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REPARATION AT THE PARIS PEACE CONFERENCE

IN TWO VOLUMES

REPARATION AT THE PARIS PEACE CONFERENCE

From the Standpoint of the American Delegation

By PHILIP MASON BURNETT

* VOLUME I *

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Some of the countries, however, were not listed in the Report. Panama, for example, stated that it would waive its claims; and Ecuador replied that it had none to make. Honduras, Nicaragua, and Uruguay did not present demands in time to be included, although they informed the Committee that their figures would soon be ready. Of a Cuban reply there is no record at all.[35]

Claims were also received from three other sources. M. Arthur Raffalovitch presented unofficially claims on behalf of Russia.[36] The "Delegation of the Armenian Republic to the Conference of Peace" transmitted a memorandum of its demands.[37] Kazimierz Olszowski, Polish delegate on the CRD, presented information to the Committee regarding damage done in sections of Russia eastward of the territory claimed by Poland.[38] According to this information, there were many Poles in these sections; it may have been that in this way the Polish government hoped to get their damages made good by means of the reparation that Russia might receive.

The comparative ease with which the Special Committee obtained figures from the nonrepresented powers was perhaps due to the fact that these powers were in no position to refuse; and also that their claims were not great enough to constitute a political issue for their governments.

The work of the Special Committee was probably in any event a necessary part of the work of the First Subcommittee. But, if McCormick also regarded his resolution as another means by which pressure to supply figures could be brought to bear upon the members of the First Subcommittee, he was disappointed. For, by the end of the first week in March, 1919, at the same time that the Americans were apparently succeeding in limiting their Allies to actually claiming from the enemy only a contractual liability, it had become increasingly clear that they were not going to be able to get a fixed sum based upon a statistical analysis of the damage claims.

[35] *Ibid.*

[36] See Document 507. Raffalovitch represented an organization of the Russian refugees in Paris.

[37] See Document 511.

[38] Summarized in the Report of April 14, 1919 (see Document 497).

intended to give this right to any powers except France, Italy and Belgium and that nothing is prejudged with regard to the status, as claimants, of Roumania, Greece, Czecho-Slovakia or Poland.

(2) Except the words in 2 (a) "For the purpose of meeting immediate and urgent needs" and in 2 (b) "to permit of the restoration of the invaded areas," I see nothing which limits the powers of the Commission either as to the quantity of the machinery, rolling stock, tools and like articles of a commercial character, or as to the number of months or years over which the deliveries may extend. Definite limits are desirable.

(3) By paragraph 4 the interested Governments only agree to accept the articles delivered provided they conform to the specifications given. That in many cases they will not conform is quite probable. If, as I was told, the interested power is then to be entitled to reject them and to claim instead on the reparation payments and in consequence these rejected articles made for particular purposes and for particular specifications are thrown on the market, great prejudice may accrue to those whose chance of payment depends on the industrial productivity of Germany. I think these powers are too extensive, all the more as the decision on the original requirements and on the specifications as to time, quantity and description would be in the hands of a majority and of the five powers, three are interested in the exercise of this option in their own favor. Rejection would rest with the single power called on to accept delivery whose agreement to accept is conditional on conformity, and conformity is not even declared to be a subject for the Commission.

(4) The draft implies and M. Loucheur claimed the right to take running machinery, e.g., to dismantle a running mill or to take rolling stock and tools in use and transfer the articles taken to France. Such an exercise of the power to dislocate industries in Germany capable of serving the debt to the Allies and transferring those means of industry to France, seems to me to work injustice to powers whose interest lies in Germany's cash payments.

(5) I think the words in paragraph (1) "and primarily" go too far and the words at the end of paragraph (5) "The Commission shall have regard . . . . . to which such acts repair" have no clear meaning and need recasting.

(6) It was agreed that the country employing the labor and not the Commission must ensure to the laborers proper conditions.

(7) M. Loucheur stated that France would not re-export the

articles delivered and would demand them only for use in the devastated areas. I think a written declaration by him as Minister to this effect is desirable.

I am sending M. Loucheur a copy of this letter. I have not yet had an opportunity of discussing this matter with the Prime Minister.

Sincerely yours,

Sumner

P.T.O.

P.S. I think it would assist in carrying the principle of your proposal, if you would support the following option for the benefit of the Allies generally.

"The German Government undertakes to make delivery, as required, every six months, at fair prices to be fixed by the Commission and credited to Germany against the reparation obligations, of the following proportions of all or any of her chemical, electrical or electro-chemical products, namely: for 1920 and 1921, 30%; for 1922 and 1923, 25%; for 1924 and 1925, 20%, to be received for the benefit of the Allies jointly and to be equitably distributed among them by the Commission."

Probably no great use need be made of this option, but the object is to prevent Germany from making use of a monopoly position to fetter or cripple the nascent industries of the Allied Powers. S.

DOCUMENT 279

C. H. McKinstry, "Table of Estimated Damages," April 18, 1919

[TPG, II, 70-72. This memorandum and accompanying table were prepared for McCormick. "Copy." The typist's signature at the top of the sheet, "THD/BHB," suggests that Dillon actually may have done the work for McKinstry.

It will be noted that McKinstry has used here a more accurate system of exchange ratios than the editor has in the present work. That means that the editor's figures as expressed in marks cannot be changed into dollars at 1:4 and made to agree with McKinstry's "Approximate Total in Millions of Dollars," as shown in the fourth column of figures. The editor's conversion into marks is merely a guide to the reader.]

1. In response to your request of April 16th, there is submitted herewith a table giving the estimated money value of damages included in the articles of the four categories of annex to Clause II, adopted by the Council of Four at their meeting of April 7th, 1919.

2. Estimates are given for France, British Empire, Belgium,

Italy, United States, Portugal, Japan, Servia and Montenegro, Poland, and the miscellaneous small states. No estimate has been given for Russia, Czecho-Slovak, Roumania or Greece on account of lack of data.

3. The Yugo-Slovak state has introduced a claim for Servia and Montenegro which has been used in compiling this table. They also introduced a claim for damages in portions of Austria, which is expected, will be incorporated in the new state. This latter claim has been disregarded.

4. Armenia has also introduced a claim aggregating some nineteen billion francs, but their figures are so speculative that they have been omitted.

5. The estimate for Article II, Annex to Clause II (Enforced Labor) is not included for lack of data, except in the case of Poland, where the necessary figures have been obtained from the Poland claim.

6. Article II of Annex to Clause II (Property Damages) is so phrased that it might be interpreted as including such items in compensation for dispossession, loss of interest, loss of profit, and expenses for re-organization of business, etc., but in accordance with Mr. Dulles' instructions such items have been omitted; and the figures as given cover only physical damage to property. It should be further noted that damages caused by depreciation of currency in the invaded regions, and in the hands of returning prisoners of war, and also the expenses for the care of the civilian population in the invaded regions, and expenses for repatriation of refugees, have also been omitted from these estimates. Property in enemy countries is not included for France and certain other nations for lack of suitable data.

7. In considering this estimate, as in the case of previous estimates submitted, it should be understood that our figures are based upon incomplete information, and that these figures should be interpreted as indicating the order and the amounts of these damages rather than their accuracy. Nor should they be given any great weight in comparison with detailed estimates which will later be submitted to the Inter-Allied Commission by the various Governments concerned.

C. H. McKinstry
Brigadier General, U.S.A.

ESTIMATED MONEY VALUE OF DAMAGES WHICH COME WITHIN THE FOUR CATEGORIES ADOPTED BY COUNCIL OF FOUR, APRIL 7th

April 17, 1919

Amounts given in millions of francs.

