 7 hereof they have explained more fully their view as to the effect of that Judgment, which, as stated at the very outset of the present proceedings (See Counter-Case, Clause 1), they loyally accept. No criticism whatever is involved in the recognition of the fact that the Judgment was confined to a preliminary point of law, and that it is, therefore, permissible and indeed needful now to ascertain the facts with greater precision than it was necessary to do for the purpose of deciding such point.

11. — Clause 11 of the Reply deals with the meaning of the word *application* in Article 6 of the Protocol, and it is argued that the contention in Clause 13 of the Counter-Case involves the substitution of *execution* for *application*. The Greek Government have evidently misunderstood the British contention. It is not said in the Counter-Case that the phrase: *reçu un commencement d'application* means that the concessionary contract must have been executed, but that the *works* provided for by the contract must have begun to be executed. It is submitted that to speak of a contract having begun to be executed would be incorrect—a contract is either executed or not executed. The word *application* is more flexible but when used of a contract it does not seem apt to convey, as the Reply wishes to suggest, that one of the Parties to the contract has fulfilled one or more of its formal stipulations. It implies, in the submission of H.M. Government, that the purpose of the contract has been carried out. And so “commencement of application” means “commencement of carrying out such purpose”. The framers of the Protocol endeavoured to find a short phrase which would express their intentions. As explained in the Counter-Case (p. 8, 3rd paragraph), if they had meant to provide that contracts of which merely the formal stipulations had been fulfilled were to be readapted, Article 6 would have been unnecessary.

In regard to the last paragraph of Clause 11 of the Reply, H.M. Government maintain their position as stated in the Counter-Case (p. 8, 2nd paragraph¹) and observe that the point there made is not met.

The foregoing remarks have been confined to answering the verbal criticisms made in the Reply, but H.M. Government attach importance to the purpose and intention of the Protocol as shown by its provisions. Some reason must be found for the different treatment accorded to concessions under Articles 4 and 5, on the one hand, and under Article 6 on the other. Even if it be assumed contrary to the fact (and a fact well-known to those who drew up the Protocol) that there existed unworked concessions entitled to benefit by the right of subrogation granted by Article 9, in respect of which

¹ Page 216 of this volume.

such conditions as the making of deposits and the presentation of plans had not been fulfilled, why should the right of readaptation be denied to such concessions and accorded to other equally unworked concessions simply because the concessionnaire had fulfilled these formalities? The difference in treatment between the two classes of concessions is very substantial, and must have been based upon a sufficient ground. This ground, it is submitted, is the one mentioned in the Counter-Case, viz.: that concessions which have begun to be worked are entitled to readaptation because they are actual undertakings, giving their possessors a fair claim to look for a continuance of their activities upon a remunerative basis, whereas concessions which are merely in what may be called the "paper stage" receive adequate treatment by the choice either of being carried into operation on the basis fixed in the contract, or of receiving compensation for the preliminary expenses actually incurred.

12. — In regard to Clause 12 of the Reply, H.M. Government only think it necessary to deal explicitly with one point. The Greek Government play upon words in stating (see 4th paragraph) that the acts done by M. Mavrommatis under his concessionary contracts do not concern their validity. If he had not made the final deposits and presented the designs and plans within the prescribed periods his concessions would under the very terms of the contracts have become void (See Annex to Greek Case, Acte No. 1, Articles 4 and 13, Acte No. 2, Article 19). Similarly, it is, in the submission of the British Government, clearly impossible to hold, as the Reply proposes, that the Protocol imposes upon the successors of Turkey obligations in regard to concessions which were not binding upon Turkey. Article 9 of the Protocol provides for the subrogation of the State acquiring Turkish territory to the rights and obligations of Turkey under certain concessionary contracts entered into before October 29th, 1914, this subrogation to have effect as from October 30th, 1918. If on the last mentioned date a concession had lapsed or become void there would obviously be no obligation of Turkey to which the other State could be subrogated. It is for this reason that H.M. Government have contended in the Counter-Case (page 8, 3rd paragraph) and again submit that if the Greek argument that concessions which have not progressed beyond the stage where deposits have been made and plans presented are outside Article 6 of the Protocol, that article is deprived of meaning or effect.

