Translation.

Communicated to the Council.

LEAGUE OF NATIONS.

C.540.1931.I.

Geneva,

September 7th, 1931.

CROCO-BULGARIAN RELATIONS.

REQUEST BY THE BULGARIAN GOVERNMENT DATED, AUGUST 7th, 1931 REGARDING THE EXECUTION OF THE CAPHANDARIS-KOLLOFF AGREEMENT. *

Memorandum dated September 3rd, 1931 by the Bulgarian Government.

Note by the Secretary-General.

The Secretary-General has the honour to communicate to members of the Council for consideration a letter dated September 3rd, 1931, from the Bulgarian Chargé d'affaires in Switzerland forwarding a memorandum by the Bulgarian Government regarding the question of the execution of the Caphandaris-Koloff Agreement raised in the Bulgarian Government's letter of August 7th, 1931.

LETTRE DU MINISTRE DES AFFAIRES ETRANGÈRES

À LA SECRÉTAIRE-GERALDE.

Sombre, septembre 3rd, 1881.

Translation.

Dear Sir,

Further to your letter of August 7th last,

I have the honour to transmit herewith, with the request that it should be circulated to Members of the Council of the League of Nations, a memorandum by the Bulgarian Government regarding the question of the application of the Czakh-Mazar-Polloff agreement.

(Signed) D. VICTOR.
HANS ANDRIE
by the
BULGARIAN GOVERNMENT
REGARDING
THE IMPLEMENTATION OF THE CEFANDARIS-HOLLOFF AGREEMENT.

In pursuance of Art. 4 of the Agreement concluded at Genoa on December 31st, 1927 between the Bulgarian and Greek Ministers of Finance in settlement of the obligations of Greece and Bulgaria arising out of the Convention respecting Reciprocal Emigration of November 27th, 1911, better known as the Cefandaris-Holloff Agreement, the Greek-Bulgarian Mixed Commission, towards the end of June last, fixed the face value of the bonds issued under that Agreement and invited the Greek Government, which, according to the accounts drawn up by the Mixed Commission, was in the Bulgarian Government’s debt, to approve the balance shown as due by Greece in order that the payment of 60,282,407 leva, being the amount due by the Greek Government at the end of the first half of 1932, might be made, as called for under Art. 4, third paragraph, of the Cefandaris-Holloff Agreement, not later than one month after the end of that half-year, i.e., by August 1st, 1931.

For the whole months the Greek Government made no reply to the invitation. Only on August 1st, in a letter No. 118441, signed by K. G. Harris, the Greek Minister of Finance, was the Mixed Commission notified that, as the question of the payment to be made to the Bulgarian Government under Art. 4 of
the Caphandaris-Molloff Agreement was one of a number of problems raised by President Hoover's proposal which were being discussed in London, the Greek Government was deferring its discussion on the point until the discussions were ended, and would have to suspend payment of the half-yearly amount provided for in Art. 4 of the Caphandaris-Molloff Agreement.

In its reply of August 3rd, 1931, No.17259, the Mixed Emigration Commission drew the Greek Government's attention to the fact that the Caphandaris-Molloff Agreement made no provision for such suspension of payment. As the Commission had no power to prolong the time-limits allowed to the debtor state by Art. 4 of the Agreement for payment of its half-yearly instalment, it would forward Dr. Haris's letter to the Bulgarian Government and to the Chairman of the Financial Committee of the League of Nations for information.

In obediently learning that the Greek Government had decided to suspend the half-yearly payment due on August 1st, 1931, the Bulgarian Government protested against this ex parte proceeding, both to the Mixed Emigration Commission and to the League Secretariat, which noted this protest on August 3rd. Simultaneously, on August 4th, the Bulgarian Minister at Athens lodged a protest on behalf of the Bulgarian Government with Mr. Mihailakopoulos, the Greek Minister of Foreign Affairs.

