File E. c. XV.
Docket XVI.
Judgment No. 14
12 July 1929

PERMANENT COURT OF INTERNATIONAL JUSTICE
Sixteenth (Extraordinary) Session

Case Concerning the Payment of Various Serbian Loans Issued in France

France v. Kingdom of the Serbs, Croats and Slovenes
Judgment

BEFORE:	President:	Anzilotti
	Vice-President:	Huber
	Judges:	Loder, de Bustamante, Altamira, Oda, Pessoa, Hughes
	Deputy Judge(s):	Beichmann,Negulesco
	Judges *ad hoc:*	Fromageot,Novacovitch
Represented By:	France:	Basdevant, Assistant Legal Advicer of the French Ministry for Foreign Affairs
	Kingdom of the Serbs, Croats and Slovenes:	Spassojevitch, Professor at the University of Belgrade

Perm. Link: http://www.worldcourts.com/pcij/eng/decisions/1929.07.12_payment1.htm

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[p5] The Court,
composed as above, [p6]
having heard the observations and conclusions of the Parties,
delivers the following judgment:

[1] The Governments of the French Republic and of the Kingdom of the Serbs, Croats and Slovenes have submitted to the Permanent Court of International Justice, by means of a Special Agreement concluded at Paris on April 19th, 1928, between the aforesaid Governments, duly ratified by both Parties on May 16th, 1928, and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, by letters dated May 24th, 1928, signed by the French Minister at The Hague and by the Minister of the Serb-Croat-Slovene State in London (also accredited to The Hague) respectively, the dispute which has arisen

between the Serb-Croat-Slovene Government and the French holders of the Serbian 4 % 1895, 5 % 1902, 4½ % 1906, 4½ % 1909 and 5 % 1913 loans and also of the 4½ % land bonds (obligations foncieres) of 1910 and of the 4½ % communal bonds of 1911 (Ouprava Fondova) and of the shares of the Serbian Red Cross Society, with regard to the question upon what monetary bases payment of the principal and interest of these loans should be effected.

[2] The letter of the Minister of the Serb-Croat-Slovene State reached the Registry only on June 4th, 1928; but, in view of the fact that Article III of the Special Agreement provides that the latter may, as soon as ratifications have been exchanged, be submitted to the Court by means of a notification addressed to the Registry by either Party, the Court was duly made cognizant of the case on May 24th, the date on which the letter of the French Minister at The Hague was received.

[3] According to the terms of the Special Agreement, the Court is asked to decide the following questions:

"(a) Whether, as held by the Government of the Kingdom of the Serbs, Croats and Slovenes, the latter is entitled to effect in paper francs the service of its 4 % 1895, 5 % 1902, 4½ % 1906, 4½ % 1909 and 5 % 1913 loans, as it has hitherto done;
(b) or whether, on the contrary, the Government of the Kingdom of the Serbs, Croats and Slovenes, as held [p7] by the French bondholders, is under an obligation to pay in gold or in foreign currencies and at the places indicated hereinafter, the amount of the bonds drawn for redemption but not refunded and of those subsequently drawn, as also of coupons due for payment but not paid, and of those subsequently falling due for payment of the Serbian loans enumerated above, and in particular:

1° With regard to the Serbian 4 % loan of 1895, whether holders of bonds of this loan are entitled, whatever their nationality may be, to obtain, at their free choice, payment of the nominal amount of their coupons due for payment but not paid and of those subsequently falling due for payment, as also of their bonds drawn for redemption but not refunded and of those subsequently drawn, at Paris, London, Berlin, Vienna, Geneva and Belgrade, in the currency in circulation at one of these places;
2° With regard to the 5 % 1902, 4½ % 1906, 4½ % 1909 and 5 % 1913 loans and, subsidiarily with regard to the above-mentioned 4 % loan of 1895, whether holders of these bonds are entitled to obtain payment of the nominal amount of their coupons due for payment but not paid and of those subsequently falling due, as also of their bonds drawn for redemption but not refunded and of those subsequently drawn, in gold francs at Belgrade, Paris, Brussels and Geneva, or at the equivalent value of the said amount at the exchange rate of the day in the local currency at Berlin, Vienna and Amsterdam, in so far as concerns the 1902, 1906 and 1909 loans;
3° Lastly, how the value of the gold franc is to be determined as between the Parties for the above-mentioned payments."

[4] It is to be noted that no question is put to the Court respecting the 4½ % land bonds of 1910, the 4½ % communal bonds of 1911, or the "shares of the Serbian Red Cross Society".

[5] Conforming to the proposals jointly made in Article IV of the Special Agreement, in accordance with Article 32 of the Rules of Court, the President, having regard to that article, as also to Article 48 of the Statute and Articles S3 and 39 [p8] of the Rules, made an order on May 26th, 1928, fixing July 25th and September 25th, 1928, as the dates for the expiration of the times allowed to each of the Parties for the filing of their Cases, formulating their submissions, and of their Counter-Cases in reply, setting out also, if necessary, any additional submissions; in the same order, the President, whilst recording that the Parties were to be held to have agreed, in accordance with Article 39, paragraph 1, of the Rules, to waive the right to submit Replies, reserved the right of the Court to call upon them, should it see fit, to submit Replies within a time subsequently to be fixed. The Court has not made use of this right.

[6] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute.

[7] In the course of public sittings held on May 15th, 16th, 17th, 18th, 22nd, 23rd and 24th, 1929, the Court has heard the oral pleadings, reply and rejoinder, presented by the above-mentioned Agents for the Parties, as also by Me Albert Montel, Counsel before the Court of Appeal of Paris, on behalf of the French Government, and by Me Albert Deveze, Counsel before the Court of Appeal of Brussels, on behalf of the Serb-Croat-Slovene Government.

[8] In support of their respective statements, the Parties have submitted to the Court, either as annexes to the documents of the written proceedings or during the hearing, the documents a list of which is given in the annex to this judgment [FN1].

[FN1] See p. 85.

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[9] Under Article IV of the Special Agreement, the Parties' Cases were to contain their submissions, whilst the Counter-Cases were, if necessary, to set out any additional submissions.

[10] The submissions of the French Government as formulated in its Case are as follows:

It is submitted that:

"(1) With regard to the Serbian 4 % 1895 loan, the holders of the bonds of this loan, whatever their nationality may be, are entitled to obtain, at their free choice, payment of the nominal amount of their coupons, due for payment but not [p9] paid, and of those subsequently falling due, as also of their bonds drawn for redemption but not refunded and of those subsequently drawn at Paris, London, Berlin, Vienna, Geneva and Belgrade in the currency in circulation at one of these places;
(2) With regard to the 4 % 1895, 5 % 1902, 4½ % 1906, 4½ % 1909 and 5 % 1913 loans, the holders of bonds of these loans are entitled to obtain payment of the nominal amount of their coupons, due for payment but not paid, and of those subsequently falling due, as also of their bonds drawn for redemption but not refunded and of those subsequently drawn, in gold francs, at Belgrade, Paris, Brussels and Geneva, or at the equivalent value of the said amount at the exchange rate of the day in the local currency at Berlin, Vienna and Amsterdam, in so far as concerns the 1902, 1906 and 1909 loans;
(3) For the purpose of the above payments which are to be made in gold francs at gold parity, the value of the gold franc is that of a weight of gold corresponding to one twentieth part of a piece of gold weighing 6 gr. 45161 900/1000 fine."

[11] For its part, the Serb-Croat-Slovene Government, in its Case, submits:

" .... that the French Government's claims are unfounded and that the Serb-Croat-Slovene State, in paying the principal and interest of the loans in dispute in French francs, is carrying out its obligations to the full;
And consequently that the claim of the French State should be dismissed."

[12] This submission is preceded by an enumeration of grounds on which it is based and summarizing the Serbian standpoint in regard to the various points forming the subject of argument; these grounds are headed by a preamble, the terms of which should be set out:

"Whereas the purpose of the action brought by the French State on behalf of the holders of bonds

of the Serbian 1895, 1902, 1906, 1909 and 1913 loans, is to obtain judgment to the effect that the service of these loans should be effected in gold;
And whereas the Serbian State in its submissions expressly reserves all rights which may belong to it either by reason of the forfeiture of certain rights by the bondholders, or under the provisions of the Peace Treaty regarding the property of ex-enemy subjects...."

[13] The French Government has not availed itself of the right accorded by the Special Agreement to formulate additional [p10] submissions in its Counter-Case; it has simply contented itself with reproducing in that document word for word the submissions made in the Case, but, like the Serb-Croat-Slovene Case, it has preceded them by an enumeration of grounds summarizing its standpoint in regard to the various points in dispute.

[14] Similarly, the Serb-Croat-Slovene Government has not made use of its right to formulate additional submissions in its Counter-Case, and has confined itself to stating that it "maintains the submissions set out" in its "first Case".

