Sir,

In a letter No. 5587 dated July 4th 1921, I had the honour, on behalf of the Saar Basin Governing Commission, to inform the League of Nations of the difficulties which had arisen both on the German Government and the Commission with regard to the International Transport Convention concluded at Berne on October 14th 1890.

At the request of the Council of the League of Nations, the Advisory and Technical Committee for Communications and Transit of the League of Nations considered this question and on September 26th 1922 expressed the following opinion, which was transmitted by the Council to the Governing Commission.

Yours sincerely,

[Signature]
Secretary General,
League of Nations, Geneva.
In accordance with the Council's Resolution of October 2nd, 1917, which you have communicated to us, the Advisory and Technical Committee on Communications and Transit, has examined the questions of communications and transit, raised by the request of the Sear Basin Governing Commission for adherence to the International Convention on the Transport of Goods by Rail of October 14th, 1920. (Bern Convention).

As the Council informed, the Advisory Committee, whose attention has been drawn to this question at its last meeting by a letter from the Secretary-General, appointed a Sub-Committee entrusted with the task of making a preliminary examination and of drawing up a report to the Plenary Committee, in case the Council required an opinion from this Committee.

The above-mentioned Sub-Committee consisting of Jonkman J.H., van Eysinga, Professor of the University of Leyden, President, Mr. H. Hoek-Solding, Chef du Bureau at the Ministry of Public Works of Denmark, Mr. Svinning, Chief Inspector on the Italian State Railways met on the 14th and 15th of October 1921 and adopted the following conclusions which were subsequently approved by the Committee.

It appeared from the letter of the President of the Sear Basin Governing Commission dated July 4th 1921, as well as from the documents submitted by him, that although the Sear Basin Governing Commission had presented its request in the regular form for adherence to the Bern Convention of the 14th October 1920 on the Transport of Goods by Rail, this request could not be proceeded to owing to the opposition of the German Government, which is signatory of the Bern Convention.

The Sear Basin Governing Commission maintained that the various provisions of the Treaty of Versailles conferred upon it, directly or indirectly, the right of applying for and obtaining this adherence.

The German Government, on the other hand, consistently under its opposition on the plea that adherence to the Bern Convention is reserved to States, whereas the Sear Basin territory was still under German sovereignty and did not, therefore, constitute a State, and that finally a separate adherence of this kind could be useless because the provisions of the Bern Convention were applied, in the opinion of the German Government, to goods in transit either from or to the Sear Basin territory, since the territory formed part, as far as the application of this Convention was concerned, of the territories under German sovereignty.

It would be well to point out that the consequences of applying the Bern Convention to the Sear Basin territory already subject to this convention because Germany is contracting party to the latter, and of applying the same Convention in virtue of a separate adherence, are not, from certain points of view, and as regards traffic between the Sear Basin and Germany, the same.

In the first case, this traffic could be considered as subject to German internal administration, and would require way-bills as used by that internal administration, because the Bern Convention, which only governs international transport, would not apply in that case. In the second case, on the contrary, it could be considered international traffic and would require the issue of international
way-bills in accordance with the Bern Convention. In the first case Germany might demand, as indeed she chooses to demand at the present moment, that the goods carried between the river basin and Germany, (for example the traffic in coal between the five mines and the port of Reih) should follow only German railway routes even if such routes were longer and more expensive than those including non-German lines. In the second case, this traffic might follow the cheapest routes even if such were not German, and could benefit by the most advantageous rates. (Article 6-10 of the Bern Convention).

The Advisory and Technical Committee on Communications and Transit considered that according to the Council's Resolution of September 2, 1920, which appointed this Committee and laid down its competence, it ought not to give any opinion on general legal questions as whether the territory of the river basin constituted a state or not, and whether such state was or was not under German sovereignty but that the Committee ought only to examine the question raised by the river basin governing commission from the point of view of the working conditions on the river railways, as viewed in the light of international law with regard to communications.

It appeared to be, moreover, after due examination, that those considerations were entirely sufficient to solve the question raised, without any necessity of first solving, in any way whatsoever, the more general problems mentioned above.

