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The Savarkar Case (Great Britain, France)

24 February 1911

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THE SAVARKAR CASE

PARTIES: Great Britain, France.

COMPROMIS: 25 October 1910.

**ARBITRATORS: Permanent Court of Arbitration: A. M. F. Beernaert;
Earl of Desart; L. Renault; G. Gram; A. F. Savornin
Lohman.**

AWARD: 24 February 1911.

Settlement of the questions of fact and law raised by the arrest and restoration to the mail steamer "Morea" at Marseilles, on the 8th July 1910, of the British Indian Savarkar, who had escaped from that vessel where he was in custody — Person taking refuge in the territory of a foreign State — Sovereignty of this State — Extradition.

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SYLLABUS ¹

This case arose as the result of the escape of Savarkar, a Hindoo, who was being transported from England to India for trial on a charge of abetment of murder, and who at Marseilles on July 8, 1910, escaped to the shore from the *Morea*, a British merchant vessel, which was carrying him. While being pursued by Indian policemen from the vessel, he was captured by a French police officer, who returned him to the *Morea*, which sailed with the fugitive on board on the following day. Subsequently, France demanded the restitution of the fugitive on the ground that his delivery to the British officers on board the vessel was contrary to the rules of international law, and, upon Great Britain's refusal to comply, the questions of law and fact involved were, by a *compromis* signed October 25, 1910,² submitted to the arbitration of a tribunal composed of the following members of the Permanent Court of Arbitration: August M. F. Beernaert of Belgium, Earl of Desart of England, Louis Renault of France, Gregors Gram of Norway and A. F. de Savornin Lohman of Holland. The sessions began February 14, 1911, and ended February 17, 1911, the decision being rendered February 24, 1911.

¹ *The Hague Court Reports*, edited by J. B. Scott, Carnegie Endowment for International Peace, New York, Oxford University Press, 1st series, 1916, p. 275.

² See *infra*, p. 249.

AGREEMENT BETWEEN THE UNITED KINGDOM AND FRANCE
REFERRING TO ARBITRATION THE CASE OF VINAYAK DAMO-
DAR SAVARKAR. SIGNED AT LONDON, 25 OCTOBER, 1910¹

THE GOVERNMENT OF HIS BRITANNIC MAJESTY AND THE GOVERNMENT OF THE FRENCH REPUBLIC having agreed, by an exchange of notes dated the 4th and 5th October, 1910, to submit to arbitration, on the one hand, the questions of fact and law raised by the arrest and restoration to the mail steamer "Morea", at Marseilles, on the 8th July, 1910, of the Indian, VINAYAK DAMODAR SAVARKAR, who had escaped from that vessel, on board of which he was in custody; and on the other hand, the demand of the Government of the Republic with a view to the restitution to them of SAVARKAR;

THE UNDERSIGNED, duly authorised to this effect, have arrived at the following Agreement:

Article 1. An Arbitral Tribunal, composed as hereinafter stated, shall undertake to decide the following question:

Should VINAYAK DAMODAR SAVARKAR, in conformity with the rules of international law, be restored or not be restored by His Britannic Majesty's Government to the Government of the French Republic?

Article 2. The Arbitral Tribunal shall be composed of five arbitrators chosen from the members of the Permanent Court at The Hague. The two Contracting Parties shall settle the composition of the Tribunal. Each of them may choose as arbitrator one of their nationals.

Article 3. On the 6th December, 1910, each of the High Contracting Parties shall forward to the Bureau of the Permanent Court fifteen copies of its case, with duly certified copies of all documents which it proposes to put in. The Bureau will undertake without delay to forward them to the arbitrators and to each Party: that is to say, two copies for each arbitrator and three copies for each Party. Two copies will remain in the archives of the Bureau.

On the 17th January, 1911, the High Contracting Parties will deposit in the same manner their counter-cases, with documents in support of them.

These counter-cases may necessitate replies, which must be presented within a period of fifteen days after the delivery of the counter-cases.

The periods fixed by the present Agreement for the delivery of the cases, counter-cases, and replies may be extended by mutual agreement between the High Contracting Parties.

