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PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES

WITH

THE ANNUAL MESSAGE OF THE PRESIDENT TRANSMITTED TO CONGRESS DECEMBER 7, 1909

WASHINGTON
GOVERNMENT PRINTING OFFICE
1914

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MESSAGE.

To the Senate and the House of Representatives:

The relations of the United States with all foreign governments have continued upon the normal basis of amity and good understanding, and are very generally satisfactory.

EUROPE.

Pursuant to the provisions of the general treaty of arbitration concluded between the United States and Great Britain, April 4, 1908, a special agreement was entered into between the two countries on January 27, 1909, for the submission of questions relating to the fisheries on the North Atlantic Coast to a tribunal to be formed from members of the Permanent Court of Arbitration at The Hague.

In accordance with the provisions of the special agreement the printed case of each Government was, on October 4 last, submitted to the other and to the Arbitral Tribunal at The Hague, and the counter case of the United States is now in course of preparation.

The American rights under the fisheries article of the Treaty of 1818 have been a cause of difference between the United States and Great Britain for nearly seventy years. The interests involved are of great importance to the American fishing industry, and the final settlement of the controversy will remove a source of constant irritation and complaint. This is the first case involving such great international questions which has been submitted to the Permanent Court of Arbitration at The Hague.

The treaty between the United States and Great Britain concerning the Canadian International boundary, concluded April 11, 1908, authorizes the appointment of two commissioners to define and mark accurately the international boundary line between the United States and the Dominion of Canada in the waters of the Passamaquoddy Bay, and provides for the exchange of briefs within the period of six months. The briefs were duly presented within the prescribed period, but as the commissioners failed to agree within six months after the exchange of the printed statements, as required by the treaty, it has now become necessary to resort to the arbitration provided for in the article.

The International Fisheries Commission appointed pursuant to and under the authority of the Convention of April 11, 1908, between the United States and Great Britain, has completed a system of uniform and common international regulations for the protection and preservation of the food fishes in international boundary waters of the United States and Canada.

The regulations will be duly submitted to Congress with a view to the enactment of such legislation as will be necessary under the convention to put them into operation.

The Convention providing for the settlement of international differences between the United States and Canada, including the apportionment between the two countries of certain of the boundary waters and the appointment of commissioners to adjust certain other questions, signed on the 11th day of January, 1909, and to the ratification of which the Senate gave its advice and consent on March 3, 1909, has not yet been ratified on the part of Great Britain.

Commissioners have been appointed on the part of the United States to act jointly with Commissioners on the part of Canada in examining into the question of obstructions in the St. John River between Maine and New Brunswick, and to make recommendations for the regulation of the uses thereof, and are now engaged in this work.

Negotiations for an international conference to consider and reach an arrangement providing for the preservation and protection of the fur seals in the North Pacific are in progress with the Governments of Great Britain, Japan, and Russia. The attitude of the Governments interested leads me to hope for a satisfactory settlement of this question as the ultimate outcome of the negotiations.

The Second Peace Conference recently held at The Hague adopted a convention for the establishment of an International Prize Court upon the joint proposal of delegations of the United States, France, Germany and Great Britain. The law to be observed by the Tribunal in the decision of prize cases was, however, left in an uncertain and therefore unsatisfactory state. Article 7 of the Convention provided that the Court was to be governed by the provisions of treaties existing between the belligerents, but that "in the absence of such provisions, the court shall apply the rules of international law. If no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity." As, however, many questions in international maritime law are understood differently and therefore interpreted differently in various countries, it was deemed advisable not to intrust legislative powers to the proposed court, but to determine the rules of law properly applicable in a Conference of the representative maritime nations. Pursuant to an invitation of Great

Britain a conference was held at London from December 2, 1908, to February 26, 1909, in which the following Powers participated: the United States, Austria-Hungary, France, Germany, Great Britain, Italy, Japan, the Netherlands, Russia and Spain. The conference resulted in the Declaration of London, unanimously agreed to and signed by the participating Powers, concerning among other matters, the highly important subjects of blockade, contraband, the destruction of neutral prizes, and continuous voyages.

The Declaration of London is an eminently satisfactory codification of the international maritime law, and it is hoped that its reasonableness and fairness will secure its general adoption, as well as remove one of the difficulties standing in the way of the establishment of an International Prize Court.

Under the authority given in the sundry civil appropriation act, approved March 4, 1909, the United States was represented at the International Conference on Maritime Law at Brussels. The Conference met on the 28th of September last and resulted in the signature *ad referendum* of a convention for the unification of certain regulations with regard to maritime assistance and salvage and a convention for the unification of certain rules with regard to collisions at sea.

Two new projects of conventions which have not heretofore been considered in a diplomatic conference, namely, one concerning the limitation of the responsibility of shipowners, and the other concerning marine mortgages and privileges, have been submitted by the Conference to the different governments.

The Conference adjourned to meet again on April 11, 1910.

The International Conference for the purpose of promoting uniform legislation concerning letters of exchange, which was called by the Government of the Netherlands to meet at The Hague in September, 1909, has been postponed to meet at that capital in June, 1910. The United States will be appropriately represented in this Conference under the provision therefor already made by Congress.

The cordial invitation of Belgium to be represented by a fitting display of American progress in the useful arts and inventions at the World's fair to be held at Brussels in 1910 remains to be acted upon by the Congress. Mindful of the advantages to accrue to our artisans and producers in competition with their Continental rivals, I renew the recommendation heretofore made that provision be made for acceptance of the invitation and adequate representation in the Exposition.

The question arising out of the Belgian annexation of the Independent State of the Congo, which has so long and earnestly preoccupied the attention of this Government and enlisted the sympathy of our best citizens, is still open, but in a more hopeful stage.

This Government was among the foremost in the great work of uplifting the uncivilized regions of Africa and urging the extension of the benefits of civilization, education, and fruitful open commerce to that vast domain, and is a party to treaty engagements of all the interested powers designed to carry out that great duty to humanity. The way to better the original and adventitious conditions, so burdensome to the natives and so destructive to their development, has been pointed out, by observation and experience, not alone of American representatives, but by cumulative evidence from all quarters and by the investigations of Belgian Agents. The announced programmes of reforms, striking at many of the evils known to exist, are an augury of better things. The attitude of the United States is one of benevolent encouragement, coupled with a hopeful trust that the good work, responsibly undertaken and zealously perfected to the accomplishment of the results so ardently desired, will soon justify the wisdom that inspires them and satisfy the demands of humane sentiment throughout the world.

A convention between the United States and Germany, under which the nonworking provisions of the German patent law are made inapplicable to the patents of American citizens, was concluded on February 23, 1909, and is now in force. Negotiations for similar conventions looking to the placing of American inventors on the same footing as nationals have recently been initiated with other European governments whose laws require the local working of foreign patents.

Under an appropriation made at the last session of the Congress, a commission was sent on American cruisers to Monrovia to investigate the interests of the United States and its citizens in Liberia. Upon its arrival at Monrovia the commission was enthusiastically received, and during its stay in Liberia was everywhere met with the heartiest expressions of good will for the American Government and people and the hope was repeatedly expressed on all sides that this Government might see its way clear to do something to relieve the critical position of the Republic arising in a measure from external as well as internal and financial embarrassments.

The Liberian Government afforded every facility to the Commission for ascertaining the true state of affairs. The Commission also had conferences with representative citizens, interested foreigners and the representatives of foreign governments in Monrovia. Visits were made to various parts of the Republic and to the neighboring British colony of Sierra Leone, where the Commission was received by and conferred with the Governor.

It will be remembered that the interest of the United States in the Republic of Liberia springs from the historical fact of the foundation of the Republic by the colonization of American citizens of the Afri-

can race. In an early treaty with Liberia there is a provision under which the United States may be called upon for advice or assistance. Pursuant to this provision and in the spirit of the moral relationship of the United States to Liberia, that Republic last year asked this Government to lend assistance in the solution of certain of their national problems, and hence the Commission was sent.

The report of our commissioners has just been completed and is now under examination by the Department of State. It is hoped that there may result some helpful measures, in which case it may be my duty again to invite your attention to this subject.

The Norwegian Government, by a note addressed on January 26, 1909, to the Department of State, conveyed an invitation to the Government of the United States to take part in a conference which it is understood will be held in February or March, 1910, for the purpose of devising means to remedy existing conditions in the Spitzbergen Islands.

This invitation was conveyed under the reservation that the question of altering the status of the islands as countries belonging to no particular State, and as equally open to the citizens and subjects of all States, should not be raised.

The European Powers invited to this Conference by the Government of Norway were Belgium, Denmark, France, Germany, Great Britain, Russia, Sweden and the Netherlands.

The Department of State, in view of proofs filed with it in 1906, showing the American possession, occupation and working of certain coal-bearing lands in Spitzbergen, accepted the invitation under the reservation above stated, and under the further reservation that all interests in those islands already vested should be protected and that there should be equality of opportunity for the future. It was further pointed out that membership in the Conference on the part of the United States was qualified by the consideration that this Government would not become a signatory to any conventional arrangement concluded by the European members of the Conference which would imply contributory participation by the United States in any obligation or responsibility for the enforcement of any scheme of administration which might be devised by the Conference for the islands.

THE NEAR EAST.

His Majesty Mehmed V, Sultan of Turkey, recently sent to this country a special embassy to announce his accession. The quick transition of the Government of the Ottoman Empire from one of retrograde tendencies to a constitutional government with a Parliament and with progressive modern policies of reform and public improvement is one of the important phenomena of our times.

Constitutional government seems also to have made further advance in Persia. These events have turned the eyes of the world upon the Near East. In that quarter the prestige of the United States has spread widely through the peaceful influence of American schools, universities and missionaries. There is every reason why we should obtain a greater share of the commerce of the Near East since the conditions are more favorable now than ever before.

LATIN AMERICA.

One of the happiest events in recent Pan-American diplomacy was the pacific, independent settlement by the Governments of Bolivia and Peru of a boundary difference between them, which for some weeks threatened to cause war and even to entrain embitterments affecting other republics less directly concerned. From various quarters, directly or indirectly concerned, the intermediation of the United States was sought to assist in a solution of the controversy. Desiring at all times to abstain from any undue mingling in the affairs of sister republics and having faith in the ability of the Governments of Peru and Bolivia themselves to settle their difference in a manner satisfactory to themselves which, viewed with magnanimity, would assuage all embitterment, this Government steadily abstained from being drawn into the controversy and was much gratified to find its confidence justified by events.

On the 9th of July next there will open at Buenos Aires the Fourth Pan-American Conference. This conference will have a special meaning to the hearts of all Americans, because around its date are clustered the anniversaries of the independence of so many of the American republics. It is not necessary for me to remind the Congress of the political, social and commercial importance of these gatherings. You are asked to make liberal appropriation for our participation. If this be granted, it is my purpose to appoint a distinguished and representative delegation, qualified fittingly to represent this country and to deal with the problems of intercontinental interest which will there be discussed.

The Argentine Republic will also hold from May to November, 1910, at Buenos Aires, a great International Agricultural Exhibition in which the United States has been invited to participate. Considering the rapid growth of the trade of the United States with the Argentine Republic and the cordial relations existing between the two nations, together with the fact that it provides an opportunity to show deference to a sister republic on the occasion of the celebration of its national independence, the proper Departments of this Government are taking steps to apprise the interests concerned of the opportunity afforded by this Exhibition, in which appropriate

participation by this country is so desirable. The designation of an official representative is also receiving consideration.

To-day, more than ever before, American capital is seeking investment in foreign countries, and American products are more and more generally seeking foreign markets. As a consequence, in all countries there are American citizens and American interests to be protected, on occasion, by their Government. These movements of men, of capital, and of commodities bring peoples and governments closer together and so form bonds of peace and mutual dependency, as they must also naturally sometimes make passing points of friction. The resultant situation inevitably imposes upon this Government vastly increased responsibilities. This Administration, through the Department of State and the foreign service, is lending all proper support to legitimate and beneficial American enterprises in foreign countries, the degree of such support being measured by the national advantages to be expected. A citizen himself can not by contact or otherwise divest himself of the right, nor can this Government escape the obligation, of his protection in his personal and property rights when these are unjustly infringed in a foreign country. To avoid ceaseless vexations it is proper that in considering whether American enterprise should be encouraged or supported in a particular country, the Government should give full weight not only to the national, as opposed to the individual benefits to accrue, but also to the fact whether or not the Government of the country in question is in its administration and in its diplomacy faithful to the principles of moderation, equity and justice upon which alone depend international credit, in diplomacy as well as in finance.

The Pan-American policy of this Government has long been fixed in its principles and remains unchanged. With the changed circumstances of the United States and of the Republics to the south of us, most of which have great natural resources, stable government and progressive ideals, the apprehension which gave rise to the Monroe Doctrine may be said to have nearly disappeared, and neither the doctrine as it exists nor any other doctrine of American policy should be permitted to operate for the perpetuation of irresponsible government, the escape of just obligations, or the insidious allegation of dominating ambitions on the part of the United States.

Beside the fundamental doctrines of our Pan-American policy there have grown up a realization of political interests, community of institutions and ideals, and a flourishing commerce. All these bonds will be greatly strengthened as time goes on and increased facilities, such as the great bank soon to be established in Latin America, supply the means for building up the colossal intercontinental commerce of the future.

My meeting with President Diaz and the greeting exchanged on both American and Mexican soil served, I hope, to signalize the close and cordial relations which so well bind together this Republic and the great Republic immediately to the south, between which there is so vast a network of material interests.

I am happy to say that all but one of the cases which for so long vexed our relations with Venezuela have been settled within the past few months and that, under the enlightened régime now directing the Government of Venezuela, provision has been made for arbitration of the remaining case before The Hague Tribunal.

On July 30, 1909, the Government of Panama agreed, after considerable negotiation, to indemnify the relatives of the American officers and sailors who were brutally treated, one of them having, indeed, been killed by the Panaman police this year.

The sincere desire of the Government of Panama to do away with a situation where such an accident could occur is manifest in the recent request in compliance with which this Government has lent the services of an officer of the Army to be employed by the Government of Panama as Instructor of Police.

The sanitary improvements and public works undertaken in Cuba prior to the present administration of that Government, in the success of which the United States is interested under the treaty, are reported to be making good progress and since the Congress provided for the continuance of the reciprocal commercial arrangement between Cuba and the United States assurance has been received that no negotiations injuriously affecting the situation will be undertaken without consultation.

The collection of the customs of the Dominican Republic through the general receiver of customs appointed by the President of the United States in accordance with the convention of February 8, 1907, has proceeded in an uneventful and satisfactory manner. The customs receipts have decreased, owing to disturbed political and economic conditions and to a very natural curtailment of imports in view of the anticipated revision of the Dominican tariff schedule. The payments to the fiscal agency fund for the service of the bonded debt of the Republic, as provided by the convention, have been regularly and promptly made, and satisfactory progress has been made in carrying out the provisions of the convention looking towards the completion of the adjustment of the debt and the acquirement by the Dominican Government of certain concessions and monopolies which have been a burden to the commerce of the country. In short, the receivership has demonstrated its ability, even under unfavorable economic and political conditions, to do the work for which it was intended.

This Government was obliged to intervene diplomatically to bring about arbitration or settlement of the claim of the Emery Company against Nicaragua, which it had long before been agreed should be arbitrated. A settlement of this troublesome case was reached by the signature of a protocol on September 18, 1909.

Many years ago diplomatic intervention became necessary to the protection of the interests in the American claim of Alsop and Company against the Government of Chile. The Government of Chile had frequently admitted obligation in the case and had promised this Government to settle it. There had been two abortive attempts to do so through arbitral commissions, which failed through lack of jurisdiction. Now, happily, as the result of the recent diplomatic negotiations, the Governments of the United States and of Chile, actuated by the sincere desire to free from any strain those cordial and friendly relations upon which both set such store, have agreed by a protocol to submit the controversy to definitive settlement by His Britannic Majesty, Edward VII.

Since the Washington Conventions of 1907 were communicated to the Government of the United States as a consulting and advising party, this Government has been almost continuously called upon by one or another, and in turn by all of the five Central American Republics, to exert itself for the maintenance of the Conventions. Nearly every complaint has been against the Zelaya Government of Nicaragua, which has kept Central America in constant tension or turmoil. The responses made to the representations of Central American Republics, as due from the United States on account of its relation to the Washington Conventions, have been at all times conservative and have avoided, so far as possible, any semblance of interference, although it is very apparent that the considerations of geographic proximity to the Canal Zone and of the very substantial American interests in Central America give to the United States a special position in the zone of these Republics and the Caribbean Sea.

I need not rehearse here the patient efforts of this Government to promote peace and welfare among these Republics, efforts which are fully appreciated by the majority of them who are loyal to their true interests. It would be no less unnecessary to rehearse here the sad tale of unspeakable barbarities and oppression alleged to have been committed by the Zelaya Government. Recently two Americans were put to death by order of President Zelaya himself. They were reported to have been regularly commissioned officers in the organized forces of a revolution which had continued many weeks and was in control of about half of the Republic, and as

such, according to the modern enlightened practice of civilized nations, they were entitled to be dealt with as prisoners of war.

At the date when this message is printed this Government has terminated diplomatic relations with the Zelaya Government, for reasons made public in a communication to the former Nicaraguan chargé d'affaires, and is intending to take such future steps as may be found most consistent with its dignity, its duty to American interests, and its moral obligations to Central America and to civilization. It may later be necessary for me to bring this subject to the attention of the Congress in a special message.

The International Bureau of American Republics has carried on an important and increasing work during the last year. In the exercise of its peculiar functions as an international agency, maintained by all the American Republics for the development of Pan-American commerce and friendship, it has accomplished a great practical good which could be done in the same way by no individual department or bureau of one government, and is therefore deserving of your liberal support. The fact that it is about to enter a new building, erected through the munificence of an American philanthropist and the contributions of all the American nations, where both its efficiency of administration and expense of maintenance will naturally be much augmented, further entitles it to special consideration.

THE FAR EAST.

In the Far East this Government preserves unchanged its policy of supporting the principle of equality of opportunity and scrupulous respect for the integrity of the Chinese Empire, to which policy are pledged the interested Powers of both East and West.

By the Treaty of 1903 China has undertaken the abolition of likin with a moderate and proportionate raising of the customs tariff along with currency reform. These reforms being of manifest advantage to foreign commerce as well as to the interests of China, this Government is endeavoring to facilitate these measures and the needful acquiescence of the treaty Powers. When it appeared that Chinese likin revenues were to be hypothecated to foreign bankers in connection with a great railway project, it was obvious that the Governments whose nationals held this loan would have a certain direct interest in the question of the carrying out by China of the reforms in question. Because this railroad loan represented a practical and real application of the open door policy through cooperation with China by interested Powers as well as because of its relations to the reforms referred to above, the Administration deemed American participation to be of great national interest. Happily, when it was as a matter of broad policy urgent that this opportunity should not

be lost, the indispensable instrumentality presented itself when a group of American bankers, of international reputation and great resources, agreed at once to share in the loan upon precisely such terms as this Government should approve. The chief of those terms was that American railway material should be upon an exact equality with that of the other nationals joining in the loan in the placing of orders for this whole railroad system. After months of negotiation the equal participation of Americans seems at last assured. It is gratifying that Americans will thus take their share in this extension of these great highways of trade, and to believe that such activities will give a real impetus to our commerce and will prove a practical corollary to our historic policy in the Far East.

The Imperial Chinese Government in pursuance of its decision to devote funds from the portion of the indemnity remitted by the United States to the sending of students to this country has already completed arrangements for carrying out this purpose, and a considerable body of students have arrived to take up their work in our schools and universities. No one can doubt the happy effect that the associations formed by these representative young men will have when they return to take up their work in the progressive development of their country.

The results of the Opium Conference held at Shanghai last spring at the invitation of the United States have been laid before the Government. The report shows that China is making remarkable progress and admirable efforts toward the eradication of the opium evil and that the Governments concerned have not allowed their commercial interests to interfere with a helpful cooperation in this reform. Collateral investigations of the opium question in this country lead me to recommend that the manufacture, sale and use of opium and its derivatives in the United States should be so far as possible more rigorously controlled by legislation.