It has adopted the following Resolution:

RESOLUTION

The Advisory and Technical Committee on Communications and Transit,

Constituted in virtue of the Assembly's Resolution of December 9, 1920 as an Advisory and Technical body of the League of Nations for all questions of communications and Transit during, in Article 2, on the application of Article 22 of the Covenant, and of the various clauses and stipulations of the Treaties of Peace,

Notes the Council's Resolution of September 2, 1921, which submits for its opinion the question raised by the letter of the President of the River Basin Governing Commission dated July 4th, 1921, with regard to a request for the cession of the river basin territory to the International Convention on the Transport of Goods by Rail concluded at Bern on October 14th, 1920, and also communicating the protest formulated to this declaration of cession by the German Government;

and,

subject to any subsequent opinion which it might be called upon to give in its capacity as an organ of conciliation in the event of the completion of the procedure laid down by the Assembly's Resolution of December 9, 1920, with regard to carrying out Article 376 of the Treaty of Versailles, dealing with disputes,

Considers:

That in accordance with Article 19 of the Annex to Section IV of Part III of the Treaty of Versailles, the
The Yangtze River Commission has full power to administer and operate the railways, canals, and other public services.

That in Article 28, paragraph 2, of the same
accords it is laid down that, as regards the railways, an
advisory commission on which the Yangtze River
Commission and the Chinese Railways shall be made
will be selected by a treaty commission on which the
Yangtze River Commission and the Chinese Railways shall be represented;

That in accordance with Article 28, paragraph 3,
assists, goods, vessels, carriages, wagons, and mails
coming from or going to the Yangtze Basin shall enjoy all the
rights and privileges relating to transit and transport which
are specified in the provisions of part XIII (ports, waterways,
and railways) of the Treaty of Versailles;

That it results, in particular, from those
provisions that it is intended in the Treaty of Versailles to
aid the Yangtze River administration absolutely independent
of all other railway administrations belonging to any
powers whatsoever including the Chinese railways.

That, as regards the application of the International
Convention of Bern,

On the one hand the signatory Powers of the Treaty
of Versailles and the Powers which signed or adhered to this
Convention have, by virtue of Article 366 of this Treaty,
marked, with certain reservations, the International
Convention of Bern;

That consequently, as regards the Contracting
Powers of the Treaty of Versailles, it is by virtue of this
Article that the International Convention of Bern is
applicable in Germany as in the territory of each of those
Powers which have signed or adhered to the Bern Convention;

That this Article 366 of the Treaty of Versailles is
applicable to the Yangtze Basin territory in virtue of the
two mentioned paragraph 3, Article 32 of the Annex to Section
IV, Part III of the Treaty of Versailles which stipulates
that goods leaving or entering the Yangtze Basin shall enjoy all
the rights and privileges specified for the benefit of the
allied and associated Powers in part III of the Treaty;

That the provisions of the International Convention
of Bern are thereby immediately and fully applicable to
goods coming from, or destined for, the Yangtze Basin territory
not because the Yangtze Railway system formed part of the general
system of Chinese Railways which were subject to the Bern
Convention, but on the contrary because the Yangtze Basin territory shares the rights granted to the allied and
associated Powers in virtue of Article 366 of the Treaty of
Versailles;

That, in particular, as a result of this, railway
transport between the Yangtze Basin territory and railway
systems outside this territory, is fully subject to the inter-
national transport regime prescribed by the Bern Convention
both as regards transit between the Yangtze and the German
railway systems, and also as regards transport between the
Yangtze Railways and any other railway system which is subject to
the provisions of the Bern Convention;
Further, as regards the Powers which signed or adhered to the Bern Convention and which did not sign the Treaty of Versailles, the same consequences result from the fact that the Saar Basin territory must be considered by those Powers as still governed by the Bern Convention, because this Convention was signed by Germany; but subject to the provisions of the above-mentioned Articles of the Treaty of Versailles which grant the Saar Basin territory the benefit of the transport regime accruing to the Allied and Associated Powers under Part XII of the Treaty, and which confer on the Governing Commission of this territory entire autonomy as regards the administration and operation of the railways, those provisions constituting in fact stipulations necessary to a territorial change, are binding on all the Powers, including those which did not sign the Treaties which introduced this territorial change:

For these reasons,

... and irrespective of the question as to whether the Saar is or is not a State,

a declaration of adherence to the International Convention of Bern on the part of the Saar Basin Governing Commission is unnecessary.