[15] With regard to Article 1 (b), No. 2, of the Special Agreement, a passage which is reproduced almost word for word in the submissions of the French Government, the Court has been informed by that Government's Agent, in reply to a question put by the Court to the two Parties, that the words "and Amsterdam in so far as concerns the 1902, 1906 and 1909 loans", which in a preliminary draft of the Special Agreement were enclosed in brackets, should be read to mean: whereas, in the case of the holders of bonds of the four loans of 1902, 1906, 1909 and 1913, the question is one of the existence of a right to obtain at Berlin and at Vienna only payment of the corresponding value at the exchange rate of the day in the local currency of the nominal amount in gold francs of their coupons and bonds, in the case of holders of bonds of the 1902, 1906 and 1909 loans, there is also the question of the existence of a similar right at Amsterdam.

[16] The Agent for the Serb-Croat-Slovene Government has not disputed the explanation thus given, which is, moreover, confirmed by the wording of the various bonds.

THE FACTS.

[17] According to the documents and information submitted to the Court by the Parties, the origin of the controversy now before the Court is as follows: [p11]

I.

[18] I.— At a conference held on June 20th, 1895, at Carlsbad, between the Serbian Minister of Finance, representatives of the Serbian National Bank and representatives of three other banks, the Minister explained that the Serbian Government had decided "to convert the existing 5% loans into a consolidated 4% loan to be redeemed in 72 years, to maintain for the benefit of this new conversion loan the securities appropriated to the existing loans; further, to create by law, for the control of these securities, an Administration of Monopolies entirely independent of political occurrences, in order that the securities appropriated to the conversion loan should be administered independently, and to utilize independently the revenues which it receives for the payment of interest and for the redemption of the conversion loan". Thereupon the representatives of the banks expressed the "opinion that the proposals of H.E. the Minister of Finance were calculated considerably to increase confidence in Serbia's credit and to compensate Serbia's creditors for the reduction of the rate of interest resulting from the exchange of the existing 5% stock for 4% bonds". It was accordingly agreed that the Serbian Government should submit to the Skupshtina a bill containing certain provisions agreed upon by the Conference.

[19] The law in question was in effect promulgated on July 8th/20th, 1895. It authorized a "new consolidated loan" of a nominal capital of 355,292,000 dinars (francs); it was divided into

710,584 bonds, the certificates of which — which are analysed hereinafter — were signed at Belgrade on August 1st/13th, 1895. The loan was issued in the same year at various places other than London, with the exception of an amount of 73,460,000 francs which remained in the hands of the Serbian Government.

[20] According to a circular of the Comptoir national d'Escompte of Paris dated August 28th, 1895, it was more a question of an exchange of certificates — this moreover was in accordance with the character of the 1895 loan as a conversion loan — , and this exchange could be demanded until [p12] September 24th, 1895. The Court has before it no prospectus properly so called, but merely a "first notice distributed in France in May 1896", as also a "notice concerning the Serbian 4% consolidated 1895 funds", which mentions no date but is said to have been published in October 1902, the authenticity of which however is disputed by the Serbian Government.

[21] Under a contract concluded at Paris on April 3rd/15th, 1896, the Serbian Government made over to a group of banks "the nominal sum of 70,460,000 francs" of the 4% redeemable loan of 1895; a portion of the amount thus made over was made the subject of an agreement concluded at Paris on June 27th/July 9th, 1897, with regard to the issue in London of £1.000.000 sterling (25 million dinars). The prospectus relating to this section, dated July 23rd, 1897, states that subscription would take place in London on July 27th, 1897.

[22] II. — On July 26th/August 8th, 1902, a Serbian law was promulgated authorizing the Government to issue a loan of a nominal amount of "60 million francs in gold", and designed to liquidate a part of the floating debt. With a view to the issue of this loan, the Serbian Government concluded at Paris on August 23rd/September 5th, 1902, with a group of banks, a contract under which the Government was to hold at the disposal of the banks, on certain specified conditions, the bonds to be issued to the number of 120,000. The bonds were signed at Belgrade on the same day; they will be analysed hereinafter. The prospectus, which is dated February 12th, 1903, indicates that the subscription list will be open at Paris during the day of February 26th, 1903.

[23] III. — A Serbian law promulgated on December 14th/27th, 1906, authorized the Serbian Government to contract a loan "of a nominal amount of 95 million francs in gold", destined for the construction of railways and the acquisition of war material. As early as November 12th, 1906, however, a contract had been concluded at Geneva between the Serbian Government and a group of banks, the object of which was the issue of the loan contemplated by the law of December 14th/27th, to which it expressly refers. Under [p13] the contract, the Serbian Government was to hold at the disposal of the banks the bonds to be created to the number of 190,000 "as from the signature of the contract". The bonds, which will be analysed hereinafter, were signed at Belgrade on December 14th/27th, 1906, that is to say, on the day on which the law authorizing the loan was promulgated. According to the prospectus, which is dated January 23rd, 1907, the subscription list was to be open at Paris on February 9th, 1907.

[24] IV. — On October 9th, 1909, a contract was concluded at Paris between the Serbian Government and a group of banks concerning the issue of a "loan of 150 millions of gold francs which the Government intended to ask the Skupshtina for authority to contract"; the Government undertook to hand over to the banks the bonds to be issued "as from the date of the passing and promulgation of the law"; bonds to the number of 300,000 were to be issued 75% in France and 25% in Germany; the contents of these bonds will be analysed hereinafter. On December 15th/28th, 1909, a Serbian law was in effect promulgated approving "the contract of October 27th/November 9th, 1909," concerning the loan "of 150,000,000 francs intended for the construction of railways and the completion of the stock of war material". The bond certificates were signed the same day at Belgrade, and, according to the prospectus of February 5th, 1910, concerning the issue in France of 225,000 bonds, applications for allotments were to be received at Paris, on and after February 19th, 1910; on the other hand, the prospectus concerning the

German issue (75,000 bonds), dated "February 1910", states that subscription would take place at Berlin, Frankfort-on-the-Main and Hamburg, on February 26th, 1910.

[25] V. — Lastly, a contract signed at Belgrade on August 26th/September 8th, 1913, between the Serbian Government and the group of banks fixed the conditions for the issue by the latter of a loan which the Government "intended to ask the Skupshtina for authority to contract". The loan was to be of 250,000,000 francs and divided into two equal parts, one devoted to payment of the expenditure resulting from the wars of 1912 and 1913, and the other to expenditure in [p14] connection with the requirements of the public services and the economic development of the Kingdom, and especially of the new territories. The bonds, to the total number of 500,000, were to be held at the disposal of the banks as from the date of the passing and promulgation of the law authorizing the loan. This law, which was actually promulgated on October 18th/31st, 1913, approved the contract of August 26th/September 8th, 1913, concerning the loan "of 250,000,000 gold francs for the payment of the urgent expenditure incurred during the war and for urgent needs of the State". The bonds, which will be analysed hereinafter, were signed at Belgrade the same day. According to the prospectus, dated December 10th, 1913, the subscription list, which was opened at Paris, Geneva and Belgrade, was to be closed on January 14th, 1914, at latest.

2.

[26] It has not been denied — and this moreover appears from the actual terms of the Special Agreement — that the service of the five loans has hitherto been effected in respect of the French holders in French francs at their current value. This also appears to be the case, since July 1920, as regards coupons of the 4 % 1895 loan belonging to French holders who had previously been paid in London in English money. The service of the loan was conducted in this manner, in particular, during the period, in the course of the war of 1914-1918, when it was met, either by the French Government — as contended by the Serb-Croat-Slovene Government — or out of funds advanced by the French and British Governments. It was from 1924 or 1925 onwards that the holders began to refuse to accept payment of their coupons on this basis and to make protests, contending that the loan-service should be on a gold basis.

[27] It is also common ground that the yield of the various loans was credited to the Serbian Government in French francs at the current value and that, when that Government, in 1913, asked for remittances in gold specie, it was obliged to accept responsibility for certain expenses in respect thereof, the character of which is differently construed by the Parties. [p15]

3.

[28] When their attention had been directed to the question whether the service of the Serbian loans should be effected in francs at gold value or in francs at the current value, the French bondholders requested their Government to intervene. According to the statements of the Parties' Agents before the Court, diplomatic negotiations followed and the Court has had before it certain documents relating to these negotiations, in the course of which "the Government of the French Republic held that the French holders of the loans in question were justified in the claim they were making to obtain payment in gold currency of arrears and of bonds of those loans drawn for redemption", whilst "the Serb-Croat-Slovene Government, on the other hand, held that it was right in maintaining that payment was due only in French paper money".

[29] This is "the dispute" which, being unable to settle it by diplomacy, the two Governments have, according to the preamble of the Special Agreement of April 19th, 1928, decided to "submit to the Court"; it is true, however, that, in the preamble, as also in Article I above quoted, the Special Agreement defines the dispute by stating, not the respective contentions of the two Governments, but, on the one hand, that of the Serb-Croat-Slovene Government and, on the other, that of the French bondholders; the Court will revert to this point.