In one of the Chinese-Japanese Conventions of September 4 of this year there was a provision which caused considerable public apprehension in that upon its face it was believed in some quarters to seek to establish a monopoly of mining privileges along the South Manchurian and Antung-Mukden Railroads, and thus to exclude Americans from a wide field of enterprise, to take part in which they were by treaty with China entitled. After a thorough examination of the Conventions and of the several contextual documents, the Secretary of State reached the conclusion that no such monopoly was intended or accomplished. However, in view of the widespread discussion of this question, to confirm the view it had reached, this Government made inquiry of the Imperial Chinese and Japanese Governments and received from each official assurance that the provision had no purpose inconsistent with the policy of equality of

opportunity to which the signatories, in common with the United States, are pledged.

Our traditional relations with the Japanese Empire continue cordial as usual. As the representative of Japan, His Imperial Highness Prince Kuni visited the Hudson-Fulton Celebration. The recent visit of a delegation of prominent business men as guests of the chambers of commerce of the Pacific slope, whose representatives had been so agreeably received in Japan, will doubtless contribute to the growing trade across the Pacific, as well as to that mutual understanding which leads to mutual appreciation. The arrangement of 1908 for a cooperative control of the coming of laborers to the United States has proved to work satisfactorily. The matter of a revision of the existing treaty between the United States and Japan which is terminable in 1912 is already receiving the study of both countries.

The Department of State is considering the revision in whole or in part, of the existing treaty with Siam, which was concluded in 1856 and is now, in respect to many of its provisions, out of date.

THE DEPARTMENT OF STATE.

I earnestly recommend to the favorable action of the Congress the estimates submitted by the Department of State and most especially the legislation suggested in the Secretary of State's letter of this date whereby it will be possible to develop and make permanent the reorganization of the Department upon modern lines in a manner to make it a thoroughly efficient instrument in the furtherance of our foreign trade and of American interests abroad. The plan to have Divisions of Latin-American and Far Eastern Affairs and to institute a certain specialization in business with Europe and the Near East will at once commend itself. These politico-geographical divisions and the detail from the diplomatic or consular service to the Department of a number of men, who bring to the study of complicated problems in different parts of the world practical knowledge recently gained on the spot, clearly is of the greatest advantage to the Secretary of State in foreseeing conditions likely to arise and in conducting the great variety of correspondence and negotiation. It should be remembered that such facilities exist in the foreign offices of all the leading commercial nations and that to deny them to the Secretary of State would be to place this Government at a great disadvantage in the rivalry of commercial competition.

The consular service has been greatly improved under the law of April 5, 1906, and the Executive Order of June 27, 1906, and I commend to your consideration the question of embodying in a

statute the principles of the present Executive Order upon which the efficiency of our consular service is wholly dependent.

In modern times political and commercial interests are interrelated, and in the negotiation of commercial treaties, conventions and tariff agreements, the keeping open of opportunities and the proper support of American enterprises, our diplomatic service is quite as important as the consular service to the business interests of the country. Impressed with this idea and convinced that selection after rigorous examination, promotion for merit solely and the experience only to be gained through the continuity of an organized service are indispensable to a high degree of efficiency in the diplomatic service, I have signed an Executive Order as the first step toward this very desirable result. Its effect should be to place ail secretaries in the diplomatic service in much the same position as consular officers are now placed and to tend to the promotion of the most efficient to the grade of minister, generally leaving for outside appointment such posts of the grade of ambassador or minister as it may be expedient to fill from without the service. It is proposed also to continue the practice instituted last summer of giving to all newly appointed secretaries at least one month's thorough training in the Department of State before they proceed to their posts. This has been done for some time in regard to the consular service with excellent results.

Under a provision of the Act of August 5, 1909, I have appointed three officials to assist the officers of the Government in collecting information necessary to a wise administration of the tariff act of August 5, 1909. As to questions of customs administration they are cooperating with the officials of the Treasury Department and as to matters of the needs and the exigencies of our manufacturers and exporters, with the Department of Commerce and Labor, in its relation to the domestic aspect of the subject of foreign commerce. In the study of foreign tariff treatment they will assist the Bureau of Trade Relations of the Department of State. It is hoped thus to coordinate and bring to bear upon this most important subject all the agencies of the Government which can contribute anything to its efficient handling.

As a consequence of Section 2 of the tariff act of August 5, 1909, it becomes the duty of the Secretary of State to conduct as diplomatic business all the negotiations necessary to place him in a position to advise me as to whether or not a particular country unduly discriminates against the United States in the sense of the statute referred to. The great scope and complexity of this work, as well as the obligation to lend all proper aid to our expanding commerce, is met by the expansion of the Bureau of Trade Relations as set forth in the estimates for the Department of State.

OTHER DEPARTMENTS.

I have thus in some detail described the important transactions of the State Department since the beginning of this Administration for the reason that there is no provision either by statute or custom for a formal report by the Secretary of State to the President or to Congress, and a Presidential message is the only means by which the condition of our foreign relations is brought to the attention of Congress and the public.

In dealing with the affairs of the other Departments, the heads of which all submit annual reports, I shall touch only those matters that seem to me to call for special mention on my part without minimizing in any way the recommendations made by them for legislation affecting their respective Departments, in all of which I wish to express my general concurrence.

GOVERNMENT EXPENDITURES AND REVENUES.

Perhaps the most important question presented to this Administration is that of economy in expenditures and sufficiency of revenue. The deficit of the last fiscal year, and the certain deficit of the current year, prompted Congress to throw a greater responsibility on the Executive and the Secretary of the Treasury than had heretofore been declared by statute. This declaration imposes upon the Secretary of the Treasury the duty of assembling all the estimates of the Executive Departments, bureaus, and offices, of the expenditures necessary in the ensuing fiscal year, and of making an estimate of the revenues of the Government for the same period; and if a probable deficit is thus shown, it is made the duty of the President to recommend the method by which such deficit can be met.

The report of the Secretary shows that the ordinary expenditures for the current fiscal year ending June 30, 1910, will exceed the estimated receipts by $34,075,620. If to this deficit is added the sum to be disbursed for the Panama Canal, amounting to $38,000,000, and $1,000,000 to be paid on the public debt, the deficit of ordinary receipts and expenditures will be increased to a total deficit of $73,075,620. This deficit the Secretary proposes to meet by the proceeds of bonds issued to pay the cost of constructing the Panama Canal. I approve this proposal.

The policy of paying for the construction of the Panama Canal, not out of current revenue, but by bond issues, was adopted in the Spooner Act of 1902, and there seems to be no good reason for departing from the principle by which a part at least of the burden of the cost of the canal shall fall upon our posterity who are to enjoy it; and there is all the more reason for this view because the actual cost to date of the canal, which is now half done and which will be com-

pleted January 1, 1915, shows that the cost of engineering and construction will be $297,766,000, instead of $139,705,200, as originally estimated. In addition to engineering and construction, the other expenses, including sanitation and government, and the amount paid for the properties, the franchise, and the privilege of building the canal, increase the cost by $75,435,000, to a total of $375,201,000. The increase in the cost of engineering and construction is due to a substantial enlargement of the plan of construction by widening the canal 100 feet in the Culebra cut and by increasing the dimensions of the locks, to the underestimate of the quantity of the work to be done under the original plan, and to an underestimate of the cost of labor and materials both of which have greatly enhanced in price since the original estimate was made.

In order to avoid a deficit for the ensuing fiscal year, I directed the heads of Departments in the preparation of their estimates to make them as low as possible consistent with imperative governmental necessity. The result has been, as I am advised by the Secretary of the Treasury, that the estimates for the expenses of the Government for the next fiscal year ending June 30, 1911, are less than the appropriations for this current fiscal year by $42,818,000. So far as the Secretary of the Treasury is able to form a judgment as to future income, and compare it with the expenditures for the next fiscal year ending June 30, 1911, and excluding payments on account of the Panama Canal, which will doubtless be taken up by bonds, there will be a surplus of $35,931,000.

In the present estimates the needs of the Departments and of the Government have been cut to the quick, so to speak, and any assumption on the part of Congress, so often made in times past, that the estimates have been prepared with the expectation that they may be reduced, will result in seriously hampering proper administration.

The Secretary of the Treasury points out what should be carefully noted in respect to this reduction in governmental expenses for the next fiscal year, that the economies are of two kinds—first, there is a saving in the permanent administration of the Departments, bureaus, and offices of the Government; and, second, there is a present reduction in expenses by a postponement of projects and improvements that ultimately will have to be carried out, but which are now delayed with the hope that additional revenue in the future will permit their execution without producing a deficit.

It has been impossible in the preparation of estimates greatly to reduce the cost of permanent administration. This can not be done without a thorough reorganization of bureaus, offices, and departments. For the purpose of securing information which may enable the executive and the legislative branches to unite in a plan for the

permanent reduction of the cost of governmental administration, the Treasury Department has instituted an investigation by one of the most skilled expert accountants in the United States. The result of his work in two or three bureaus, which, if extended to the entire Government, must occupy two or more years, has been to show much room for improvement and opportunity for substantial reductions in the cost and increased efficiency of administration. The object of the investigation is to devise means to increase the average efficiency of each employee. There is great room for improvement toward this end, not only by the reorganization of bureaus and departments and in the avoidance of duplication, but also in the treatment of the individual employee.

Under the present system it constantly happens that two employees receive the same salary when the work of one is far more difficult and important and exacting than that of the other. Superior ability is not rewarded or encouraged. As the classification is now entirely by salary, an employee often rises to the highest class while doing the easiest work, for which alone he may be fitted. An investigation ordered by my predecessor resulted in the recommendation that the civil service be reclassified according to the kind of work, so that the work requiring most application and knowledge and ability shall receive most compensation. I believe such a change would be fairer to the whole force and would permanently improve the personnel of the service.

More than this, every reform directed toward the improvement in the average efficiency of government employees must depend on the ability of the Executive to eliminate from the government service those who are inefficient from any cause, and as the degree of efficiency in all the Departments is much lessened by the retention of old employees who have outlived their energy and usefulness, it is indispensable to any proper system of economy that provision be made so that their separation from the service shall be easy and inevitable. It is impossible to make such provision unless there is adopted a plan of civil pensions.

Most of the great industrial organizations, and many of the well-conducted railways of this country, are coming to the conclusion that a system of pensions for old employees, and the substitution therefor of younger and more energetic servants, promotes both economy and efficiency of administration.

I am aware that there is a strong feeling in both Houses of Congress, and possibly in the country, against the establishment of civil pensions, and that this has naturally grown out of the heavy burden of military pensions, which it has always been the policy of our Government to assume; but I am strongly convinced that no other practical solution of the difficulties presented by the superan-

nuation of civil servants can be found than that of a system of civil pensions.

The business and expenditures of the Government have expanded enormously since the Spanish war, but as the revenues have increased in nearly the same proportion as the expenditures until recently, the attention of the public, and of those responsible for the Government, has not been fastened upon the question of reducing the cost of administration. We can not, in view of the advancing prices of living, hope to save money by a reduction in the standard of salaries paid. Indeed, if any change is made in that regard, an increase rather than a decrease will be necessary; and the only means of economy will be in reducing the number of employees and in obtaining a greater average of efficiency from those retained in the service.

Close investigation and study needed to make definite recommendations in this regard will consume at least two years. I note with much satisfaction the organization in the Senate of a Committee on Public Expenditures, charged with the duty of conducting such an investigation, and I tender to that committee all the assistance which the executive branch of the Government can possibly render.

FRAUDS IN THE COLLECTION OF CUSTOMS.

I regret to refer to the fact of the discovery of extensive frauds in the collection of the customs revenue at New York City, in which a number of the subordinate employees in the weighing and other departments were directly concerned, and in which the beneficiaries were the American Sugar Refining Company and others. The frauds consisted in the payment of duty on underweights of sugar. The Government has recovered from the American Sugar Refining Company all that it is shown to have been defrauded of. The sum was received in full of the amount due, which might have been recovered by civil suit against the beneficiary of the fraud, but there was an express reservation in the contract of settlement by which the settlement should not interfere with, or prevent the criminal prosecution of everyone who was found to be subject to the same.

Criminal prosecutions are now proceeding against a number of the Government officers. The Treasury Department and the Department of Justice are exerting every effort to discover all the wrongdoers, including the officers and employees of the companies who may have been privy to the fraud. It would seem to me that an investigation of the frauds by Congress at present, pending the probing by the Treasury Department and the Department of Justice, as proposed, might by giving immunity and otherwise prove an embarrassment in securing conviction of the guilty parties.

MAXIMUM AND MINIMUM CLAUSE IN TARIFF ACT.

Two features of the new tariff act call for special reference. By virtue of the clause known as the "Maximum and Minimum" clause, it is the duty of the Executive to consider the laws and practices of other countries with reference to the importation into those countries of the products and merchandise of the United States, and if the Executive finds such laws and practices not to be *unduly discriminatory* against the United States, the minimum duties provided in the bill are to go into force. Unless the President makes such a finding, then the maximum duties provided in the bill, that is, an increase of twenty-five per cent *ad valorem* over the minimum duties, are to be in force. Fear has been expressed that this power conferred and duty imposed on the Executive is likely to lead to a tariff war. I beg to express the hope and belief that no such result need be anticipated.

The discretion granted to the Executive by the terms "unduly discriminatory" is wide. In order that the maximum duty shall be charged against the imports from a country, it is necessary that he shall find on the part of that country not only discriminations in its laws or the practice under them against the trade of the United States, but that the discriminations found shall be undue; that is, without good and fair reason. I conceive that this power was reposed in the President with the hope that the maximum duties might never be applied in any case, but that the power to apply them would enable the President and the State Department through friendly negotiation to secure the elimination from the laws and the practice under them of any foreign country of that which is unduly discriminatory. No one is seeking a tariff war or a condition in which the spirit of retaliation shall be aroused.

USES OF THE NEW TARIFF BOARD.

The new tariff law enables me to appoint a tariff board to assist me in connection with the Department of State in the administration of the minimum and maximum clause of the act and also to assist officers of the Government in the administration of the entire law. An examination of the law and an understanding of the nature of the facts which should be considered in discharging the functions imposed upon the Executive show that I have the power to direct the tariff board to make a comprehensive glossary and encyclopedia of the terms used and articles embraced in the tariff law, and to secure information as to the cost of production of such goods in this country and the cost of their production in foreign countries. I have therefore appointed a tariff board consisting of three members and have directed them to perform all the duties above described. This work will perhaps take two or three years,

and I ask from Congress a continuing annual appropriation equal to that already made for its prosecution. I believe that the work of this board will be of prime utility and importance whenever Congress shall deem it wise again to readjust the customs duties. If the facts secured by the tariff board are of such a character as to show generally that the rates of duties imposed by the present tariff law are excessive under the principles of protection as described in the platform of the successful party at the late election, I shall not hesitate to invite the attention of Congress to this fact and to the necessity for action predicated thereon. Nothing, however, halts business and interferes with the course of prosperity so much as the threatened revision of the tariff, and until the facts are at hand, after careful and deliberate investigation, upon which such revision can properly be undertaken, it seems to me unwise to attempt it. The amount of misinformation that creeps into arguments *pro* and *con* in respect to tariff rates is such as to require the kind of investigation that I have directed the tariff board to make, an investigation undertaken by it wholly without respect to the effect which the facts may have in calling for a readjustment of the rates of duty.

WAR DEPARTMENT.

In the interest of immediate economy and because of the prospect of a deficit, I have required a reduction in the estimates of the War Department for the coming fiscal year, which brings the total estimates down to an amount forty-five millions less than the corresponding estimates for last year. This could only be accomplished by cutting off new projects and suspending for the period of one year all progress in military matters. For the same reason I have directed that the Army shall not be recruited up to its present authorized strength. These measures can hardly be more than temporary—to last until our revenues are in better condition and until the whole question of the expediency of adopting a definite military policy can be submitted to Congress, for I am sure that the interests of the military establishment are seriously in need of careful consideration by Congress. The laws regulating the organization of our armed forces in the event of war need to be revised in order that the organization can be modified so as to produce a force which would be more consistently apportioned throughout its numerous branches. To explain the circumstances upon which this opinion is based would necessitate a lengthy discussion, and I postpone it until the first convenient opportunity shall arise to send to Congress a special message upon this subject.

The Secretary of War calls attention to a number of needed changes in the Army in all of which I concur, but the point upon which I place most emphasis is the need for an elimination bill providing

a method by which the merits of officers shall have some effect upon their advancement and by which the advancement of all may be accelerated by the effective elimination of a definite proportion of the least efficient. There are in every army, and certainly in ours, a number of officers who do not violate their duty in any such way as to give reason for a court-martial or dismissal, but who do not show such aptitude and skill and character for high command as to justify their remaining in the active service to be promoted. Provision should be made by which they may be retired on a certain proportion of their pay, increasing with their length of service at the time of retirement. There is now a personnel law for the Navy which itself needs amendment and to which I shall make further reference. Such a law is needed quite as much for the Army.

The coast defenses of the United States proper are generally all that could be desired, and in some respects they are rather more elaborate than under present conditions are needed to stop an enemy's fleet from entering the harbors defended. There is, however, one place where additional defense is badly needed, and that is at the mouth of Chesapeake Bay, where it is proposed to make an artificial island for a fort which shall prevent an enemy's fleet from entering this most important strategical base of operations on the whole Atlantic and Gulf coasts. I hope that appropriate legislation will be adopted to secure the construction of this defense.

The military and naval joint board have unanimously agreed that it would be unwise to make the large expenditures which at one time were contemplated in the establishment of a naval base and station in the Philippine Islands, and have expressed their judgment, in which I fully concur, in favor of making an extensive naval base at Pearl Harbor, near Honolulu, and not in the Philippines. This does not dispense with the necessity for the comparatively small appropriations required to finish the proper coast defenses in the Philippines now under construction on the island of Corregidor and elsewhere or to complete a suitable repair station and coaling supply station at Olongapo, where is the floating dock "Dewey." I hope that this recommendation of the joint board will end the discussion as to the comparative merits of Manila Bay and Olongapo as naval stations, and will lead to prompt measures for the proper equipment and defense of Pearl Harbor.

THE NAVY.

The return of the battle-ship fleet from its voyage around the world, in more efficient condition than when it started, was a noteworthy event of interest alike to our citizens and the naval authorities of the world. Besides the beneficial and far-reaching effect on our personal and diplomatic relations in the countries which the

fleet visited, the marked success of the ships in steaming around the world in all weathers on schedule time has increased respect for our Navy and has added to our national prestige.

Our enlisted personnel recruited from all sections of the country is young and energetic and representative of the national spirit. It is, moreover, owing to its intelligence, capable of quick training into the modern man-of-warsmen. Our officers are earnest and zealous in their profession, but it is a regrettable fact that the higher officers are old for the responsibilities of the modern navy, and the admirals do not arrive at flag rank young enough to obtain adequate training in their duties as flag officers. This need for reform in the Navy has been ably and earnestly presented to Congress by my predecessor, and I also urgently recommended the subject for consideration.

Early in the coming session a comprehensive plan for the reorganization of the officers of all corps of the Navy will be presented to Congress, and I hope it will meet with action suited to its urgency.

Owing to the necessity for economy in expenditures, I have directed the curtailment of recommendations for naval appropriations so that they are thirty-eight millions less than the corresponding estimates of last year, and the request for new naval construction is limited to two first-class battle ships and one repair vessel.

The use of a navy is for military purposes, and there has been found need in the Department of a military branch dealing directly with the military use of the fleet. The Secretary of the Navy has also felt the lack of responsible advisers to aid him in reaching conclusions and deciding important matters between coordinate branches of the Department. To secure these results he has inaugurated a tentative plan involving certain changes in the organization of the Navy Department, including the navy-yards, all of which have been found by the Attorney-General to be in accordance with law. I have approved the execution of the plan proposed because of the greater efficiency and economy it promises.