[*Figures in brackets show milliards of marks, converted at ratio of 5:4.*]

STATE	Item I Personal Damages, Pensions & Separation Allowances.	Items III and IV Property Damage, Levies, Fines, etc.	Total	Approximate Total in Millions of Dollars	%
France	55,300[1] [44.24]	55,000[1] [44.00]	110,000 [88.00]	20,000	37.6
British Empire[2]	35,000 [28.00]	25,000 [20.00]	60,000 [48.00]	11,000	20.6
Belgium	1,400 [1.12]	25,000 [20.00]	26,400 [21.12]	5,000	9.4
Italy[3]	12,500 [10.00]	15,000 [12.00]	27,500 [22.00]	5,000	9.4
United States	5,000[4] [4.00]	4,000[4] [3.20]	9,000 [7.20]	1,652	3.1
Portugal	200 [.16]	275 [.22]	475 [.38]	90	0.2
Japan	not reported	665[5] [.532]	—	—	—
Servia & Montenegro[6]	900 [.72]	5,800 [4.64]	6,700 [5.36]	1,200	2.2
Polish	1,000[8] [.80]	50,000 [40.00]	51,000 [40.80]	9,000	17.0
Others (except Armenia)	—	—	—	250	0.5
TOTAL (excluding Japan)	111,000 [88.80]	180,000 [144.00]	291,000 [232.00]	53,000	100.0

Notes

[Notes 7 and 9 seem to have no point of reference.]

1. This consists of French figure of 40,279 million francs for pensions, plus our estimate of 15,000 million francs for separation allowances.
2. The figures for British Empire are estimates using such data as are available for killed, wounded, and mobilized troops and shipping losses; and using other data from British claim.
3. The figures for Italy are taken from Italian claim, and converted from Lire to Francs, in the ratio of 1.0 to 0.9.
4. The figures for United States are taken from revised American claim [see Document 368, section 19] and converted from dollars into francs in the ratio of 1 to 5.5.
5. From Japanese claim, converted from Yen to Francs in ratio of 1 to 2.6—Figures are incomplete.
6. The figures for Servia and Montenegro are from the Servian claim.
7. The figures for Poland are from the Polish claim. Probably high in comparison with other claims.
8. This figure includes enforced labor.
9. Armenia has a claim aggregating 19,130,982.000 Fcs which is not included on account of its speculative character.

DOCUMENT 280

Letter from Hymans and from Van den Heuvel to Clemenceau Regarding Belgian Demands for Reparation, April 18, 1919

[From Peace Conference Bulletin No. 225 (May 1, 1919), in Miller, XVIII, 81-84.]

Thanks to your kindness the Belgian Delegation to the Peace Conference has received from the Minister of Finance the list of categories of damages adopted by the Council of Four, as well as the text of an amendment to this list submitted by the French Delegation.

The Belgian Delegation has the honor to request you to submit to the competent Council the following considerations, which this communication calls for on its part:

I. The list of categories does not reproduce all the categories

THE MINUTES OF THE SPECIAL COMMITTEE (POWERS NOT REPRESENTED ON THE COMMISSION)

DOCUMENT 494

First Subcommittee: Minutes of the First Meeting of the Special Committee (Powers Not Represented on the Commission), March 8, 1919, 3:15 P. M.

[TPG, II, 295-96. These minutes are part of Inclosure "O" to Document 497.]

The Special Committee appointed by the First Sub-Committee (Valuation of Damage) to get in statements of claims from powers not represented on the Commission on Reparation, held its first meeting on Saturday, March 8, 1919, at 3:15 P. M. at the Ministry of Finance.

Present: GENERAL MCKINSTRY (*U. S. A.*), COLONEL PEEL (*British Empire*), MR. JOUASSET (*France*).

The Committee elected GENERAL MCKINSTRY as CHAIRMAN and appointed MR. HENRY JAMES (*U. S. A.*) and MR. P. LAURE (*France*) as Secretaries.

The Committee has been charged to secure and report information relative to the amount and character of such reparation as may be claimed by or due to the Governments and people not represented on the Committee on Reparation of Damage.

It was decided to ask the Delegations of the Powers just referred to to forward all information needed for this purpose and also to give this Committee verbal explanations in case they deemed such explanations to be necessary.

The Secretaries were instructed to send a letter to this effect to the following Powers: BOLIVIA, BRAZIL, CUBA, ECUADOR, GUATEMALA, HAITI, HEDJAZ, LIBERIA, PANAMA, PERU, SIAM, URUGUAY, CHINA, NICARAGUA, HONDURAS.[1]

It was noted that CHINA had already supplied a memorandum.[2]

MR. JOUASSET (*France*) was charged to gather any information available in regard to Russian claims, so far as that could be done without official inquiry.

The next meeting was fixed for 11 March, at 11 A. M.

The meeting adjourned at 5 P. M.

[1] This letter was reproduced at the beginning of the Report of the Special Committee (see Document 497).

[2] See Document 498.

DOCUMENT 495

First Subcommittee: Minutes of the Second Meeting of the Special Committee (Powers Not Represented on the Commission), March 11, 1919, 11 A. M.

[TPG, II, 297-98. These minutes are part of Inclosure "O" to Document 497.]

The Special Committee appointed by the First Sub-Committee (Valuation of Damage) to get in statements of claims from Powers not represented on the Commission on Reparation, held its second meeting on Tuesday, March 11, 1919 at 11:00 A. M., at the Ministry of Finance.

Present: GENERAL MCKINSTRY (*U. S. A.*), COLONEL PEEL (*British Empire*) and MR. JOUASSET (*France*).

The Committee decided to adopt the practice of translating all documents submitted to the Committee into English or French according to whether they were received in one or the other language and to present such documents for the Committee's consideration only after they had been examined by one of its members.

The CHAIRMAN was asked to consult LORD SUMNER about the course to be adopted with respect to a memorandum originating from the self-styled "Delegation of the American Republic to the Peace Conference."[1]

A memorandum had been received from the Siamese delegation setting forth damages sustained by Siam.[2] The Brazilian and Uruguayan Delegation had promised to send [?] memoranda shortly.

The Secretaries are to address a letter to the delegations of Honduras and Nicaragua, to [*two?*] powers which had not yet nominated delegates to the Peace Conference.

The meeting adjourned at noon.

DOCUMENT 496

First Subcommittee: Minutes of the Third (and Final) Meeting of the Special Committee (Powers Not Represented on the Commission), April 11, 1919, 3:30 P. M.

[TPG, II, 299-301. These minutes are part of Inclosure "O" to Document 497.]

The special committee met at 3:30 P. M. April 11, 1919, at the Ministry of Finance. MR. DUDLEY WARD (*British Empire*) and

[1] This should be "Armenian Republic." See Document 511.

[2] See Document 506.

"I may add that in case your Delegation should consider it desirable to present verbal explanations on the subject of these documents, the Committee is disposed to hear a representative of your Nation at a date which will be fixed later."

This letter was sent to the delegations of the following Powers: BOLIVIA, BRAZIL, CUBA, ECUADOR, GUATEMALA, HAITI, HEDJAZ, HONDURAS, LIBERIA, NICARAGUA, PANAMA, PERU, SIAM, URUGUAY.

The Committee took note of the fact that CHINA had already presented a memorandum. (Inclosure "A")[3]

M. JOUASSET (*France*) was also requested to obtain the information relative to Russian damage in the possession of M. KLOTZ, Minister of Finance, and, unofficially, any information on the same subject obtainable from other sources.