Article 4. The Tribunal shall meet at The Hague the 14th February, 1911.

Each Party shall be represented by an Agent, who shall serve as intermediary between it and the Tribunal.

¹ Bureau international de la Cour permanente d'Arbitrage, *Protocoles des séances et sentence du Tribunal d'Arbitrage constitué en exécution du Compromis signé entre la France et la Grande-Bretagne le 25 octobre 1910 — Différend au sujet de l'arrestation et de la ré-intégration à bord du paquebot "Morea" le 8 juillet 1910, à Marseille du sujet britannique (British Indian) SAVARKAR.* La Haye, 1911, p. 7.

The Arbitral Tribunal may, if it thinks necessary, call upon one or other of the agents to furnish it with oral or written explanations, to which the agent of the other Party shall have the right to reply.

It shall also have the right to order the attendance of witnesses.

Article 5. The Parties may employ the French or English language. The members of the Tribunal may, at their own choice, make use of the French or English language. The decisions of the Tribunal shall be drawn up in the two languages.

Article 6. The award of the Tribunal shall be given as soon as possible, and, in any case, within thirty days following the date of its meeting at The Hague or that of the delivery of the written explanations which may have been furnished at its request. This period may, however, be prolonged at the request of the Tribunal if the two High Contracting Parties agree.

DONE in duplicate at London, October 25, 1910.

[L. S.] E. GREY

[L.] S. Paul CAMBON

NOTE ADRESSÉE PAR SON EXCELLENCE M. PAUL CAMBON,
AMBASSADEUR DE LA RÉPUBLIQUE FRANÇAISE À LONDRES,
À SON EXCELLENCE LE TRÈS HONORABLE SIR EDWARD GREY,
PRINCIPAL SECRÉTAIRE D'ÉTAT DE SA MAJESTÉ BRITANNIQUE
AU DÉPARTEMENT DES AFFAIRES ÉTRANGÈRES

25 octobre 1910

MONSIEUR LE MINISTRE,

J'ai l'honneur d'accuser réception à Votre Excellence de sa note de ce jour relative à l'arrangement que nous avons signé aujourd'hui en vue de soumettre à l'arbitrage certaines questions concernant l'arrestation et la restitution de VINAYAK DAMODAR SAVARKAR, à Marseille, le 8 juillet dernier. Je suis autorisé à constater, avec Votre Excellence, l'entente d'après laquelle toutes les questions qui pourraient s'élever au cours de cet arbitrage, et qui ne seraient pas prévues par le susdit arrangement, seront réglées conformément aux stipulations de la Convention, pour le règlement pacifique des conflits internationaux, signée à La Haye le 18 octobre 1907.

Il est également entendu que chaque partie supportera ses propres frais et une part égale des dépenses du Tribunal.

Veuillez agréer, etc.

Signé: Paul CAMBON

NOTE ADRESSÉE PAR SON EXCELLENCE LE TRÈS HONORABLE
SIR EDWARD GREY, PRINCIPAL SECRÉTAIRE D'ÉTAT DE SA
MAJESTÉ BRITANNIQUE AU DÉPARTEMENT DES AFFAIRES
ÉTRANGÈRES, À SON EXCELLENCE M. PAUL CAMBON, AMBAS-
SADEUR DE LA RÉPUBLIQUE FRANÇAISE, À LONDRES

25 octobre 1910.

YOUR EXCELLENCY,

With reference to the agreement which we have concluded this day, for the purpose of submitting to arbitration certain matters in connexion with the arrest and restitution of VINAYAK DAMODAR SAVARKAR, at Marseilles, in July last, I have the honour to place on record the understanding that any points which may arise in the course of this arbitration which are not covered by the terms of the Agreement above referred to shall be determined by the provisions of the International Convention for the pacific settlement of international disputes signed at the Hague, on the 18th of October, 1907.

It is further understood that each party shall bear its own expenses and an equal share of the expenses of the Tribunal.

I have the honour, etc.