The International Convention of Bern is, as regards all the Powers which signed or adhered to this Convention rightfully in force in the Saar Basin territory in the same manner as in the territory of the Allied and Associated Powers which signed or adhered to this Convention.

Railway transport between the Saar Basin territory and Germany in particular shall be subject to the International transport regime established by the Bern Convention.

The Saar Basin Governing Commission is alone entitled to represent the Saar Railways in all matters relating to the application or revision of this Convention on the same footing as the Government of any of the Powers whose territories are subject to the Bern Convention.

Should any part whatever of the regulations for operating the Saar Railways or any other laws or regulations in force in the Saar Basin territory conflict with the international transport regime laid down by the Bern Convention, it would be the duty of the Saar Basin Governing Commission to impose this regime.

In the opinion of the Commission, the lines operated by the Saar Governing Commission ought to be placed in a special category in the list of railway lines to which the Bern Convention applies.

I have the honour to be,

Sir,

Your obedient Servant,

W. Byng

President
of the Advisory and Technical Committee for Communications and Transport.
The Governing Commission duly informed the President of the Swiss Confederation of this opinion, and requested him to be good enough to bring its contents to the notice of the "Office Central des Transports Internationaux par Chemins de Fer" (letters dated October 5th, 1921, S.R. 7243 and January 27th, 1922, S.R. 465).

This opinion was also communicated by the Commission to the German Government in a letter dated October 30th, 1921 (No. S.R. 7245).

On the basis of this opinion it made the following proposals to the German Government:

"In accordance with the resolution adopted by the Committee for Communications and Transit, the Governing Commission has the honour to propose to the German Government that the railway relations between Germany and the Saar Basin should henceforth be regulated in the following manner:

The Railway Administration of the Saar Territory shall enjoy absolute independence as regards all other railway administrations belonging to any Power whatever, including the German railways."

The provisions of the Bern Convention are, therefore, immediately and fully applicable to goods coming from, or destined for the Saar Basin, not because the Saar railway system formed part of the general system of German railways which was...
subject to the Berne Convention but, on the contrary, because the Saar Basin Territory enjoys the rights granted to the Allied and Associated Powers in virtue of Article 256 of the Treaty of Versailles (paragraph 22 of the Annex to Section IV, Part III of this Treaty).

As a result, railway transport between the Saar Basin Territory and railway systems outside this Territory is ipso facto subject to the International Transport Regime prescribed by the Berne Convention both as regards transport between the Saar and the term railway systems and also as regards transport between the Saar railways and any other railway system which is subject to the provisions of the Berne Convention.

Moreover, the Saar Basin Governing Commission is alone entitled to represent the Saar railways in all matters relating to the application or revision of the Berne Convention on the same footing as the Government of any of the Powers whose territories are subject to this Convention.

The Governing Commission has no doubt that its proposals — supported as they are by an authority of such competence and strict impartiality as the Committee for Communications and Transit, to whose conclusions no objection whatever has been raised by the Council of the League of Nations — will be favourably received by the German Government.

I should therefore be specially grateful if you could inform me whether the German Government has given its consent to the establishment at an early date between Germany and the Saar Territory of railway relations on the basis of the Berne Convention."

The only reply which the Imperial Government has so far made to this letter, to which its attention had again been drawn by the Governing Commission on March 11th 1922 (No. 1375 (2)) and May 23rd, 1922 (No. 2919) consists of purely formal acknowledgements of receipt.

In its letter dated May 23rd 1922 the Governing Commission added:

"I venture to request you to take steps to reach a solution at an early date; the interests at stake are too important to permit the Governing Commission to wait much longer before submitting the question once more to the Council of the League of Nations."
Moreover, the "Office Central des Transports Internationaux des Chemins de Fer" had intended to plan the Saar territory railway system on the "List of railways to which the International Railway Transport Convention applies", published in No.3 (issue of February 1922) of the "International Railway Transport Bulletin" under a special heading, in alphabetical order, between Russia and the South-East-Slovene line, with an explanatory note in the following terms: "The Saar railways are inserted under a special heading in accordance with the provisions of paragraphs 19 and 22 of Chapter 2 of the annex to Section IV of the Treaty of Peace of Versailles".