The generosity of Congress has provided in the present Naval Observatory the most magnificent and expensive astronomical establishment in the world. It is being used for certain naval purposes which might easily and adequately be subserved by a small division connected with the Navy Department at only a fraction of the cost of the present Naval Observatory. The official Board of Visitors established by Congress and appointed in 1901 expressed its conclusion that the official head of the observatory should be an eminent astronomer appointed by the President by and with the advice and consent of the Senate, holding his place by a tenure at least as premanent as that of the Superintendent of the Coast Sur-

vey or the head of the Geological Survey, and not merely by a detail of two or three years' duration. I fully concur in this judgment, and urge a provision by law for the appointment of such a director.

It may not be necessary to take the observatory out of the Navy Department and put it into another department in which opportunity for scientific research afforded by the observatory would seem to be more appropriate, though I believe such a transfer in the long run is the best policy. I am sure, however, I express the desire of the astronomers and those learned in the kindred sciences when I urge upon Congress that the Naval Observatory be now dedicated to science under control of a man of science who can, if need be, render all the service to the Navy Department which this observatory now renders, and still furnish to the world the discoveries in astronomy that a great astronomer using such a plant would be likely to make.

DEPARTMENT OF JUSTICE.

EXPEDITION IN LEGAL PROCEDURE.

The deplorable delays in the administration of civil and criminal law have received the attention of committees of the American Bar Association and of many State Bar Associations, as well as the considered thought of judges and jurists. In my judgment, a change in judicial procedure, with a view to reducing its expense to private litigants in civil cases and facilitating the dispatch of business and final decision in both civil and criminal cases, constitutes the greatest need in our American institutions. I do not doubt for one moment that much of the lawless violence and cruelty exhibited in lynchings is directly due to the uncertainties and injustice growing out of the delays in trials, judgments, and the executions thereof by our courts. Of course these remarks apply quite as well to the administration of justice in State courts as to that in Federal courts, and without making invidious distinction it is perhaps not too much to say that, speaking generally, the defects are less in the Federal courts than in the State courts. But they are very great in the Federal courts. The expedition with which business is disposed of both on the civil and the criminal side of English courts under modern rules of procedure makes the delays in our courts seem archaic and barbarous. The procedure in the Federal courts should furnish an example for the State courts. I presume it is impossible, without an amendment to the Constitution, to unite under one form of action the proceedings at common law and proceedings in equity in the Federal courts, but it is certainly not impossible by a statute to simplify and make short and direct the procedure both at law and in equity in those courts. It is not impossible to cut down still

more than it is cut down, the jurisdiction of the Supreme Court so as to confine it almost wholly to statutory and constitutional questions. Under the present statutes the equity and admiralty procedure in the Federal courts is under the control of the Supreme Court, but in the pressure of business to which that court is subjected, it is impossible to hope that a radical and proper reform of the Federal equity procedure can be brought about. I therefore recommend legislation providing for the appointment by the President of a commission with authority to examine the law and equity procedure of the Federal courts of first instance, the law of appeals from those courts to the courts of appeals and to the Supreme Court, and the costs imposed in such procedure upon the private litigants and upon the public treasury and make recommendation with a view to simplifying and expediting the procedure as far as possible and making it as inexpensive as may be to the litigant of little means.

INJUNCTIONS WITHOUT NOTICE.

The platform of the successful party in the last election contained the following:

"The Republican party will uphold at all times the authority and integrity of the courts, State and Federal, and will ever insist that their powers to enforce their process and to protect life, liberty, and property shall be preserved inviolate. We believe, however, that the rules of procedure in the Federal courts with respect to the issuance of the writ of injunction should be more accurately defined by statute, and that no injunction or temporary restraining order should be issued without notice, except where irreparable injury would result from delay, in which case a speedy hearing thereafter should be granted."

I recommend that in compliance with the promise thus made, appropriate legislation be adopted. The ends of justice will best be met and the chief cause of complaint against ill-considered injunctions without notice will be removed by the enactment of a statute forbidding hereafter the issuing of any injunction or restraining order, whether temporary or permanent, by any Federal court, without previous notice and a reasonable opportunity to be heard on behalf of the parties to be enjoined; unless it shall appear to the satisfaction of the court that the delay necessary to give such notice and hearing would result in irreparable injury to the complainant and unless also the court shall from the evidence make a written finding, which shall be spread upon the court minutes, that immediate and irreparable injury is likely to ensue to the complainant, and shall define the injury, state why it is irreparable, and shall also endorse on the order issued the date and the hour of the issuance of the order. Moreover, every such injunction or

restraining order issued without previous notice and opportunity by the defendant to be heard should by force of the statute expire and be of no effect after seven days from the issuance thereof or within any time less than that period which the court may fix, unless within such seven days or such less period, the injunction or order is extended or renewed after previous notice and opportunity to be heard.

My judgment is that the passage of such an act which really embodies the best practice in equity and is very like the rule now in force in some courts will prevent the issuing of ill-advised orders of injunction without notice and will render such orders when issued much less objectionable by the short time in which they may remain effective.

ANTITRUST AND INTERSTATE COMMERCE LAWS.

The jurisdiction of the General Government over interstate commerce has led to the passage of the so-called "Sherman Anti-trust Law" and the "Interstate Commerce Law" and its amendments. The developments in the operation of those laws, as shown by indictments, trials, judicial decisions, and other sources of information, call for a discussion and some suggestions as to amendments. These I prefer to embody in a special message instead of including them in the present communication, and I shall avail myself of the first convenient opportunity to bring these subjects to the attention of Congress.

JAIL OF THE DISTRICT OF COLUMBIA.

My predecessor transmitted to the Congress a special message on January 11, 1909, accompanying the report of Commissioners theretofore appointed to investigate the jail, workhouse, etc., in the District of Columbia, in which he directed attention to the report as setting forth vividly,

"the really outrageous conditions in the workhouse and jail."

The Congress has taken action in pursuance of the recommendations of that report and of the President, to the extent of appropriating funds and enacting the necessary legislation for the establishment of a workhouse and reformatory. No action, however, has been taken by the Congress with respect to the jail, the conditions of which are still antiquated and insanitary. I earnestly recommend the passage of a sufficient appropriation to enable a thorough remodeling of that institution to be made without delay. It is a reproach to the National Government that almost under the shadow of the Capitol Dome prisoners should be confined in a building destitute of the ordinary decent appliances requisite to cleanliness and sanitary conditions.

POST-OFFICE DEPARTMENT.

SECOND-CLASS MAIL MATTER.

The deficit every year in the Post-Office Department is largely caused by the low rate of postage of 1 cent a pound charged on second-class mail matter, which includes not only newspapers, but magazines and miscellaneous periodicals. The actual loss growing out of the transmission of this second-class mail matter at 1 cent a pound amounts to about $63,000,000 a year. The average cost of the transportation of this matter is more than 9 cents a pound.

It appears that the average distance over which newspapers are delivered to their customers is 291 miles, while the average haul of magazines is 1,049, and of miscellaneous periodicals 1,128 miles. Thus, the average haul of the magazine is three and one-half times and that of the miscellaneous periodical nearly four times the haul of the daily newspaper, yet all of them pay the same postage rate of 1 cent a pound. The statistics of 1907 show that second-class mail matter constituted 63.91 per cent of the weight of all the mail, and yielded only 5.19 per cent of the revenue.

The figures given are startling, and show the payment by the Government of an enormous subsidy to the newspapers, magazines, and peroidicals, and Congress may well consider whether radical steps should not be taken to reduce the deficit in the Post-Office Department caused by this discrepancy between the actual cost of transportation and the compensation exacted therefor.

A great saving might be made, amounting to much more than half of the loss, by imposing upon magazines and periodicals a higher rate of postage. They are much heavier than newspapers, and contain a much higher proportion of advertising to reading matter, and the average distance of their transportation is three and a half times as great.

The total deficit for the last fiscal year in the Post-Office Department amounted to $17,500,000. The branches of its business which it did at a loss were the second-class mail service, in which the loss, as already said, was $63,000,000, and the free rural delivery, in which the loss was $28,000,000. These losses were in part offset by the profits of the letter postage and other sources of income. It would seem wise to reduce the loss upon second-class mail matter, at least to the extent of preventing a deficit in the total operations of the Post-Office.

I commend the whole subject to Congress, not unmindful of the spread of intelligence which a low charge for carrying newspapers and periodicals assists. I very much doubt, however, the wisdom of a policy which constitutes so large a subsidy and requires additional taxation to meet it.

POSTAL SAVINGS BANKS.

The second subject worthy of mention in the Post-Office Department is the real necessity and entire practicability of establishing postal savings banks. The successful party at the last election declared in favor of postal savings banks, and although the proposition finds opponents in many parts of the country, I am convinced that the people desire such banks, and am sure that when the banks are furnished they will be productive of the utmost good. The postal savings banks are not constituted for the purpose of creating competition with other banks. The rate of interest upon deposits to which they would be limited would be so small as to prevent their drawing deposits away from other banks.

I believe them to be necessary in order to offer a proper inducement to thrift and saving to a great many people of small means who do not now have banking facilities, and to whom such a system would offer an opportunity for the accumulation of capital. They will furnish a satisfactory substitute, based on sound principle and actual successful trial in nearly all the countries of the world, for the system of government guaranty of deposits now being adopted in several western States, which with deference to those who advocate it seems to me to have in it the seeds of demoralization to conservative banking and certain financial disaster.

The question of how the money deposited in postal savings banks shall be invested is not free from difficulty, but I believe that a satisfactory provision for this purpose was inserted as an amendment to the bill considered by the Senate at its last session. It has been proposed to delay the consideration of legislation establishing a postal savings bank until after the report of the Monetary Commission. This report is likely to be delayed, and properly so, because of the necessity for careful deliberation and close investigation. I do not see why the one should be tied up with the other. It is understood that the Monetary Commission have looked into the systems of banking which now prevail abroad, and have found that by a control there exercised in respect to reserves and the rates of exchange by some central authority panics are avoided. It is not apparent that a system of postal savings banks would in any way interfere with a change to such a system here. Certainly in most of the countries in Europe where control is thus exercised by a central authority, postal savings banks exist and are not thought to be inconsistent with a proper financial and banking system.

SHIP SUBSIDY.

Following the course of my distinguished predecessor, I earnestly recommend to Congress the consideration and passage of a ship subsidy bill, looking to the establishment of lines between our

Atlantic seaboard and the eastern coast of South America, as well as lines from the west coast of the United States to South America, China, Japan, and the Philippines. The profits on foreign mails are perhaps a sufficient measure of the expenditures which might first be tentatively applied to this method of inducing American capital to undertake the establishment of American lines of steamships in those directions in which we now feel it most important that we should have means of transportation controlled in the interest of the expansion of our trade. A bill of this character has once passed the House and more than once passed the Senate, and I hope that at this session a bill framed on the same lines and with the same purposes may become a law.

INTERIOR DEPARTMENT.

NEW MEXICO AND ARIZONA.

The successful party in the last election in its national platform declared in favor of the admission as separate States of New Mexico and Arizona, and I recommend that legislation appropriate to this end be adopted. I urge, however, that care be exercised in the preparation of the legislation affecting each Territory to secure deliberation in the selection of persons as members of the convention to draft a constitution for the incoming State, and I earnestly advise that such constitution after adoption by the convention shall be submitted to the people of the Territory for their approval at an election in which the sole issue shall be the merits of the proposed constitution, and if the constitution is defeated by popular vote means shall be provided in the enabling act for a new convention and the drafting of a new constitution. I think it vital that the issue as to the merits of the constitution should not be mixed up with the selection of State officers, and that no election of State officers should be had until after the constitution has been fully approved and finally settled upon.

ALASKA.

With respect to the Territory of Alaska, I recommend legislation which shall provide for the appointment by the President of a governor and also of an executive council, the members of which shall during their term of office reside in the Territory, and which shall have legislative powers sufficient to enable it to give to the Territory local laws adapted to its present growth. I strongly deprecate legislation looking to the election of a Territorial legislature in that vast district. The lack of permanence of residence of a large part of the present population and the small number of the people who either permanently or temporarily reside in the district as

compared with its vast expanse and the variety of the interests that have to be subserved, make it altogether unfitting in my judgment to provide for a popular election of a legislative body. The present system is not adequate and does not furnish the character of local control that ought to be there. The only compromise it seems to me which may give needed local legislation and secure a conservative government is the one I propose.

CONSERVATION OF NATIONAL RESOURCES.

In several Departments there is presented the necessity for legislation looking to the further conservation of our national resources, and the subject is one of such importance as to require a more detailed and extended discussion than can be entered upon in this communication. For that reason I shall take an early opportunity to send a special message to Congress on the subject of the improvement of our waterways, upon the reclamation and irrigation of arid, semiarid, and swamp lands; upon the preservation of our forests and the reforesting of suitable areas; upon the reclassification of the public domain with a view of separating from agricultural settlement mineral, coal, and phosphate lands and sites belonging to the Government bordering on streams suitable for the utilization of water power.

DEPARTMENT OF AGRICULTURE.

I commend to your careful consideration the report of the Secretary of Agriculture as showing the immense sphere of usefulness which that Department now fills and the wonderful addition to the wealth of the nation made by the farmers of this country in the crops of the current year.

DEPARTMENT OF COMMERCE AND LABOR.

THE LIGHT-HOUSE BOARD.

The Light-House Board now discharges its duties under the Department of Commerce and Labor. For upwards of forty years this Board has been constituted of military and naval officers and two or three men of science, with such an absence of a duly constituted executive head that it is marvelous what work has been accomplished. In the period of construction the energy and enthusiasm of all the members prevented the inherent defects of the system from interfering greatly with the beneficial work of the Board, but now that the work is chiefly confined to maintenance and repair, for which purpose the country is divided into sixteen districts, to which are assigned an engineer officer of the Army and an inspector of the Navy, each with a light-house tender and the needed plant for his

work, it has become apparent by the frequent friction that arises, due to the absence of any central independent authority, that there must be a complete reorganization of the Board. I concede the advantage of keeping in the system the rigidity of discipline that the presence of naval and miltiary officers in charge insures, but unless the presence of such officers in the Board can be made consistent with a responsible executive head that shall have proper authority, I recommend the transfer of control over the light-houses to a suitable civilian bureau. This is in accordance with the judgment of competent persons who are familiar with the workings of the present system. I am confident that a reorganization can be effected which shall avoid the recurrence of friction between members, instances of which have been officially brought to my attention, and that by such reorganization greater efficiency and a substantial reduction in the expense of operation can be brought about.

CONSOLIDATION OF BUREAUS.

I request Congressional authority to enable the Secretary of Commerce and Labor to unite the Bureaus of Manufactures and Statistics. This was recommended by a competent committee appointed in the previous administration for the purpose of suggesting changes in the interest of economy and efficiency, and is requested by the Secretary.

THE WHITE SLAVE TRADE.

I greatly regret to have to say that the investigations made in the Bureau of Immigration and other sources of information lead to the view that there is urgent necessity for additional legislation and greater executive activity to suppress the recruiting of the ranks of prostitutes from the streams of immigration into this country—an evil which, for want of a better name, has been called "The White Slave Trade." I believe it to be constitutional to forbid, under penalty, the transportation of persons for purposes of prostitution across national and state lines; and by appropriating a fund of $50,000 to be used by the Secretary of Commerce and Labor for the employment of special inspectors it will be possible to bring those responsible for this trade to indictment and conviction under a federal law.

BUREAU OF HEALTH.

For a very considerable period a movement has been gathering strength, especially among the members of the medical profession, in favor of a concentration of the instruments of the National Government which have to do with the promotion of public health. In the nature of things, the Medical Department of the Army and the

Medical Department of the Navy must be kept separate. But there seems to be no reason why all the other bureaus and offices in the General Government which have to do with the public health or subjects akin thereto should not be united in a bureau to be called the "Bureau of Public Health." This would necessitate the transfer of the Marine-Hospital Service to such a bureau. I am aware that there is a wide field in respect to the public health committed to the States in which the Federal Government can not exercise jurisdiction, but we have seen in the Agricultural Department the expansion into widest usefulness of a department giving attention to agriculture when that subject is plainly one over which the States properly exercise direct jurisdiction. The opportunities offered for useful research and the spread of useful information in regard to the cultivation of the soil and the breeding of stock and the solution of many of the intricate problems in progressive agriculture have demonstrated the wisdom of establishing that department. Similar reasons, of equal force, can be given for the establishment of a bureau of health that shall not only exercise the police jurisdiction of the Federal Government respecting quarantine, but which shall also afford an opportunity for investigation and research by competent experts into questions of health affecting the whole country, or important sections thereof, questions which, in the absence of Federal governmental work, are not likely to be promptly solved.

CIVIL SERVICE COMMISSION.

The work of the United States Civil Service Commission has been performed to the general satisfaction of the executive officers with whom the Commission has been brought into official communication. The volume of that work and its variety and extent have under new laws, such as the Census Act, and new Executive orders, greatly increased. The activities of the Commission required by the statutes have reached to every portion of the public domain.

The accommodations of the Commission are most inadequate for its needs. I call your attention to its request for increase in those accommodations as will appear from the annual report for this year.

POLITICAL CONTRIBUTIONS.

I urgently recommend to Congress that a law be passed requiring that candidates in elections of Members of the House of Representatives, and committees in charge of their candidacy and campaign, file in a proper office of the United States Government a statement of the contributions received and of the expenditures incurred in the campaign for such elections, and that similar legislation be enacted in respect to all other elections which are constitutionally within the control of Congress.

FREEDMAN'S SAVINGS AND TRUST COMPANY.

Recommendations have been made by my predecessors that Congress appropriate a sufficient sum to pay the balance—about 38 per cent—of the amounts due depositors in the Freedman's Savings and Trust Company. I renew this recommendation, and advise also that a proper limitation be prescribed fixing a period within which the claims may be presented, that assigned claims be not recognized, and that a limit be imposed on the amount of fees collectible for services in presenting such claims.

SEMICENTENNIAL OF NEGRO FREEDOM.

The year 1913 will mark the fiftieth anniversary of the issuance of the Emancipation Proclamation granting freedom to the negroes. It seems fitting that this event should be properly celebrated. Already a movement has been started by prominent negroes, encouraged by prominent white people and the press. The South especially is manifesting its interest in this movement.

It is suggested that a proper form of celebration would be an exposition to show the progress the negroes have made, not only during their period of freedom, but also from the time of their coming to this country.

I heartily indorse this proposal, and request that the Executive be authorized to appoint a preliminary commission of not more than seven persons to consider carefully whether or not it is wise to hold such an exposition, and if so, to outline a plan for the enterprise. I further recommend that such preliminary commission serve without salary, except as to their actual expenses, and that an appropriation be made to meet such expenses.

CONCLUSION.

I have thus, in a message compressed as much as the subjects will permit, referred to many of the legislative needs of the country, with the exceptions already noted. Speaking generally, the country is in a high state of prosperity. There is every reason to believe that we are on the eve of a substantial business expansion, and we have just garnered a harvest unexampled in the market value of our agricultural products. The high prices which such products bring mean great prosperity for the farming community, but on the other hand they mean a very considerably increased burden upon those classes in the community whose yearly compensation does not expand with the improvement in business and the general prosperity. Various reasons are given for the high prices. The proportionate increase in the output of gold, which to-day is the chief medium of exchange

and is in some respects a measure of value, furnishes a substantial explanation of at least part of the increase in prices. The increase in population and the more expensive mode of living of the people, which have not been accompanied by a proportionate increase in acreage production, may furnish a further reason. It is well to note that the increase in the cost of living is not confined to this country, but prevails the world over, and that those who would charge increases in prices to the existing protective tariff must meet the fact that the rise in prices has taken place almost wholly in those products of the factory and farm in respect to which there has been either no increase in the tariff or in many instances a very considerable reduction.

WM. H. TAFT.

The WHITE HOUSE,
December 7, 1909.

LIST OF PAPERS, WITH SUBJECTS OF CORRESPONDENCE.

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VENEZUELA—Continued.

CORRESPONDENCE.

CIRCULARS.

CONSERVATION OF NATURAL RESOURCES.

DEPARTMENT OF STATE,
Washington, February 19, 1909.