In response to the above letter, data as to damage have been furnished by the delegations of BOLIVIA, BRAZIL, GUATEMALA, HAITI, HEDJAZ, LIBERIA, PERU, and SIAM (Inclosures "B", "C", "D", "E", "F", "G", "H", and "I")[4]

M. ARTHUR RAFFALOVITCH has presented, unofficially, memoranda relating to the damage suffered by Russia, but containing very little information as to the money value of the damage (Inclosure "J")[5]

M. OLCHOWSKI, Polish Delegate on the Commission on Reparation of Damage, came before the Committee and presented some information regarding the damage suffered in Russia Eastward of the territory covered by the Polish claims (Inclosure "K")[6]

The Republic of Panama has stated that she will refrain from presenting any claim. The Republic of Ecuador has likewise stated that she has no demand for reparation of damage to make against the enemy. (Inclosures "L" and "M")[7]

Prompt dispatch of memoranda has been promised by the delegations of Honduras, Nicaragua, and Uruguay.

No response has as yet been received from the Cuban delegation.

A memorandum was received from the "Delegation of the Armenian Republic to the Conference of Peace" (Inclosure "N.")[8]

All memoranda received are forwarded with this report.

Also the minutes of the Meetings of the Committee (Inclosure "O")[9]

[3] See Document 498.

[4] Bolivia, see Document 499; Brazil, 500; Guatemala, 501; Haiti, 502; Hejaz, 503; Liberia, 504; Peru, 505; Siam, 506.

[5] See Document 507.

[6] See Document 508.

[7] Panama, see Document 509; Ecuador, 510.

[8] See Document 511.

[9] See Documents 494, 495, and 496.

For the Special Committee:

[HENRY JAMES][10] 2nd. Lieutenant U. S. A. [P. LAURE][10] Adjoint à l'Inspection Générale des Finances	SECRETARIES

There follows a summary statement of the amounts for reparation claimed, with notes by the Committee:—

(The roman numerals on the right of the page refer to the attached general table of claims in which an attempt is made to divide the claims into categories)

ARMENIA

	Francs	
I. *Turkish Armenia*		
a) Losses suffered by the country population	4,601,610,000	I
b) Damage suffered by urban population and their needs for reconstruction (merchants, manufacturers and artisans)	3,235,550,000	I
c) General damage	325,000,000	I
	840,000,000	II
	5,596,350,000	III
II. *Republic of Armenia and the provinces of Caucasus inhabited by Armenians*		
a) Localities absolutely devastated and destroyed, whose population has been driven out	1,831,872,000	I
b) Localities not abandoned by the population	1,293,600,000	I
c) General losses	30,000,000	I
	240,000,000	II
	512,000,000	III
	625,000,000	IV
TOTAL	19,130,982,000 Fr	

NOTES

The claim includes reparation, at Frs 5,000 each, for 1,100,000 civilians massacred and 35,000 soldiers killed, in addition to claims for injuries, deportations, etc., regardless of whether there are heirs or dependents alive.

The claim also provides for re-establishing, with all their property, as many families as were comprised by the original people.

BOLIVIA

	Pounds Sterling	
a) Property lost as a consequence of the torpedoing of the steamer "Tubantia"	12,000	I
b) Death of Mr. Salinas Vega a few months after the torpedoing of S/S "Tubantia"	4,000	III
TOTAL	16,000	

NOTES

At the normal rate of exchange (1 pound Sterling = 25.22 francs) the claim is equivalent to Frs 403,520.

[10] The names are missing in the original, but the titles are included.

CLAIMS PRESENTED BY NATIONS NOT REPRESENTED ON REPARATION COMMISSION

[Figures in brackets show milliards of marks, converted at ratio of 5:4.] April 14, 1919

COUNTRY	I. Damage to physical property, requisitions, fines, taxes, etc.	II. Losses of Revenue, Support of civilians, repatriation of refugees etc.	III. Compensation for Civilian Injuries and Deaths.	IV. Compensation for Military Injuries and Deaths.	V. Other War Costs	VI. Total Claim	
	Francs	*Francs*	*Francs*	*Francs*	*Francs*	*Francs*	
Armenia	11,317,632,000	1,080,000,000	6,108,350,000	625,000,000	—	19,130,982,000	[15.304 786]
Bolivia	302,640	—	100,880	—	—	403,520	[.000 323]
Brazil*	16,584,633	7,294,381	680,940	—	108,752,635	133,312,589*	[.106 650]
China†	163,493,913	29,867,672	5,313,600	—	5,586,300	204,261,485†	[.163 417]
Cuba							
Ecuador						No claim	
Guatemala§	—	357,420,000	—	—	51,282,000	408,702,000§	[.326 962]
Haiti	189,593	—	380,000	—	—	569,593	[.000 456]
Hedjaz‡	480,000‡	2,000	—	—	—	482,000‡	[.000 386]
Honduras							
Liberia§	935,172	6,875,636	12,794,600	—	—	20,605,408§	[.016 484]
Nicaragua							
Panama	—	—	—	—	—	Claims waived	
Peru‖	1,393,062					1,393,062‖	[.001 114]
Russia							
Siam	11,668,968¶	—	114,000	—	14,675,000	26,457,968¶	[.021 166]
Uruguay							
TOTAL							[15.941 md. mks.]

* Claim made in Pounds Sterling; converted to Francs on basis of 1 Pound—25.22 francs. Brazil also claims the restitution of 125,787,481 marks representing the sale price of coffee deposited to secure a loan (sold by the enemy) plus the loss resulting from difference in rate of exchange and difference in rate of interest.

† Claim made in Taels; converted to Francs on basis of 1 Tael—3.75 Francs. No claims were made by China for damages in the Province of Shantung, for expenses of war or for interest.

‡ Claim noted as not yet complete.

§ Claim made in Dollars, converted to Francs on basis of 1 Dollar—5.18 francs.

[illegible]

DOCUMENT 498

Chinese Memoranda on Claims for Reparation, about March 5, 1919, and Later]

[TPG, II, 118-38. Inclosure "A" to Document 497.]

[*The date of the first memorandum is derived from a reference to it in the second. The second* (TRANSLATION BUREAU—695) *is dated April 11. The claims of both are summarized in Document 497.*]

DOCUMENT 499

Bolivian Memorandum on Claims for Reparation, with Supplementary Letter, March 25 and March 30, 1919

[TPG, II, 139-41. Inclosure "B" to Document 497.]

[*The memorandum is a translation. The supplementary letter,* dated March 30, *is headed.* TRANSLATION BUREAU—*No. 639. The claims of both these documents are summarized in Document 497.*]

DOCUMENT 500

Brazilian Memoranda on Claims for Reparation, March 22 1919, and Later

[TPG, II, 142-76. Inclosure "C" to Document 497.]

[*The first memorandum* (TRANSLATION BUREAU—*497*) *is covered by a letter dated March 22. The second is dated March 31. The third* (*639*) *is undated. The fourth* (TRANSLATION BUREAU—*729*) *is also undated. The claims of all these are summarized in Document 497.*]

DOCUMENT 501

Guatemalan Memorandum on Claims for Reparation, March 27, 1919

[TPG, II, 177-78. Inclosure "D" to Document 497.]

[*The memorandum is headed,* TRANSLATION BUREAU—*639. Its claims are summarized in Document 497.*]

DOCUMENT 502

Haitian Memorandum on Claims for Reparation, with Covering Letter and with Annexes, March 19, 1919

[TPG, II, 179-208. Inclosure "E" to Document 497.]

[*These documents are all headed,* TRANSLATION BUREAU—*635. Their claims are summarized in Document 497.*]

DOCUMENT 503

Hejaz Memorandum on Claims for Reparation, with Covering Letter, March 11, 1919

[TPG, II, 209-10. Inclosure "F" to Document 497.]

[*The memorandum is undated; the letter is dated March 11. The claims of the memorandum are summarized in Document 497.*]

DOCUMENT 504

Liberian Memorandum on Claims for Reparation, with Covering Letter and with Annexes, March 10, 1919

[TPG, II, 211-35. Inclosure "G" to Document 497.]