Signed: E. GREY

AWARD DELIVERED ON 24 FEBRUARY 1911 BY THE ARBITRAL
TRIBUNAL APPOINTED TO DECIDE THE " CASE OF SAVARKAR " ¹

Solution des questions de fait et de droit soulevées par l'arrestation et la réintégration, à bord du paquebot « Morea » le 8 juillet 1910, à Marseille, du sujet britannique (British Indian) Savarkar, évadé de ce bâtiment où il était détenu — Personne réfugiée sur le territoire d'un Etat étranger — Souveraineté de cet Etat — Extradition.

WHEREAS, by an agreement dated the 25th October 1910, the Government of the French Republic and the Government of His Britannic Majesty agreed to submit to Arbitration the questions of fact and law raised by the arrest and restoration to the mail-steamer " Morea " at Marseilles, on the 8th July 1910, of the British Indian SAVARKAR, who had escaped from that vessel where he was in custody; and the demand made by the Government of the French Republic for the restitution of SAVARKAR;

the Arbitral Tribunal has been called upon to decide the following question:

Should VINAYAK DAMODAR SAVARKAR, in conformity with the rules of international law, be restored or not be restored by His Britannic Majesty's Government to the Government of the French Republic?

WHEREAS, for the purpose of carrying out this agreement, the two Governments have respectively appointed as Arbitrators:

His Excellency Monsieur BEERNAERT, Minister of State, Member of the Belgian Chamber of Representatives, etc., President;

The Right Honourable the EARL OF DESART, formerly His Britannic Majesty's Procurator-general;

Monsieur Louis RENAULT, Professor at the University of Paris, Minister plenipotentiary, Legal Adviser of the Department of Foreign Affairs;

Monsieur G. GRAM, formerly Norwegian Minister of State, Provincial Governor;

His Excellency, the Jonkheer A. F. DE SAVORNIN LOHMAN, Minister of State, Member of the Second Chamber of the States-General of the Netherlands.

And, further, the two Governments have respectively appointed as their Agents,

The Government of the French Republic :

Monsieur ANDRÉ WEISS, assistant legal Adviser of the Department of Foreign Affairs of the French Republic, Professor of Law at the University of Paris.

¹ Bureau international de la Cour permanente d'Arbitrage, *Protocoles des séances et sentence du Tribunal d'Arbitrage constitué en exécution du Compromis signé entre la France et la Grande-Bretagne le 25 octobre 1910 — Différend au sujet de l'arrestation et de la réintégration à bord du paquebot « Morea » le 8 juillet 1910, à Marseille du sujet britannique (British Indian) SAVARKAR.* La Haye, 1911, p. 54.

The Government of His Britannic Majesty:

Mr. EYRE CROWE, Councillor of Embassy, a Senior Clerk at the British Foreign Office.

WHEREAS, in accordance with the provisions of the Agreement, Cases, Counter-Cases and Replies have been duly exchanged between the Parties, and communicated to the Arbitrators.

WHEREAS the Tribunal met at The Hague on the 14th February 1911.

WHEREAS, with regard to the facts which gave rise to the difference of opinion between the two Governments, it is established that, by a letter, dated the 29th June 1910, the Commissioner of the Metropolitan Police in London informed the " Directeur de la Sûreté générale " at Paris, that the British-Indian VINAYAK DAMODAR SAVARKAR was about to be sent to India, in order to be prosecuted for abetment of murder etc., and that he would be on board the vessel " Morea " touching at Marseilles on the 7th or 8th July.

WHEREAS, in consequence of the receipt of this letter, the Ministry of the Interior informed the Prefect of the " Bouches-du-Rhône ", by a telegram dated the 4th July 1910, that the British Police were sending SAVARKAR to India on board the steamship " Morea ". This telegram states that some " révolutionnaires hindous " then on the Continent, might take advantage of this to further the escape of this foreigner, and the Prefect was requested to take the measures necessary to guard against any attempt of that kind.

WHEREAS the " Directeur de la Sûreté générale " replied by a letter dated the 9th July 1910 to the letter of the Commissioner of the Metropolitan Police, stating that he had given the necessary instructions for the purpose of guarding against the occurrence of any incident during the presence at Marseilles of the said VINAYAK DAMODAR SAVARKAR, on board the steamship " Morea ".