To certain diplomatic officers abroad.

SIR: There is now assembled in Washington, in response to the invitation of the President, a conference of representatives of the United States of Mexico and of the Dominion of Canada to meet the representatives of the United States of America for the purpose of considering the common interests of the three countries in the conservation of their natural resources. The cordiality with which the neighboring Governments accepted the invitation is no less an augury of the success of this important movement than is the disposition already shown by the conference to recognize the magnitude of the question before them. While recognizing the imperative necessity for the development and use of the great resources upon which the civilization and prosperity of nations must depend, the American Governments realize the vital need of arresting the inroads improvidently or unnecessarily made upon their natural wealth. They comprehend also that as to many of their national resources more than a merely conservative treatment is required; that reparatory agencies should be invoked to aid the processes of beneficent nature, and that the means of restoration and increase should be sought whenever practicable. They see that to the task of devising economical expenditure of resources, which, once gone, are lost forever, there should be superposed the duty of restoring and maintaining productiveness wherever impaired or menaced by wastefulness. In the northern part of the American hemisphere destruction and waste bring other evils in their train. The removal of forests, for instance, results in the aridity of vast tracts, torrential rainfalls break down and carry away the unprotected soil, and regions once abundant in vegetable and animal life become barren. This is a lesson almost as old as the human race. The older countries of Europe, Africa, and the Orient teach a lesson in this regard which has been too little heeded.

Anticipating the wide interest which would naturally be aroused in other countries by the present North American Conference, the President foresaw the probability that it would be the precurser of a world congress. By an aide-mémoire of the 6th of January last the principal Governments were informally sounded to ascertain whether they would look with favor upon an invitation to send delegates to such a conference. The responses have so far been uni-

formly favorable, and the Conference of Washington has suggested to the President that a similar general conference be called by him. The President feels, therefore, that it is timely to initiate the suggested world conference for the conservation of national resources by a formal invitation.

By direction of the President, and with the concurrence of Her Majesty the Queen of the Netherlands, an invitation is extended to the Government of ——— to send delegates to a conference to be held at The Hague at such date as may be found convenient, there to meet and consult the like delegates of the other countries, with a view to considering a general plan for an inventory of the natural resources of the world and to devising a uniform scheme for the expression of the results of such inventory to the end that there may be a general understanding and appreciation of the world's supply of the material elements which underlie the development of civilization and the welfare of the peoples of the earth. It would be appropriate also for the conference to consider the general phases of the correlated problem of checking and, when possible, repairing the injuries caused by the waste and destruction of natural resources and utilities and make recommendations in the interest of their conservation, development, and replenishment.

With such a world inventory and such recommendations the various producing countries of the whole world would be in a better position to cooperate, each for its own good and all for the good of all, toward the safeguarding and betterment of their common means of support. As was said in the preliminary aide-mémoire of January 6:

> The people of the whole world are interested in the natural resources of the whole world, benefited by their conservation, and injured by their destruction. The people of every country are interested in the supply of food and of material for manufacture in every other country, not only because these are interchangeable through processes of trade, but because a knowledge of the total supply is necessary to the intelligent treatment of each nation's share of the supply.

Nor is this all. A knowledge of the continuance and stability of perennial and renewable resources is no less important to the world than a knowledge of the quantity or the term remaining for the enjoyment of those resources which when consumed are irreplaceable. As to all the great natural sources of national welfare, the peoples of to-day hold the earth in trust for the peoples to come after them. Reading the lessons of the past aright, it would be for such a conference to look beyond the present to the future.

You will communicate the foregoing to the Government of ——— with the expression of the President's hope that we may be soon informed of its acceptance of the invitation. You will at the same time inform His Excellency that upon informal inquiry a gratifying assurance of the sympathy of the Government of the Netherlands has been received.

I am, etc.,

ALVEY A. ADEE,
Acting Secretary of State.

File No. 17231.

WORLD'S CONSERVATION CONGRESS.

DEPARTMENT OF STATE,
Washington, April 21, 1909.

To the diplomatic officers of the United States.

GENTLEMEN: I inclose herewith for your information, in case the Government to which you are accredited should mention the matter to you, a copy of an aide-mémoire handed to the chargé des affaires of the Netherlands legation at Washington explaining the intended scope of the department's instruction of February 19 last concerning the proposed world's congress for the conservation of natural resources.

I am, etc., P. C. KNOX.

[Inclosure.]

Aide-mémoire.

On the 12th instant Mr. Royaards, the chargé des affaires of the Netherlands legation, called at the Department of State to inquire on behalf of his Government whether it was convenient for the department to give information as to the disposition of the various Governments to participate in the contemplated International Congress for the Conservation of Natural Resources. The remarks of the chargé des affaires also conveyed the impression that his Government had been placed under the misapprehension that the Government of the United States might fail to call upon the Netherlands Government to issue the final invitation to foreign Governments to the congress, which it is proposed to hold at The Hague.

The Department of State welcomes the opportunity to dispel so unfortunate an impression. The instructions sent to the diplomatic representatives of the United States were intended merely to cause them to make preliminary inquiry as to the disposition of the various Governments to join in a congress of the kind contemplated. In this way it was sought to determine the question whether there was sufficient international interest to justify going forward with the project, in order that if this first condition were established a date might be fixed whereupon the Government of the Netherlands would naturally be asked to issue an invitation—a step obviously impossible at the time when the holding of the congress is problematical and the date is not fixed.

DEPARTMENT OF STATE,
Washington, April 15, 1909.

File No. 19632.

REGISTRATION OF AMERICAN CITIZENS.

DEPARTMENT OF STATE,
Washington, June 21, 1909.

To the diplomatic and consular officers of the United States.

GENTLEMEN: Referring to the circular instruction of April 19, 1907, in regard to the registration of American citizens, you are hereby instructed to insert in both the register and the certificate of registration the local address of the person registering and the name and address of the nearest relative in America with whom it would be necessary to communicate in the event of any serious accident to or death of the person registered.

I am, etc., HUNTINGTON WILSON,
Acting Secretary.

File No. 20272.

FOURTH PAN-AMERICAN SANITARY CONFERENCE.

DEPARTMENT OF STATE,
Washington, July 28, 1909.

To the diplomatic officers of the United States in countries of the Western Hemisphere.

GENTLEMEN: The Director of the Bureau of the American Republics, speaking also for the governing board of the bureau, has expressed to the Department of State the opinion that it would be helpful to the adequate representation of the several American Republics at the Fourth International Sanitary Convention, to be held at San Jose, Costa Rica, from December 25, 1909, to January 2, 1910, if the representatives of the United States at the capitals of these Republics should discuss with the ministers for foreign affairs and with local sanitary officers the importance of the gathering in question.

Duplicate copies, in English and Spanish, of a pamphlet setting forth the convocation of the Fourth International Sanitary Convention, and documents relating thereto, are inclosed herewith.

Inasmuch as the convention is to be held at the city of San Jose, the Costa Rican Government has undoubtedly taken all appropriate steps to encourage the attendance of representatives of the Governments concerned. These Governments have doubtless received full information on the subject through the Bureau of the American Republics, their representatives at Washington, and from the chairman of the International Sanitary Bureau here. Nevertheless, you may take a convenient opportunity to discuss the matter in the manner suggested by the Director of the Bureau of American Republics, since the project is one which this Government regards as of interest and importance to all American Republics.

I am, etc., P. C. KNOX.

File No. 774.

INTERNATIONAL OPIUM CONFERENCE.

DEPARTMENT OF STATE,
Washington, September 1, 1909.

To the diplomatic officers of the United States accredited to the Governments which were represented in the Shanghai International Opium Commission.[1]

File No. 4834.

THE AMERICAN RED CROSS.

DEPARTMENT OF STATE,
Washington, November 1, 1909.

To the diplomatic and consular officers of the United States.

GENTLEMEN: The diplomatic officers of the United States are instructed to obtain information and forward reports upon the following points. These reports should be forwarded with the least possible delay in order that the American Red Cross, which requests

[1] For text see p. 107.

the information, may have it available in case legislation affecting their organization comes up at the impending session of Congress.

First. Which of the signatory powers already had in 1906 legislation adequate for the protection of the sign of the Red Cross and in what that legislation consists; the verbiage of the statutes to be supplied.

Second. What, if any, measures have since been taken by those countries whose legislation was not adequate to protect the emblem of the Red Cross at the time of the signing of the convention, and in what the legislation consists.

At the International Red Cross Convention at Geneva, on July 6, 1906, certain measures were taken which looked to the repression of the abuse of the sign of the Red Cross. The Governments that took part in this conference were the following: Argentine Republic, Austria-Hungary, Belgium, Brazil, Bulgaria, Chile, China, Denmark, France, Germany, Great Britain and Ireland, Greece, Guatemala, Honduras, Italy, Japan, Kongo Free State, Korea, Luxemburg, Mexico, Montenegro, the Netherlands, Nicaragua, Norway, Persia, Peru, Portugal, Roumania, Russia, Switzerland, Servia, Siam, Spain, Sweden, the United States of America, and Uruguay.

The articles of the treaty above referred to, signed at Geneva, that relate to the distinctive emblem of the Red Cross are as follows (chap. 6, art. 18):

CHAPTER VI.—*Distinctive emblem.*

ART. 18. Out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by the reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

ART. 19. This emblem appears on flags and brassards as well as upon all matériel appertaining to the sanitary service, with the permission of the competent military authority.

ART. 20. The personnel protected in virtue of the first paragraph of article 9, and articles 10 and 11, will wear attached to the left arm a brassard bearing a red cross on a white ground, which will be issued and stamped by competent military authority, and accompanied by a certificate of identity in the case of persons attached to the sanitary service of armies who do not have military uniform.

ART. 21. The distinctive flag of the convention can only be displayed over the sanitary formations and establishments which the convention provides shall be respected, and with the consent of the military authorities. It shall be accompanied by the national flag of the belligerent to whose service the formation or establishment is attached.

Sanitary formations which have fallen into the power of the enemy, however, shall fly no other flag than that of the Red Cross so long as they continue in that situation.

ART. 22. The sanitary formations of neutral countries which, under the conditions set forth in article 11, have been authorized to render their services, shall fly, with the flag of the convention, the national flag of the belligerent to which they are attached. The provisions of the second paragraph of the preceding article are applicable to them.

ART. 23. The emblem of the red cross on a white ground and the words Red Cross or Geneva Cross may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and matériel protected by the convention.

With respect to the repression of the abuse and infractions of the use of this emblem the following articles were adopted (chapter 8, Repression of abuses and infractions):

CHAPTER VIII.—*Repression of abuses and infractions.*

ART. 27. The signatory powers whose legislation may not now be adequate to engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

ART. 28. In the event of their military penal laws being insufficient, the signatory Governments also engage to take, or to recommend to their legislatures, the necessary measures to repress, in time of war, individual acts of robbery and illtreatment of the sick and wounded of the armies, as well as to punish, as usurpations of military insignia, the wrongful use of the flag and brassard of the Red Cross by military persons or private individuals not protected by the present convention.

They will communicate to each other through the Swiss Federal Council the measures taken with a view to such repression not later than five years from the ratification of the present convention.

It is understood that the plenipotentiaries of all the powers signed the treaty in question and that it has been ratified and confirmed by the respective Governments.

The reports made in pursuance of this suggestion should convey information respecting the use that is now being made in various countries of the Red Cross as a trade-mark in advertising the sale of goods and commodities. There will thus be supplied information essential to legislation for the proper protection of the Red Cross emblem in the United States.

I am, furthermore, requested to inform you that the American Red Cross is desirous of securing as active members of the national and official association of this country our diplomatic and consular representatives abroad, so that in case of need they can act as representatives of the American Red Cross. As active members they will be enabled to obtain information as to the standing and efficiency of the Red Cross societies in the countries to which they are accredited, such information being of great importance in the matter of the administration of relief funds forwarded by the American Red Cross. Moreover, the diplomatic and consular representatives of the United States will comprehend the opportunity of strengthening the friendly relationship between this country and others by thus providing at times of disaster an avenue through which our people may express their sympathy in a practical and tangible form.

The American National Red Cross, by the act of Congress, January 5, 1905, is charged with the duty of—

Fifth. And to continue and carry on a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other great national calamities, and to devise and carry on measures for preventing the same.

Since that date it has rendered assistance in money contributions and in supplies after calamities in foreign countries from famine, floods, fires, volcanic eruptions, and earthquakes in Japan, China,

Russia, Jamaica, Chile, Canada, Italy, Turkey, and Mexico. The contributions for such relief work have amounted to considerably over a million and a half dollars and have consisted entirely of voluntary donations. In case of such foreign relief the American Red Cross has relied largely upon the information received from, and the assistance rendered by, the diplomatic representatives of the United States in the respective countries wherein the assistance is rendered.

As showing the high patronage and the scope of the American Red Cross, which has been chartered and sanctioned by act of Congress, I quote a letter which the President of the United States has addressed, as president of the American Red Cross, to the governors of the States of the Union:

The purpose of this letter is to bring to your knowledge the facilities of the American Red Cross for conducting large measures of emergency relief or assisting in ther conduct in any part of the United States.

Its national director, Mr. Ernest P. Bicknell, who devotes his entire time to the executive duties of the Red Cross, has had an extended experience in the organization and direction of work of this character. Mr. Bicknell is prepared to proceed instantly to the scene of any great disaster and confer with the State or local authorities, as well as the local representative of the Red Cross, in regard to the efficient organization of relief. This service is wholly free and is quite apart from any question of the source of the relief funds.

The Red Cross is a national organization, the only one chartered by the United States and maintained for the sole purpose of relieving the sufferings caused by war or by calamities in time of peace. In the United States, fortunately, the Red Cross has been almost entirely free from the demands of war, but has found an important and growing field in the relief and rehabilitation of communities devastated by fire, flood, storm, or other disaster of an extent or magnitude exceeding local relief resources. It operates under a special charter from Congress and is governed by a central committee appointed in part by the President of the United States from the Departments of State, War, Navy, Treasury, and Justice, and is required to submit an annual report to Congress. In the event of war the Red Cross is the only organization whose agents in the military encampments and upon battlefields will be officially recognized and authorized to maintain hospitals, hospital ships, etc.

Should any calamity occur within the bounds of your State which requires large and unusual relief measures, you are invited to make the freest use of the services of the Red Cross or of its national director in either an executive or advisory capacity.

Since the reorganization of the Red Cross in 1905, the amounts enumerated on the attached sheet have been raised and expended at the places or for the objects stated.

Respectfully, WM. H. TAFT.

(The following is inclosed with the above:)

"Relief expenditures, American Red Cross, from January 1, 1906, to April 30, 1909:

Philippine typhoon	$1,150.00
Japanese famine	245,865.67
Vesuvian eruption	16,226.25
California earthquake	2,963,200.64
Valparaiso earthquake	9,844.81
Chinese famine	327,897.50
Kingston earthquake	5,381.25
Russian famine	9,000.00
Mississippi cyclone	2,767.38
South Carolina and Georgia floods	942.05
Canadian forest fires	300.00
Monongah mine disaster	3,762.11
Italian earthquake	986,378.61
Turkey-Armenian relief	29,500.00

Mexican flood relief	$7,700.00
Miscellaneous	75.00
Total	4,609,991.27
Christmas stamps, 1908, tuberculosis	138,000.00

"The total expenditure for all administration and executive work during same period was $30,195.15.

"Expenses, two-thirds of 1 per cent of expenditures; more than half of which has been paid from members' dues and from the income of the endowment fund of $115,000."

In the past the Department of State has been frequently called upon by individuals or organizations to forward through the foreign service sums for the relief of suffering in foreign countries. To avoid complications and to avail of a centralized, appropriate, and highly efficient channel for such contributions, the department has lately encouraged the making of all such contributions to the Red Cross itself. In such cases, from time to time, the department is asked by the Red Cross to forward sums thus coming to them or contributions from the society's own funds to the scene of suffering, and this has been done through the foreign service. It would obviously be appropriate if members of the foreign service who might be called upon to handle such funds were in position to do so as members of their national organization. As such, the foreign service might also be better able to point out occasions when Red Cross relief from this country would be really appropriate, and, what is quite equally important, to advise against inopportune or exaggerated contribution.

From the foregoing, and in view also of the fact that the international activities of the American Red Cross can not but be a factor in international relations and good feeling, it is needless to say that the desire of the American Red Cross that the members of the diplomatic and consular service should join it has the good will of the Department of State.

I am, etc.,

P. C. KNOX.

File No. 8292.

INTERNATIONAL PRISON CONGRESS.

DEPARTMENT OF STATE,
Washington, December 4, 1909.

To the Diplomatic Officers of the United States.

GENTLEMEN: In pursuance of a joint resolution of the Congress of the United States, approved March 3, 1905, the President of the United States addressed to the president of the International Prison Congress an invitation to hold the eighth session of the congress in the United States at such time and place as might be determined by the International Prison Commission.

The invitation was duly accepted and the congress will meet at Washington, October 2–8, 1910.

The Government of the United States would be pleased to have the Government to which you are accredited represented in the forthcoming congress by delegates, and you are instructed to extend to that Government an official invitation from the Government of the United States to participate therein.

In conveying the invitation you will accompany it with a copy of the inclosed Senate Document No. 462, Sixtieth Congress, first session, in which are set forth the origin, history, scope, and object of the International Prison Congress and the program of the questions to be discussed at the meeting of the congress at Washington in 1910.

It is represented to the department by the commissioner of the United States on the International Prison Commission that it is important that the International Prison Commission at Berne should be advised not later than February next of the names of the delegates who will attend the Washington congress. You will therefore request prompt consideration of the invitation.

I am, etc.,

P. C. KNOX.

ARGENTINE REPUBLIC.

SEVERING OF DIPLOMATIC RELATIONS BETWEEN ARGENTINA AND BOLIVIA AND GOOD OFFICES OF UNITED STATES.

File No. 534/17.

Minister Stutesman to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
La Paz, July 13, 1909.

Reports that there was a hostile demonstration in La Paz on Saturday and Sunday last on account of decision of the Argentine Republic acting as arbitrator in the boundary dispute between Bolivia and Peru. Says the Argentine and Peruvian legations and Peruvian business houses were attacked by mobs, but no one was seriously injured and very little property destroyed. Adds that the mob is under control, and that the situation is now tranquil.

File No. 534/17.

Minister Stutesman to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
La Paz, July 21, 1909.

Reports recall of Argentine minister, and says he is asked to take charge of Argentine legation, to which Bolivian Government consents.

File No. 534/16.

The Secretary of State to Minister Sherrill.[1]

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, July 22, 1909.

Informs him that during the suspension of diplomatic relations between Bolivia and Argentina, and after obtaining the consent of the Argentine Government, he may take over custody of Bolivian legation and use impartial friendly offices in behalf of Bolivian citizens and interests in Argentina.

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[1] Mutatis Mutandis to Minister Stutesman at La Paz.

File No. 534/20.

The Secretary of State to Minister Sherrill.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, July 23, 1909.

Informs him that his telegram relative to Bolivia's request for good offices in Argentina was received almost at same time as similar request on behalf of Argentine interests in Bolivia. Adds that the United States viewed these requests as a proof of confidence of the two countries in the sincere and impartial friendship of this Government, that the dual trust was uninvited and was accepted in cordial friendship to both countries, and that favorable action was taken on each, and simultaneous telegrams sent to the legations at Buenos Aires and La Paz to this effect.

File No. 534/16.

The Secretary of State to Minister Sherrill.[1]

No. 13.] DEPARTMENT OF STATE,
Washington, July 23, 1909.

SIR: I have to acknowledge the receipt of your telegram of the 21st instant.[2]

I also confirm the department's telegram in reply sent on July 22, in the following words:[2]

It does not occur to the department that it is necessary to instruct you with respect to the nature and scope of your duties under this arrangement; but, out of abundant caution, it refers you, in case of doubt to Volume IV, pages 584–615, Moore's International Law Digest, wherein are set forth the general principles as announced by various Secretaries of State touching the use of good offices by American diplomatic and consular officers for citizens of third countries.