[*The memorandum is dated March 7; the letter, March 10. These claims are summarized in Document 497.*]

DOCUMENT 505

Peruvian Letter on Claims for Reparation, March 22, 1919

[TPG, II, 236. Inclosure "H" to Document 497.]

[*The letter is headed,* TRANSLATION BUREAU—*639. Its claims are summarized in Document 497.*]

DOCUMENT 506

Siamese Memoranda on Claims for Reparation, Perhaps March 27, 1919

[TPG, II, 237-44. Inclosure "I" to Document 497.]

[*One of the memoranda is dated March 27; the others are undated. Their claims are summarized in Document 497.*]

DOCUMENT 507

Memoranda on Damages Suffered by Russia, Perhaps March 7, 1919, and Later

[TPG, II, 245-78. Inclosure "J" to Document 497.]

[*Some of the sheets are headed,* TRANSLATION BUREAU—*634. An elaborate description of the damage suffered by Russia, without figures, however, except for war expenses. A map is annexed.*

DOCUMENT 508

Statement by Olszowski in Regard to Damage in Russia Eastward of the Territory Covered by the Polish Claim, April 11, 1919

[TPG, II, 279-80. Inclosure "K" to Document 497.]

[*Summarized in Document 497.*]

DOCUMENT 509

Letter from Delegation of Panama Declining to Claim for Reparation, with Telegram from Polk, March 11, 1919

[TPG, II, 281-83. Inclosure "L" to Document 497.]

[*Panama declines to claim on account of great losses suffered by France and by Belgium. Telegram to American Mission, March 11, reports same fact from Washington.*]

DOCUMENT 510

Letter from Delegation of Ecuador Declining to Claim for Reparation, March 28, 1919

[TPG, II, 284. Inclosure "M" to Document 497.]

[*Letter is headed,* TRANSLATION BUREAU—*633. Ecuador will not claim.*]

DOCUMENT 511

Armenian Memorandum on Claims for Reparation, with Letter, before March 11, 1919

[TPG, II, 285-94. Inclosure "N" to Document 497.]

[*Date derived from fact that this memorandum was mentioned in minutes of March 11 (see Document 495) as having been received. Claims summarized in Document 497. Accompanying letter from James to McKinstry, dated March 18, states that James' files have nothing on damages done in Armenia.*]

CHAPTER XVII

The Negotiations with the Germans: The Controversy over Article 231

Les Gouvernements alliés et associés déclarent et l'Allemagne reconnaît que l'Allemagne et ses alliés sont responsables, pour les avoir causés, de toutes les pertes et de tous les dommages subis par les Gouvernements alliés et associés et leurs nationaux en conséquence de la guerre, qui leur a été imposée par l'agression de l'Allemagne et de ses alliés.

The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.

—*Article 231 of the Treaty with Germany*

THE ALLIES made it plain from first to last that Germany was not to question the legal bases of the reparation settlement. These bases, underlying Articles 231 and 232, had been previously defined in the Allied delegates' discussions of April, 1919. As the reader will recall, they had been built around the two concepts of a high theoretical responsibility (for political reasons) and of a lower actual responsibility (for practical reasons).[1] Now, redefined, but without any statement of the political reasons, these bases were expounded to the Germans.

First, by their statement of Germany's theoretical obligation in Article 231 the Allies became involved in a discussion of Germany's war guilt. To the Germans it seemed that the Allies also affirmed Germany's consequent obligation to make reparation; but the evidence is somewhat inconclusive. For example, to the German protest that Article 231 established a connection between their obligation to make reparation and their alleged responsibility for the origin of the war, Clemenceau did not answer quite directly. In his note of May 20, 1919, he said: "It is only possible to conceive of such an obligation if its origin and cause is the responsibility of the author of the damage."[2] He did not say, that is, that such an obligation was conceivable only if its origin and cause was the responsibility of the author of the war. Again, to the German protest against the use of the word "aggression" in Article 231, he replied that the absence of German protest against this "allega-

[1] See pp. 66 ff. above.

[2] Allied note, May 20, 1919 (Document 362).

tion" in November, 1918, indicated that Germany had recognized at that time, "implicitly and clearly, both the aggression and her responsibility [as the author of the damage]." "It is too late," he added, "to seek to deny them today."[3] Furthermore, he refused to communicate to the Germans the conclusions of the Allied Commission on Responsibility, according to which Germany was guilty of having premeditated and brought about the war. For, he argued, these were "documents of an internal character which can not be transmitted to you."[4] He did not argue, that is, that they were documents irrelevant to the reparation question, that the war guilt and reparation questions were unrelated.

But the Germans, after a second vain request for the report of the Allied Commission,[5] submitted their own memorandum on May 28, 1919, as evidence that Germany had not been guilty of aggression;[6] and this memorandum the Allies consented to examine and to rebut.[7] However, although the Allied rebuttal referred specifically to the German document, it appeared only in Part VII of the formal Allied Reply of June 16—not in Part VIII, which dealt with reparation. But, in the covering note to the Reply, Clemenceau clearly linked reparation and war guilt together when, after describing the war as a "crime against humanity," he declared: "The conduct of Germany is almost unexampled in human history. . . . Justice, therefore, is the only possible basis for the settlement of the accounts of this terrible war. . . . That is why the Allied and Associated Powers have insisted . . . that Germany must undertake to make reparation to the very uttermost of her power; for reparation for wrongs inflicted is of the essence of justice. . . ."[8]

The last German protest was made on June 22, when Von Haniel, acting chief of the German delegation, forwarded a declaration of the Weimar Cabinet: that Germany "cannot accept and does not cover with her signature Article 231 of the Treaty of Peace, which demands from Germany that she confess herself the sole author of the war," and that Germany "must also refuse to recognize the derivation of her imposed burden from the war-authorship un-

[3] *Ibid.* [4] *Ibid.* [5] German note, May 24, 1919 (Document 367).

[6] *Materialien, betreffend die Friedensverhandlungen*, VI (Charlottenburg, 1919), 55 ff. Germany, Auswärtiges Amt, *German White Book Concerning the Responsibility of the Authors of the War* ("Publications of the Carnegie Endowment for International Peace") (Washington, 1924), pp. 30 ff.

[7] *Materialien*, IV (Charlottenburg, 1919), 32-36. [A. G. de Lapradelle, ed.] *La Paix de Versailles* ("La Documentation internationale"), [XII] "Notes échangées entre la Conférence de la paix et la délégation allemande" (Paris: Les Éditions internationales, 1930), 272-76. *International Conciliation*, 1919 (New York), pp. 1378-82.

[8] Covering note, June 16, 1919 (Document 428, Vol. II, pp. 191-92). This note was drafted chiefly by Philip Kerr (now Lord Lothian).

justly attributed to her." To this Clemenceau replied on the same day that "the time for discussion has passed" and that the Allies were compelled "to demand from the representatives of Germany an unequivocal declaration of their willingness to sign and accept as a whole, or to refuse to sign and accept, the Treaty in its final form."[9]

Second, the Allies declared that Germany's actual obligation under Article 232 was based on the Pre-Armistice Agreement, was no more than "contractual." The Reply of June 16 stated, on the basis for the peace settlement as a whole: "The Allied and Associated Powers are in complete accord with the German Delegation in their insistence that the basis for the negotiation of the Treaty of Peace is to be found in the correspondence which immediately preceded the signing of the Armistice. . . ."[10] And again, on the basis for the reparation settlement in particular: ". . . the Reparation Clauses . . . have been prepared with scrupulous regard for the correspondence leading up to the Armistice. . . ."[11]

That is, from the practical need of imposing upon Germany only a relatively low actual financial liability, the Allies had been led to declare their adherence to the Pre-Armistice Agreement. But, it seemed to the Germans, from the political need of affirming a high theoretical liability, the Allies had been led to declare their belief in Germany's alleged war guilt.

