

187.

Treaties: Transportation by Air 1114/3/39

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W.R.
Def Mini

DEPARTMENT OF STATE
WASHINGTON

October 6, 1939



Excellency:

Reference is made to your predecessor's note no.

1114/2

234, dated June 15, 1939, by which the Department was

informed that there has arisen in the English courts a

question as to the interpretation of Article 1 (2) of

the Convention for the Unification of Certain Rules

Relating to International Transportation by Air, signed

at Warsaw on October 12, 1929, and that a majority of

the House of Lords have held that the expression "High

Contracting Party" as used in Article 1 (2) includes a

country which has signed the Convention but has not rati-

fied it. It was stated in the note under reference that

His Majesty's Government in the United Kingdom are of the

opinion that this decision of the House of Lords is not

in accordance with the intentions of the negotiators of

the Convention, and are desirous of obtaining an expression

of

His Excellency

The Right Honorable

The Marquess of Lothian, C.H.,

British Ambassador.

[Signature]
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Proof of acknowledgment a month.
Copy 120 ref.
in P.L. 1143. Oct 14 1939
Ad 12 call
Yes. 15.10.10
Not in force
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of the opinion of this Government, as a party to the Convention, in regard to the interpretation of the provision.

The Government of the United States concurs in the view of His Majesty's Government, to the effect that the expression "High Contracting Party" or "High Contracting Parties" as used in the Warsaw Convention is to be interpreted in accordance with the ordinary meaning of that expression when used in treaties or conventions; that is to say, it is the view of this Government that, so far as the provisions of treaties or conventions have any binding effect, the term "High Contracting Party" or "High Contracting Parties" appearing in any such treaty or convention signifies only such countries as have satisfied all requirements, pursuant to the provisions of the instrument itself, whereby such instrument is brought into force.

With reference to the decision of the majority of

the

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the House of Lords of His Majesty's Government, in regard to the interpretation of Article 1 (2) of the Convention for the Unification of Certain Rules Relating to International Transportation by Air, signed at Warsaw on October 12, 1929, it appears that as suggested in the note of June 15, 1939, the members of the House of Lords may have been misled by the use of the expression "High Contracting Parties" in the formal articles of the Convention, especially Articles 36, 37 and 40, where in certain instances the terms clearly have reference only to signatory Governments which have not ratified the Convention. Although the usage of the expression "High Contracting Party" to mean signatory countries which have not ratified may seem unusual, the term has been used with this meaning in certain provisions relating to procedure in the following international instruments, as well as in the articles of the Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded at Warsaw, October 12, 1929,

1929, to which reference has been made:

Final Protocol to the International Wireless
Telegraph Convention, signed at Berlin,
November 3, 1906 (Article VII);

Convention for the Unification of Certain Rules
of Law With Respect to Assistance and Salvage
at Sea, signed at Brussels, September 23, 1910
(Article 18);

Convention for the Unification of Certain Rules
Relating to Bills of Lading for the Carriage
of Goods by Sea, signed at Brussels, August 25,
1924 (Article 11, first paragraph);

Treaty for the Renunciation of War as an Instru-
ment of National Policy (Kellogg-Briand Peace
Pact), signed at Paris, August 27, 1928 (Arti-
cle III, first paragraph);

The term "High Contracting Party" embraces signatories
that have ratified as well as signatories that have not
ratified, in certain articles and paragraphs as indicated
below, in the following Conventions, all of which refer-
ences are to procedural matters:

Convention for the Unification of Certain Rules
Relating to International Transportation by Air,
concluded at Warsaw, October 12, 1929 (Articles
37, 38, paragraph 2, Article 39, paragraph 1, and

Article

Article 40).

Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva, July 13, 1931 (Article 26, first paragraph);

Convention for the Regulation of Whaling, signed at Geneva, September 24, 1931 (Article 20, paragraph 1); and

Sanitary Convention for Aerial Navigation, signed at The Hague, April 12, 1933 (Article 65, first paragraph).

From an examination of articles containing the substantive agreements entered into by means of the conventions in the above lists as well as of the above-cited formal provisions it would seem to be clear that the term "High Contracting Party" or "High Contracting Parties" has been used in many conventions with a different meaning in the articles which relate to procedure and formalities from the meaning it has in the articles which contain the substantive provisions of the convention, the meaning in the latter class of articles being Signatory Governments which have fulfilled the stipulations of the convention in regard to ratification and deposit of ratification or Governments which have fulfilled the requirements in regard to adherence, and are

therefore

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therefore bound by the convention, whereas in the formal articles the term is often used to mean Signatory Governments which have not fulfilled those requirements. Although the terms evidently are used with two meanings in the procedural articles it is believed that the sense of the provisions in each case renders it unlikely that mistakes are made in action taken pursuant to them. Greater clarity of expression has, however, been attained in certain conventions by the use of the terms "Signatory Powers" or "Signatory States" or such expressions as "Powers that have signed" and "Powers that have ratified" in articles relating to procedure. The following examples are cited:

General Act for the Repression of African Slave Trade, signed at Brussels, July 2, 1890
(Article XCIX, second paragraph);

Convention for the Suppression of the Abuse of Opium and Other Drugs, signed at The Hague, January 23, 1912 (Article 23, especially the fourth and fifth paragraphs);

Treaty Relative to the Protection of the Lives of Neutrals and Noncombatants at Sea in Time of War and to Prevent the Use in War of Noxious Gases and Chemicals, signed at Washington,

February 6,

February 6, 1922 (Article VI);

Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, signed at Geneva, June 17, 1925 (Articles 40 and 41);

Convention for the Safety of Life at Sea, signed at London, May 31, 1929 (Article 63, third paragraph);

International Load Line Convention, signed at London, July 5, 1930 (Article 22, second paragraph); and

Treaty for the Limitation of Naval Armament, signed at London, March 25, 1936 (Article 30 (1)).

This Government is unable to perceive how the terms "High Contracting Party" or "High Contracting Parties" when used in relation to the substantive provisions of a convention placing duties on or according rights to the parties can be construed as embracing parties that have not ratified or given definitive adherence to the convention. This Government considers that, in the case of any treaty or convention to which it is a signatory, it has not accepted any obligations or acquired any rights until it has duly ratified such instrument in accordance with its constitutional procedure and until the requirements of the treaty or convention with reference to

exchange

exchange or deposit of ratification also have been fulfilled by it. Moreover, this Government could accord rights under treaties and conventions only to countries which likewise have met the requirements of the particular instruments with respect to ratification or adherence. This position, it is believed, is in accordance with the customary and reasonable rule in regard to the interpretation of treaties.

In the view of this Government, it would be not only impracticable, but unreasonable, to construe the expressions "High Contracting Party" and "High Contracting Parties," where they appear in Article 1(2) of the Convention of 1929, as being applicable to and binding upon signatory Powers which have not deposited their ratifications in conformity with the provisions of Article 37 of that Convention, or as applicable to ratifying Powers in respect of signatory Powers which have not deposited their ratifications.

Accept, Excellency, the renewed assurances of my highest consideration.