[30] According to the Special Agreement, the Court's judgment, though deciding the questions formulated in Article I, is not however destined finally to settle the manner in which the service of the loans is to be effected. For Article II of the Special Agreement provides that, within one month from the delivery of the judgment, the Serb-Croat-Slovene Government and the representatives of the bondholders will begin negotiations with a view to concluding an arrangement which:

"1° In the event of the Court's award being in accordance with the views of the Government of the Kingdom of the Serbs, Croats and Slovenes, will determine whether considerations of equity do not require that the Government [p16] of the Kingdom of the Serbs, Croats and Slovenes should make the bondholders certain concessions over and above that which — in the event of an award by the Court in favour of its contentions — it would be strictly obliged to do.
2° In the event of the Court's award recognizing the justice of the claims of the bondholders, will make to the Government of the Kingdom of the Serbs, Croats and Slovenes, having regard to its economic and financial situation and capacity for payment, certain concessions over and above that which it would be strictly entitled to claim."

[31] The same article also provides that, failing the conclusion within a specified time of such an arrangement, "the question of the concessions referred to" in the paragraph quoted above "and of the method of giving effect to them" shall, in all circumstances, be decided by a special arbitral tribunal, to which the question may be referred by "either of the two contracting Parties".

[32] Finally, it should be observed that, according to Article V of the Special Agreement, "as regards any matter not provided for by the present Special Agreement, the provisions of the Statute of the Permanent Court of International Justice shall be applied".

The Court's jurisdiction.

[33] Before approaching the questions submitted to it, the Court feels that it should define, with reference to the provisions governing its jurisdiction and functions, the task entrusted to it by the Special Agreement.

[34] This is made necessary because of the fact that the jurisdiction which the Court is called upon to exercise under the Agreement between France and the Serb-Croat-Slovene State, seems at first sight to constitute a departure from the principles which the Court, in previous judgments, has laid down with regard to the conditions under which a State may bring before it cases relating to the private rights of its nationals.

[35] According to Article 14 of the Covenant, the Court is competent to hear and determine "any dispute of an international character which the Parties thereto submit to it"; [p17] and, according to Article 36 of its Statute, "the jurisdiction of the Court comprises all cases which the Parties refer to it". Having been brought before the Court by a Special Agreement between the Government of the French Republic and the Government of the Serb-Croat-Slovene Kingdom, the present case appears on this ground to be admissible, as far as considerations of form are concerned.

[36] Nevertheless, according to the strict terms of the Special Agreement, the controversy submitted to the Court does not appear as a dispute between the two Governments, but as one between the Government of the Serb-Croat-Slovene Kingdom and the French bondholders of certain Serbian loans: it is this dispute, concerning the question on what monetary bases the service of these loans should be effected, which the said Government and the Government of the French Republic would appear to have submitted to the Court by agreement. Now, Article 34 of the Statute expressly provides that "only States or Members of the League of Nations can be

parties in cases before the Court" (in the French text "ont qualite pour se presenter devant la Cour"); this principle has its origin in Article 14 of the Covenant, the terms of which, especially if regard be had at the same time to both the official versions, hardly admit of a doubt that the disputes of an international character contemplated therein are disputes between the actual Parties who submit them to the Court.

[37] It follows that if the dispute referred to the Court by the Special Agreement between France and the Serb-Croat-Slovene State were to be regarded as a dispute between the Government of the Serb-Croat-Slovene Kingdom and certain bondholders of the loans, one of the essential conditions of procedure before the Court, namely, the legal capacity of the Parties, would be unfulfilled.

[38] In this connection, reference should be made to what the Court has said on several occasions, and in particular in Judgments Nos. 2 and 13, namely, that by taking up a case on behalf of its nationals before an international tribunal, a State is asserting its own right — that is to say, its right to ensure in the person of its subjects, respect for the rules of international law. Accordingly, in all cases with which the Court has so far had to deal and in which private interests [p18] have been involved, the State's claim has been based upon an alleged breach of an international agreement. The controversy submitted to the Court in the present case, on the contrary, solely relates to the existence and extent of certain obligations which the Serbian State is alleged to have assumed in respect of the holders of certain loans. It therefore is exclusively concerned with relations between the borrowing State and private persons, that is to say, relations which are, in themselves, within the domain of municipal law.

[39] It is however to be noted that the question whether the manner in which the Serb-Croat-Slovene Government is conducting the service of its loans is in accordance with the obligations accepted by it, is no longer merely the subject of a controversy between that Government and its creditors. When the holders of the Serbian loans, considering that their rights were being disregarded, appealed to the French Government, the latter intervened on their behalf with the Serb-Croat-Slovene Government. Diplomatic negotiations followed: but whatever took place during these negotiations, it is common ground that the Serb-Croat-Slovene Government did not reject the intervention of the French Government, but contended that the service of the loans was being effected by it in full conformity with the obligations resulting from the contracts. This view however was not shared by the Government of the French Republic. As from this point, therefore, there exists between the two Governments a difference of opinion which, though fundamentally identical with the controversy already existing between the Serb-Croat-Slovene Government and its creditors, is distinct therefrom; for it is between the Governments of the Serb-Croat-Slovene Kingdom and that of the French Republic, the latter acting in the exercise of its right to protect its nationals. It is this difference of opinion between the two Governments and not the dispute between the Serb-Croat-Slovene-Government and the French holders of the loans, which is submitted by the Special Agreement to the Court. The case therefore is admissible not merely from the point of view of form: it also relates to a dispute between Parties of the category contemplated by Article 14 of the Covenant and Article 34 of the Statute. It thus only remains to consider whether the actual subject of the dispute referred to the [p19] Court which relates only to questions of fact and of municipal law, prevents the Court from dealing with it.

[40] From a general point of view, it must be admitted that the true function of the Court is to decide disputes between States or Members of the League of Nations on the basis of international law: Article 38 of the Statute contains a clear indication to this effect.

[41] But it would be scarcely accurate to say that only questions of international law may form the subject of a decision of the Court. It should be recalled in this respect that paragraph 2 of Article 36 of the Statute provides that States may recognize as compulsory the jurisdiction of the

Court in legal disputes concerning "the existence of any fact which, if established, would constitute a breach of an international obligation". And Article 13 of the Covenant includes disputes of the sort above mentioned among those which are generally suitable for submission to arbitration or judicial settlement". Clearly, amongst others, disputes concerning pure matters of fact are contemplated, for the States concerned may agree that the fact to be established would constitute a breach of an international obligation; it is unnecessary to add that the facts the existence of which the Court has to establish may be of any kind.

[42] Is the case altered if the point at issue between two States is a question which must be decided by application of the municipal law of a particular country? There are cases — as the Court has already had occasion to observe in Judgment No. 8 — in which an action cannot be brought before an international tribunal when there are legal remedies still open to the individuals concerned. But, apart from cases of this kind, and when the two States have agreed to have recourse to the Court, the latter's duty to exercise its jurisdiction cannot be affected, in the absence of a clause in the Statute on the subject, by the circumstance that the dispute relates to a question of municipal law rather than to a pure matter of fact. The very wide wording of the first paragraph of Article 36, which refers especially to cases which — like the present proceedings — are brought before the Court by Special Agreement, supports this conclusion. [p20]

[43] Article 38 of the Statute cannot be regarded as excluding the possibility of the Court's dealing with disputes which do not require the application of international law, seeing that the Statute itself expressly provides for this possibility. All that can be said is that cases in which the Court must apply international law will, no doubt, be the more frequent, for it is international law which governs relations between those who may be subject to the Court's jurisdiction.

[44] On the one hand, the dispute submitted to the Court is, as has been explained, a controversy between France and the Serb-Croat-Slovene State, while on the other hand, it relates exclusively to a nexus of municipal law between the Serb-Croat-Slovene State as borrower and the holders of certain Serbian loans. In these circumstances, the question arises whether facts of a character which would determine the relations under international law between the two States may also have an effect upon the relations under the municipal law upon which the Court, at the request of these States, has to give judgment in this case. Thus the Government of the Serb-Croat-Slovene State has sought to rely upon certains acts of the French Government with regard to the service of the Serbian loans. The Court cannot base its decision on facts which are outside the scope of the relations existing between the borrowing State and the bondholders, for the question submitted to it is definitely restricted to these relations; it is even expressly submitted in the form of a statement contrasting the contention of the Serb-Croat-Slovene Government on the one hand and that of the bondholders on the other. The Court therefore can and must deal only with the particular aspect of the problem raised by the intervention of the French Government on behalf of the bondholders. This would be no less true even if the Special Agreement did not in its second article provide for a second possible phase of the proceedings, in which considerations of equity and necessity may come into account, considerations which have nothing to do with the relations at municipal law existing between borrower and lender. [p21]

THE LAW.

[45] The bonds. — The terms of the bonds of the various issues, in so far as they are pertinent to the questions before the Court, are as follows:

1895 Loan.

[Translation.]
"4 % redeemable Loan
created by the law of 8th/20th July, 1895, represented by

710,584 bonds constituting a nominal capital of frs. 355,292,000
= R.M. 287,786,520 = Austrian gold florins 142,116,800,
repayable in gold at par in 72 years,
secured by the revenues appropriated by the law to the
Autonomous Administration of Monopolies.

BOND
to bearer
OF FIVE HUNDRED FRANCS
nominal value
= R.M. 405 = Austrian gold florins 200."