Whatever the evidence may reveal of the legal content of Article 231, however, no one has denied that this correspondence of May and of June did register, as a historical fact, the Allied belief in German war guilt; that the circumstances under which the Treaty was negotiated did lead the Germans to interpret their reparation liability as based on their alleged guilt. Such an opinion has been set out recently (1935) by certain French and German historians: ". . . the form in which Article 231 was drafted, the general statement of the responsibility of Germany formulated in the preamble of the Allied note of June 16, 1919, in reply to the protests of the German peace delegation, and the acceptance of such an interpretation of Article 231 by the Allied governments could naturally have convinced the German people, as it did the public opinion of all countries, that the obligation to pay reparations was linked to the assertion of this moral responsibility."[12]

Article 231 became, that is, a symbol of injustice to the German

[9] See Documents 436-A and 436-B.

[10] Reply, June 16, 1919 (Document 429, Vol. II, p. 194). [11] *Ibid.*, p. 196.

[12] B. E. Schmitt, trans., "'War Guilt' in France and Germany: Resolutions Adopted by a Committee of French and German Historians for the Improvement of Textbooks in Both Countries," *The American Historical Review*, XLIII (New York, 1938), 338-39 (point XXXV). Cf. note 16, p. 69, above.

people and it created in them a passionate indignation. For the war guilt principle believed to lie behind it, more easily understood by the ordinary man than the complexities of international economics, seemed to the Germans to set the whole scheme of reparation upon an unjustified moral basis. The article became, consequently, a political rallying point for the postwar revisionist movement. As such, it became also a factor enormously disruptive of the European equilibrium.

But, in recent years, a controversy has arisen over whether or not postwar opinion did correctly interpret Article 231. The general question has been raised: To what extent can Article 231 correctly be described as a "war guilt clause"? Or, more precisely stated: (1) Did Germany, in subscribing to Article 231, thereby subscribe as well to an accusation that she, chiefly, was guilty of having brought about the war? (2) If she did subscribe to such an accusation, was reparation thereby linked to war guilt—so that Germany's obligation to pay existed only as a consequence of her alleged guilt?

This general question—like the war guilt question proper, of which it is really one aspect—has divided English and French from German scholars, and Americans among themselves. Primarily a question of the legal interpretation of a treaty, it has involved, however, other than legal elements. National psychology, domestic politics, the requirements of diplomacy, have all borne upon Article 231 until it stands today clustered about with conflicting interpretations, itself a phenomenon of postwar international history. Like a fluorescent mineral, the color of which alters according to the illumination thrown down by the observer, the sense of the article has shifted and changed according to the prejudice or purpose of the interpreter. Into its postwar significance, however, we can scarcely enter here. We are concerned only with the opinions that have been advanced as to the sense that the opposing parties to the Treaty attached to its terms.

In 1926, an American, Professor Robert C. Binkley, advanced the argument that Article 231 was not properly interpretable as a war guilt clause.[13] Three years later, on the basis of the increasingly available records of the Peace Conference, he stated his point again;[14] but it does not seem to have commanded wide attention until it was taken up by Professors Bloch and Renouvin, of Paris.

[13] R. C. Binkley and A. C. Mahr, "A New Interpretation of the 'Responsibility' Clause in the Versailles Treaty," *Current History*, XXIV (New York, 1926), 398-400.

[14] Binkley, "The 'Guilt' Clause in the Versailles Treaty," *ibid.*, XXX (1929), 294-300.

On November 15, 1931, these two scholars published prominently in *Le Temps* (Paris) a study that is now generally accepted as the standard presentation of the whole position there set forth.[15]

The Bloch-Renouvin thesis stated, first, that Article 231 was primarily an affirmation of Germany's theoretical financial liability for damage in excess of that which she was actually to make good. For, it was argued, only this sense could be harmonized with that of Article 232, which declared Germany incapable of making integral reparation and subjected her, consequently, to a lower actual liability. From this it followed that Article 231 was not primarily an affirmation of Germany's war guilt.

But the Bloch-Renouvin thesis went further. Not only did it deny that an accusation of war guilt constituted the main statement of Article 231; it also denied that such an accusation constituted any part of the article. Specifically, that is, it denied that the word "aggression," which had the function of explaining why Germany was being made subject to a liability (though only a theoretical one) that exceeded the liability contemplated by the Pre-Armistice Agreement, should be interpreted in the sense of a statement that the German Empire had brought about the war. For, according to Professors Binkley, Bloch, and Renouvin, "aggression" was to be taken only in a limited, technical sense, referring only to Germany's military initiative in 1914—to her declaration of war and invasion—; was employed only in order to furnish some textual justification for the exaction of damages analogous to the citations made from the civil codes at the time of the war costs debate. Evidence for this was seen in the fact that the word "aggression" had only that technical sense in the Lansing Note; and that, since Clemenceau took pains to state that the obligation of Article 231 was derived from that of the Lansing note, the earlier limitation was carried over into Article 231.

It was argued, too, that neither the Council of Four nor the reparation experts had any intention of making Article 231 a war guilt clause; that the article was certainly not intended to serve as a vehicle for the conclusions of the Commission on Responsibilities and, in its drafting, had no connection at all with the work of that Commission; and that the formal Allied statement of Germany's war guilt appeared in Part VII of the Allied Reply of June 16—not in Part VIII, which dealt with reparation.

It was argued, finally, that the official German translation of the

[15] The Bloch-Renouvin study was slightly amplified, and reprinted with an insignificant change of title as: "L'Art. 231 du traité de Versailles: sa genèse et sa signification," *Revue d'histoire de la guerre mondiale*, X (Paris, 1932), 1-24.

article, by distorting the concept of Germany's "causing" the damage into that of Germany as "author" of the war, failed to bring out the true sense of the article, which was that Germany was legally and financially liable.[16]

The world-wide reputation of Bloch and of Renouvin, their full treatment of the subject, and the important additional personal testimony of Professor Paul Mantoux,[17] who had been interpreter to the Council of Four, added weight to what Professor Binkley had previously worked out. The conclusion that Article 231 was primarily designed as a statement of Germany's theoretical liability was clearly sound and needed to be sharply reasserted, for the larger controversy over war guilt itself had tended to focus attention only on what were felt to be the article's war guilt connotations. The further conclusion that the article did not contain any accusation of war guilt at all was also appealing, for, politically, it seemed to offer a method by which reiterated German demands for a retraction of the "war guilt lie" could be side-stepped.

Whatever the reason, the Bloch-Renouvin thesis was soon accepted by many leading scholars and publicists in France, in England, and in the United States.[18] Indeed, so rapid was the shift in opinion that, when the Archbishop of York, citing the "spirit of the Gospel," urged in a disarmament sermon of January 31, 1932, that "the war-guilt clause must go," both he and the League of Nations Union, which had reprinted the sermon, were rebuked by Professor Harold Temperley, of Cambridge, England: ". . . both are absolutely behind the times—they are the Rip Van Winkles of the controversy. . . . [Article 231] is merely a technical plea to justify exaction of money and goods from Germany. . . ."[19]

[16] The official German translation reads (though an unimportant official variant also exists): "Die alliierten und assoziierten Regierungen erklären, und Deutschland erkennt an, dass Deutschland und seine Verbündeten als Urheber für alle Verluste und Schäden verantwortlich sind, die die alliierten and assoziierten Regierungen und ihre Staatsangehörigen infolge des Krieges, der ihnen durch den Angriff Deutschlands und seiner Verbündeten aufgezwungen wurde, erlitten haben." *Materialien*, VII (Charlottenburg, 1919), 106; *Berliner Monatshefte für internationale Aufklärung*, IX (Berlin, 1931), 1189.