13. — The Hellenic Government state in Clause 13 of the Reply that the meaning of the British argument with regard to the effect of the provision as to indemnities in Article 6 of the Protocol escapes them. H.M. Government regret that they have not made their meaning clear. The point is this: Article 6 provides for an indemnity in respect of *travaux d'étude* in the case of concessions which

have not begun to be put into operation. The Greek Government maintain that a concession must be regarded as having begun to be put into operation by reason only of the making of deposits and the presentation of designs and plans. Now the deposit involves no loss (See Counter-Case, pages 8 and 9) and therefore the only matter in respect of which the concessionnaire of such a concession could require indemnification would be precisely the cost of the preparatory work which is contemplated in Article 6. But upon the Greek hypothesis Article 6 does not apply to such a concession, the result being that there are no concessions to which the provision as to indemnity can apply.

14. — Clause 14 of the Reply contains another statement tending to create prejudice but devoid of legal value. H.M. Government must ask the Court to bear in mind the true position. M. Mavrommatis had on July 30th, 1914, requested the Municipality of Jerusalem to suspend the execution of all his engagements under the two concessions for a "period equal to the time which shall elapse between the day of the declaration of war and that of the conclusion of the definitive peace" (See Annex to Greek Case, Acte No. 5, p. 4). To this request the Municipal Council consented in corresponding terms (*ibid.*, Acte No. 6, p. 5). Peace was concluded with Turkey by the Treaty of Lausanne, which came into force on August 6th, 1924. The state of war continued throughout the period from October 29th, 1914, until that date. It is therefore quite unfounded for M. Mavrommatis to complain of alleged obstacles and delays in 1921, 1922, 1923. And further it is plain that H.M. Government could not take a final decision in regard to concessions relating to territory actually in their possession but granted by the enemy State, before the many questions arising out of the war were settled by an operative Treaty. The Reply states that "it ill becomes the British Government to reproach M. Mavrommatis and to seek to take advantage of a text drawn up after the event to place him in a worse situation than he would have created for himself if his activity had not been paralyzed, as it has been, by their action alone". But this is a complete misstatement of the real position. M. Mavrommatis himself asked that the execution of his concessions should be suspended for a period which terminated on August 6th, 1924, and the delay in the conclusion of peace was not due to H.M. Government but to a large number of causes for which they were in no way responsible. From the moment however when the Protocol was signed and even before it came into force, H.M. Government have shown their willingness and intention of giving effect to its terms. Finally, it seems necessary to remind the Greek Government that the Treaty of Lausanne, with Protocol XII, were not unilateral enactments of Great Britain but international engagements arrived at by negotiation between the Powers concerned, including Greece.

15. — In Clause 15 of the Reply the Greek Government expresses the opinion that the application of the Protocol to M. Mavrommatis' concessions is no longer possible in practice. H.M. Government, on whom such application depends, have stated in the Counter-Case, and repeat here, that they see no reason why the concessions should not be carried out and that they are prepared to give effect to whatever provisions of the Protocol the Court decides are applicable. It has already been fully explained that the Rutenberg Concessions do not constitute any obstacle to the execution of the Mavrommatis Concessions, nor are H.M. Government aware of any other circumstances which compel them to proceed to expropriation rather than allow the concessions to be operated.

The next subject dealt with is that of the effect of the provisions of the Protocol upon the question of re-purchase. Upon this point H.M. Government adhere to the view expressed in the Counter-Case (Clause 13). The Protocol not only contains no mention of re-purchase (except in so far as Article 6 may be regarded as dealing with the subject), but that notion cannot be reconciled with its provisions—on the contrary they negative its exercise. The Greek Government suggest that in order to exclude re-purchase an express clause would have been necessary, but there does not seem any ground for this contention; the provisions actually contained in the Protocol exhaust the whole subject of concessions, and there is no basis for reading into them any extraneous rule.

In the 7th paragraph of Clause 15, the Greek Government repeat the assertion made in their Case that the British Government have already expropriated the Mavrommatis Concessions, an assertion which has been answered in the Counter-Case (Clauses 16 and 17). No new argument is brought forward, but reference is made to the question of the currency in which the maximum prices authorized by the concessions are fixed. Upon this question it is important that the position of the British Government should be clearly appreciated. It is quite true that both concessions contain a provision stating that the para is considered as $\frac{1}{40}$ th part of the piastre and the piastre as $\frac{1}{100}$ th part of the Turkish pound (See Annex to Greek Case, Acte No. 1, p. 47, Art. 70; Acte No. 2, p. 24, Art. 23¹), but this has no relation at all to the currency being gold. The explanation of the provision in question is as follows :

Before the war, there existed in Turkey a wide variation in the value of the smaller currency relative to the Turkish pound which was a gold coin, so that in different commercial centres of the Ottoman Empire the piastre in actual currency was worth anything from 108 piastres to close on 200 piastres to the Turkish pound. The object of the above-mentioned provision, which is commonly