"The bonds of this loan yield 4 % per annum upon their nominal value and the interest thereon will be paid half-yearly on the 1st/13th July of each year on presentation of the coupons.

Repayment of this loan will be effected in accordance with the sinking fund plan annexed to the bonds within 72 years by means of half-yearly drawings held on 1st/13th April and 1st/13th October of each year.

Drawn bonds will be repaid at their nominal value in gold when the first coupon subsequent to the drawing reaches maturity.

Bonds and coupons of this loan are free of all existing or future taxes, duties or deductions in Serbia.

Payment of matured coupons and bonds drawn will be effected, at the choice of holders:

at Belgrade	at the rate of 10 francs in gold for each coupon and 500 francs in gold for each bond of 500 francs nominal,
Paris Berlin	at the rate of R.M. 8.10 in gold for each coupon and R.M. 405 for each bond of R.M. 405 nominal,
Vienna	at the rate of 4 Austrian gold florins for each coupon, and 200 Austrian gold florins for each bond of 200 florins nominal, [p22]

at any of the establishments and banking houses to be appointed by the Minister of Finance to the Kingdom of Serbia."

The French text of the bonds shall be authoritative.

Coupons not presented for payment shall be barred by prescription after five years and bonds drawn for redemption thirty years after maturity.

Belgrade, August 1st/13th, 1895."

[Signed by the Serbian Minister of Finance.]

[46] The following is the form of coupon:

[Translation.]
"4 % redeemable Loan.
COUPON
payable in gold on ....
at Belgrade and Paris at the rate of frs. 10
Berlin at the rate of R.M. 8.10 and
Vienna at the rate of 4 Austrian gold florins."

1902 Loan.

[Translation.]
"5 % Bonds of the Monopolies
created by the law of July 26th/August 8th, 1902,
reproduced in extract on the back,
for a total of 60 million gold francs
represented by
120,000 Bonds of 500 gold francs
redeemable by purchase below par, if the case arise, or otherwise
by six-monthly drawings at par,
by means of a special provision of ½ % of the
nominal total of the loan.
Maximum period for repayment: 50 years.
Annual sum allocated for interest and redemption
of the loan: 3,300,000 gold francs.

This loan is guaranteed both by the Royal Serbian Government
and by the Autonomous Administration of Monopolies
and is payable out of the surplus of net revenue available
after providing for the service
of the loans referred to in the law of July 8th/20th, 1895.
An annual sum of 3,300,000 gold francs shall be allocated
for the purpose and shall be paid in monthly instalments by
the Autonomous Administration of Monopolies.

[p23] The loan is further guaranteed by the revenue from the railways
with a first charge upon the lines at present in working,
the whole always subject to the provisions of the Law of
July 26th/August 8th, 1902 (Art. IV), and of the General
Bond delivered to the contracting Parties
(whereof extracts are reproduced on the back).
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5 % BOND TO BEARER
OF 500 FRANCS
No…..
The present loan is issued exclusively
for uniform denominations.

INTEREST.

The Bonds of this loan carry an annual interest of 5 % on their nominal capital. Interest is payable each three months, on February 2nd/15th, May 2nd/15th, August 2nd/15th, and November 2nd/15th of each year on presentation of the corresponding coupons.

REDEMPTION.

Should redemption not be possible by repurchase below par, drawings shall take place at Belgrade on March 2nd/15th and September 2nd/15th of each year, and the bonds drawn will be repaid in gold at par two months after, namely, on May 2nd/15th and November 2nd/15th respectively. The Government reserve the right to redeem the whole loan at par, together with interest due, after the year 1908.

Bonds and coupons of the present loan are free of all Serbian taxes, duties or deductions, present or future.

Payment of coupons due shall be made in gold at the choice of holders and by the firms that shall be thereto appointed.

			For each Bond of 500 francs.				
at	Belgrade	at the	Frs.	6,25	on	Febr.	2nd/15th	of each
	Paris	rate of	,,	6,25	,,	May	2nd/15th	year
	Brussels		,,	6,25	,,	Aug.	2nd/15th	
	Geneva		,,	6,25	,,	Nov.	2nd/15th	

Frs. 25. — per annum on presentation of coupons bearing the dates in question.

[p24]

At	Berlin	On the same dates
	Vienna	in the currency of these towns respectively
	Amsterdam	at the rate of exchange at sight on Paris.

The French text of the Bonds shall be authoritative.
Belgrade, August 23rd/September 5th, 1902.
The Minister of Finance
of the Kingdom of Serbia."

[47] The coupon is as follows:

[Translation.]
"5 % Bonds of the Monopolies
No. ….
Coupon payable in gold on ....
at Belgrade, Paris, Brussels and Geneva at the rate of Frs. 6.25;
at Berlin, Vienna and Amsterdam at the rate of exchange at
sight on Paris."

1906 Loan.

[Translation.]
"4½ % Gold Loan 1906
Issued under the Law of December I4th/27th, 1906, whereof an

extract is reproduced on the back
For a total of 95 million gold francs
represented by
190,000 Bonds of 500 gold francs.

Redeemable by repurchase below par, if the case arise, or otherwise by six-monthly drawings at par, by means of a special provision referred to below.
Maximum period for repayment: 50 years.

Annual sum allocated for interest and redemption of the present loan:
4,800,000 francs.

This loan is guaranteed both by the Royal Serbian Government and by the Autonomous Administration of Monopolies and is payable out of the surplus of net revenue available after providing for the service of the loans referred to in the Law of July 8th/20th, 1895, and July 26th/August 8th, 1902, in accordance with the Law of December 14th/27th, 1906.

BOND OF 500 FRANCS 4½ %
TO BEARER.

INTEREST.

The Bonds of this loan carry an annual interest of 4½ % on their nominal capital. Interest is paid half-yearly on [p25] April 2nd/15th and October 2nd/15th of each year on presentation of the corresponding coupons.

REDEMPTION.

Should redemption not be possible by repurchase below par, drawings shall take place at Belgrade on February 2nd/15th and August 2nd/15th of each year, and the bonds drawn will be repaid at par after two months, namely, on April 2nd/i5th and October 2nd/15th respectively.

The bonds and coupons of the present loan are for all time exempt from all present or future taxes and duties in Serbia.

The payment of matured coupons and bonds drawn shall be effected at the choice of holders by the firms that shall be thereto appointed:

		For each Bond of 500 francs.	
at Belgrade at Paris at Brussels at Geneva	at the rate of	Frs. 11.25 on April 2nd/15th ,, 11.25 on Oct. 2nd/15th Total 22.50	of each year per annum on presentation of coupons bearing the date in question;

at Berlin
at Vienna

on the same dates in the currency of these towns respectively at the rate of exchange at sight on Paris.

at Amsterdam

The French text of the bonds shall be authoritative.
Belgrade, December 14th/27th, 1906.
The Minister of Finance
of the Kingdom of Serbia."

[48] The coupon is as follows:

[Translation.]
"4½ % Gold Loan 1906
Bond No. ….
Coupon payable on ....
at Belgrade, Paris, Brussels and Geneva, at the rate of frs. 11.25
at Berlin, Vienna, Amsterdam, at the rate of exchange at
sight on Paris. [p26]

1909 Loan.

[Translation.]
"4½ % Gold Loan 1909
Issued under the law of December 15th/28th, 1909,
whereof an extract is given on the back,
For a total of
150 million gold francs
Consisting of
300,000 Bonds of 500 gold francs

Redeemable by repurchase below par
or by six-monthly drawings if the price is at or above par
by means of a special provision referred to below.
Maximum period for repayment: 50 years.

Annual sum allocated for interest and redemption of the
present loan: 7,500,000 francs.

This loan has as a special guarantee the net receipts of the Autonomous Administration of the Monopolies as available after the service of the loans referred to by the laws of July 8th/20th, 1895, July 26th/August 8th, 1902, and December 14th/27th, 1906, in accordance with the law of December 15th/28th, 1909. If these receipts should be insufficient to cover annual payments under the present loan, the service as a whole will be effected by the general revenue from the State budget.

4½ % BOND OF 500 FRANCS
TO BEARER
No. ….
INTEREST.

The Bonds of this loan carry 4½ % interest per annum on their nominal capital. Interest is payable half-yearly on May 19th/June 1st and November 18th/December 1st of each year, on presentation of the corresponding coupons.

The half-yearly coupons are payable:

At Belgrade
At Paris
At Brussels
At Geneva

at frs. 11.25;

At Berlin, Frankfort-on-Main, Hamburg, St. Petersburg, Vienna and Amsterdam in the currency of those towns respectively [p27] at the rate of exchange at sight on Paris, by the firms which shall be appointed to effect the service of the loan.

REDEMPTION.

Should redemption not be possible by repurchase below par, drawings shall take place at Belgrade on March 19th/April 1st and September 18th/October 1st of each year, and the bonds drawn will be repaid at par two months afterwards, namely, on May 19th/June 1st and November 18th/December 1st.

Bonds and coupons of the present loan are free of all Serbian taxes and duties present or future.

The French text of the bonds shall be authoritative.
Belgrade, December 15th/28th, 1909.
The Minister of Finance
of the Kingdom of Serbia."