The Greek Government totally ignored these proceedings. In obvious pursuance of a long-shivered plan and without any prior notice to the Bulgarian Government, it changed the scene of action and submitted the case to the Committee of Experts
which met in London at the end of July to take the necessary steps for applying the Hoover proposal regarding the intergovernmental and reparations debts of Germany, Hungary and Bulgaria.

II.

The Greek Government's intention to evade payment of its debts under Art. 4 of the Caphandaris-Kolloff Agreement by connecting it with the moratorium proposed by President Hoover - an intention clearly discernible in the letter of August 1st from M. Karis, the Greek Minister of Finance - had already been disclosed a few days previously, in July, by M. Venizelos, President of the Council, and M. Michalakopoulos, Minister of Foreign Affairs, in a series of press declarations. From these it appeared that the Greek Government was preparing to resume an attempt which it had already unsuccessfully made in 1919 at Paris, during the Conference of Experts for non-German reparations, by seeking to establish a connection between its obligations under the Caphandaris-Kolloff Agreement and Bulgaria's reparation debts. From the declarations made by M. Venizelos and Michalakopoulos, the Greek Government proposed to achieve the same purpose by taking as a basis President Hoover's proposal and asking that Greece's obligations under the aforesaid Agreement should be regarded as obligations contracted in consequence of the Great War and should therefore benefit by the suggested moratorium.

Convinced of the fallacy of the Greek theory, and fully believing that it would not be accepted by the other creditor Powers, the Bulgarian Government did not feel it necessary to reply to the Greek Ministers' declarations. It was content to wait for the question of the suspension of Bulgarian reparations to come before the Experts' Committee in London and to controvert there the statements and claims of the Greek Government, should the latter decide to maintain its erroneous theory before that Committee. Actually, when, on July 23rd, the Committee of
Experts came to discuss the application of the Hoover proposal to Bulgaria's reparation payments. It became obvious that the Greek Government proposed to take the opportunity of evading payment of the amounts due by it for 1931-32 under the Caphandaris-Koloff Agreement.

During the discussions between the Experts' Committee and the representatives of the Bulgarian Government, it appeared that the Greek Government had told the Experts that it could not agree to forego the Bulgarian reparation debt unless Greece's obligations under the Caphandaris-Koloff Agreement were also recognised to be intergovernmental debts, and therefore subject to the moratorium suggested by Mr. Hoover.

The Bulgarian delegates protested repeatedly and energetically against this claim by the Greek Government. They pointed out that Bulgaria should be given a moratorium for her reparation payments without the moratorium's being connected in any way with the Greek Government's debt under the Caphandaris-Koloff Agreement, as the latter was not an intergovernmental obligation, but a debt due to private persons - in this case to the emigrants - and could not therefore be set off against Bulgarian reparations.

The Experts, however, did not see their way to decide between the two conflicting theories, and on solely practical grounds decided, on August 11th, that Bulgaria's reparation payments should be postponed for one year in accordance with the Hoover proposal; before, however, the necessary agreement to this effect could be concluded, the difficulty regarding the debt under the Caphandaris-Koloff Agreement would have to be solved. Believing that it had no power to settle the dispute between Bulgaria and Greece, the Committee accordingly recommended that the question should be decided directly between the two Governments concerned.
This decision came as a surprise to the Bulgarian Government, for, while apparently admitting Bulgaria’s right to benefit by the Hoover proposal, the Committee of Experts actually made the moratorium which Bulgaria was entitled to claim dependent on the outcome of the negotiations between Bulgaria and Greece which it recommended.

In other words, while admitting its incompetence to settle the dispute between Bulgaria and Greece regarding the interpretation of the Ophanderis-Joloff Agreement, the Committee, instead of ignoring it and deciding purely and simply that Bulgaria should be given the benefit of the Hoover moratorium for her reparation payments, actually established a certain connection between Bulgarian reparations and the Greek debt under the Ophanderis-Joloff Agreement.

The Bulgarian Government holds that there is no justification whatever for such a connection. First, because it enables Greece to maintain her refusal to make the payments due in discharge of the Agreement referred to and, although there are no provisions justifying it, to persist in her arbitrary determination not to fulfill the obligations she undertook in that Agreement.