You will perceive thereby that your duties are to be confined to the exercise of good offices in behalf of Bolivian citizens and their interests in the Argentine Republic should occasion therefor arise; that you do not in any sense represent the Government of the Argentine Republic diplomatically; that no representative office of any sort on behalf of that Government is bestowed upon you; and that you are not subject to its instructions or orders.

You will report to, and receive instructions from, your own Government only, which you are in no wise to commit or compromise.

I am, etc.,

P. C. KNOX.

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[1] Mutatis Mutandis to Minister Stutesman at La Paz, Inst. No. 19.
[2] Supra.

File No. 534/22.

The Acting Secretary of State to the Argentine Minister.

[Telegram.]

DEPARTMENT OF STATE,
Washington, July 26, 1909.

Your telegram of 24th received yesterday. Upon request of Argentine minister at La Paz, communicated through American minister, Mr. Stutesman, was cabled July 22, to take custody of Argentine legation and exert good offices for Argentine citizens and interests during suspension of relations. A similar request on behalf of Bolivian interests in Argentina was received at the same time from American minister at Buenos Aires, who was instructed in like manner the same day. He has explained the situation fully to Argentine minister for foreign affairs, and the requested permission has been granted.

HUNTINGTON WILSON.

File No. 534/102.

Minister Stutesman to the Secretary of State.

[Telegram—Pharaphrase.]

AMERICAN LEGATION,
La Paz, September 14, 1909.

Reports that Bolivia will accept award and thereby satisfy Government of Argentina; that Bolivia is treating with Peru for modification of boundary line, and that they are not far apart in their respective contentions.

File No. 534/105.

Minister Stutesman to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
La Paz, September 16, 1909.

Reports that Peru and Bolivia have reached an agreement and that protocol is to be signed to-day or to-morrow.

File No. 534/105.

The Acting Secretary of State to Minister Stutesman.

[Telegram—Pharaphrase.]

DEPARTMENT OF STATE,
Washington, September 16, 1909.

Mr. Adee expresses gratification that agreement has been reached by the parties directly.

File No. 534/110.

(*Handed to Acting Secretary Adee September 20, 1909, by Mr. de Freyre, chargé d'affaires of Peru.*)

LIMA, *September 18, 1909.*

The conflict with Bolivia has been favorably settled. Two protocols have been signed. In the first protocol the Argentine award is formally accepted. And in the second protocol, dated later, both parties specify certain territorial compensations agreed upon within the boundary line traced by the arbitrator.

File No. 534/131.

Minister Stutesman to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
La Paz, October 23, 1909.

Reports ratification to-day of Peru-Bolivian protocol by Bolivian Congress.

File No. 534/132.

Minister Combs to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Lima, October 26, 1909.

Reports ratification of protocol by Peru and Bolivia.

EXTRADITION OF VITO DAMIANO FROM THE ARGENTINE REPUBLIC.

EXTRADITION PROCEDURE.

File No. 14040/3–4.

The Acting Secretary of State to Chargé Wilson.

No. 180.] DEPARTMENT OF STATE,
Washington, June 30, 1908.

SIR: I have to inform you that the President has issued his warrant authorizing Rocco Cavone to take into custody Vito Damiano, alias Rocco Morello, a fugitive from the justice of the United States, charged with murder, who is believed to have taken refuge in the Argentine Republic and is to be surrendered to the competent authorities of the State of New York.

The President's warrant, together with a certified copy of the papers in the case, has been handed to the agent, who, upon his

arrival in the Argentine Republic, will communicate with you. The certificate of the department will require authentication by you.

You will formally request the extradition of the fugitive in pursuance of treaty stipulations.

I am, etc.,

ROBERT BACON.

File No. 14040/10.

Chargé Wilson to the Secretary of State.

[Extract.]

No. 782.]

AMERICAN LEGATION,
Buenos Aires, August 13, 1908.

SIR: Referring to your telegram of to-day's date,[1] inquiring as to the status of the Damiano extradition case, I have the honor to report that Mr. Cavone, the President's agent, arrived in Buenos Aires on July 27, and that the formal extradition papers which he brought with him were forwarded by the legation to the ministry of foreign affairs on the same date, and that in the note transmitting these documents I asked that the case might be pushed through with as little delay as possible, as the agent was already in Buenos Aires and was anxious to start back promptly.

On August 3 a note was received from the ministry for foreign affairs, informing me that on that date the extradition papers had been forwarded to the federal judge of the criminal and correctional court of this city for such legal action as he should see fit to take.

Up to the present date the judge has not taken the case under consideration, although I have several times referred to the matter at the ministry of foreign affairs, who have replied that once the case was in the hands of the courts the ministry could do nothing further, although a copy of my note in which I requested that the case might be hastened had been sent to the judge.

Damiano, who was at first inclined to waive extradition, has now been persuaded to fight it, and his attorney has said that in case the extradition is granted by the federal court he will try to have the case appealed to the supreme court.

In case such appeal is allowed, as it very likely will be, there is naturally likely to be considerable delay.

Under these conditions, and as the granting of extradition here is a long process, I respectfully suggest that in future cases the papers should be sent by mail within the two months required by treaty, and that the agent should only be sent out after the extradition has been granted and the prisoner is ready to be delivered to him. That such proceeding would result in a saving of time and expense is shown not only by this Damiano extradition case but also by the Moses Ferris case, in which the agent arrived here on September 28, 1907, and was not able to leave until January 24, 1908.

I have, etc.,

CHARLES S. WILSON.

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[1] Not printed.

File No. 14040/11.

Minister Eddy to the Secretary of State.

[Telegram.]

AMERICAN LEGATION,
Buenos Aires, September 24, 1908.

Damiano extradition granted. Agent expects to leave October 10, steamship *Velasquez*.

EDDY.

File No. 14040/19–21.

Minister Eddy to the Secretary of State.

No. 30.] AMERICAN LEGATION,
Buenos Aires, October 7, 1908.

SIR: I have the honor to inform you that, on the 6th instant, I received from Dr. de los Llanos, subsecretary for foreign affairs, a note whereby he transmitted to me two judgments by the federal judge of the criminal and correctional court of Buenos Aires, in regard to the extradition of Vito Damiano. I inclose herewith copies of the judgments aforesaid, as well as of Dr. de los Llanos's note.

To-day I called upon the minister for foreign affairs and had a long conversation with him on the subject of the Damiano case. Dr. de la Plaza's opinion coincides with that of the federal judge, both of whom base their contention upon the extradition convention between the Argentine and the United States, of September 26, 1896, and upon article 667 of the Argentine Penal Code. Article 4 of the above-mentioned treaty contains the following paragraph:

For the purpose of extradition the two high contracting parties will proceed, in accordance with this treaty, in conformity with the laws regulating judicial proceedings at the time being in force in the country to which the demand for extradition shall be directed.

Article 5 of the Argentine Penal Code states that—

When the crime on which the demand for extradition is founded has a lesser penalty in the Argentine Republic, the extradition of the accused is only agreed to under the condition that the courts of the claiming power will apply to him the lesser penalty.

Dr. de la Plaza understands that the Federal Government of the United States has not the right to enter into an agreement whereby the criminal codes of the different States would be affected, and it seems to him unlikely that the Department of State would authorize me to make the promise required in this instance. But as the failure of the present extradition proceedings against Damiano would create a precedent whereby practically no criminal could be extradited from the Argentine Republic to the United States, the minister for foreign affairs has decided to refer the present case to the attorney general for his opinion.

I have to-day cabled to you briefly the status of this matter, and as soon as the opinion of the attorney general has been given I shall at once inform you of the sense of it. In the meantime I have advised the agent, who has now been in Buenos Aires for three

months, waiting to take the prisoner to the United States, to remain quietly in this city until I shall have received instructions from the Department of State.

I have, etc., SPENCER EDDY.

[Inclosure 1—Translation.]

The Minister for Foreign Affairs to Minister Eddy.

MINISTRY FOR FOREIGN AFFAIRS AND WORSHIP,
Buenos Aires, October 6, 1908.

Mr. MINISTER: I have the honor to transmit to your excellency a legalized copy of two sentences dictated by the federal judge of the criminal and correctional court of the capital, one dated September 22, granting the extradition of Vito Damiano al. Rocco Morello, requested by your legation in its note of July 27 last, and the other dated the 24th of the same month of September, amplifying the first, and stipulating that the extradition is granted only on condition that the authorities of the country making the demand apply to the person extradited in case of his condemnation the punishment immediately inferior to the death penalty, if that punishment should be imposed.

Hoping that your excellency will inform me of the day and hour at which the delivery of the prisoner should take place, as well as the name of the person to whom he is to be delivered to be taken to his country, in order that the proper orders may be given, I take pleasure in renewing, etc.

MARIO R. DE LOS LLANOS.

[Inclosure 2—Translation.]

BUENOS AIRES, *September 22, 1908.*

Having examined the case of extradition of Vito Damiano requested by the United States of North America, and, considering:

That the documents accompanying the case, presented by the country demanding the extradition, prove that the crime with which the prisoner is charged is among those comprised in article 2 of the extradition treaty with the United States of North America, and that the requirements for said extradition called for by article 4 of the same treaty have been complied with.

Whereas the prisoner has renounced the judicial proceedings in the present case, and in conformity with the advice of the procurador fiscal in the preceding decree I grant the request for extradition. Therefore, let the chief of police of the capital be notified, in order that he may place Vito Damiano or Rocco Morello at the disposition of the minister for foreign affairs, to whom also should be sent this document as testimony of this decision.

[SEAL.] (Signed) HORACIO R. LABRETA.

A true copy.

JUAN BTE. ARUMBURU,
Director of the Section of Political Affairs.

[Inclosure 3—Translation.]

BUENOS AIRES, *September 24, 1908.*

Having examined and considering:

That the explanation requested by the defender of the prisoner is just, because the sentence of page 56 neglected to settle the point in regard to the punishment to be applied to the prisoner by the legislation of the country requesting extradition.

That, as is stated in article 667 of our Code of Criminal Procedure, when the crime for which extradition is demanded has a lesser punishment in the Republic, the prisoner will not be extradited except on condition that the courts of the country making the demand shall impose this lesser penalty.

That, as the documents accompanying the present case make clear, the crime imputed to the prisoner would be punished by our legislation by the penalty of imprisonment of from 10 to 25 years. (Art. 17, Chap. I, Par. I, of the Corrected Penal Code.)

For these reasons the court declares: That extradition is granted on condition that the authorities of the country requesting extradition apply to the prisoner, in case of condemnation, the punishment immediately inferior to the death penalty, if this latter shall be imposed, and the fulfilment of this condition is intrusted to the good faith and guaranty of the Government of the United States of America.

[SEAL.] (Signed) HORACIO R. LARRETA.

A true copy.

JUAN BTE. ARUMBURU,
Director of the Section of Political Affairs.

File No. 14040/13.

Minister Eddy to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Buenos Aires, October 8, 1908.

Reports that minister for foreign affairs, after referring to article 4 of extradition treaty, which agrees to extradition of criminals in accordance with laws of country from which criminal is extradited, and quoting Argentine law, article 667 of Criminal Code, thinks it doubtful if prisoner can be given up unless it is guaranteed that death penalty will not be inflicted. Mr. Eddy explained that, as there was no national penal code in the United States, he doubted if such guaranty could be given. Adds that minister promised to obtain opinion of attorney general.

File No. 14040/13.

The Secretary of State to Minister Eddy.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, October 19, 1908.

Secretary Root informs Mr. Eddy that it is impossible for Federal authorities to give guaranty, as under the dual government of this country criminals are punishable exclusively by States for violation of State laws. Informs him that the governor of New York says he has not the power to stipulate as suggested by the authorities of Argentina. Says the department does not perceive that proposed condition is warranted by treaty, as article 4 refers to mere procedure and not to substantive law, and that article 648 of Argentine code, which provides that in extradition under treaty the treaty and not local law controls, sustains this view. Instructs him, pending the settlement of this question, to take every precaution to have fugitive detained.

File No. 14040/22–23.

Minister Eddy to the Secretary of State.

No. 38.] AMERICAN LEGATION,
Buenos Aires, October 28, 1908.

SIR: Referring to the department's telegram of the 19th instant in regard to the extradition of Vito Damiano, I have the honor to report that upon receipt of this cable I immediately sent a note to the Argentine minister for foreign affairs stating that I had been notified by my Government that neither the Federal authorities nor those of the State of New York were authorized to guarantee that Damiano, if extradited, would not suffer the death penalty if convicted of the crime of murder in the first degree.

I further pointed out that my Government did not consider the proposed condition warranted by the extradition treaty between the two countries and cited article 648 of the Argentine Penal Code, which provides that extradition should be granted according to treaty and not according to local law.

The next day, in conversation with the minister for foreign affairs, I again brought the matter up and stated that in various previous cases in which this legation had demanded the extradition of criminals no such condition had ever been mentioned, and that if the Argentine Government insisted upon such an interpretation the extradition treaty between the two countries would become quite worthless as far as the United States was concerned, as that Government could hardly give the assurance demanded by the Argentine Government that "when a crime on which the demand for extradition is founded has a lesser penalty in the Republic extradition of the accused is only agreed to under the condition that the courts of the claiming power will apply to him the lesser penalty." Article 667, Código de Procedimientos en lo Criminal.

The minister appeared to appreciate the position taken by the department, and promised to submit the matter to the attorney general without delay.

I am now in receipt of a note from the ministry for foreign affairs, dated October 27, a copy of which, together with translation of same is inclosed herewith, stating that in accordance with the opinion of the attorney general the case has been referred back to the court which gave the sentence for measures to be taken to provide for the suppression of the clause objected to by the department.

I shall do everything in my power to obtain the decision of the Argentine Government with as little further delay as possible, and shall notify the department promptly of the result.

I have, etc.,

SPENCER EDDY.

[Inclosure—Translation.]

The Minister for Foreign Affairs to Minister Eddy.

THE FOREIGN OFFICE,
Buenos Aires, October 27, 1908.

Mr. MINISTER: I have the honor to acknowledge the receipt of your excellency's note of the 20th instant, in which, in accordance with telegraphic instructions from your Government, you observe that the clause, by which the

extradition of Vito Damiano has been granted by the federal judge of the capital, Dr. Rodriguez Larreta "on condition that the authorities of the country making the request, apply to the person whose extradition is demanded, in case of condemnation, the punishment immediately inferior to that of death, if this should be imposed"—a condition which your excellency says is not in accordance with the stipulations of the treaty existing between both countries.

In reply I beg to inform your excellency that in accordance with the opinion of the procurador general of the nation (attorney general), your excellency's note, together with the other documents, have been sent to the procurador fiscal (prosecuting attorney) in order that he may again take the proper steps toward obtaining the suppression of the said clause in the sentence referred to.

As soon as I shall have been informed of the definite decision of the judge, Dr. Rodriguez Larreta, I shall make haste to communicate the same to your excellency.

Meanwhile I take pleasure in renewing, etc.,

V. DE LA PLAZA.

File No. 14040/29.

Chargé Wilson to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Buenos Aires (Received February 25, 1909).

Reports that the supreme court has granted the unconditional extradition of Damiano, and that agent and prisoner leave on March 10 on steamship *Verdi.*

File No. 14040/31.

Chargé Wilson to the Secretary of State.

No. 96.] AMERICAN LEGATION,
Buenos Aires, March 1, 1909.

SIR: Referring to the legation's telegram dated February 25, 1909, I have the honor to report that on February 13 the supreme court granted the unconditional extradition of Vito Damiano, and that on February 25 the foreign office notified the legation that the Argentine Government was ready to surrender the prisoner to the United States authorities. I therefore wrote to the foreign office requesting that he should be delivered to Mr. Rocco Cavone, the agent authorized by the President, on board the steamship *Verdi* (the first direct boat for New York) sailing from Buenos Aires on March 10.

As previously reported (see legation's dispatches Nos. 30 and 38, dated October 7 and October 28, 1908, respectively), the judge of the federal and correctional court granted the extradition of Damiano on condition that in case Damiano should be judged guilty of murder by the American courts, the punishment immediately inferior to the death penalty should be inflicted upon him in accordance with the Argentine Code, which provides that "when the crime on which the demand for extradition is founded has a lesser penalty in the (Argentine) Republic, the extradition of the accused is only agreed to under the condition that the courts of the claiming power will apply to him the lesser penalty," which would mean that 25

years' imprisonment would be the maximum punishment which could be imposed upon Damiano by the American courts.

The legation immediately notified the foreign office that it could not accept extradition on these terms as this decision was not authorized by the extradition treaty between the two countries nor by Argentine law.

The legation's note was passed to the attorney general, who decided favorably, and who directed the fiscal to request the criminal judge to grant the extradition without conditions.

This the judge refused to do, stating the condition formed a part of the sentence.

The case was then appealed to the federal chamber, which stated that it agreed with the attorney general and the fiscal and directed that extradition should be granted unconditionally.

The next appeal was to the supreme court, which, as already stated, handed down a decision favorable to the United States, granting the unconditional extradition of Damiano.

In this connection I have the honor respectfully to renew my suggestion that as the granting of extradition here is a long process, in future cases the formal papers should be sent by mail within the two months prescribed by treaty, and that the agent should be sent out only after extradition has been granted. That such proceedings would result in a saving of time and expense is shown not only in the present instance, but also in the previous recent cases of Moses Ferris and Ross W. Douglass. (See dispatch No. 782 of August 13, 1908.)[1]

This is the practice of other countries, as the Spanish, Italian, and French legations, which have numerous cases of extradition, inform me that it usually takes from six months to a year after the formal request is made before the extradition is finally granted.

I have, etc.,

CHARLES S. WILSON.

[1] Not printed.

AUSTRIA-HUNGARY.

APPLICATION OF THE ADMINISTRATIVE PROVISIONS OF THE COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND GERMANY TO AUSTRIA-HUNGARY.

File No. 14867/5.

The Chargé of Austria-Hungary to the Secretary of State.

No. 1809.] EMBASSY OF AUSTRIA-HUNGARY,
Manchester, Mass., July 22, 1909.

YOUR EXCELLENCY: Referring to our numerous conferences on the subject, I have the honor, in pursuance to instructions from my Government, to inform your excellency that the latter would greatly appreciate an official declaration by the State Department to the effect that the administrative provisions of the commercial agreement concluded between the United States and the German Empire in 1907, will, as far as they remain in force during the period prescribed after such denunciation has been made, be likewise applied to Austrian and Hungarian imports.

My Government points to the fact that this would not imply a new concession on the part of the United States, but merely the continuance of an existing condition during the six-months denunciation period. It believes that it can count on an absolutely equal treatment of our products with those of the German Empire as far as the administrative provisions are concerned, for the reason that a differential treatment of Austria-Hungary would have to be regarded by it as a violation of the principle of the most favored nation, which is applied to the United States by the Austro-Hungarian Monarchy in the most faithful manner.

I am aware that the State Department will be unable to make an authoritative declaration regarding the future tariff treatment of foreign nations until the tariff now under discussion is permanently adopted. However, in view of our commercial interests, I should greatly appreciate an exhaustive and, as I hope, satisfactory answer to this note as soon as the new tariff bill becomes a law.

While having the honor to request as early a reply as possible, I avail, etc.

L. AMBRÓZY.

File No. 14867/8.

Chargé Rives to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Vienna, September 30, 1909.

Mr. Rives says he has been requested by the minister for foreign affairs to ask that the United States customs authorities accept certificates of chambers of commerce of Austria-Hungary and extend to Austria-Hungary the same privileges, as to Germany, until enforcement of Payne bill, and requests answer by cable.

File No. 14867/7

The Acting Secretary of State to the Ambassador of Austria-Hungary.

No. 485.] DEPARTMENT OF STATE,
Washington, October 25, 1909.