A better translation, by Dr. von Wegerer, reads: "Die alliierten und assoziierten Regierungen erklären und Deutschland erkennt an, dass Deutschland und seine Verbündeten verantwortlich sind, alle Verluste und Schäden verursacht zu haben, die die alliierten und assoziierten Regierungen und ihre Staatsangehörigen infolge des Krieges erlitten haben, der ihnen durch den Angriff Deutschlands und seiner Verbündeten aufgezwungen wurde." *Berliner Monatshefte, loc. cit.*

For several other German translations, see Binkley's footnote in *The Journal of Modern History*, IV (Chicago, 1932), 320-21.

[17] P. Mantoux, "Les Réparations et l'article 231 du traité de Versailles," *Le Temps* (Paris), Nov. 29, 1931.

[18] See generally the files of the *Berliner Monatshefte* from December, 1931, on. In this journal was reported every study or comment of importance made in any country; and many were reprinted or translated. See particularly the letter of Prof. H. Temperley to Dr. A. von Wegerer, May 6, 1932, *ibid.*, X, 681-83.

[19] W. Temple, Archbishop of York, "Sermon Preached in the Cathedral Church of S. Pierre at

But, in Germany, this new interpretation of Article 231 was vigorously rejected. In the publication of Dr. Alfred von Wegerer, German scholars insisted that the article had embodied an accusation of war guilt and they continued their efforts to prove the accusation false.[20] If they believed that students of the former Allied countries actually were attempting to side-step the possible embarrassment of the war guilt question proper, they resisted that attempt to the utmost.

With the general German conclusion—that Article 231 did embody an accusation of war guilt—the present author agrees. But he does not agree with all the arguments that have been advanced in support of that conclusion; or disagree with all those in support of the opposite conclusion.

First, as Professors Binkley, Bloch, and Renouvin have pointed out, *it can no longer be doubted that the primary purpose for which Article 231 was drafted was to affirm Germany's theoretical financial liability for damage in excess of that which she was actually to make good*. Evidence of such a purpose is plain. In addition to the terms themselves of the text, we have noted in the history of the drafting that, from the time of the war costs debate, some mitigating formula was always among the reparation articles—some formula that Lloyd George and Clemenceau could offer as a sign to their constituencies that war costs or *réparation intégrale* had, at least in theory, been required of the enemy. The lesser amount that Germany was actually to pay was defined in Article 232. It follows, therefore, that not to attach to Article 231 its primary sense of a statement of financial liability would, as Professor Binkley has written, leave Article 232 "hanging in the air."[21]

Geneva," *Berliner Monatshefte*, X (Berlin, 1932), 207-15. H. Temperley, "Archbishop Temple and Article 231," *The New Statesman and Nation* (London), New Series, III, 326, March 12, 1932; reprinted in *Berliner Monatshefte, loc. cit.*, p. 361.

For recent important statements of the Bloch-Renouvin thesis, see H. W. Steed, *Vital Peace* (London and New York, 1936), pp. 148-50 (in which the leaders of the Weimar Republic, who held the opposite view, are referred to as "those who prevaricate in great matters such as these"); point XXXV of the resolutions adopted by a committee of French and German historians (cited above in footnote 12); R. W. Seton-Watson, *Britain and the Dictators* (Cambridge, England, and New York, 1938), p. 69 (in which Professor Seton-Watson has inadvertently strengthened his own case by misquoting the text of Article 231 through the omission of the important word "causing"); É. Weill-Raynal, "L'Allemagne et les réparations," *Revue d'histoire de la guerre mondiale*, XVI (Paris, 1938), 193.

[20] Among the important German studies may be mentioned: A. von Wegerer, "Bemerkungen," *Berliner Monatshefte für internationale Aufklärung*, IX (Berlin, 1931), 1188-1209; A. von Wegerer, "Der Streit um den Artikel 231," *Berliner Monatshefte*, X (Berlin, 1932), 170-83; reply of Dr. A. von Wegerer to letter from Prof. H. Temperley, *ibid.*, pp. 586-89; R. Knubben, "Sind die Artikel 231 und 232 des Versailler Friedensvertrages mit der Lansingnote vom 5. November 1918 vereinbar und war danach völkerrechtlich ihre Abfassung zulässig?" *ibid.*, pp. 1074-97, 1190-1221; "Zur deutsch-französischen Verständigung über Lehrbücher: Artikel 231 (These XXXV)," *Berliner Monatshefte: Zeitschrift für neueste Geschichte*, XVI (Berlin, 1938), 136 39.

[21] Binkley and Mahr, *op. cit.* (footnote 13 above), p. 399.

From this it is seen that Article 231 is not a war guilt clause in the sense of having been drafted in order to pass a moral judgment upon the foreign policy of prewar Germany. Especially should it be recognized that the drafters did not design the article to carry the conclusions of the Allied Commission on Responsibility. It may be that the article and the conclusions expressed the same sentiments. But the article expressed them secondarily and coincidentally; it was not inserted in the Treaty for the purpose of doing so.

Second, Article 231 did embody a statement of Germany's alleged war guilt—*but only as a basis for the primary statement of her theoretical financial liability*. For, as can be demonstrated, both parties to the Treaty attached to the article a sense of moral wrong, a wrong of which Germany was regarded as guilty. That the Germans attached such a sense to the article is a proposition accepted as soon as stated. Their inadequate translation of the article is evidence of the sense in which they immediately construed it; their continued application to the article of this sense is obvious at every turn of the correspondence. We have to do, then, only with the sense attached to the article by the Allies.

That the Allies attached to Article 231 a sense of moral wrong is a conclusion resting on two facts. The first is unquestioned: that Germany's "aggression" was advanced as an explanation of why Germany was being made subject to a liability (though only a theoretical one) that exceeded the liability contemplated by the Pre-Armistice Agreement. The second is to be proved: that the Allies, at the time the Treaty was signed, did attach to the word "aggression" this sense of moral wrong.

At the outset, it must be made clear that in the process of interpretation we are entitled to make use of any documents that may furnish evidence of the sense attached by the parties to the terms of the agreement. Bloch and Renouvin have stated, for example, that the Allied Reply of June 16 was only the expression of a "conviction" or "judgment," which the Allies did not require the Germans to subscribe to.[22] And Temperley has suggested that, although a war guilt accusation may have been included by the Allies in their correspondence with the Germans, it was not included in the terms of the Treaty.[23] Our approach will be somewhat different—not thus to consider the correspondence and the Treaty as separate legal entities, but rather to consider the correspondence as evidence of what signification the parties thought they were

[22] Bloch and Renouvin, *op. cit.* (footnote 15 above), p. 19.

[23] Temperley, *op. cit.* (footnote 18 above), p. 583.

agreeing to when they subscribed to the Treaty. Cut off from such an approach, interpretation from *travaux préparatoires* cannot proceed.