WHEREAS, on the 7th July, the " Morea " arrived at Marseilles. The following morning, between 6 and 7 o'clock, SAVARKAR, having succeeded in effecting his escape, swam ashore and began to run; he was arrested by a brigadier of the French maritime gendarmerie and taken back to the vessel. Three persons, who had come ashore from the vessel, assisted the brigadier in taking the fugitive back. On the 9th July, the " Morea " left Marseilles with SAVARKAR on board.

WHEREAS, from the statements made by the French brigadier to the Police at Marseilles, it appears:

that he saw the fugitive, who was almost naked, get out of a porthole of the steamer, throw himself into the sea and swim to the quay;

that at the same moment some persons from the ship, who were shouting and gesticulating, rushed over the bridge leading to the shore, in order to pursue him;

that a number of people on the quay commenced to shout " Arrêtez-le ";

that the brigadier at once went in pursuit of the fugitive and, coming up to him after running about five hundred metres, arrested him.

WHEREAS the brigadier declares that he was altogether unaware of the identity of the person with whom he was dealing, that he only thought that the man who was escaping was one of the crew, who had possibly committed an offence on board the vessel.

WHEREAS, with regard to the assistance afforded him by one of the crew and two Indian policemen, it appears from the explanations given on this point, that these men came up after the arrest of SAVARKAR, and that their intervention was only auxiliary to the action of the brigadier. The brigadier had seized SAVARKAR by one arm for the purpose of taking him back to the ship, and the prisoner went peaceably with him. The brigadier, assisted by the above mentioned persons, did not relax his hold, till he reached the half deck of the vessel.

The brigadier said that he did not know English.

From what has been stated, it would appear that the incident did not occupy more than a few minutes.

WHEREAS, it is alleged that the brigadier who effected the arrest was not ignorant of the presence of SAVARKAR on board the vessel, and that his orders, like those of all the French Police and Gendarmes, were to prevent any Hindoo from coming on board who had not got a ticket.

WHEREAS these circumstances show that the persons on board in charge of SAVARKAR might well have believed that they could count on the assistance of the French Police.

WHEREAS it is established that a "Commissaire" of the French Police came on board the vessel shortly after her arrival at the port, and, in accordance with the orders of the Prefect, placed himself at the disposal of the Commander in respect of the watch to be kept;

that, in consequence, this "Commissaire" was put into communication with the British Police Officer who, with other Police Officers, was in charge of the prisoner;

that the Prefect of Marseilles, as appears from a telegram dated the 13th July 1910 addressed to the Minister of the Interior, stated that he had acted in this matter in accordance with instructions given by the "Sûreté générale" to make the necessary arrangements to prevent the escape of SAVARKAR.

WHEREAS, having regard to what has been stated, it is manifest that the case is not one of recourse to fraud or force in order to obtain possession of a person who had taken refuge in foreign territory, and that there was not, in the circumstances of the arrest and delivery of SAVARKAR to the British Authorities and of his removal to India, anything in the nature of a violation of the sovereignty of France, and that all those who took part in the matter certainly acted in good faith and had no thought of doing anything unlawful.

WHEREAS, in the circumstances cited above, the conduct of the brigadier not having been disclaimed by his chiefs before the morning of the 9th July, that is to say before the "Morea" left Marseilles, the British Police might naturally have believed that the brigadier had acted in accordance with his instructions, or that his conduct had been approved.

WHEREAS, while admitting that an irregularity was committed by the arrest of SAVARKAR, and by his being handed over to the British Police, there is no rule of International Law imposing, in circumstances such as those which have been set out above, any obligation on the Power which has in its custody a prisoner, to restore him because of a mistake committed by the foreign agent who delivered him up to that Power.

FOR THESE REASONS:

The Arbitral Tribunal decides that the Government of His Britannic Majesty is not required to restore the said VINAYAK DAMODAR SAVARKAR to the Government of the French Republic.

DONE at The Hague, at the Permanent Court of Arbitration, February 24th, 1911.

The President: A. BEERNAERT

The Secretary-general: Michiels VAN VERDUYNEN