EXCELLENCY: Referring to the requests of your Government, as communicated by Baron Ambrózy's notes Nos. 1809, 2010, and 2193 of the respective dates of July 22, August 15,[1] and September 3, 1909,[1] that Austria-Hungary be assured in the continuous enjoyment of the administrative provisions indicated in the diplomatic note which accompanied the American commercial agreement with Germany of April 22/May 2, 1907—which administrative provisions were gratuitously extended so far as applicable to all other nations, including Austria-Hungary, importing goods into the United States—I have the honor to inform you that the department, animated by a sincere desire to meet the request of Austria-Hungary, in whole or in part, if such a course be proper and possible under the existing laws of the United States and be consistent with the traditional commercial policy of this Government, has, as foreshadowed in its note to you of the 11th ultimo, given this question the most serious and painstaking consideration and has submitted the questions involved to the Treasury Department for investigation and determination, since that department is the particular division of the executive branch of this Government which, under our laws, is primarily charged with the administration of customs acts.

As the result of this careful consideration by both departments, this department is able to make the following assurances regarding the administrative interpretation to be applied for the present to certain provisions of the new tariff law. However, it should at the same time be observed that in giving to the Government of Austria-Hungary the assurances hereinafter set forth—assurances which this Government is most happy to be able to extend—it must not be overlooked that such assurances are in their nature entirely voluntary and gratuitous, and that the privileges thereunder are extended not because of any feeling upon the part of this Government that it is under any obliga-

[1] Not printed.

tion to make such assurances, but solely because of the deep desire of this Government to give to the Government of Austria-Hungary and to every other Government concerned every courtesy, consideration, and advantage which a due and proper regard for its own policies and laws permits it to bestow; and further, it should not pass without notice that this Government is not intending to confer, and does not confer, either by the making of these assurances or by the actual application of the administrative provisions themselves, any such right or interest in such provisions as may not, when and as soon as the exigencies of the situation may seem to this Government to demand it, be freely changed and altered or abolished without thereby giving to your Government or to other Governments, in whose favor naturally these provisions, being general, will also be extended, any just ground for objection or complaint.

Concerning those provisions of the diplomatic note which were not general in their nature but specific (that is, points E and F of the note) and which, as to point F, the department was pleased, upon special request of the Austro-Hungarian Government, dated June 19, 1907, to extend to Austria-Hungary, the department begs to state that it is of opinion that the American customs officials may continue for the present to extend to Austria and Hungary the privileges provided in those sections, and that for the present the certificates of value as issued by the chambers of commerce of those countries will, pursuant to the understanding above referred to and as specified in point F, be received by American customs appraisers as competent evidence of the value of the imported goods wherever such evidence is relevant to the question under investigation.

Concerning the other provisions contained in the German note, it was, as your excellency is aware, made clear by this department at the time the provisions were extended to Austria-Hungary and other nations that points A to D, inclusive, were general in their character; that is, that they were merely administrative statements as to modifications to be thereafter uniformly and generally applied in the administrative interpretation of the customs laws of the United States at that time in force. Moreover, as your excellency is also doubtless aware, those provisions were, as a matter of fact, thereafter uniformly applied by American customs officials to imports from all nations without reference to the existence or nonexistence of any specific conventional agreement to this effect between any of such nations and the United States, and, indeed, were actually applied to the imports of all countries without any such conventional agreement, except in the case of Germany and the Netherlands. In other words, these provisions were mere administrative rulings upon the meaning of an existing law, and while they were made part of the commercial agreement with Germany, they were applied independently of it. It should also be recalled, as was fully understood at the time, that the extension of these privileges by this Government to other nations than Germany was not made because of any belief or feeling upon the part of this Government that such other nations could claim these privileges as matters of treaty or other right, but solely because this Government, considering that the privileges resulted from mere interpretations of an existing law, and were not, therefore, necessarily a matter of treaty stipulation and bargain, was sincerely desirous of treating, as far as

the law and our commercial policy would permit, all nations upon a basis of exact commercial equality.

But, inasmuch as these privileges were thus in their essence the result of mere interpretations of law, obviously they must, so far as a strict legal and logical aspect of the case is concerned, fall when the law to which they appertain ceases longer to have any force or effect. Therefore, the Dingley tariff law, having been repealed, it is impossible for the Government of the United States to continue the administrative interpretations of that law.

However, this department, anxious to encourage the friendly commercial intercourse which has always existed between itself and the Government of Austria-Hungary, is of opinion that it will be possible for the Government of Austria-Hungary still to receive for the present, as administrative interpretations of the new tariff law, the advantage of all those general provisions which were set forth in points B to D, inclusive, since there have been incorporated into the new tariff law provisions either identical with or substantially similar to those provisions of the old law to which these particular points relate.

In accordance with this view, it would seem that, inasmuch as section 8 of the old customs administrative act has been reenacted as subsection 8 of section 28 of the new tariff law, there would appear to be no reason why the interpretation placed upon the language of the old act, as provided in point B of the diplomatic note, should not be for the present continued as the interpretation of the provisions of the new law.

As to point G, which provides that in reappraisement cases the hearings shall be open and in the presence of the importer, it will be observed that the substance of this provision of the note has been incorporated in the new tariff law as a part of subsection 13 of section 28, which in terms provides that in reappraisement cases "hearings may, in the discretion of the General Appraiser or Board of General Appraisers, before whom the case is pending, be opened, and in the presence of the importer or his attorney." For this reason it would seem that there could not be any serious difficulty concerning this point.

Finally, as to point D, there appears to be nothing in the new law which would prevent for the present the continued enforcement, as to matters involved therein, of the consular regulations provided for in that section as they have been heretofore administered.

It therefore appears that the substance of all the provisions of the diplomatic note above referred to, from B to F, inclusive, can for the present at least be continued in practically an unmodified form.

The new law does not, however, seem to permit the continuation of an unmodified and mandatory application of point A, since the law defines, so far as its own provisions are concerned, the meaning of "market value," in cases contemplated in that point, in a way which may not at times be in harmony with the definition given to that term in point A of the diplomatic note. You will understand in this connection, as has been already pointed out, that while the Executive authority of this Government may, and indeed must interpret the meaning of the laws relating to customs duties, yet this authority can but interpret; and, therefore, whenever the law itself specifically

defines the meaning of a term, it is not possible for the Executive to change or alter such definition. Since in this matter, therefore, the law has by its very terms and clear intention nullified, at least in part, the administrative provisions of section A of the German agreement, and while as to Germany and the Netherlands those provisions are nevertheless continued for a limited time under their specific agreements in accordance with the express provisions of the new tariff law as to the date of expiration of these and other agreements, the voluntary extension of similar benefits to other nations with whom no specific agreements have been negotiated must (where, as here, inconsistent with the terms of the new law) cease and determine from the moment the old law falls and the new law goes into effect; and however willing the Executive of this Government might be to continue to extend to all countries the full benefits of all portions of the administrative features of the German commercial agreement, and however much the department may regret its inability to give assurances to this effect as desired by the Government of Austria-Hungary, the express provisions of the new law are of such a clear and direct character as to render such a course impossible.

It may, however, be observed that while subsection 11 of section 28 of the new tariff act provides that in no case shall the market value "as defined by law" with reference to goods imported into the United States under circumstances contemplated by the provisions of point A of the agreement, be less than the American wholesale price, yet, as you are well aware, the same subsection also provides that in determining the dutiable value which shall be placed upon such goods, there shall be deducted from the American wholesale price when so applied certain necessary expenditures and commissions incurred in connection with the importation of such goods; and it would appear that wherever the question of the real value of the goods and the amount to be deducted as provided in this section is under discussion and investigation "the market value," as defined in point A of the diplomatic note, might still be pertinent and admissible evidence upon the question of the real value of the goods and would receive consideration by the Treasury officials in their determination of the amount that should be deducted from the American wholesale price as an allowance for the necessary expenditures contemplated by the statute. Although, as is obvious, such evidence could not under any view be regarded as conclusive upon the questions involved in the determination of this dutiable value, it would certainly appear to be strongly persuasive now as formerly upon the point of the market value in the producing country. Concerning this point it may be remarked that if the new law operates as did the old one, it will doubtless be found that the certificates of the chambers of commerce contemplated in point F will be of particular value in connection with the determination of the foreign "market value" under this provision of the new law as just discussed; and in this connection I beg to suggest for your consideration the fact that as the old law and the administrative provisions applying thereto were administered, these certificates were not considered decisive upon the question of the "market value," as defined by point A, and they were not, as a general rule, introduced as evidence unless a reasonable doubt had arisen as to the correctness of

stated values and upon the demand of consular or appraising officers, or at the request of shippers or importers who desired to verify invoice values and to corroborate their evidence. It would seem that this might, in considerable part, be the position and value of such certificates under the new law.

The department desires that in connection with this whole matter it should not be overlooked that questions regarding importations formerly affected by the provisions of point A of the German agreement and now and hereafter by the stipulations of subsection 11 of the new tariff law, are relatively unimportant, since it would seem from the records of the United States Customs Service that heretofore such importations have been all but negligible; and if this be true, it would appear that the questions now under discussion, ought not and could not, under any fair and reasonable attitude, appreciably affect the commercial relations of the two Governments. It would therefore seem that all apprehension that the new law will inflict upon the commerce between the United States and Austria-Hungary, any substantial injury by reason of its effect upon importations falling within the purview of point A of the German agreement, should be removed, and this view finds emphasis in a consideration of the fact that the general provisions regarding the determination of the market value of imports into the United States are, under the new law, substantially similar to those under the old law, as will be seen by reference to the provisions of subsection 18 of section 28 of the new law, which provides that under the circumstances named in that section the actual market value of an article shall be held to be the price at which such merchandise is freely offered for sale to all purchasers in the foreign markets in the usual wholesale quantities, such being the price which the manufacturer or owner should have received and was willing to receive for such merchandise when sold in the ordinary course of trade in the usual wholesale quantities.

Since these assurances as to the essential portion of the administrative provisions included in the German agreement appear to be of a character to meet substantially the requests made by your excellency's Government, it would seem that nothing remains as to this phase of the matter but to express to your excellency the satisfaction it affords me to be able thus to comply with the requests of your Government.

Inasmuch, however, as in your excellency's note of July 22, 1909, your excellency has thought it necessary to invoke in support of your requests the doctrine of the "most favored nation" treatment as that doctrine appears to your Government, it seems advisable, in order that there may be no misapprehension concerning the position of the Government of the United States upon that question as it affects the present matter, that some such discussion of this general principle should be herein incorporated as would sufficiently set forth the American doctrine upon this question.

As your excellency's Government is doubtless aware the Government of the United States advocates and maintains that the general treaty clause stipulating for most favored nation treatment should be interpreted as meaning that under it one contracting power may demand as of right, freely and without compensation, all privileges

and favors which the other contracting power, freely and without compensation, grants to a third power; but that where the third power secures from the one contracting power exceptional and unusual rights or privileges for a price or compensation paid therefor by such third power, that in that event the one power is under no obligation to grant such exceptional and extraordinary rights and privileges to such other contracting power, except upon payment by such power of a price or compensation which is the same or equivalent to the price or compensation paid by the third power. This has been the uniform doctrine of the United States upon this question. In the present case, however, the Government of the United States is not, in order to support its present contentions, under the necessity of relying upon this general principle of interpretation as adopted by this Government, since, as your excellency is fully informed, the commercial treaty of 1829 between the United States and Austria-Hungary is most explicit upon this very question; for while article 5 specifies that no higher or other duties shall be imposed on an importation into the United States of any article of produce or manufacture of the dominions of Austria than are imposed upon the produce and manufacture of any other foreign country article 9 provides specifically "That if either party shall hereafter grant to any other nation any particular favor in navigation or commerce it shall immediately become common to the other party freely, where it is freely granted to such other nation, or on yielding the same compensation when the grant is conditional." In view of this latter provision of the treaty your excellency will at once perceive that even had it been necessary under the new tariff law for the Government of the United States wholly to withdraw from the Government of Austria-Hungary the administrative privileges guaranteed to Germany in the German commercial agreement, still it would not be possible, under article 9 of the treaty just quoted, for your Government to regard the United States as thereby infringing upon any of the rights which Austria-Hungary possessed by reason of this "most favored nation" clause, because the privileges of the administrative provisions having been granted to the German Government for a compensation paid by that Government, the Government of Austria-Hungary would not, under the treaty, be entitled as of right to such privileges except in case of the payment of the same compensation as that paid by the German Government.

The question of the interpretation of these provisions of the treaty has already been the subject of a considerable correspondence between the two Governments, in the course of which the contentions of the United States upon the question were quite elaborately set forth in a note dated November 5, 1832, addressed by Mr. Livingston, then Secretary of State, to Baron Lederer, then the Austrian consul general, in which Mr. Livingston discussed the matter in the following clear and comprehensive manner:

There is no rule of construction better settled either in relation to covenants between individuals or treaties between nations than that the whole instrument containing the stipulations is to be taken together, and that all articles in part materia should be considered as parts of the same stipulations. The five articles of the treaty in question, from the fifth to the ninth, inclusive, bear on the same matter—they profess to regulate the footing in which their respective vessels are to be mutually treated in relation to duties and other impositions.

They must all then be taken together and if the fifth article provides, as it does in substance, that the duties levied on merchandise imported by them mutually shall be the same with those paid by the most-favored nation. The ninth explains fully what was the intent of the parties by declaring explicitly that if the future favor to the third nation shall be freely granted it shall be freely enjoyed by the contracting party, but on payment of the same compensation if it were granted conditionally. This is the plain, common-sense construction of the agreement; any other, as has been shown, could not reasonably be supposed to have been the intent of the high contracting parties. Did they mean that that which was paid for at a high price should be enjoyed gratuitously? Did they mean to preclude each other from making any advantageous arrangement with other nations, for such would undoubtedly be the effect of the construction contended for by the Austrian Government, a construction that may in future contigencies be much more injurious to their interests than it is in this instance to those of the United States; or did they intend to establish as a rule between them the plain and equitable principle that each was to pay the same price that other nations paid for any advantage they might receive—a rule that would leave each free to pursue its own interest without injury to the other contracting party? For what is more equitable than that, if the advantage is to be enjoyed, the price at which it was obtained should be paid; what more unjust than the pretension to enjoy it without an equivalent? The construction contended for by the United States therefore puts the contract on the foundation of justice and equity; that of the Austrian Government would make it the means of inequality, and therefore the rule applies that in doubtful cases that construction is to be adopted which will work the least injustice. Observe, sir, that I am far from contending that the mere inconveniences resulting from your interpretation of the treaty are conclusive reasons that it is not the true one; I acknowledge that although the stipulation should be inconvenient it must be fulfilled if it be explicit. But the scope of my argument is to show that if the case were as doubtful as I think it clear, the inconveniences would be such as ought to persuade us that your construction can not be conformable to the intent of the parties. I have said that the case appears it to be entirely clear from all obscurity if there is no contradiction between the fifth and the ninth articles, and if the latter applies to the former there can be no doubt.

There is no contradiction between the two articles. The fifth article stipulates that no higher or other duties shall be paid on any article of the product or manufacture of Austria than are or shall be imposed on the like articles proceeding from any other country. The ninth article confirms instead of contradicts this. Its language is in substance this: The same duties shall be paid, and if we lessen those duties in favor of another nation yours shall be placed on a perfect equality with such nation; if we give it gratuitously to him we extend it in the same manner to you; if he gives an equivalent, you shall give one, but we can expect no greater consideration from you than from him. In this way the fifth article is complied with, otherwise it would not be. Suppose there should be another nation from whom you take cotton and who in return takes your wines, and suppose the quantities equal in value and the duties imposed by each nation to be also equal. If such nation should agree with you to abrogate the duty on your wines in consideration of a similar abrogation of your duty on their cotton, could the United States in that case claim a right to introduce their cotton into Austria, duty free, under the fifth article? I apprehend not. We should in that case be told, and told with reason, the ninth article is as much a part of the contract as the fifth; it does not contradict but confirms it, for (we should further be told) the nation whose cotton we should agree to receive without duty, in appearance, really pays us the same duty as it did before, but it has taken off a duty equivalent in amount from our wines; for our mutual convenience we have dispensed with the actual collection, but the duty is still substantially paid; if you are willing to pay the same price for the arrangement you have a right under the fifth article to do so; we should be guilty of a breach of faith if we denied it, but until you have complied with the condition you have no right to enjoy the advantage. To this answer we should find it difficult to frame a reply that would sustain our right to the advantage without paying the price which was given by the nation which purchased it.

You seem to think that the expression used in the ninth article, which designates the advantage intended to be made reciprocal as a "*particular* favor in navigation or commerce," can not refer to any future change in rate of duties,

and you say the word *particular* means *peculiar* not *general, special* not *ordinary.*" Admitting the correctness of this definition, it points out clearly the object of the article to have been that for which I contend. The fifth article had provided for all *general* and *ordinary* cases. If we reduced our duties generally for other nations they must be reduced for Austria. But another case must be provided for, a particular favor, to another nation not a *general,* not an *ordinary* one; what is to be done in that case? The article answers it shall be enjoyed by the contracting parties. But how? Freely if freely granted, performing the same condition if there is a consideration. Thus all the parts of the treaty are in harmony, the ordinary advantages are enjoyed on the ordinary terms, the special advantages on paying the price at which they were purchased by the other party.

It will, I trust, be thus evident to you that this Government might, under the express provisions of this treaty, and in strict accord with the very terms of the most-favored-nation clause included therein, wholly withdraw from the Government of Austria-Hungary the benefits of the administrative provisions of the German commercial agreement without giving to the Government of Austria-Hungary any just or tenable basis whatsoever upon which to rest complaints against this Government for such action. The Government of the United States, however, having in mind the liberal commercial policy invariably pursued in recent years by the Government of Austria-Hungary toward the United States in all that concerns the application to American products of the conventional tariff of Austria-Hungary, has been not only disposed to grant to Austria-Hungary those advantages which Austria-Hungary might demand as a matter of treaty right, but has been vigilant to discover a means by which it might extend to Austria-Hungary, so far as was possible, advantages and considerations which it has extended to other nations in order thus to express in an appropriate and substantial manner its appreciative sense of that liberal commercial policy which has heretofore been shown by the Government of Austria-Hungary toward the United States, and which it is the earnest hope of the Government of the United States shall always characterize the relations between the two Governments.

Accept, etc., HUNTINGTON WILSON.

The Secretary of State to Chargé O'Shaughnessy.

File No. 14867/7.

No. 374.] DEPARTMENT OF STATE,
Washington, November 1, 1909.

SIR: I inclose for the embassy's information copy of a note[1] to the ambassador of Austria-Hungary concerning the continued enjoyment by Austria-Hungary of the administrative provisions indicated in the diplomatic note which accompanied the American commercial agreement with Germany of April 22–May 2, 1907.

I am, etc.,

P. C. KNOX.

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[1] Supra, note of October 25.

File No. 14867/17.

Chargé O'Shaughnessy to the Secretary of State.

No. 993.] AMERICAN EMBASSY,
Vienna, November 10, 1909.

SIR: I have the honor to acknowledge the receipt of your dispatch No. 374, dated the 1st of November, 1909, in which is inclosed, for this embassy's information, the copy of a note addressed by the Hon. Huntington Wilson, Acting Secretary of State, to the Austro-Hungarian ambassador in Washington, concerning the continued enjoyment by Austria-Hungary of the administrative provisions indicated in the diplomatic note which accompanied the American commercial agreement with Germany of April 22–May 2, 1907; and to report that the action of my Government in voluntarily and gratuitously granting this courtesy to Austria-Hungary has been received in this country with satisfaction, several members of the staff of the foreign office having expressed to me personally their appreciation.

I am, etc., NELSON O'SHAUGHNESSY.

FORM OF CERTIFICATE TO BE USED BY SUBJECTS OF AUSTRIA-HUNGARY BECOMING NATURALIZED AMERICAN CITIZENS.

File No. 19913.

The Chargé of Austria-Hungary to the Secretary of State.

No. 1396.] AUSTRO-HUNGARIAN EMBASSY,
Washington, June 4, 1909.

