

"*Mr. Justice Harlan.*—Suppose this Tribunal should decide under the points in Article VI that the United States had or had not any right of property in the seals, and had or had not any right to protect them on the high seas, you would consider the United States bound by that ruling when the two nations, if the occasion arose, got together in negotiations on the question of damages.

"*Mr. Phelps.*—I should, Sir, if you put that question to me at this time.

"*Mr. Justice Harlan.*—That is what I understand Lord Hannen's question to embrace.

"*Mr. Phelps.*—If that is the purport of the inquiry, yes. I do not suppose, for instance, that if this Tribunal should decide that the United States had no right of property and no right of protection, and that under the circumstances vessels were seized belonging to British subjects, I do not understand that it would be open to the United States after that to insist that there was a right of seizure and a right of protection, in the face of the decision of the Tribunal.

"*Lord Hannen.*—I am bound to say that, assuming that that may be taken as authoritative, it would meet my question.

"*The President.*—And in that case the liability spoken of in Article VIII would merely refer to the question of indemnity, and then there would be no disagreement.

"*Mr. Phelps.*—That question, as it seems to me, which was put by his Lordship, refers rather to the inference that the United States' Government would feel itself bound to draw, in respect of the seizure, from the decision of the points of law in respect to the other branches of the Case.

"*Lord Hannen.*—Yes. The object of my inquiry would be completely met if it can be taken as authoritative. We will assume for a moment that the finding would be no property. If that can be tacked on to the Finding of Facts as to the seizure, then that would meet that which Sir Charles has been asking for, a finding that it was an illegal seizure; and, if so, I presume that would satisfy his requirement, as undoubtedly it would meet the view which I intended to indicate in the question I put to you.

"*Mr. Phelps.*—Your Lordship will see that if you ask the opinion of the Counsel of the United States what would be the just and right course for the United States' Government to pursue in the future negotiations if such were the finding of the Tribunal, our answer might be one way. If you ask us if we are authorized here to bind the United States to any conclusion in future negotiations, we must answer that we have no such authority, and have no right to make a declaration that would bind them.

"*Lord Hannen.*—That is why I put in the word 'authoritative.'

"*Mr. Phelps.*—We are not authorized to make any such statement or to give any such assurance. I am free to say, and I believe that to be the view of my associates, that after a finding by the Tribunal upon the five questions involved, it would not seem to me becoming on the part of the United States, who have agreed to abide by this Award, to contradict the Award when the question of its propriety arose upon this subordinate matter of seizure; but it must be a question for those who control the diplomatic relations of our Government, and is not a question that we are authorized in reference to.

"*The President.*—That is all very well, Mr. Phelps; but we have here the United States before us in the persons of their Agent and Counsel, and we have the right to ask them what is the authoritative and official interpretation put by the United States upon one word used in an Article of a Treaty which limits our powers. We have the right to ask you, what is the interpretation put by the United States upon those words 'question of liability'?

"*Mr. Phelps.*—That question the Tribunal is quite entitled to put, and that question we are quite ready to answer. We have endeavoured to answer it; that in the discussion of questions under Article VIII the Tribunal is invested with no authority whatever except to find the facts, leaving the legal consequences of those facts, so far as these seizures are concerned, for future consideration.

"Then if the Tribunal goes further, and asks me what that future consideration on the part of the United States' Government would be, I reply in the first place that I have no doubt that it ought to regard the decision of the Tribunal as conclusive upon the questions arising under this Treaty, but that I am not authorized to go beyond this arbitration and the power with which the Tribunal is invested under this Article, and give an authoritative assurance as to what those in charge of the United States' Govern-