Furthermore, the Committee’s decision seems to be fundamentally unfair, because by giving Greece an excuse for adhering to her attitude it deprives the emigrants who pinned their faith to the Emigration Convention of the sums required for the service of the bonds issued in payment of the value of their property acquired by Greece. At the same time it prevents Bulgaria, who badly needs financial assistance,
from benefiting by the Hoover proposal and enjoying the alleviation of internal conditions which she was entitled to expect from the immediate suspension of reparations.

The Bulgarian Government cannot agree to such a solution and, though unable to reverse the decision of the Committee of Experts, it repudiates most energetically the fallacy of connecting the execution of the Caphandaris-Koloff Agreement with the moratorium granted for Bulgaria’s reparation payments.

As Greece, relying on the excuse proffered by her to the Committee of Experts, refuses to discharge her obligations under the Caphandaris-Koloff Agreement, and as the Committee’s decision of August 11th creates an absolutely unfounded connection between Bulgaria’s reparation debts and Greece’s obligations to the emigrants under the Caphandaris-Koloff Agreement, the Bulgarian Government feels bound, in pursuance of Art. 8 of that Agreement, to apply to the League Council and ask it to find that the engagements undertaken by Greece are not obligations to the Bulgarian Government but to the emigrants, that such obligations cannot in any way be set off against Bulgaria’s inter-governmental debts, and that the Greek Government, therefore, has no right whatever to suspend payment of the half-yearly amount due on August 1st under the Caphandaris-Koloff Agreement.
III.

The Bulgarian Government's arguments in support of its interpretation of the Caphandaris-Joloff Agreement may be summarized as follows:

The Caphandaris-Joloff Agreement is the result of Articles 10 and 11 of the Convention between Bulgaria and Greece regarding the right of the minorities to emigrate. These two Articles therefore must be consulted for the nature and character of the obligations of the Bulgarian and Greek Governments arising out of that Convention.

Art. 10 of the Convention reads as follows:

"The Mixed Commission shall have full power to have a valuation made of real property, the interested parties being heard or duly summoned to a hearing.

"The Government of the country where liquidation takes place shall pay to the Mixed Commission, under conditions to be fixed by the latter, and for transmission to the rightful parties, the value of the real property liquidated, which shall remain the property of the said Government."

Art. 11. "Funds shall be advanced to the Mixed Commission by the States concerned, with a view to facilitating emigration and under conditions fixed by the Commission. The Commission shall advance to emigrants, according to the funds available, the value of their real property."

These passages are sufficient evidence of the juridical character of the obligation devolving on each of the Governments of the countries where the liquidation takes place to pay to the Mixed Commission the value of the emigrants' property which that Government acquires as the result of
liquidation. The obligation is essentially an obligation contracted with private persons. This is even more clearly evident if the procedure described in Arts. 10 and 11 of the Emigration Convention is considered in relation to Arts. 2, 7 and 9 of the same Convention, of which Articles it is the logical result.

Art. 2, para. 2, of the Convention provides that the exercise of the right of emigration shall not affect the pecuniary rights of the emigrants, as these may exist at the moment of emigration.

Art. 7 states that "Real property, rural or urban, belonging to voluntary emigrants or to the communities to which Art. 6 refers, shall be liquidated in accordance with the following provisions by the Mixed Commission, provided for in Article 9."

Art. 9 repeats once more that the Mixed Commission shall have the duty, inter alia, of liquidating the real property of emigrants.

In other words, Arts. 2, 7 and 9 of the Convention, the purpose and spirit of which are to prevent emigrants being dispossessed of their property before they have been paid a fair price, fully maintains the right of emigrants to ownership of their real property. This property right continues until the moment of liquidation, then it is changed into a right to compensation from the Government who acquire the title to such property. The latter right is carried into effect in the manner described in Articles 10 and 11 of the Convention: the Government of the country where the liquidation takes place pays the Mixed Commission the value of the property liquidated, which reverts to it, and the Commission
then makes an advance to the emigrants of the value of their property.