YOUR EXCELLENCY: By direction of my Government I have the honor to call your excellency's attention to the fact that in the certificate of citizenship issued on October 18, 1900, by the Court of Common Pleas, Fairfield County, Conn., to the former Hungarian subject, Victor Vrecenak (Vreczenyak), of Bridgeport (which is inclosed with the request that it be returned), the said person is designated as a "subject of the Sovereign of Austria," a form which does not take into account the political status of the Austro-Hungarian monarchy and is not in accordance with the notes exchanged some time ago with the State Department (see department's note of July 7, 1896, No. 121,[1] to Prince Wrede and the memorandum under date of June 22, 1896).[2]

I therefore beg to request your excellency's good offices in bringing the purport of the former memorandum again to the knowledge of the competent American authorities and to kindly endeavor to prevent errors of this nature from recurring in future in the issuance of certificates of naturalization.

Please accept, etc., L. AMBROZY.

[1] See Foreign Relations, 1897, p. 24.
[2] Not printed.

File No. 19913/2–3.

The Acting Secretary of State to the Chargé of Austria-Hungary.

No. 457.] DEPARTMENT OF STATE,
Washington, July 23, 1909.

SIR: Referring to your note of the 4th ultimo, in which the department's attention was invited to an error in the certificate of naturalization issued by the Court of Common Pleas in Fairfield County, Conn., to the former Hungarian subject Victor Vrecenak (or Vreczenyak), whereby he is designated as a "subject of the Sovereign of Austria," a form which, as you point out, does not take into account the dual character of the Austro-Hungarian monarchy, I have now the honor to advise you of the receipt of a letter on the subject, dated the 12th instant, from the Acting Secretary of Commerce and Labor, to whose department a translation of your note was sent with the request that it be brought to the knowledge of the competent authorities, in order that similar errors may not be made in the future.

The Acting Secretary's letter calls attention to the fact that the said Victor Vrecenak (or Vreczenyak) was admitted to American citizenship on October 18, 1900, or prior to September 27, 1906, the date when the naturalization act of June 29, 1906, which conferred upon the Department of Commerce and Labor administrative control over naturalization matters, became effective in toto.

Mr. McHarg adds that since September 27, 1906, his department has required that in cases of Austrian subjects renouncing allegiance to their sovereign in order to become American citizens the designation in the certificate of naturalization shall be "Francis Joseph, Emperor of Austria," and in the case of Hungarians, "Francis Joseph, Apostolic King of Hungary."

The certificate of naturalization inclosed with your note is herewith returned, as requested.

Accept, etc., ALVEY A. ADEE.

File No. 19913/4–7.

The Chargé of Austria-Hungary to the Secretary of State.

[Translation.]

No. 2330.] AUSTRO-HUNGARIAN EMBASSY,
Manchester, Mass., September 25, 1909.

YOUR EXCELLENCY: In your esteemed communication No. 457, of July 23 last, your excellency had the kindness to inform me that the Department of Commerce and Labor had, since September 27, 1906, adopted a new wording of the renunciation clause contained in American certificates of citizenship, in which the title of His Imperial and Royal Apostolic Majesty now reads "Francis Joseph, Emperor of Austria," in the case of the naturalization of an Austrian, and "Francis Joseph, Apostolic King of Hungary," in case of the naturalization of a Hungarian.

I brought the contents of said note to the knowledge of my Government and am now instructed to call your excellency's attention to the contents of the note, of which an English translation is in-

closed, which was sent to Secretary of State Olney on June 8, 1896, by Prince Wrede, at that time Austro-Hungarian chargé d'affaires, and which was made known to the American authorities concerned by means of the memorandum of the State Department under date of June 22, 1896,[1] of which a copy is likewise inclosed.

From this correspondence it is to be seen that the only form of oath that will take into account the political status of the Austro-Hungarian Monarchy will be one which, on the one hand, recognizes the fact of a separate Austrian and Hungarian citizenship, and which, on the other, recognizes the fact that the ruler to whom the Austrian or Hungarian citizen renounces his allegiance unites both the States of the Monarchy under his scepter in common.

Just as in 1896, my Government still considers it to be of the greatest importance that the title of His Imperial and Royal Apostolic Majesty should always read "His Majesty the Emperor of Austria and Apostolic King of Hungary" in American naturalization certificates, regardless of whether the person being naturalized is an Austrian or a Hungarian citizen.

While taking the liberty of requesting your excellency's kind offices in communicating the foregoing to the Department of Commerce and Labor and in having the latter resume the practice which prevailed from 1896 to 1906 with regard to the form of the renunciation clause, I beg of your excellency to kindly notify me of whatever steps you take in this matter and the results thereof.

Please accept, etc.

L. AMBRÓZY.

File No. 19913/4–7.

The Acting Secretary of State to the Chargé of Austria-Hungary.

No. 483.] DEPARTMENT OF STATE,
Washington, October 7, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 25th ultimo, in which, with reference to the department's note of July 23 last, you invite attention to the fact that your Government considers that in certificates of naturalization issued in the United States to former Austrians and Hungarians, it is of the greatest importance that the title of your Sovereign should always read "His Majesty the Emperor of Austria and Apostolic King of Hungary," regardless of the circumstance whether the person naturalized was an Austrian or a Hungarian subject.

In reply I have the honor to advise you that, pursuant to your request, it has afforded the department pleasure to communicate the contents of your note to the Secretary of Commerce and Labor, who has been asked to bring the matter to the attention of the proper officials of his deparment in order that they may take due note of the Imperial-Royal style hereafter to be used.

Accept, etc., ALVEY A. ADEE.

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[1] See For. Rels., 1897, p. 24, for note re memorandum.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND AUSTRIA-HUNGARY.

Signed at Washington, January 15, 1909.
Ratification advised by the Senate, January 20, 1909.
Ratified by the President, March 1, 1909.
Ratified by Austria-Hungary, April 17, 1909.
Ratifications exchanged at Washington, May 13, 1909.
Proclaimed May 18, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Arbitration Convention between the United States of America and Austria Hungary was concluded and signed by their respective Plenipotentiaries at Washington on the fifteenth day of January, one thousand nine hundred and nine, the original of which Convention, being in the English, German, and Hungarian languages, is word for word as follows:

The President of the United States of America and His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary, signatories of the Convention for the pacific settlement of international disputes, concluded at The Hague on the 29th July, 1899;

Taking into consideration that by Article 19 of that Convention the High Contracting Parties have reserved to themselves the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment, have resolved to conclude the following convention and for that purpose have appointed their Plenipotentaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary, Baron Ladislaus Hengelmüller de Hengervár, Grand Cross of the Orders of Leopold and Francis Joseph, 3rd Class Knight of the Order of the Iron Crown, His Majesty's Privy Counselor and Ambassador Extraordinary and Plenipotentiary to the United States of America;

Who after communicating to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I.

Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the High Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July, 1899; provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the High Contracting Parties, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defined clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure.

It is understood that such special agreements on the part of the United States will be made by the President of the United States by and with the advice and consent of the Senate thereof.

Such agreements shall be binding only when confirmed by the governments of the High Contracting Parties by an exchange of notes.

ARTICLE III.

The present Convention shall be ratified by the High Contracting Parties, and the ratifications shall be exchanged as soon as possible at Washington.

The present Convention shall remain in force for five years from the fifteenth day after the date of the exchange of the ratifications.

In testimony whereof the respective Plenipotentiaries have signed this Convention and have affixed thereto their seals.

Done in duplicate at Washington the 15th day of January, 1909.

ELIHU ROOT [SEAL]
HENGELMÜLLER [SEAL]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the thirteenth day of May, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this eighteenth day of May in the year of our Lord one thousand nine hundred and nine, [SEAL] and of the Independence of the United States of America the one hundred and thirty-third.

WM. H. TAFT.

By the President:
P. C. KNOX,
Secretary of State.

ABUSE OF NATURALIZATION PAPERS.

File No. 1271/469.

The Department of State to the Embassy of Austria-Hungary.

Aide memoire.

DEPARTMENT OF STATE,
Washington, December 20, 1909.

With reference to the recent visit to the Department of State of the ambassador of Austria-Hungary, on which occasion His Excellency made inquiry touching the question of the abuse of naturalization papers by Austrians who have taken out American citizenship papers merely for purposes of protection in their native country, the Department of State begs to invite attention to the fact that the cases mentioned by the ambassador seem to come within the purview of the second paragraph of section 15 of the naturalization act of June 29, 1906. This law is quoted on the first page of the circular instruction to the diplomatic and consular officers of the United States, dated April 19, 1907, and entitled "Reports of Fraudulent Naturalization." A copy of that circular is sent herewith.[1]

It appears from the records that the Department of State has referred to the Department of Justice, under the provision of this law, three cases of persons who acquired permanent residence in Austria-Hungary within five years after their naturalization. Two of these cases were reported by the consul at Trieste and the other by the consul at Prague.

Attention is also invited to the second section of the expatriation act of March 2, 1907, which is quoted on the first page of the circular instruction of April 19, 1907, entitled "Expatriation."[2]

These two laws clearly show that it is not the desire of the Government of the United States to extend its protection to persons who obtain naturalization fraudulently without an intention of residing in this country, or to persons who, although they may have been lawfully naturalized, have expatriated themselves by prolonged foreign residence. There are, no doubt, many naturalized American citizens of Austrian or of Hungarian origin who have been residing in their native lands for many years. It is difficult, however, for the diplomatic and consular officers of the United States to obtain information and furnish reports in regard to these persons, since they do not make known the fact of their American naturalization until, for some reason, they desire to obtain the intervention of this Government in their behalf.

It may be added that the Department of State has been informed by the Department of Justice that there is a case now pending in one of the courts which involves the question as to whether section 15 of the naturalization act of June 29, 1906, is retroactive.

The question of the retroactivity of section 2 of the expatriation act of March 2, 1907, is receiving the reconsideration of the law officers of the Department of State.

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[1] See Foreign Relations, 1907, p. 8.
[2] Ibid., p. 3.

BELGIUM.

DEATH OF HIS MAJESTY LEOPOLD II, KING OF THE BELGIANS, AND THE ACCESSION TO THE THRONE OF KING ALBERT II.

File No. 3382/18.

Minister Wilson to the Secretary of State.

[Telegram.]

AMERICAN LEGATION,
St. Josse Ten Noode, December 17, 1909.

The King of the Belgians died this morning. Sending appropriate expression on the part of the President. The funeral most probably Wednesday.

WILSON.

File No. 3382/19A.

The Secretary of State to the Belgian Minister.

No. 14.] DEPARTMENT OF STATE,
Washington, December 17, 1909.

SIR: Having been officially informed by your legation of the death on the 17th instant, of His Majesty Leopold II, King of the Belgians, I have the honor to express the sincere regret felt by the Government of the United States on the receipt of this painful announcement.

A telegram conveying the same sad intelligence has been received by the President from His Majesty King Albert.

The President's condolences have been telegraphed to His Majesty, and I now desire to express the sympathy felt by the Government and people of the United States in the loss which has befallen the Government and people of Belgium in the death of their sovereign after a long and prosperous reign.

(For Mr. Knox.)
HUNTINGTON WILSON.

File No. 3382/19.

Minister Wilson to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
St. Josse Ten Noode, December 20, 1909.

Mr. Wilson reports that the title of the new King of Belgium will be Albert I, and that the ceremony of enthronement will take place on the 23d instant. He adds that the diplomatists will be received on the 24th.

File No. 3382/19.

The Acting Secretary of State to Minister Wilson.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 21, 1909.

You will attend enthronement ceremonies as the personal representative of the President.

WILSON.

File No. 3382/25A.

The Acting Secretary of State to the Belgian Minister.

DEPARTMENT OF STATE,
Washington, December 22, 1909.

MY DEAR MR. MINISTER: The President desires me to say that he will attend the services to be held at St. Matthew's Church tomorrow morning, at half past 10 o'clock, in memory of His late Majesty King Leopold.

I am, etc.,

HUNTINGTON WILSON.

APPLICATION OF TREATIES TO THE HAWAIIAN ISLANDS.

File No. 12515/2.

The Belgian Minister to the Secretary of State.

[Translation.]

No. 103.] BELGIAN LEGATION,
Washington, February 3, 1909.

MR. SECRETARY OF STATE: The State Department transmitted a memorandum[1] note on March 24 last regarding the manner in which the annexation of the Hawaiian Islands to the United States had been notified to foreign governments after the passage of the law of April 30, 1900, organizing the government of this new territory.

It seems to appear from this memorandum that commercial conventions, concluded by the United States with foreign powers, have been applicable, as a matter of course, to the Hawaiian Islands since 1900.

I have the honor to appeal to Your Excellency's habitual courtesy in order to learn whether this is really the interpretation given by the United States Government to the law of April 30, 1900.

I beg, etc.,

B[n] MONCHEUR.

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[1] Not printed.

File No. 12515/2.

The Secretary of State to the Belgian Minister.

No. 525.] DEPARTMENT OF STATE,
Washington, February 13, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 3d instant inquiring whether the United States interprets the law of April 30, 1900, "to provide a government for the Territory of Hawaii," to mean that commercial conventions concluded by the United States with foreign powers have been applicable as a matter of course to the Hawaiian Islands since 1900.

In reply I have the honor to say that all treaties, including commercial conventions, between the United States and foreign powers were made applicable to the Hawaiian Islands not by the act of April 30, 1900, but by the joint resolution of July 7, 1898, two copies of which I inclose herewith.

Paragraph four of this joint resolution abrogates the existing treaties of Hawaii and substitutes therefor such treaties as may exist or as may be afterwards concluded between the United States and foreign powers.

Accept, etc., ROBERT BACON.

[SEE ALSO KONGO, P. 400.]

BOLIVIA.

ELECTION OF PRESIDENT AND VICE PRESIDENTS OF BOLIVIA.

File No. 4885/10.

The Bolivian Minister to the Secretary of State.

[Translation.]

LEGATION OF BOLIVIA,
New York, May 6, 1909.

SIR: I have the honor to inform Your Excellency that this legation has received cable advice that the election of the President and Vice Presidents for the term beginning August 6, 1909, and ending August 6, 1913, took place on the 2d instant.

The Hon. Eleodoro Villazon received a majority of the votes for President, the Hon. Macario Pinilla for First Vice President, and the Hon. Juan M. Saracho for Second Vice President.

In bringing the foregoing to Your Excellency's knowledge, I wish to add that perfect quiet prevails throughout the Republic.

With greatest respect, etc.,

I. CALDERON.

File No. 4885/15–16.

The Bolivian Minister to the Secretary of State.

[Translation.]

BOLIVIAN LEGATION,
Washington, October 4, 1909.

SIR: I have the honor to inclose with this communication the autograph letter which the President of Bolivia, Eleodoro Villazon, addresses to the President of the United States of America, advising him of his assumption of the government of the Republic, on August 12 ultimo, called thereto by the vote of a majority of his fellow citizens.

I beg your Excellency to forward this letter to its exalted destination, wherefor I tender you, in anticipation, my sincerest thanks.

I avail myself, etc.,

IGNACIO CALDERON.

File No. 4885/15–16.

The Acting Secretary of State to the Bolivian Minister.

DEPARTMENT OF STATE,
Washington, October 7, 1909.

SIR: I have the honor to asknowledge the receipt of your note of the 4th instant, transmitting a letter addressed to the President by which His Excellency, President Villazon, announces his assumption of the duties of the high office of President of Bolivia, to which he was elected on August 12, last. The letter will be duly transmitted to the President, whose reply will be delivered through the American minister at La Paz.

Accept, etc.,

ALVEY A. ADEE.

BRAZIL.

PREFERENTIAL TARIFF CONCESSIONS IN FAVOR OF AMERICAN PRODUCTS.

File No. 836/122.

Chargé Janes to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Rio de Janeiro, January 17, 1909.

Reports presidential decree signed 14th, which continues during 1909 tariff reduction of 20 per cent, favoring articles enjoying privilege last year.

File No. 826/122.

The Secretary of State to Chargé Janes.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, January 20, 1909.

Mr. Root instructs Mr. Janes to express the appreciation of the United States for the continuance of tariff reduction.

File No. 836/123.

The Brazilian Ambassador to the Secretary of State.

BRAZILIAN EMBASSY,
Washington, January 22, 1909.

MR. SECRETARY OF STATE: I have the honor to bring to your knowledge that, according to a communication just received from the Brazilian Government, by a decree No. 7283, of the 14th of January instant, the ministry of finance renewed for the present fiscal year the reduction of 20 per cent previously granted to the American flour and to other articles imported in Brazil from the United States of America.

I avail, etc., JOAQUIM NABUCO.

File No. 836/123.

The Secretary of State to the Brazilian Ambassador.

No. 76.] DEPARTMENT OF STATE,
Washington, February 2, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 22d instant, by which you advise the department that your Government has renewed for the present fiscal year the tariff reduction of 20 per cent previously granted to American flour and certain other American exports to Brazil.

The department had received the same gratifying information by telegraph from the American embassy at Petropolis, which was at once instructed by telegraph to express to the Brazilian Government this Government's appreciation of its action.

I shall be glad if you will confirm this sentiment to your Government.

Accept, etc., ROBERT BACON.

ARREST AND IMPRISONMENT OF AMERICAN SEAMEN BY POLICE AUTHORITIES OF RIO DE JANEIRO.

JURISDICTION OVER OFFENSES COMMITTED ON BOARD SHIP IN FOREIGN PORTS.

File No. 17753/3.

The Acting Secretary of State to Ambassador Dudley.

DEPARTMENT OF STATE,
Washington, November 4, 1909.

SIR: I transmit herewith for your information a copy of dispatch,[1] No. 138, of December 28, 1908, from the American consul general at Rio de Janeiro, Brazil, concerning the arrest and imprisonment by the police authorities at that place of two American seamen, Otto Andersen and A. Erikson, on account of a minor offense committed by them on the American vessel *Margaret Thomas*, at that port on December 25, 1908. It appears that the arrest of the seamen was made at the instance of a Brazilian revenue officer who was on board the vessel at the time and who did not approve the action of the captain of the vessel in placing in irons one of the seamen who was in such a state of intoxication as to be dangerous. The men were, however, subsequently released at the request of the consul general.

No treaty or agreement of any character appears to have been entered into by the United States and Brazil governing the matter of the jurisdiction over offenses committed on board a vessel of either country in a port of the other, and the question, therefore, seems to be a much disputed one. A decree of November 8, 1851, as cited in Moore's International Law Digest, regulates the jurisdictional rights of consuls in Brazil and concedes to them cognizance in certain civil and criminal matters arising between members of the

[1] Not printed.

crews of vessels of their respective countries, provided that (Art. 15)—

When a foreign merchant vessel shall be lying within any of the ports of Brazil the criminal and police jurisdiction of the respective consular agents shall not extend to high crimes or to those that may in any manner disturb public tranquility or particularly affect any inhabitant of the country.

Whether this concession might be construed as a partial or complete surrender of jurisdiction to consular officers by the local authorities seems not to be well settled, but when the seamen mentioned herein were turned over to the consul general upon his demand that they be released the local officers appear to have recognized the authority of the consular officer in such cases, in accordance with the decree hereinbefore cited. The consul general's action, therefore, appears to have been proper under the circumstances.

It is desired that this matter be brought to the attention of the Brazilian foreign office, in order that an undesirable precedent may not be claimed for the arbitrary act of the revenue officer in forbidding the captain of the vessel to place the dangerous seaman in irons. There appears not to have been any pretense of exercise of local jurisdiction. The seamen were arbitrarily taken from the captain's jurisdiction by the police on the revenue officer's order, without judicial process, and were promptly returned to the ship when the circumstances were made known to the competent authorities. The department considers that this was sufficient amends and you are further requested to advise the Brazilian Government that it is so accepted, but that the arbitrary interference of the revenue and police authorities with the internal discipline of a vessel and with the rights of the master thereof, as generally recognized by international law and usage, having been disavowed and corrected by the return of the men to the captain's jurisdiction, the incident is satisfactorily ended, and the case can not, from any point of view, be deemed to create a precedent for similar unwarranted interference in the future.

I am, etc.,

HUNTINGTON WILSON.

File No. 17753/4.

Ambassador Dudley to the Secretary of State.

No. 460.] AMERICAN EMBASSY,
Petropolis, December 18, 1909.