Evidence for the sense attached by the Allies to the word "aggression" is to be found, therefore, in the Allied note of May 20, in the answer to the German note of May 13, and in the subsequent correspondence.[24] When, for example, the Germans protested the connection they felt had been established in Article 231 between their reparation obligation and their alleged responsibility for the origin of the war, and when Clemenceau replied that a connection did exist between that obligation and their responsibility as the "author of the damage," one might easily (though should not necessarily) assume that the concept of the authorship of the damage was understood by Clemenceau to be nearly equal in signification to the concept of the responsibility of the origin of the war. When the Germans protested further against the word "aggression," which they took in the broader, guilty sense, and when Clemenceau replied that they had already accepted in the Lansing Note both the allegation of their aggression and their responsibility as the author of the damage, one might assume further that the Allies, too, were attaching to both words, "aggression" and "responsibility," a sense of war guilt—even though the words were probably being taken now only in their context in the Lansing Note. But when, following this exchange, the Allies later consented to examine and rebut the German memorandum on the responsibility for the war, which the Germans had submitted as evidence that they were not guilty of aggression, the only reasonable inference is that the Allies attached a broad, guilty sense to the word "aggression" as it was used in the Lansing Note.[25] From this it surely follows that, if the Allies thus attached a sense of war guilt to the concept of an aggression that had caused only the limited damages contemplated by the Lansing Note, they also, *a fortiori*, attached a sense of war guilt to the concept of an aggression that had caused the much greater damages contemplated by Article 231.

This conclusion is not contradicted, in the first place, by the argument that the Allied memorandum on Germany's responsibility for the origin of the war appeared in Part VII of the Reply of June 16 and not in Part VIII ("Reparation"). According to this argument, that is, the war guilt statement of the Allied Reply is to be regarded as pertinent only to Article 227 of the Treaty, by which the former German Kaiser was to be tried "for a supreme offence

[24] Documents 362 and 353. [25] See citations in footnotes 6 and 7 above.

against international morality and the sanctity of treaties." That the war guilt statement of Part VII was pertinent to Article 227 no one will deny. But it was also pertinent to Article 231. For there is an explicit connection between each link in the chain of correspondence from the German note of May 13 to Part VII of the Allied Reply of June 16. In that first note, the Germans protested the statement of war guilt in Article 231 and requested the communication to them of the report of the Allied Commission on Responsibility. In their reply of May 20, the Allies refused to communicate it. On May 28, the Germans submitted their own memorandum as observations on the report of the Allied Commission. On June 16, in Part VII of the formal Reply, the Allies rebutted the conclusions of the German memorandum. Since each of these documents thus referred specifically to the one that had immediately preceded it, the last of the series (the Allied statement of Germany's war guilt) may be reasonably understood as referring to the first (Article 231)—although admittedly the case would be stronger if the last had itself made specific mention of the first.

Why did the statement of war guilt appear in Part VII of the Reply of June 16 rather than in Part VIII? Two explanations seem reasonable. First, in the division of labor necessary in the drafting of the Reply, it was natural that the war guilt statement should have been prepared by the competent experts—by those who had drawn up the previous Report of the Commission on Responsibility—; and equally natural that this preparation should not have been assigned to the reparation experts, who, in addition to being fully occupied with the specific reparation demands, had scarcely thought about war guilt as such up to that time. Since it was the experts on war guilt, therefore, who had also drafted Article 227, and since there was a very direct and necessary connection between war guilt and that article, it was quite logical that the war guilt statement should have been included in Part VII, as a sort of commentary to Article 227. But we are not debarred from taking it also as a commentary to Article 231 if it furnishes (as it does furnish) evidence of the sense attached to that article by the Allies.

Then, second, the Allies showed every evidence of desire to emphasize to the Germans that the actual obligation to make reparation was based strictly upon the Pre-Armistice Agreement. For example, the repetition in Article 232 of the phraseology of the Lansing Note, Clemenceau's references to the Agreement in his note of May 20, and the strong statement at the beginning of Part

VIII of the Reply of June 16—these all reveal great anxiety to have the Agreement recognized as the foundation of the reparation system. But, to have introduced into this argument a statement of German war guilt would have destroyed all hope of such recognition.

It can, therefore, be maintained that the Allies did attempt to keep war guilt out of the reparation discussion. But, as we have seen, they were not able to keep it out; for, when once the Germans had protested against "aggression" as being an accusation of war guilt, the chain of correspondence was begun that eventually did attach an implication of war guilt to "aggression" as used in the Lansing Note; and, *a fortiori*, to "aggression" as used in Article 231.

Nor, even if it were shown that the Allies revealed a volition to avoid connecting Article 231 itself with a statement of war guilt, would such evidence necessarily be proof that they did avoid doing so. For evidence of the volition of one party not to embody certain terms in an agreement that has been, by other evidence, previously interpreted as containing those terms will not in itself invalidate that previous interpretation. Evidence must rather be shown that such nonembodiment was mutually assented to by both parties; and only then may it be granted that the previous interpretation was unsound. But there is, of course, no evidence that the Germans ever did attach to Article 231 a sense devoid of war guilt.

The conclusion that the word "aggression" was employed in Article 231 by the Allies in a sense implying war guilt is not contradicted, in the second place, by the conclusion arrived at in an earlier chapter—that "aggression" was written originally into the Lansing Note without an implication of war guilt.[26] That earlier conclusion is true. When "aggression" was used in the Lansing Note, the delegates were indeed attempting, as we have seen, only to find a term broader than either "forces" or "invasion." They understood "aggression," that is, only in the technical sense suggested by Professors Binkley, Bloch, and Renouvin. And it may also be granted that when "aggression" was repeated in the April draft of Articles 231 and 232, it still carried no more than the limited signification—did not carry, that is, a sense of war guilt.[27] But, by the time the Treaty had been signed, the sense of "aggression" had been altered. For the correspondence of May and of June, we have just seen, imposed upon the word the war guilt implication. And, since we are concerned with the interpretation of

[26] See p. 6 above. [27] See p. 70 above.

an agreement not among the several Allied Powers but rather between the Allies as a whole and Germany, the *travaux préparatoires* to be regarded as significant are, surely, not those that resulted from the negotiations among the Allies but those that resulted from the negotiations between the Allies and Germany. The conclusion to be drawn, then, is this: that, even though the Allies in their own early discussions may have employed "aggression" in only a limited sense, they attached to the word a broader sense, of war guilt, in their later discussion with the Germans.

So far, for the sense in which the Allies employed the word "aggression," we have examined the more or less direct evidence of the chain of correspondence beginning with the German protest of May 13 and ending with the Allied statement in the Reply of June 16. There is also indirect evidence, not specifically applicable to "aggression," but rather widely applicable to Article 231 as a whole and operating to resolve the ambiguity of the article. This evidence lies in the covering note to the Reply of June 16.[28] In that note, as we have seen, Clemenceau declared that justice was "the only possible basis for the settlement of the accounts of this terrible war" and added: ". . . reparation for wrongs inflicted is of the essence of justice." In the light of this declaration, we conclude, Article 231 is to be interpreted as recording Allied assent to the proposition that Germany's reparation liability existed as a consequence of her war guilt.

If the Germans, however, had not themselves brought the question of war guilt into the discussion, it is doubtful that the Allies would have ever brought it in, or that "aggression" would so definitely have acquired its sense of moral condemnation. Without the original German protest, that is, the exchange of correspondence would probably never have taken place, the Allied statement of Germany's responsibility would probably never have been made, and Article 231, consequently, would be scarcely interpretable today in a war guilt sense.

Why the Germans did protest is clear. Even before they came to Versailles, they had seen in the German press the Report of the Allied Commission on Responsibilities; even before they had read the Treaty, their leader, Brockdorff-Rantzau, had spoken out against the judgment of this Report;[29] and when he and his col-

[28] Document 428.