[49] The coupon is as follows:

[Translation.]
"4½ % Gold Loan 1909
Bond No. ….
Coupon payable
on ....

at Belgrade, Paris, Brussels and Geneva,
at the rate of frs. 11.25; at Berlin, Frankfort-on-Main,
Hamburg, St. Petersburg, Vienna and Amsterdam
at the rate of exchange at sight on Paris."

1913 Loan.

[Translation.]
"5 % Gold Loan 1913
of a nominal total of
Two hundred and fifty million francs
Issued under the law of October 18th/31st, 1913,
whereof an extract is reproduced on the back.
This loan is represented by 500,000 bonds of
500 gold francs
Carrying an annual interest of 25 francs
Repayable at par by half-yearly drawings or by purchase

on the Exchange below par.
Maximum period for repayment: Fifty years.

[p28]

Annual sum allocated for interest and redemption of the loan:
13,550,000 francs.

Apart from the direct obligation of the Royal Serbian Government, this loan is specially guaranteed by the net receipts of the Autonomous Administration of Monopolies so far as available after the service of the loans referred to in the laws of July 8th/20th, 1895, July 26th/August 8th, 1902, December 14th/27th, 1906, and December 15th/28th, 1909, in conformity with the law of October 18th/31st, 1913. The loan is further specially guaranteed by a first charge on the net profits of the Monopoly, on Alcohol established under the law of August 3rd/15th, 1893, and administered by the Autonomous Administration of Monopolies.

Bonds and coupons of the present loan are exempt from all Serbian taxes, duties or deductions present or future.

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5 % BONDS OF 5OO FRANCS
TO BEARER.

INTEREST.

The bonds of this loan carry an annual interest of 5 % on their nominal capital. Interest is payable half-yearly on February 16th/March 1st and August 19th/September 1st of each year on production of the corresponding coupons.

REDEMPTION.

Should redemption not be possible by purchase below par, drawings shall take place at Belgrade on December 19th/ January 1st and June 18th/July 1st of each year, and bonds drawn shall be redeemed at par two months afterwards, that is to say, on February 16th/March 1st and August 19th/September 1st respectively.

Payment of coupons due shall be made at the choice of holders by the firms that shall be appointed for the purpose:

At Belgrade	at the rate of	Frs.	12.50	on Febr. 16th/March 1st.
At Paris		,,	12.50	on Aug. 19th/Sept. 1st.
At Brussels		,,	25. —	per annum, on presentation of coupons bearing the date in question.
At Geneva				

At Berlin	On the same dates in the currency of those towns respectively, at the rate of exchange at sight on Paris. [p29]
At Vienna	

The French text of the bonds shall be authoritative.

Belgrade, October 18th/31st, 1913.
The Minister of Finance
of the Kingdom of Serbia."

[50] The coupon is as follows:

[Translation.]
"5 % Gold Loan 1913
Bond No. ….
Coupon payable on . . . .
At Belgrade, Paris, Brussels and Geneva, at the rate of 12 frs. 50.
At Berlin and Vienna, at the rate of exchange at sight on Paris."

[51] Interpretation of the provisions relating to payment. — The first question presented is with respect to the interpretation of the loan contracts, that is, whether gold francs or merely French francs were promised, and, if the former, the significance of the expression "gold franc".

[52] The bonds are payable to bearer and they set forth the terms of the payment to which each holder is entitled. An examination of the bonds shows that in each case there was a promise of payment in gold or gold francs. Thus the bonds of the issue of 1895 explicitly provide:

"repayable in gold at par in 72 years".

[53] Also:

at Belgrade	at the rate of 10 francs in gold for each coupon and 500 francs in gold for each bond of 500 francs nominal;
at Paris	
at Berlin	at the rate of R.M. 8.10 in gold for each coupon and R.M. 405 for each bond of 405 nominal;
at Vienna	at the rate of 4 Austrian gold florins for each coupon and 200 Sudtrian gold florins for each bond of 200 florins nominal.”

[54] The coupon contains the statement "payable in gold".[p30]

[55] In the bonds of the issue of 1902, the obligations are described as being for "a total of 60 million gold francs represented by 120,000 bonds of 500 gold francs". The bonds drawn for payment are to be paid "in gold", and the payment of coupons is to be made "in gold". The bonds of 1906 are entitled "4½ % gold loan" for "a total of 95 million gold francs represented by 190,000 bonds of 500 gold francs". Similarly, the bonds of 1909 are set forth as a "4½ % gold loan" for "a total of 150 million gold francs represented by 300,000 bonds of 500 gold francs". The description in the bonds of 1913 is that of a "5 % gold loan" with the addition: "This loan is represented by 500,000 bonds of 500 gold francs."

[56] The coupons in each of these issues either provide for payment in gold, as in those of the loan of 1902, or carry the words "....% Gold loan", as in those of the loans of 1906, 1909 and 1913.

[57] It is argued that there is ambiguity because in other parts of the bonds, respectively, and in the documents preceding the several issues, mention is made of francs without specification of gold. As to this, it is sufficient to say that the mention of francs generally cannot be considered as

detracting from the force of the specific provision for gold francs. The special words, according to elementary principles of interpretation, control the general expressions. The bond must be taken as a whole, and it cannot be so taken if the stipulation as to gold francs is disregarded.

[58] As the bonds themselves are not ambiguous, there is no occasion for reference to the preliminary documents. But if these are examined, it will appear that they tend to confirm the agreement for gold payments.

[59] The loan of 1895 was the subject of an agreement at Carlsbad, between representatives of the Serbian Government and the banks, which contained the following provisions: "The payment of matured coupons and bonds drawn shall be in gold"; and the Serbian law of July 8th/20th, 1895, which authorized the issue, provided:

"The payment of matured coupons and bonds drawn for redemption shall be in gold at the places appointed therefor, at the holder's option and in the gold currency of the respective countries." [p31]

[60] In view of the clear terms of the bonds of this issue, it is not necessary to resort to inferences from the fact that this was a conversion loan to take the place of outstanding obligations, or to base any conclusions on the terms of the two notices which the Court has had before it and the authenticity of one of which has been drawn in question. There is nothing, moreover, in any of the attending circumstances or preliminary documents, which can be regarded as contradicting or impairing the gold clauses of the bonds. Nor is it necessary to follow the argument that the issue of bonds in London, in pounds sterling, was a part of the authorized issue of 1895. The issue in London — an issue which was made in a currency par excellence, a gold standard currency, and which would rather denote an intention to contract a "gold loan" — certainly affords no opposing inferences, but it may be considered as a separate issue in fact, and the French holders of bonds of 1895 may be held to the terms of their own bonds, without in any manner invalidating the conclusion that these terms constituted a definite promise of gold francs.

[61] In the case of the loan of 1902, the Serbian law of authorization (July 26th/August 8th, 1902) provides for an issue "of sixty million gold francs". The contract between the Serbian Government and the bankers also stipulates an issue amounting to 60 millions of gold francs and that the payments of interest will be made in gold francs at Belgrade, Paris, Brussels and Geneva. The prospectus offering the bonds states that there will be "120,000 bonds of 500 gold francs".

[62] The Serbian law authorizing the issue of 1906 (December 14th/27th, 1906) describes it as one of "95,000,000 francs in gold". The contract with the bankers states that the Serbian Government is to issue bonds to the amount of 95 millions of gold francs, and that interest will be paid in gold francs at Belgrade, Paris, Brussels and Geneva. The prospectus also speaks of the issue as "190,000 bonds of 500 gold francs".

[63] The documents preceding the loans of 1909 and 1913 contain similar provisions. Thus, while the language of the [p32] several issues varies somewhat, it must be concluded that the promise in each case is for the payment of gold francs.

[64] Significance of the term "gold francs". — It is urged that the promise to pay gold francs or what is called the "gold clause" is without legal significance. It is said that there was no international gold franc; that the reference was to money and not to gold as merchandise; that the reference must be taken to be to French money; and that the French monetary unit was silver and that there was no "gold franc" as a monetary unit. Hence it is insisted that, despite the terms of the engagement, the promise must be construed as one to pay in French currency.

[65] As it is fundamental that the terms of a contract qualifying the promise are not to be rejected

as superfluous, and as the definitive use of the word "gold" cannot be ignored, the question is: What must be deemed to be the significance of that expression? It is conceded that it was the intention of the Parties to guard against the fluctuations of the Serbian dinar, and that, in order to procure the loans, it was necessary to contract for repayment in foreign money. But, in so contracting, the Parties were not content to use simply the word "franc", or to contract for payment in French francs, but stipulated for "gold francs". It is quite unreasonable to suppose that they were intent on providing for the giving in payment of mere gold specie, or gold coins, without reference to a standard of value. The treatment of the gold clause as indicating a mere modality of payment, without reference to a gold standard of value, would be, not to construe but to destroy it.