¹ *Publications of the Permanent Court of International Justice*, Series C, No. 5—I, pp. 175 and 218.

found in Turkish concessions, was to secure a stable basis of payments and accounts in these circumstances, and meant that the piastre was to be taken not as the real tangible piastre of the actual local currency, but as a pure *monnaie de change* representing 100th part of a Turkish pound. If, for instance, a price fixed by the *Cahier des charges* was 100 piastres, it meant that the public had to pay not 100 piastres of the Jerusalem local currency but the number of current piastres which represented the value of one Turkish pound : 108, 120 or 180 piastres as the case might be. It is this unit of 1/100th of a Turkish pound and not a gold coin that is referred to in Article 12 of the *Cahier des charges* of the Water Concession. On March 30th/April 12th, 1915, a Turkish law was passed authorizing the issue of paper notes and making such notes legal tender for all purposes on a perfect equality with metallic currency, and the monetary system of Turkey remains upon this footing at the present time. It is clear therefore that under both concessions the rates fixed are rates in and referable to the present Turkish paper currency, the acceptance of which is obligatory by law, as shown by the following decisions of the Turkish Court of Cassation : No. 1176—June 13th, 1337 ; No. 2603—June 13th, 1337 ; No. 1471—July 2nd, 1337 ; No. 2768—Sept. 11th, 1337 ; No. 4849—May 24th, 1340. If any doubt upon the subject were still possible it would be removed by the concluding words of the above-mentioned articles in the two *Cahier des charges* (See Annex to Greek Case, Acte No. 1, Art. 70, p. 47 ; Acte No. 2, Art. 23, p. 24¹). The foregoing facts, which have only recently been ascertained, make it necessary to modify the statement contained in Clause 17 of the Counter-Case, and in order to avoid the possibility of misunderstanding it may be advisable to state that the undertaking given at the end of that clause, although it holds good, must be read in the light of those facts.

The last two paragraphs of Clause 15 of the Reply do not call for detailed comment inasmuch as they raise points already dealt with, but the insistence of the Greek Government upon the claim that M. Mavrommatis should be bought out rather than allowed to carry out his concessions, in accordance with the provisions of the Protocol, again shows what is the real object he has in view.

16. — H.M. Government do not think that it is material or necessary to comment in detail upon all the observations contained in Clause 16 of the Reply. They adhere entirely to Clause 18 of the Counter-Case and in particular to the criticism there made of the figures upon which the claim for indemnity is based.

The following points may, however, be specifically referred to :

As to sub-paragraph (2) : H.M. Government dispute both the correctness and the relevance of the allegations made.

¹ *Publications of the Permanent Court of International Justice, Series C, No. 5—I*, pp. 175 and 218.

As to sub-paragraph (3) : it does not appear to the British Government that the terms upon which other concessions may have been financed afford any proof of the profits realizable from the Mavrommatis Concessions.

As to sub-paragraph (4) : the bearing of the observations made is not appreciated. The question is not what was the value of the franc before the war, but what currency M. Mavrommatis would be entitled to base his present claims upon, if they were well founded. The point made in the Counter-Case was that in so far as sums are demanded which are said to have been expended or offered in foreign currency any claim for refund or indemnity can only be calculated in the same currency at the present rate of exchange.

As to sub-paragraph (5) : H.M. Government refer to page 13, last paragraph but one, of the Counter-Case.¹

As to sub-paragraph (6) : every reservation is made in regard to the letter from the Banque Périer there mentioned and annexed to the Reply as No. 46. H.M. Government submit that a communication made in the circumstances in question has no value or weight as evidence.

As to sub-paragraph (7) : whilst H.M. Government *must not* be taken to agree with the description of the gentlemen referred to, they desire to state to the Court that in their opinion expressions of opinion contained in a letter such as Annex No. 47 of the Reply, and uncontested by cross-examination are, on principle, of little or no value.

As to sub-paragraph (8) : H.M. Government beg to refer to Clause 4, 2nd paragraph hereof.

17. — In regard to Clause 17 of the Reply, H.M. Government take note of the fact that the Greek Government re-affirms the conditional character of their proposal to revise the claim in question ; and for the rest beg to repeat their objection to the admissibility of the claim in any circumstances, as stated in Clause 4 hereof.

CONCLUSION.

18. — FOR THESE REASONS, H.M. Government submit that the allegations and contentions set out in the Reply do not in any way displace the conclusions of the Counter-Case, and accordingly ask the Court to uphold those Conclusions.

¹ Page 225 of this volume.