[29] Speech of Brockdorff-Rantzau at the Trianon Palace Hotel, Versailles, when the conditions of peace were handed to the German delegation, May 7, 1919. See D. H. Miller, *My Diary at the Conference of Paris*, XX (New York, 1926), 182; *Materialien*, I, 15; *La Paix de Versailles*, I, "Les Conditions de l'Entente [etc.]" (Paris, 1930), 7.

leagues, therefore, finally sat down to examine the Treaty, they must inevitably have been alert to discover there some clause embodying that judgment.[30]

But, as the Germans naturally protested, so the Allies equally naturally rebutted. As Dulles has written: "Under the psychological conditions which then existed it was wholly impracticable for the Allied chiefs of state to repudiate publicly this construction which Germany assumed."[31]

By thus provoking a rebuttal, therefore, the Germans also provoked the evidence for an interpretation unfavorable to themselves. Whether, so doing, they acted in their own best interests or not may be left an open question. For, on the one hand, their action tended to make the terms of the Treaty more humiliating for their country; on the other, it brought forward and laid bare to criticism what many believed to be the moral basis of the material burden. While the German protest against Article 231, consequently, had the ironical result of making the Treaty actually more severe, perhaps it also helped to rouse public opinion for revision.

We have thus examined two theses—the Bloch-Renouvin and the German. The first denies, the second asserts, that Article 231 embodied a statement of German war guilt. But both must agree that, if it did, the statement existed only indirectly, as a by-product of the principal statement of the article, that of Germany's financial liability.

There is also a third point of view: that the principal statement of Article 231 is one not merely of financial but also of moral liability for *réparation intégrale*. In April, it will be remembered, the American delegation attempted to weaken the article as a statement of Germany's theoretical liability, of her liability for damages in excess of those contemplated by the Pre-Armistice Agreement. In this attempt they succeeded so far as they made the article ambiguous by the introduction of the word "causing," since this word, we have argued earlier, suggested immediately a connotation of Germany's casual or moral responsibility as well as one of her financial liability.[32]

The difficulty of precisely interpreting Article 231 is well illustrated by the fact that reservations are at once necessary in a presentation of this third point of view. For, though it is important on the one hand to explain that there does seem to have been an

[30] A. Luckau, *The German Delegation at the Paris Peace Conference* (Carnegie Endowment for International Peace, "The Paris Peace Conference—History and Documents") (New York: Columbia University Press, *forthcoming*).

[31] Letter to the author, Sept. 26, 1938.

[32] See p. 68 above.

American interest in the introduction of the word "causing" and that the presence of the word did tend to make the article ambiguous,[33] it is equally important on the other hand to make clear that evidence of such an American interest is scant, that the ambiguity referred to seems never to have formed the substance of an official American interpretation, and that the ambiguity was certainly never embodied specifically in the signification that either the Allies as a whole or Germany ultimately attached to the terms. Perhaps the most reasonable summary of the importance of "causing" is this: the fact of the word's having been inserted at all indicates the difficulty of maintaining today that the drafters of Article 231 were thinking in terms of only legal or financial liability.

On the assumption that the German thesis is correct, that Article 231 did really embody a statement of war guilt as the explanation for the imposition upon Germany of her theoretical liability for *réparation intégrale*, what was the practical relation of the war guilt accusation to Germany's obligation to pay? Let us suppose, for example, that the Allied Governments had after the war formally withdrawn their assumed accusation and declared themselves ready to submit for judicial settlement the question of what consequences must follow that withdrawal. Solely as regards reparation, what consequences might the tribunal have decreed to be effective?

First, it would have declared that Germany's theoretical obligation for *réparation intégrale* under Article 231 no longer existed. But Germany was never expected, in any case, to make payments on this account.

Second, it would logically have declared that, so far as Germany's actual obligation under Article 232 was grounded on her war guilt, this obligation, too, no longer existed.

But, third, the tribunal must next have concluded that Germany still had an obligation to pay, resting on her commitments under the Pre-Armistice Agreement, since the validity of the Pre-Armistice Agreement had been affirmed by the Allies and accepted by the Germans throughout the correspondence.

Fourth, therefore, the tribunal would have had opened to it two possible courses. On the one hand, it might have declared that, because all the categories specified in Annex I had been so worded as

[33] In their official translation, the Germans rendered "causing" by "als Urheber"; and this element of their translation has been criticized more than any other for distorting the sense, for upsetting the ambiguous balance, of Article 231. Justified as this criticism may be, the fact that such a translation could have been made emphasizes the importance of the word "causing."

to be susceptible of a construction that would bring them within the terms of the Pre-Armistice Agreement, reparation for damage suffered under all those categories should constitute the total liability of Germany. On the other hand, it might have declared that certain categories in Annex I were not properly covered by the terms of the Pre-Armistice Agreement and must therefore be cut out of the Treaty.

Which of these two courses of action such a tribunal would have followed, it is, of course, impossible to say. Which of them it should have followed is a matter of conflicting views. For the history of the negotiations tells us only that the Germans protested certain categories and that the Allies rejected that protest.[34] As to what categories should be understood to fall within the terms of the Pre-Armistice Agreement, there is evidence only of disagreement, no evidence of mutual assent. And without evidence of such assent, interpretation is impossible today from the *travaux préparatoires.*

By this time, the reader will probably be ready to agree that Article 231 is not susceptible of exact construction. From the beginning, the article was compounded of unreality and of imprecision. To subject Germany to an obligation never intended to be discharged; to overpass, yet keep within, the limits of the Pre-Armistice Agreement; to connect in some fashion by means of the word "aggression" Germany's responsibility under the Pre-Armistice Agreement and the Allied belief in her responsibility for the war;—these were the intractable elements out of which Article 231 had to be contrived. Into this contriving entered different motives. And, partly because the article was unreal in not establishing a material obligation (the discussion of which would have been confined to the single question of performance or of nonperformance), any one of these motives could later be used to justify some particular interpretation. No one interpretation, therefore, will probably ever be generally accepted. Nevertheless, returning to the two questions presented earlier as summarizing the controversy over Article 231, the reader is invited to consider—as answers to those questions—the conclusions arrived at in the present chapter:

(1) In subscribing to Article 231, Germany subscribed primarily to a statement that she was theoretically financially liable for integral reparation. But she also subscribed to a second statement

[34] See pp. 132 and 139 above.

explanatory of the first—that she, chiefly, had been guilty of an act of aggression which had brought about the war.[35]

(2) Germany's theoretical obligation for reparation (under Article 231) existed, therefore, only as a consequence of her alleged guilt. But her actual obligation (under Article 232) existed, at least in part, under the Pre-Armistice Agreement independently of any question of her guilt.

[35] Mr. Hunter Miller believes that Germany should not be spoken of as *chiefly* responsible under Article 231. For, since textually identical articles appeared in the treaties with Germany's allies, one would be led logically to apply identical conclusions—to speak of *each* power, that is, as chiefly responsible—which, of course, would be absurd. But the author's position is that clauses identical in their text are not necessarily also identical in their sense. For their sense must be determined in the light of the accompanying correspondence. And, in the present example, the accompanying correspondence did clearly assign to Germany the chief share of the total guilt.

Mr. Miller believes, too, that the attempt to attribute a "war guilt" sense to Article 231 breaks down under the mention of Germany's allies in the phrase, "the war imposed upon them by the aggression of Germany *and her allies.*" For, according to Mr. Miller, since Austria and Hungary were one at the time the aggression alleged by the present author took place, and since neither Turkey nor Bulgaria entered the war until after its outbreak, it is possible to speak of more than one ally only if "aggression" is taken in the technical sense of "acts of war"—the sense in which the Bloch-Renouvin thesis takes it. The author's position is that "Germany and her allies" was the phrase regularly substituted when the drafts were changed from the earlier general formula, "the Enemy States." As a matter of fact, the Preliminary Anglo-American Draft of March 19, 1919 (Document 181), refers to "the war begun by Germany and her allies." Here, then, is the earliest interdelegation form of the concept that later was crystallized into the "aggression" of Article 231.

D. H. Miller, "The Attitude of the United States toward the Reparations Problem" (typescript, Nov. 1928, in the International Law Library, Columbia University), pp. 10-12. Letters from Mr. Miller to the author, Sept. 30, Oct. 19, 1938.