[66] Moreover, the terms of the bonds make such an appreciation impossible. Thus, the bonds of 1895 call for the payment of principal and interest, at the option of the bondholders, not only at Paris in gold francs, but in Berlin at the rate of R.M. 8.10 in gold for each coupon and of R.M. 405 for each bond. There were no gold coins of the denomination required for such payments. The bonds of [p33] 1902 provide for payment of the quarterly interest of francs 6.25; the bonds of 1906 and 1909 for semi-annual interest of frs. 11.25; and those of 1913 for semi-annual interest of frs. 12.50. These were to be gold payments, but there were no gold coins for such amounts. It is manifest that the Parties, in providing for gold payments, were referring, not to payment in gold coins, but to gold as standard of value. It would be in this way, naturally, that they would seek to avoid, as was admittedly their intention, the consequences of a fluctuation in the Serbian dinar.

[67] The question, then, is whether there was a standard of value which was properly denoted by the term "gold franc". The payments in gold francs were to be made, in the case of the bonds of 1895, at Belgrade and Paris; and in those of 1902, 1906, 1909 and 1913, at Belgrade, Paris, Brussels and Geneva. Both at Brussels and Geneva, as well as at Paris, the monetary unit was the franc. While there was no international gold franc, as the franc in each case was established by the respective countries, the conception of the franc, and of the gold franc, had nevertheless achieved an international character as three countries had established a similar monetary unit, with the same definition of the gold piece of 20 francs in weight and fineness, and this unit had been made the subject of the Convention of the Latin Union. The "gold franc" thus constituted a well-known standard of value to which reference could appropriately be made in loan contracts when it was desired to establish a sound and stable basis for repayment.

[68] But, while the "gold franc" was thus an internationally accepted standard of value, its definition was to be found in national laws. The French, and the initial definition of the "gold franc", which was later adopted by Belgium and Switzerland, and by the Convention of the Latin Union, was found in the law of the 17th Germinal, Year Eleven. This law provided as follows:

[Translation.]
"Five grams of silver, nine-tenths fine, shall constitute the monetary unit, which retains the name of franc. [p34]

Head I. — The minting of money.
……
Article 6. — Gold pieces of twenty and forty francs shall be minted.

Article 7. — The standard of these pieces is fixed at nine-tenths fine with one tenth of alloy.

Article 8. — The standard weight of the pieces of 20 francs shall be one hundred and forty-five to the kilogram and that of the 40 francs pieces 77½ to the kilogram."

[69] According to this definition, adopted and recognized by other countries as above stated, the gold franc, at the time of the bond issues in question, was the twentieth part of a piece of gold

weighing 6.45161 grammes with a fineness of nine-tenths. It is this gold franc, with the weight and fineness thus enacted by law, which is stipulated particularly in Article 262 of the Treaty of Versailles, in Article 214 of the Treaty of St. Germain, and in Article 197 of the Treaty of Trianon.

[70] It is concluded that this was the gold standard of value to which the loan contracts referred.

[71] As this standard of value was adopted by the Parties, it is not admissible to assert that the standard should not govern the payments because the depreciation in French currency was not foreseen, or, as it is insisted, could not be foreseen at the time the contracts were made. The question is not what the Parties actually foresaw, or could foresee, but what means they selected for their protection. To safeguard the repayment of the loans, they provided for payment in gold value having reference to a recognized standard, as above stated.

[72] The provisions for payment in certain places at the rate of the sight exchange on Paris. — The bonds of the issues of 1902, 1906, 1909 and 1913, not only provide for the payment of interest in gold francs at Belgrade, Paris, Brussels and Geneva, but also for payment in other designated places, in the money of such places respectively, "at the sight rate of exchange on Paris". In the bonds of 1902 and 1906, the [p35] provision relates to Berlin, Vienna and Amsterdam; in those of 1909, to Berlin, Frankfort-on-the-Main, Hamburg, St. Petersburg, Vienna and Amsterdam; and in those of 1913, to Berlin and Vienna. It is argued that these provisions indicate that the engagement was for the payment of the number of francs stated at the rate of sight exchange on Paris on the date the payment fell due, and hence that the payment was to be made on the basis of French francs, or French paper francs, of whatever value they might be at that time. But the provision is for the payment in gold, which, as has been said, must be taken to be gold value, with reference to the gold standard of value at the time of the loans. The mere provision for payment in the places named at the rate of exchange on Paris cannot affect the amount due: it must in fact be construed in the light of the principal stipulation which is for payment at gold value. That provision is plainly, not for the purpose of altering the amount agreed to be paid, but for the placing of the equivalent of that amount according to banking practice at the command of the bondholder in the foreign money in the designated cities. When it is ascertained what was the amount agreed to be paid, it is then simply a matter of calculation to determine the equivalent amount in the foreign currency of these places. The question, then, comes back to the terms of the agreement. This agreement was not simply for the payment of the stipulated amount in French francs, or in paper francs, but in gold francs, and as this referred to a well-known gold standard of value, it is according to that standard that the francs to be paid are to be computed.

[73] It was evidently contemplated that the bondholder would receive the same amount whether he was paid in Belgrade, Paris, Brussels or Geneva. This was the intended result of providing for gold francs, which referred to the same standard of gold value as then existing at these places. It was this amount, and not a different amount, that the bondholder was to receive in the other cities, which did not have the franc, and the provision for the calculation at the rate of exchange on Paris was a matter of convenience but was clearly not intended to give the bondholder more or less than he would be entitled to receive at Brussels or Geneva. As the gold [p36] franc referred to a uniform standard, the calculation at the rate of exchange on Paris would give the desired amount, with very slight, if any, differences as compared with Brussels and Geneva.

[74] The conclusion at which the Court has thus arrived is not affected by the fact that, for more or less extended periods gold specie in francs or a franc at gold parity was not quoted on the money market, as was the case at the time when the loans were issued; for the value can always be fixed either by comparison with the exchange rates of currency of a country in which gold coin is actually in circulation, or, should this not be possible, by comparison with the price of gold bullion. Once the gold value is fixed, it is its equivalent in money in circulation which constitutes

the amount which is payable at Belgrade, Paris, Brussels and Geneva and at the other places enumerated in the bonds, in the local currency at the sight rate of exchange on Paris.

[75] Payments at Geneva. — It is also to be observed with respect to provisions for payment in the bonds of the issues of 1902, 1906, 1909 and 1913, that the French bondholders, as well as others, are entitled to receive payment of the interest on these bonds at Geneva on the basis of the value of the gold franc. No distinction is made by reason of the nationality of the bondholder. At Geneva, the value of the gold franc has been maintained and no question has arisen between the Parties by reason of any Swiss legislation subsequent to the Serbian loan contracts.

[76] The bondholders' option under the bonds of the issue of 1895. — In the light of the interpretation of the provisions for gold payment, no question of difficulty is presented in relation to the special stipulations of the bonds of 1895 giving to the holders an option of payment in Belgrade, Paris, Berlin and Vienna. The bondholders, whatever their nationality, are entitled to be paid their coupons as they fall due, and the bonds drawn for redemption, according to the terms of the contract which is free from ambiguity. In each place named, the amount to which the bondholder is entitled is distinctly specified. In Belgrade and Paris, the amount is ten francs in [p37] gold for each coupon as it becomes due, and 500 gold francs for each bond of 500 francs drawn for redemption; in Berlin, at the rate of 8.10 Reichmarks in gold for each coupon, and 405 Reichsmarks for each bond of 405 Reichsmarks; and in Vienna, four Austrian gold florins for each coupon and 200 Austrian gold florins for each bond of 200 florins. As the Parties have not discussed whether the changes which have been made in the currency legislation of Germany and Austria have had any effect, and if so, what effect, upon the payments to be made in gold marks and gold florins, the Court need not concern itself with this point.

[77] No part of the bonds of the 1895 loan provides for payment at Geneva. Moreover, the bonds of the issue which formed the subject of the contract of 1897 and which were issued in London, bear a special clause to the effect that they are also payable in London and in pounds sterling. Only holders of bonds of this issue, which must be regarded for the present purpose as a special issue, are entitled to benefit by the clause in question, which does not appear in the bonds not belonging to this issue.

[78] The execution of the loan contracts. — It appears that before the war, payment in Paris of the coupons of all these bonds, and of the principal of the bonds drawn for redemption, was made in the ordinary manner, that is, in bank-notes against deposits by the Serbian Government in the designated banks. During this period, the parity of French currency with gold was maintained and the manner of payment was not inconsistent with the right of the bondholders to receive payment on the basis of gold francs. During the war, the same practice continued as to payments made in Paris, but this fact has little significance, as during that period and until about 1919, there appears to have been only a slight difference in the value of French currency as compared with a gold basis, taking the gold dollar as a criterion; but in the subsequent period there was a great depreciation in French currency, in relation to the former gold value, until finally by the law of June 25th, 1928, the French franc was stabilized on a gold basis at approximately one-fifth of the value of the gold franc [p38] as it stood prior to the war. During this period of depreciation, payments on the Serbian loans in question continued to be made in French paper francs.

[79] This conduct of the Parties, that is, the acceptance by the bondholders of depreciated paper francs, is invoked upon two distinct grounds. The first is that this method of executing the contract should be deemed to be controlling in determining the intention of the Parties, in accordance with the familiar principle applicable to ambiguous agreements. On this principle it is argued that the Parties did not intend by the loan contracts to provide for payment in gold francs. But the loan, contracts are not ambiguous on this point. They are clear and definite. The fact that gold francs were not paid cannot be admitted to show that gold francs were not promised. If the subsequent conduct of the Parties is to be considered, it must be not to ascertain the terms of the

loans, but whether the Parties by their conduct have altered or impaired their rights.