It seems unnecessary to emphasise the degree to which the foregoing proves that the engagement of the Bulgarian and Greek Governments to pay to the Mixed Commission the value of the liquidated property of emigrants, which thus becomes the property of the respective Governments, is a private law obligation not of one Government to another but of Governments to private parties, in this case emigrants.

This being admitted, it follows that the sole purpose of the various provisions of the Capanonis-Tollop Agreement is to regulate the execution of the Bulgarian and Greek Governments' private obligations to the emigrants, since the Agreement was concluded to give effect to Art. 10, para. 2, of the Emigration Convention, providing that the Mixed Commission would fix the conditions under which Governments would pay the value of property liquidated and acquired by them. Originally these conditions were set forth in a "Plan de paiements" to be concluded by Bulgaria and Greece for executing the Greco-Bulgarian Convention for the reciprocal voluntary emigration of the minorities" adopted by the Mixed Commission on December 8th, 1922. The Explanatory Note attached to this Plan expressly states that the liquidation of the property of emigrants is "in reality the purchase by the Governments of the real property of the emigrants" and that "each of the Governments must allot sufficient funds for the payment for such properties".
A few lines further on the Explanatory Note amplifies this principle in the following passage: "The text of the Emigration Convention clearly shows that the intention of the signatories of this instrument was that payments ensuing on liquidations should be made in cash. This was, incidentally, highly logical, seeing that these payments were the equivalent of the property acquired by the State, viz., the properties paid for, and seeing also that the emigrants needed the money immediately to be able to settle in their new country".

The principles so categorically set forth in the Explanatory Note to the "Plan de paiements" show sufficiently clearly the character of the engagement undertaken by both Governments consequent on the liquidation of emigrants' properties, and the beneficiaries of that obligation.

Furthermore, only by bearing these principles in mind can the authorisation given by the mixed Commission to emigrants to sell their property themselves direct to third parties be explained. These very principles, too, show that it was for the sole purpose of mitigating the financial difficulties of both Governments that the Commission resolved that property liquidated through its intermediary would be paid for 10% in cash and 90% in bonds. The Commission, however, only agreed to this departure on condition that a special guarantee fund was created covering all the property liable to liquidation, to ensure that the bonds thus issued were protected against all risks.

Art. 1 of the "Plan" states equally explicitly that its object is to regulate the payments due by the Bulgarian and Greek Governments to the emigrants, thus emphasising once again the private character of the engagement of each Government
and specifying that the creditors of the bonds are the emigrants themselves.

The private character of the Governments' obligations and the fact that the emigrants are the beneficiaries of those obligations emerge still more clearly from an analysis of Arts. 5 and 7 of the "Plan de paiements".

There can be no doubt that the substitution, referred to in Art. 6 of the "Plan", of the Government of the ancestral country in which emigrants settle for the Government of the country which they have left and which purchased their liquidated property and rights, and the assumption by the Government of the ancestral country of the claims of emigrants on the Government of the country which they have left, were specified solely in order to give the emigrants facilities and guarantees. This is clear from the express stipulation of Art. 6 that, firstly, each Government takes the place of the other Government only "for the service of the periodical payments due by the latter" (to emigrants, of course), and, further, that "simultaneously and as an equivalent", each Government "is subrogated to the claims which the creditor emigrants whose payments it takes over have on the other Government". Nothing in these stipulations modifies the substance of the rights possessed by emigrants, viz., the right to receive equitable compensation equivalent to the value of their liquidated property. On the contrary, such rights are expressly reserved in their entirety.

Art. 7 of the "Plan" merely confirms the corollaries to the principle laid down in the preceding article.