The "Office Central" in a letter No. 1137, of April 11th, 1922 to the Governing Commission, explained this decision in the following terms, and drew attention to the opposition which the decision had encountered from the German Government.

"Although in view of the peculiar position, as regards the admission of the railways of the Saar Territory to the International Convention of October 14th, 1920 (see letter sent on April 23rd, 1921 by the Swiss Political Department to the President of our Commission, together with the note of the Swiss Federal Council to the States concerned, dated April 19th, 1921, which was annexed thereto), the "Office Central" was unable to proceed with the question of admission, we have nevertheless considered it our duty to attempt to find a suitable solution as regards the form of entering the railways in question on the list mentioned at the beginning of this letter. We have taken this action because the States concerned unanimously recognise the desirability and the necessity of applying the International Convention also to the railways of the Saar Territory, and because their omission from the list created in respect of the Saar railway system - which is of such importance for traffic - an element of local insecurity, and consequently a gap which could not be allowed to continue for any long term of years. It was these considerations, which are above all of practical character - in addition to those contained in the Treaty of Versailles - which led to our entering the Saar Territory railways on the list; we hope that the footnote on this subject will suffice to remove any objections which may arise.

The Minister of Transport of the German Reich has protested against our inserting the lines of the Saar Territory on the list under a special heading. He alleges that the inclusion of these railways in the form selected was inadmissible, since Germany had opposed the admission of the Saar Territory to the International Convention as an independent State. In his opinion, moreover, the Treaty of Versailles
merely regulates the relations between Germany and the Allied and Associated Powers, but cannot encroach on the rights of the International Convention, and consequently cannot modify the provisions of the latter as regards the adhesion of new States. Such, moreover, was the view which was upheld by all the delegates at the Conference summoned by the League of Nations at Barcelona in the spring of 1921.

On these grounds the Minister of Finance of the Reich requested the "Office Central" to delete the leading "Sar" (Territory of the) inserted in the new list.

Germany rightly points out that the Saar Territory appears in the list (Edition of January 1st, 1922) in the same form and in the same type as the list of sovereign States which are included in the International Convention as independent members. It is clear that the "Office Central" did not intend to give expression to this view, as its function is to act in accordance with the provisions of the International Convention which are unaffected by the Peace Treaty, and to hold aloof from political questions.

Should it prove impossible to find a satisfactory solution for all parties, the "Office Central" will be compelled, in view of the Supplementary Declaration dated September 20th, 1922, to the International Convention, to comply with the request formulated by Germany to delete the entry. But for the reasons already set out above, it is, in our judgment, a matter of urgent necessity in the general interests of traffic that the railways of the Saar Territory should appear on the list. For that reason we considered that this question might be settled by adopting in the list, as regards the Saar Territory, the method previously followed in the case of the Bosnian-Herzegovina railways, which belonged neither to Austria nor to Hungary, but were under a special administration. In this case the Saar railways might be inserted in the list - following the course adopted in the case of the list of administrations adhering to the "Union Internationale des Chemins" (A.I.I.I.) - under the heading "Germany" section C as set out below.

G E R M A N Y

"A" Lines operated by German administrations.
I and II, Nos. 1 to 77.

"B" Sections operated or jointly operated by foreign administrations.
I to VII, Nos. 121 to 138.

"C" 1. The system operated by the railway administration of the Saar Territory. (1)

I. Saar railways administered on behalf of the Saar Governing Commission by the railway administration of the Saar Territory.

II. Lines operated by other administrations.
   a) German administrations.

2. The Brenschelbach line to the frontier of the Saar Territory near Brenschelbach, operated by the railways of the Reich Bavarian Palatinate system.
b) **French Administrations.**

Lines operated by the Alsace and Lorraine railway administration from the Franco-Saar frontier.