[80] In the latter view, the principle known in Anglo-Saxon law as estoppel is sought to be applied. The argument developed by the Serb-Croat-Slovene Government in this connection leads the Court to consider the circumstances. The Special Agreement for the submission to the Court was signed in April 1928, but it seems that for a considerable time previously the question had been the subject of diplomatic negotiations between the two Governments, and the period which, may have significance with respect to the conduct of the French bondholders is during the years from about 1919 to about 1925. On behalf of the bondholders, it is urged that there were large numbers of them; that it required time for them to arrange for concerted action; that it was necessary for them to interest the French Government in their case; that the French Government had to consider the matter and determine whether it would proceed to diplomatic negotiations on behalf of the bondholders; and that the delay, considering the incidents of governmental activity, is not extraordinary [p39] and should not lead to a denial of rights otherwise established. This position is not an unreasonable one, and when the requirements of the principle of estoppel to establish a loss of right are considered, it is quite clear that no sufficient basis has been shown for applying the principle in this case. There has been no clear and unequivocal representation by the bondholders upon which the debtor State was entitled to rely and has relied. There has been no change in position on the part of the debtor State. The Serbian debt remains as it was originally incurred; the only action taken by the debtor State has been to pay less than the amount owing under the terms of the loan contracts. It does not even appear that the bondholders could have effectively asserted their rights earlier than they did, much less that there is any ground for concluding that they deliberately surrendered them. It may also be observed that the contract between borrower and lender finds its expression in bearer bonds, which entitle the bearer to claim, simply because he is a bearer, all the rights accruing under the bond.

[81] It is also argued that, during the period of depreciated currency, the French and British Governments advanced to the debtor State amounts needed to meet the accruing payments on the bonds and that these amounts payable in Paris were calculated in depreciated paper francs. But it is manifest that this action could not be regarded as affecting the rights of the bondholders. It is also stated, apparently as a moral consideration, that there has been speculation in these bonds, and that the original subscribers have already taken their losses. How far this is true is not shown, but it is a matter with which the Court cannot concern itself in dealing, as provided in the Special Agreement, with the question of legal right. The French Government, as it was entitled to do, has taken up the cause of its nationals, and the legal questions submitted by the Special Agreement of the two States for determination by the Court do not turn on such market transactions.

[82] Force majeure. — It cannot be maintained that the war itself, despite its grave economic consequences, affected the legal [p40] obligations of the contracts between the Serbian Government and the French bondholders. The economic dislocations caused by the war did not release the debtor State, although they may present equities which doubtless will receive appropriate consideration in the negotiations and — if resorted to — the arbitral determination for which Article II of the Special Agreement provides.

[83] It is contended that under the operation of the forced currency regime of France, pursuant to the law of August 5th, 1914, payment in gold francs, that is, in specie, became impossible. But if the loan contracts be deemed to refer to the gold franc as a standard of value, payments of the equivalent amount of francs, calculated on that basis, could still be made. Thus, when the Treaty of Versailles became effective, it might be said that "gold francs", as stipulated in Article 262, of the weight and fineness as denned by law on January 1st, 1914, were no longer obtainable, and have not since been obtainable as gold coins in specie. But it could hardly be said that for this reason the obligation of the Treaty was discharged in this respect on the ground of impossibility of performance. That is the case of a treaty between States, and this is a case of loan contracts between a State and private persons or lenders. But, viewing the question, not as one of the

source or basis of the original obligation, but as one of impossibility of performance, it appears to be quite as impossible to obtain "gold francs" of the sort stipulated in Article 262 of the Treaty of Versailles as it is to obtain gold francs of the sort deemed to be required by the Serbian loan contracts.

[84] The law applicable. — Having thus established the meaning which, on a reasonable construction, is to be attached to the terms of the bonds, the Court will now proceed to consider the subsidiary contentions of the Serb-Croat-Slovene Government to the effect that the obligations entered into are subject to French law which — it is alleged — renders a clause for payment in gold or at gold value null and void, at all events in so far as payment is to be effected in French money and in France. [p41]

[85] As regards the question whether it is French law which governs the contractual obligations in this case, the Court makes the following observations:

[86] Any contract which is not a contract between States in their capacity as subjects of international law is based on the municipal law of some country. The question as to which this law is forms the subject of that branch of law which is at the present day usually described as private international law or the doctrine of the conflict of laws. The rules thereof may be common to several States and may even be established by international conventions or customs, and in the latter case may possess the character of true international law governing the relations between States. But apart from this, it has to be considered that these rules form part of municipal law.

[87] The Court, which has before it a dispute involving the question as to the law which governs the contractual obligations at issue, can determine what this law is only by reference to the actual nature of these obligations and to the circumstances attendant upon their creation, though it may also take into, account the expressed or presumed intention of the Parties. Moreover, this would seem to be in accord with the practice of municipal courts in the absence of rules of municipal law concerning the settlement of conflicts of law.

[88] Before proceeding to determine which this law is, it should however be observed that it may happen that the law which may be held by the Court to be applicable to the obligations in the case, may in a particular territory be rendered inoperative by a municipal law of this territory — that is to say, by legislation enacting a public policy the application of which is unavoidable even though the contract has been concluded under the auspices of some foreign law.

[89] Again it should be observed that even apart from rules of public policy, it is quite possible that the same law may not govern all aspects of the obligation. The distinction which seems indicated for the purposes of this case is more particularly that between the substance of the debt and certain methods for the payment thereof. [p42]

[90] In the first place, the law governing the obligations at the time at which they were entered into must be determined. In the Court's opinion, this law is Serbian law and not French law, at all events in so far as concerns the substance of the debt and the validity of the clause defining it.

[91] The loans in question are loans contracted by the State of Serbia under special laws which lay down the conditions relating to them. These laws are cited in the bonds; and it appears that the validity of the obligations set out in the said bonds is indisputable in Serbian law. The bonds are bearer bonds signed at Belgrade by representatives of the Serbian Government. It follows from the very nature of bearer bonds that, in respect of all holders, the substance of the debt is necessarily the same, and that the identity of the holder and the place where he obtained it are without relevancy. Only the individuality of the borrower is fixed: in this case it is a sovereign State which cannot be presumed to have made the substance of its debt and the validity of the obligations accepted by it in respect thereof, subject to any law other than its own.

[92] Nevertheless, Serbia might have desired to make its loans subject to some other law, either generally, or in certain respects: if that were proved, there would seem to be nothing to prevent it. In this case, however, there is no express provision to this effect. The question therefore is whether, from the contents of the bond or other circumstances which are binding on the bondholders, the conclusion can be drawn that the State of Serbia intended that the loans in question should be, either generally speaking, or in certain respects, subject to French law — which is, according to the arguments, the only law in question.

[93] The Serbian Government has in this connection cited various circumstances which, however, upon examination, do not support the conclusion which it deduces from them and in any case appear not to be binding on the bondholders. This is the case with regard to the various provisions contained in the contracts with the banks, for instance, that concerning the quotation of bonds on the Paris Exchange as a possible ground for the rescission of the contract, the explanation of this provision being the importance attached to quotation [p43] at Paris with a view to placing the bonds; moreover, provision is also made for the quotation of bonds on the Exchanges of other countries. The same also applies with respect to the provisions as to the deposit with a bank at Paris of the sums necessary for the payment of interest and redemption, and these provisions moreover only relate to the 1902, 1906 and 1913 loans, while in the case of the 1895 loan, funds for the service of this loan were also to be transmitted to Berlin and Vienna and, in the case of the 1909 loan, also to a bank at Berlin. Lastly, the same applies in regard to the provision contained in one of the contracts to the effect that Serbia, for the purpose of the notices to be issued respecting the contract, gives as its official address the Serbian Legation at Paris. It is clear that all these stipulations contain nothing with respect to the applicability of French law to the loans to which they refer. In so far as concerns the places where the contracts with the banks were concluded — a circumstance on which however it does not seem to be the intention of the Serb-Croat-Slovene Government to rely, — these are, for the 1895 loan, Carlsbad and Paris; for the 1902 and 1909 loans, Paris; for the 1906 loan, Geneva, and for the 1913 loan, Belgrade. And the banks were not all French banks. In the Carlsbad agreement in June 1895, in addition to some French banks, Berlin and Vienna banks took part; in the Paris contract in April 1896, a Vienna bank; in the Paris contract in June 1897, English banks took part; in the Paris contract in September 1902, banks of Berlin and Vienna; in the Geneva contract in November 1906, a Franco-Swiss bank, and in the Paris contract in November 1909, banks of Berlin and Frankfurt.