Consequently, the reciprocal substitution of both Governments, referred to in Art. 6 of the "Plan", can only be
regarded as a condition adopted for the purpose of facilitating the discharge of each Government's obligations to the emigrants whose liquidated property it had acquired through the Mixed Commission, and as a method of settling the reciprocal accounts and obligations, arising out of the Emigration Convention of 1919, of both Governments to the emigrants, without such obligations being in any way substantially affected by this form of settlement.

Precisely because of the special nature and the private character of these obligations, and because also of the "special allocation" of the final balances of both Governments' accounts arising out of the liquidation of emigrants' properties, Art. 16, last paragraph, of the "Plan de paiements", expressly provided - and quite naturally too - that the debtor State could not set off these debts against any other account pending between the two countries.

Unfortunately, it proved impossible to apply this "Plan" in 1927 because, without asking any permission, the Greek Government arbitrarily took the Guarantee Fund and gave it as a pledge for the Refugee Settlement Loan concluded by Greece.

To obviate the disastrous consequences which the disappearance of the Guarantee Fund might cause emigrants, other guarantees had to be sought. Accordingly, in December 1927, the Bulgarian and Greek Ministers of Finance, MM. Molloff and Caphandaris, signed an Agreement modifying Art. 9, paragraphs 2, 3 and 4, and Arts. 11 to 19 of the "Plan de paiements".

This Agreement, however, in no way modifies or alters the private law character of the respective Government's obligations to emigrants, since it retained intact the
fundamental principle of the 1922 "Plan" as regards substitution, and preserved its characteristic feature of being merely a way of paying the compensation due to emigrants. The inter-governmental obligations thus ensuing from the balancing of liquidation accounts continue to bear their private character and special allocation, and cannot therefore be set off against other accounts, claims or debts between the two States.

Moreover, it is precisely in order to guarantee the regular payment of the final balance arising out of the liquidation of emigrants' properties that Art. 5 of the Caphandaris-Molloff Agreement obliges the debtor State to deliver to a neutral bank to be appointed by the Council of the League of Nations as its mandataire bonds for the settlement of the half-yearly payments (interest and sinking fund) of the balance due.

Finally, Sir Austen Chamberlain's statements at the Council meeting of March 8th, 1929, show that the Council adopted this view of the importance and effect of the Caphandaris-Molloff Agreement, to which it had by its decision of December 12th, 1927 become a party, thus guaranteeing its integral execution.

The Bulgarian Government concludes that the above arguments prove sufficiently that the obligations undertaken by Greece under the Caphandaris-Molloff Agreement are obligations to private parties - the emigrants - and not to the Bulgarian Government, and as such cannot be set off against Bulgarian inter-governmental debts.
It holds that to accept the opposing theory would mean that the Caphandaris-Vollof Agreement, and the League of Nations, which guaranteed it, have not maintained the rights of the emigrants under the Emigration Convention of 1915, but have, instead, weakened and abolished them, which would be absurd. Equally absurd would it be to adopt the Greek view that Greece can on its own initiative put on Bulgaria the burden of compensating the parties entitled for the property of emigrants which she has seized and disposed of or still retains.

The conclusion from all that precedes is that in refusing to make the half-yearly payment due on August 1st under Art. 4 of the Caphandaris-Voltoff Agreement, the Greek Government has without any legal justification arbitrarily violated the provisions of that Agreement. The Greek Government has thus not merely caused considerable damage to the pecuniary interests of the emigrants, but has also prejudiced the prestige of the League of Nations, which guaranteed the exact execution of this international Convention.

In the Bulgarian Government's opinion, to uphold such a refusal might have extremely serious consequences; Bulgaria might consider herself entitled in her turn to refuse to execute her international obligations.

In the belief, however, that the Greek Government's actions will not be approved by the League of Nations, the Bulgarian Government, for all the reasons above stated, has the honour to request the Council to declare that Greece's engagements under the Caphandaris-Voltoff Agreement are not intergovernmental obligations but obligations to private persons, which cannot therefore be set off against Bulgaria's reparation debt, and to invite Greece to discharge her obligations under the said Agreement and pay without delay the half-yearly amount due on August 1st last, with the relevant interest added.