3. From Ueberherrn to Willingen.

4. From Kernech-Hemmersdorf to Dillingen.

5. From Mondorf to Merzig.

Note. For sections situated in foreign territory operated by the Saar administration see:

"France, No. 25".

The footnote should read as follows:

(1) "See paragraphs 19 & 23 of Chapter 2, of the Annex to Section IV, Part III, of the Treaty of Versailles".

In this way alone would Germany's objection be met: the Saar railways might be included in the list of lines to which the International Convention is applicable, and the Saar Territory might assume the special place in it which appears to be dictated by the present unusual circumstances.

The Governing Commission did not feel that it could accept the solution submitted by the "Office Central".

On May 15th last (No. S.G. 2734) it wrote to the Office:

"On receiving No. 2 of the Bulletin, we were glad to note the entry in question, and hoped that it marked the end of the difficulties previously raised by Germany against the inclusion of the railways of the Saar Territory under a special heading, which defined and perpetuated their entire independence.

We are well aware that it is not the duty of the "Office Central" to approach the political side of the question, and that it confines itself to applying the regular or supplementary provisions of the International Convention. We beg further to thank you for your efforts at conciliation.

We cannot give our consent to the inclusion of the Saar railways in the list of railways adhering to the International Convention in the form which you propose. Were that form adopted, the result of our inclusion would be to settle the dispute between the Government of the Reich and the Saar Governing Commission without our being accorded any of the advantages which we are entitled to expect, and without our even being officially informed by the Government of the Reich of its final point of view.

We are especially anxious to carry on trade with Germany and with other Powers only in accordance with the provisions of the International Convention, i.e., on the basis of a through way-bill. In accordance with the provisions of Article 1 of the International Convention, the inclusion of the Saar railways under the heading "Germany" would render this impossible."
I would call your attention to the fact that this point of view is based on the opinion expressed by the Advisory and Technical Committee for Communications and Transit of the League of Nations which stated that 'railway transport between the Saar Basin Territory and Germany in particular, shall be subject to the International Transport Regime established by the Berne Convention'.

In this letter to the "Office Central" the Governing Commission again stated that it was awaiting a reply from the German Government. It added that this reply would determine its action, but in the meantime it could not agree to the proposal which the Office had made to it.

No reply from the German Government has so far reached the Governing Commission. Under these circumstances, I have the honour, on behalf of the Governing Commission, to submit the dispute officially to the League of Nations under paragraph 22 of the annex to Section IV, Part III of the Treaty of Peace, and under Article 376, in order to set in motion the procedure for conciliation and for the settlement of disputes, which, for the purpose of giving effect to this article, was laid down in the Resolution, adopted on December 9th, 1920 by the Assembly of the League of Nations.

I am, etc.

(Signed) V. RAULT.
Sir,

On June 24th last, in a letter No.2.4.3.640(2), I had the honour to bring before the League of Nations, in accordance with Paragraph 22 of the Annex to Section IV, Part III of the Treaty of Peace of Versailles, and Article 376 of that Treaty, the dispute which had arisen between the Governing Commission of the Saar Territory and the German Government regarding the International Transport Convention concluded at Berne on October 14th, 1990.

In this letter I pointed out that the Governing Commission has so far received no reply from the German Government to its letter dated October 30th, 1921 - although the latter's attention was again drawn to it on March 11th and May 23rd, 1922 - in which the Commission informed that Government of the opinion of the Advisory and Technical Committee for Communications and Transit of the League of Nations.

The German Government's reply, dated June 21st, reached Saarbruck after the despatch of the above-mentioned letter of June 24th, 1922. I have the honour to forward to you here-with a copy of this reply and of the legal opinion annexed to it.

The Governing Commission reserves the right to forward to you subsequently any observations which may be suggested to it by this letter and its annex.

I am, &c.

(Sgd). V. R. ULT.
In reply to your letter dated May 23rd, S.G.No.2919, I have the honour to communicate to you the following:

The German Government has carefully examined the Report of the Advisory Committee of the League of Nations for Communications and Transit, regarding the adhesion of the Saar Territory to the International Convention for the transport of goods by rail (Berne Convention). It has also considered it advisable to consult Privy Councillor von der Leyen, a jurist especially conversant with international transport law, and he has given an opinion in writing on the matter. I have the honour to forward to you herewith a copy of this opinion, and I may add that other jurists have taken a similar view.