[94] Nor were the loans issued exclusively in France, judging from the prospectuses which have been produced. The prospectus of the 1906 loan indicates that subscription would also take place in Switzerland; as regards the 1909 loan, two prospectuses have been produced, one of which states that subscriptions would also be received at Geneva, and the other, written in German, that subscriptions would take place in various towns in Germany; the prospectus of the 1913 loan also indicates Geneva and Belgrade as places where subscriptions would be received, in addition to Paris and French provincial towns. [p44] As regards the 1902 loan, the prospectus produced does not indicate the places where subscription was to take place; in regard to the 1895 loan, the Court has only the one (in English) relating to the special issue made in London, and "notices" of 1896 and J902 which do not mention the places for subscription. But this loan being a loan for the conversion of previous loans, it may be presumed that the issue took place in the countries where these previous loans had been issued and also at Berlin and Vienna, amongst other places.

[95] All things considered, the Court finds that, in regard to the Serbian loans in question, there are no circumstances which make it possible to establish that, either generally speaking or as regards the substance of the debt and the validity of the provisions relating thereto, the obligations entered into were, in the intention of the borrowing State, or in a manner binding upon the bondholders, made subject to French law.

[96] But the establishment of the fact that the obligations entered into do not provide for

voluntary subjection to French law as regards the substance of the debt, does not prevent the currency in which payment must or may be made in France from being governed by French law. It is indeed a generally accepted principle that a State is entitled to regulate its own currency. The application of the laws of such State involves no difficulty so long as it does not affect the substance of the debt to be paid and does not conflict with the law governing such debt. In the present case this situation need not be envisaged, for the contention of the Serbian Government to the effect that French law prevents the carrying out of the gold stipulation, as construed above, does not appear to be made out.

[97] In support of its contention, the Serb-Croat-Slovene Government cites amongst others the following French laws:

The law of Germinal of the Year XI, already mentioned above.

[98] Article 1895 of the Civil Code, which is as follows:

[Translation.]
"The obligation resulting from a loan in money is always simply for the amount in figures indicated in the contract.
If there has been an increase or diminution of specie before the time of payment, the debtor must return the [p45] amount in figures lent and must return this amount only in the specie in currency at the time of payment."

[99] Article 475, paragraph 11, of the Penal Code, which is as follows:

[Translation.]
"The following shall be punished by a fine of from 6 to 10 francs....
11. Those who have refused to receive the national coin, and currency, being neither counterfeit nor debased .... at the value for which they are in circulation...."

[100] The law of August 12th, 1870:

[Translation.]
"Article 1. — As from the date of promulgation of this law, the notes of the Bank of France shall be accepted as legal tender by public offices and private persons."

[101] The law of August 5th, 1914:

[Translation.]
"Article 3. — Until otherwise provided by law, the Bank of France and the Bank of Algeria are released from the obligation to give specie in exchange for their notes."

[102] The law of February 12th, 1916:

[Translation.]
"Single Article. — In war time, any person convicted of having bought, sold or parted with, of having attempted or proposed to buy, sell or part with national specie or currency, at a price exceeding their legal value, or for any consideration whatsoever, shall be sentenced to a penalty of from six days to six months imprisonment and to a fine of from one hundred to five thousand francs or to one of these two penalties only.

Sentence of confiscation of such national currency and specie shall ipso facto be passed against the delinquents and the currency or specie shall be devoted to the fund for relief of the poor.

Article 463 of the Penal Code shall apply as regards the offence dealt with by the present law; the law of suspension of execution of the sentence is only applicable in so far as concerns imprisonment."

[103] In addition to these legislative provisions, the Serb-Croat-Slovene Government has cited a large number of opinions expressed by French writers and also certain judicial decisions which, in its contention, show that, upon a correct judicial [p46] construction, the legal currency of bank-notes taken in conjunction with the release from the obligation to exchange notes for specie (forced currency) compels every creditor to accept as due payment of a debt in French francs, inconvertible bank-notes, at their face value, and renders inoperative or null and void, at all events in France, any provision involving a distinction between these notes and metal currency.

[104] For its part, the French Government has sought to show that this construction is not sound and that it is contrary to the law as stated by the Court of Cassation and other French courts since 1920. This Government also has cited a number of publicists and judicial decisions and has submitted that it is now definitely established by these decisions that although a gold stipulation is null and void when it relates to a domestic transaction, this does not hold good in the case of international contracts, even when payment is to be effected in France. And it has represented that if the law which must be applied is French law, it must be applied as construed by the courts.

[105] The Court, having in these circumstances to decide as to the meaning and scope of a municipal law, makes the following observations: For the Court itself to undertake its own construction of municipal law, leaving on one side existing judicial decisions, with the ensuing danger of contradicting the construction which has been placed on such law by the highest national tribunal and which, in its results, seems to the Court reasonable, would not be in conformity with the task for which the Court has been established and would not be compatible with the principles governing the selection of its members. It would be a most delicate matter to do so, especially in cases concerning public policy — a conception the definition of which in any particular country is largely dependent on the opinion prevailing at any given time in such country itself — and in cases where no relevant provisions directly relate to the question at issue. It is French legislation, as applied in France, which really constitutes French law, and if that law does not prevent the fulfilment of the obligations in France in accordance with the stipulations made in the [p47] contract, the fact that the terms of legislative provisions are capable of a different construction is irrelevant.

[106] In these circumstances, the Court will confine itself to observing that, according to the information furnished by the Parties, the doctrine of French courts, after some oscillation, has now been established in the manner indicated by the French Government, and that consequently there is nothing to prevent the creditor from claiming in France, in the present case, the gold value stipulated for.

[107] It should, however, be added that, since the conclusion of the Special Agreement in March 1928, a new currency law has been promulgated in France, on June 25th, 1928, which, by its first article, abrogates Article 3 of the law of August 5th, 1914, regarding forced currency, and which contains the following provision in its second article:

"The French monetary unit, the franc, is constituted by 65.5 milligrams of gold, nine hundred thousandths fine.

This definition shall not apply to international payments which, prior to the promulgation of the present law, may have been validly stipulated in gold francs."

[108] For the future, this law replaces previous legislation; the forced currency regime having been abrogated, no obstacle resulting from this regime will any longer exist, and the reduction of

the metallic value of the franc, as newly denned, to about one-fifth of its original value, will not affect the payments involved by the Serbian loans at issue which are undoubtedly international payments.

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[109] In formulating, in the operative part of the judgment, the result arrived at by it in regard to the question referred to it, the Court has held that it must keep as closely as possible to the terms used by the Parties themselves in the Special Agreement. The reason why the Court has omitted the formula which, in Article I, paragraph (b), of the Special Agreement sets out in general terms the contention of the French bondholders, is that the submissions of the French Case and Counter-Case do not repeat this formula; moreover, it does not appear to contain [p48] anything which is not subsequently expressed with greater clearness in paragraphs 1 and 2 of the same article and which is not reproduced in the French Government's submissions.

[110] Again, the Court considers that it should be clearly stated that, if payment is to be made in gold francs, this is to be understood in accordance with the interpretation given above, that is to say that if the franc which is legal tender at the place fixed for payment does not possess the value of the gold franc as denned by this judgment, payment must be effected by the remittance of a number of francs, the value of which corresponds to the value of the gold francs due.

[111] FOR THESE REASONS,

The Court,
having heard both Parties,
by nine votes to three,
gives judgment to the following effect:

(1) That, in regard to the Serbian 4 % loan of 1895, the holders of bonds of this loan are entitled, whatever their nationality may be, to obtain, at their free choice, payment of the nominal amount of their coupons due for payment but not paid and of those subsequently falling due, as also of their bonds drawn for redemption but not refunded and of those subsequently drawn, at Paris, Berlin, Vienna and Belgrade, in the currency in circulation at one of these places;
(2) That, in regard to the 4 % 1895, 5 % 1902, 4½ % 1906, 4½ % 1909 and 5 % 1913 Serbian loans, the holders of these bonds are entitled to obtain payment of the nominal amount of their coupons due for payment but not paid and of those subsequently falling due, as also of their bonds drawn for redemption but not refunded and those subsequently drawn, in gold francs, in the case of the 1895 loan, at Belgrade and Paris, and, in the case of the 1902, 1906, 1909 and 1913 loans, at Belgrade, Paris, Brussels and Geneva, or at the equivalent value of the said amount at the exchange rate of the day in the local currency at Berlin and Vienna, in the case of the 1913 loan, and at Berlin, Vienna and Amsterdam, in the case of the 1902, 1906 and 1909 loans. [p49]
(3) That the value of the gold franc shall be fixed between the Parties, for the above-mentioned payments, as equivalent to that of a weight of gold corresponding to the twentieth part of a piece of gold weighing 6 grammes 45161, 900/1000 fine.

[112] Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this twelfth day of July, nineteen hundred and twenty-nine, in three copies, one of which is to be placed in the archives of the Court and the others to be forwarded to the Agents of the Government of the French Republic and the Government of the Kingdom of the Serbs, Croats and Slovenes respectively.

(Signed) D. Anzilotti,
President.
(Signed) A. Hammarskjold,

Registrar.

[113] MM. de Bustamante and Pessoa, Judges, and M. Novacovitch, Judge ad hoc, declaring that they are unable to concur in the judgment given by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter.

(Initialled) D. A.
(Initialled) A. H.