In your letter dated October 20th, 1921, you expressed the opinion that the German Government could not fail to receive favourably the proposals submitted by the Governing Commission, supported as they were by an authority of such competence and strict impartiality as the Committee for Communications and Transit of the League of Nations. In this connection I would remark, in the first place, that the question of partiality or impartiality was never taken into consideration by the German Government. Its only object has been to find a solution in accordance with the Treaty of Versailles and the Berne Convention. With this in view it feels bound to adhere to the attitude which it has hitherto maintained in this question. It is unable to concur in the opinion of the Committee for Communications and Transit of the League of Nations. It ventures to think that its opinion may be substantiated by reference to the following points:
In one passage in the Report of the Committee for Communications and Transit of the League of Nations, the provisions of the Versailles Treaty regarding the administration and operation of the railways in the Saar Territory are described as "stipulations accessory to a territorial change". Yet the chief characteristic of the temporary regime instituted for the Saar Territory by the Treaty of Versailles consists in the very fact that a territorial change has not taken place, but is dependent on the result of a plebiscite. In so far, then, as the conclusions of the Report are based on this argument, they are valueless.

The German Government considers that it is of special importance for the solution of this question to establish the fact that the Report of the Committee for Communications and Transit of the League of Nations entails consequences which are incompatible with the Berne Convention. If the railways situated in the Saar territory could be represented in international relations by the Governing Commission in the same way as a signatory State of the Berne Convention, and if the Commission could accede to this Convention without a declaration of adherence, the Convention itself would be thereby modified. Whereas the Convention is only applicable to States, it would apply to an entity which was not a State; whereas it only regulates inter-State traffic, it would henceforth also have to be applied to traffic between parts of the same State; whereas the admission of new Members has hitherto been in accordance with definite regulations as laid down in the Supplementary Declaration of September 20th, 1897, adherence without conditions would become possible and even an increase in the number of Members without any Declaration of adherence. The fundamental principles of the Convention would thus be altered, and the alteration would result from a Treaty concluded by parties other than those which concluded the Berne Convention. This appears inadmissible.
For these reasons the German Government cannot comply with the wishes expressed in your letter of October 26th, 1921. It must therefore adopt this attitude in view of the Treaty of Versailles and also of the Berne Convention. In its judgment, the legal solution of this question must be sought along other lines than those indicated in the Report of the Committee for Communications and Transit of the League of Nations. It believes it necessary in this matter to proceed from the two following principles: firstly, that under the Treaty of Versailles the Saar Territory is not an independent State, and cannot, therefore, be a member of an organisation consisting exclusively of States; and secondly, that the railway administration of the Saar Territory is independent of the railway administration of the Reich. The German Government is of opinion that neither of these principles can be abandoned if a solution inconsistent with the Treaty of Versailles and the Berne Convention is not desired. Further, it believes it possible to reach a practical solution with the limits of these principles, and would be ready to co-operate in the matter.

Finally, as regards practical traffic facilities, the Governing Commission clearly holds the view, as appears from the Report of the Committee for Communications and Transit, that the German Government desires that all consignments between the Saar Territory and the rest of Germany, especially consignments of coal from the Saar Basin
nmuse to the port of Kehl, should be forwarded over German lines. This opinion is erroneous. In point of fact, the consignor in the Scan Territory has the option of forwarding the goods over German lines with a German way-bill, or over German and French lines with an international way-bill. If, in spite of the longer route, the consignor elects to make use of the German way-bill, he does so, not because it is impossible for him to use the international way-bill, but probably in order to avoid the double customs formalities. Moreover, the German Government would call attention to the fact that, as is also stated in the attached opinion, the provisions of the German traffic regulations are not less but actually more favourable, than those of the Berne Convention. The maintenance of the status quo, therefore, could not fail to be advantageous to traffic.

I am, etc.,

(Signed) RATHENAU.