SIR: I have the honor to acknowledge the receipt of the department's Serial No. 169 of the 4th ultimo (file No. 17753/3) and to inclose herewith a copy of a note [1] which, pursuant thereto, I have addressed to the Brazilian foreign office, bringing to its attention, with a view to preventing the claim of a precedent, the circumstances attending the arrest and removal from the American sailing ship, *Margaret Thomas*, on December 25, 1908, of two members of the crew by Brazilian police at the instance of a customs officer in the course of his attempt to thwart the proper exercise of ship discipline by the captain.

I have, etc., IRVING B. DUDLEY.

[1] Not printed, as note is same as instruction under acknowledgment.

File No. 2372/30.

DEATH OF PRESIDENT PENNA OF BRAZIL.

Ambassador Dudley to the Secretary of State.

[Telegram.]

AMERICAN EMBASSY,
Rio, June 14, 1909.

President Penna died this morning.

DUDLEY.

File No. 2372/30.

The President of the United States to the Vice President of Brazil.

[Telegram.]

THE WHITE HOUSE,
Washington, June 15, 1909.

In the name of my countrymen, and my own, I offer heartfelt condolence to the stricken family and to the Brazilian people in their great personal and national bereavement.

WM. H. TAFT.

File No. 2372/30.

The Secretary of State to the Brazilian Ambassador.

DEPARTMENT OF STATE,
Washington, June 16, 1909.

MY DEAR MR. AMBASSADOR: On the receipt of a telegram from the American Ambassador at Rio de Janeiro reporting the death on June 14 of His Excellency President Penna, the President on yesterday by telegram to His Excellency Vice President Pecanha offered in the name of his countrymen and in his own, heartfelt condolence to the stricken family and to the Brazilian people in their great personal and national bereavement.

In advising you of this I beg that you will assure Baron Rio Branco of my own deep regret at the loss which the Brazilian Nation has sustained and will convey to the bereaved family the expression of my personal sympathy.

I am, my dear Mr. Nabuco,
Very sincerely,

P. C. KNOX.

File No. 2372/39–40.

Ambassador Dudley to the Secretary of State.

AMERICAN EMBASSY,
Petropolis, June 21, 1909.

SIR: I have the honor to enclose herewith a copy and translation of a telegram from the Brazilian Foreign Minister, received after my dispatch of the 17th instant reporting President Penna's death had

gone forward, acknowledging the receipt of the condolences extended by this embassy and expressing grateful appreciation of the action of the United States in the premises.

I have, etc.,

IRVING B. DUDLEY.

[Inclosure—Telegram—Translation.]

The Minister for Foreign Affairs to Ambassador Dudley.

The Brazilian Government and the family of the lamented President, Affonso Penna, are profoundly grateful for the condolences and the words of sympathy which, by direction of President Taft and in the name of the Government and the people of the United States, your excellency addressed to them in a telegram of the 15th instant in my care. We are honored by the part the great Republic took in our affliction.

RIO BRANCO.

BULGARIA.

RECOGNITION OF INDEPENDENCE OF BULGARIA.

File No. 5072/33.

Chargé Hutchinson to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Bucharest, April 30, 1909.

Reports communication from Bulgarian minister for foreign affairs stating that protocol was signed April 19 in which Turkey expressly declares that she recognizes new State of Bulgaria. The minister seeks recognition by United States, saying independence has already been recognized by all great European powers.

File No. 5072/43.

The Minister for Foreign Affairs of Bulgaria to the Secretary of State.

[Translation.]

No. 536.] MINISTRY OF FOREIGN AFFAIRS AND WORSHIP,
Sophia, May 2/15, 1909.

Mr. MINISTER: I have the honor to apprise your excellency that the great powers signatory to the treaty of Berlin have seen fit to recognize the political act accomplished at Tirnovo September 22/October 5/1908, by which Bulgaria was proclaimed independent and its sovereign King of the Bulgars.

I am glad of the opportunity thus afforded me to transmit to your excellency the most sincere thanks of the Bulgarian Government for the warm felicitations the Government of the United States was pleased to address to it on the occasion.

I cherish the hope, Mr. Minister, that the Government of the United States will continue to maintain friendly relations with the new Kingdom in the future and kindly contribute to its further development.

Be pleased, etc., S. PAPRIKOFF.

File No. 5072/33.

The Secretary of State to Chargé Hutchinson.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, May 3, 1909.

Informs him that the President directs that he express to His Majesty, the Czar, felicitations of the President upon the admis-

sion of Bulgaria to the community of sovereign and independent States. Adds that the Government and people of the United States, in cordial friendship for Bulgaria, offer good wishes for the welfare and happiness of His Majesty and the people of Bulgaria.

File No. 5072/42.

The Turkish Ambassador to the Secretary of State.

[Translation.]

IMPERIAL OTTOMAN EMBASSY,
Washington, May 19, 1909.

Mr. SECRETARY OF STATE: I have the honor to advise your excellency that His Excellency Rifaat Pasha, minister of foreign affairs, exchanged to-day with the Bulgarian delegate the protocol by which we recognize the new political State of Bulgaria.

Be pleased, etc., H. KIAZIM.

File No. 5072/43.

The Secretary of State to the Bulgarian Minister for Foreign Affairs.

DEPARTMENT OF STATE,
Washington, June 2, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 2/15 ultimo, by which you are so good as to inform me that the powers signatories to the treaty of Berlin have recognized Bulgaria as independent and its sovereign as King of the Bulgars.

In thanking your excellency for the courtesy of your note I gladly avail myself of the opportunity to renew to you the felicitations of the United States and the assurances of the cordial friendship of this Government and people, which the diplomatic representative of the United States accredited to your Government was instructed by the President to convey to His Majesty the King.

Accept, etc., P. C. KNOX.

TERMINATION OF COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND BULGARIA.

File No. 1195/5A.

The Acting Secretary of State to Chargé Hutchinson.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 30, 1909.

Communicate immediately to the Bulgarian Government the following:

The Congress of the United States has effectively declared its intention to supersede the present customs tariff law of the United States by a new law, which is now under discussion and which will probably be enacted within a few weeks. One of the necessary results of this change will be that the commercial

arrangements made by the President under the authority of the act of July 24, 1897, will no longer be applicable to the condition which will exist under the new law. The Government of the United States accordingly finds it necessary to give notice of the intention to terminate all of these agreements.

By direction of the President I have therefore the honor hereby to give to the Government of Bulgaria formal notice on behalf of the United States of the intended termination of the proclamation issued on September 15, 1906, with respect to Bulgaria. Further communication on this subject will be made after the passage of legislative measures affecting the bases on which these agreements were concluded.

WILSON.

File No. 1195/5B.

The Secretary of State to Minister Eddy.

[Telegram.]

DEPARTMENT OF STATE,
Washington, August 6, 1909.

Referring department's telegram April 30 last, tariff act signed by President August 5, 1909, required notice of termination be given of commercial agreements entered into under section 3 of tariff act of July 24, 1897. In the case of those agreements which contain no stipulation in regard to termination by diplomatic action President is authorized to give to the countries concerned notice of termination of six months, which notice shall date from April 30, 1909. By direction of the President you will give formal notice to the Government of Bulgaria of the intended revocation of the proclamation of the President of the United States, dated September 15, 1906, said revocation to take effect six months from April 30, 1909, namely, on October 31, 1909.

KNOX.

CHILE.

PROTECTION OF CHINESE IN CHILE.

File No. 15077/40.

Minister Hicks to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Santiago, January 20, 1909.

Reports satisfactory arrangement for Chinese representation in Chile.

File No. 15077/40.

The Acting Secretary of State to the Chinese Minister.

No. 135.] DEPARTMENT OF STATE,
Washington, January 21, 1909.

SIR: Referring to my note of August 26, 1908,[1] in which I had the honor to advise you that the American ministers at Santiago and Quito had been instructed to arrange to undertake the protection of Chinese subjects and their interests in Chile and Ecuador, I am now pleased to inform you that I am in receipt of a telegram from Santiago in which Minister Hicks states that he has satisfactorily arranged for the protection of Chinese subjects and interests in Chile by American diplomatic and consular officers.

Accept, etc., ROBERT BACON.

File No. 15077/59–60.

Minister Hicks to the Secretary of State.

No. 303.] AMERICAN LEGATION,
Santiago, January 21, 1909.

SIR: Referring to department's No. 126[1] and No. 140[2] dated August 22, 1908, and December 3, 1908, I have to report that the matter of the representation of Chinese subjects in Chile by the diplomatic and consular representatives of the United States has finally been arranged. The delay was caused by the failure of the

[1] See Foreign Relations 1908, p. 61.
[2] Not printed.

foreign office to act and it was only yesterday that the form of certificate was agreed upon.

I have notified the consuls at Valparaiso, Iquique, and Punta Arenas and sent them copies of the form of certificate agreed upon in English and Spanish.

I am also inclosing herewith a copy of the certificate. The form sent by department was modified by the foreign office in a few words and I trust will meet with department's approval.

I am, etc., JOHN HICKS.

[Inclosure.]

I, ——— ——— ———, of the United States of America, certify that ——— claims to be a subject of the Emperor of China, resident in Chile, and that upon his proving in an authentic manner the fact that he is a Chinese subject, he will have the right, in case of necessity, and according to the precepts of international law, to the protection of the Government of the United States and to the good offices of the diplomatic and consular officers of said Gvernment while they remain in Chile, in accordance with communications dated January 20, 1909, exchanged between the ministry of foreign relations of Chile and the legation of the United States in Santiago, in the name of its Government and of the Chinese Empire.

File No. 15077/58.

The Chinese Minister to the Acting Secretary of State.

IMPERIAL CHINESE LEGATION,
Washington, February 4, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 21st ultimo, serial number 135, in which you inform me that you have received a telegram from Santiago, in which Minister Hicks states that he has satisfactorily arranged for the protection of Chinese subjects and interests in Chile by American diplomatic and consular officers. I take this opportunity to assure you that the good offices of your representatives in the countries wherein my Government is not represented in the protection of our people and interests are highly appreciated by the Imperial Government.

Accept, etc.,

WU TING-FANG.

File No. 15077/58.

The Acting Secretary of State to Minister Hicks.

No. 152.] DEPARTMENT OF STATE,
Washington, February 13, 1909.

SIR: There is inclosed herewith a copy of a note[1] received by the department from the Chinese minister, expressing the appreciation of his Government of the arrangements made in Chile and other countries for the protection of Chinese subjects by American diplomatic and consular officers.

I am, etc., ROBERT BACON.

[1] Supra.

File No. 15077/59–60.

The Secretary of State to Minister Hicks.

No. 160.] DEPARTMENT OF STATE,
Washington, March 17, 1909.

SIR: The department acknowledges the receipt of your No. 303, of January 21, 1909, relative to the arrangements which have been made for the protection of Chinese subjects in Chile.

The department is gratified with the satisfactory results of your negotiations with the Chilean Government, and approves the form of certificate which accompanied your dispatch.

I have, etc., P. C. KNOX.

File No. 15077/59–60.

The Secretary of State to the Chinese Minister.

No. 148.] DEPARTMENT OF STATE,
Washington, March 17, 1909.

SIR: Referring to the department's note of January 21, 1909, in which you were advised that the American minister at Santiago had arranged with the Chilean Government for the protection of Chinese subjects in that country, I have the honor to inclose herewith for your information a copy of the certificate [1] which will be used in this connection and which seems calculated to safeguard the rights of the Chinese subjects concerned. This form is based upon that originally suggested by the department, but which has been amended in certain minor details at the request of the Chilean Government.

Accept, etc.,

P. C. KNOX.

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[1] See inclosure to Mr. Hicks's dispatch No. 303, January 21, supra.

CHINA.

RIGHT OF AMERICAN CITIZENS TO BUY AND SELL REAL ESTATE INSIDE WALLS OF NANKING CITY.

File No. 18063/4.

Consul McNally to the Secretary of State.

No. 84.] AMERICAN CONSULATE,
Nanking, January 13, 1909.

SIR: I have the honor to herewith inclose copies of the correspondence between this consulate, the local foreign office, and the legation in reference to the question as to the present status of Nanking in its entirety as an open port.

The authorities stubbornly contend the territory outside the city walls is alone open to foreign trade, which territory, although not an established concession or settlement, was a matter of official negotiation between a commission representing the British and French Governments and the local Government, in 1865, after the recapture of the city by the imperial troops. Failing to agree, the matter of the concession was transferred to Peking, the matter being finally terminated in 1875, when the Chinese Government reported that the proposed concession had been washed away.

The proposed settlement which the Chinese reported as having been washed away is now being in part utilized by the authorities as a terminus for the Nanking city railway.

I am pleased to report, however, that Mr. J. F. Newman has voluntarily sold his property to the local officials at a reasonable profit, and the matter is closed as far as American interests are concerned.

I have, etc., J. C. MCNALLY.

[Inclosure 1.]

Consul McNally to the director of foreign affairs at Nanking.

AMERICAN CONSULATE,
Nanking, November 11, 1908.

SIR: Replying to your excellency's note of the 1st instant, with further reference to the land purchased by Mr. J. F. Newman, an American citizen, on which he is erecting a dwelling house, which land was purchased from Rev. D. W. Nichols, also an American citizen, I have the honor to say that after a careful examination of the deed as recorded in the land record book of this consulate, I find no mention of "for missionary purposes," or anything that could be construed as having that intent. I am fully convinced that Rev. D. W. Nichols had a right to purchase and hold property, and to transfer the same to Mr. J. F. Newman, and that Mr. J. F. Newman has the same right to purchase property and improve it.

Article VI of the treaty between France and China in 1858 makes Nanking an open port, and while merchants and others were not able to avail themselves

of their rights for several years after by reason of the Taiping rebellion, there has been no abrogation of this treaty, and your excellency's contention that Nanking is interior land can not be admitted, nor is there any established settlement either within or without the walls.

It is a fact that the Japanese are doing business in Nanking without molestation. It is a further fact that my colleagues agree with me that Nanking city is open to foreign trade and that American citizens have an undisputed right to purchase land or houses therein.

With this opinion I would respectfully submit that I am unable to comply with your excellency's request to instruct Mr. Newman to discontinue work on his building or to turn back the land to its original owners.

With renewed, etc.,

J. C. McNALLY.

[Inclosure 2.—Translation.]

Director of the foreign office at Nanking to Consul McNally.

NANKING, *November 30, 1908.*

SIR: With reference to the land located near the Lion Bridge inside the city of Nanking, which was unlawfully purchased by J. F. Newman, an American citizen, and upon which he is erecting a dwelling house, I have had the honor of communicating with your excellency three times and explaining the case fully in accordance with treaty.

On the 18th of the tenth moon I again received your favor, in which you inform me that after a careful examination of a copy of a letter from Consul Martin, accompanying the deed of Rev. Nichols, as well as the deed recorded in the land-office book in your honorable consulate, you find no mention of the words "for missionary purposes," and that the open port of Nanking includes both inside and outside of the walls, for which opinion I am sorry, because of the full understanding and establishment of the treaty of friendship between our two countries, and I am unable to see the reason why your excellency is unable to prevent this unlawful act.

I beg again to draw your attention to the fact that those intending to purchase land at Nanking must apply to the custom taltai through their consul for a deputy to investigate the title and measure of the land, while those intending to buy for missionary purposes must apply locally to the magistrate through the foreign office.

Although there is no mention of "for missionary purposes" in the said deed, we have found the communication of Consul Martin to this office, in which he states that Mr. Nichols leased the land in perpetuity on behalf of his mission, and the deed was forwarded through this office to the local magistrate.

It makes no difference, if the land was bought by the missionary, whether the words "for missionary purposes" was included therein or not; you can not say that it does not belong to the mission. The missionaries who bought land inside the city can only use it for their own mission, no matter how the deed is written. It is impossible for a missionary to transfer the property of their mission to a merchant for any other purpose.

The treaty limits the purchasing of land by foreign merchants to the concession. In article 12 of the treaty between the United States and China in the eighth year of the Chen Fong (1858), Americans are permitted to lease lands in open ports for the erection of houses, etc. Again, in article 14 foreign merchants are allowed to trade and erect houses in the concession. In 1903 the appendix to the treaty between the United States and China a foreigner is not entitled to lease land, build thereon, or conduct any business outside of open ports except for missionary purposes. I beg to say further that under article VI of the treaty between France and China, in 1858, Nanking, Canton, etc., are open to trade only at the ports.

In the thirtieth year of Tao Kwang (——), another treaty was made between England and China which states the same as article VI of the above treaty, in view of which it is absolutely impossible for a foreigner to gain title to land and build thereon outside of open ports.

Your excellency's contention that the open port of Nanking is not limited to the inside or outside of the walls appear to me to be contrary to the treaty, and that according to the above mentioned treaties, merchants who want to

purchase land must do so in the open port from Li fang Moon to Hsia Kwan, the title deeds for which must be procured from the taotai.

Last year the said citizen, J. F. Newman, fraudulently bought in Han Shi Moon, a piece of land for go-down purposes, which land is outside of the open port. We consulted your predecessor and he was instructed to surrender the land to the former owner.

As Mr. Newman leased the property from the missionary for the erection of a dwelling house, which is contrary to treaty and which our higher authority is unable to approve, you are requested to instruct Mr. J. F. Newman to have the work on his house stopped, and we trust that the matter may be amicably settled.

With regard to the Japanese merchants inside the city, they have been requested through their consul to close their business. You will, however, note that the Japanese merely rent their shops from Chinese, and they can be ordered to vacate at any time.

There is no such law permitting a missionary to transfer the property of the mission to merchants for other purposes.

As far as we can see, the United States is the most civilized nation in the world, the citizens of which must conduct themselves in every way according to law. Now, this merchant comes inside the city to erect a dwelling house in interior land, and he is the first foreign merchant to do so inside the walls.

If we permit him to do so, the people of other nations will do likewise, and I would therefore request your excellency to appreciate my position and the trouble and settle this case in some way satisfactorily to all so that I may avoid the trouble.

I take this occasion, etc., TAOTAI YUNG HENG.

[Inclosure 3.]

Consul McNally to Minister Rockhill.

No. 37 Legation.] AMERICAN CONSULATE,
Nanking, December 5, 1908.

SIR: I have the honor to inform the legation that several months ago the Rev. D. W. Nichols, formerly connected with the Methodist mission at Nanking and now residing in the United States, sold to Mr. J. F. Newman, an American citizen, a plot of land located within the city walls and fronting on the main maloo, on which Mr. Newman is erecting a dwelling house. The original deed of purchase was registered in the land record book of this consulate on May 30, 1903, but to the present writing no further deed has been presented for recording, although I am informed Mr. Newman has paid to Dr. Robert Beebe, Mr. Nichols's power of attorney, the full purchase price.

I beg to say that Mr. Newman never consulted me as to the legality of his land purchase, nor was I informed of his intention to improve the same until the materials for his building were on the ground and the work well under way.

The local foreign office has lodged a vigorous protest against the purchase of land and the improvement thereof, and in support of their contention declare that the Rev. D. W. Nichols when he bought the land was a missionary and that he bought it for missionary purposes; that the same can not be diverted, through purchase, to other purposes. They further declare that the letter of Consul Martin accompanying the deed sent to the foreign office for stamping states that the property was to be used for missionary purposes.

As the system of writing the officials in English and sent in a Chinese translation was not established in this office during the incumbency of Consul Martin, we are compelled to rely upon the Chinese text, a copy of which, as well as that of the deed, is herewith inclosed. I am submitting also a copy of my last letter to the foreign office under date of November 11 last and their reply thereto of the 30th instant which joins the issue as to whether or not Nanking as a whole is open to foreign trade or only that portion located outside the city walls and designated as the village of Hsia Kuan, which the authorities are pleased to term the "Settlement" although they well know that no foreign settlement has been established in Nanking either inside or outside the city walls.

Referring to that part of the letter from the foreign office of November 30, 1908, which states that notice has been served on the British consul requesting him to have one of his nationals vacate land leased on Yi Fang Moon, my British colleague informs me that not only has he not received any such notice, but that he has no knowledge of any British subject having leased land inside the walls. The Japanese consul informs me that sometime ago he received notice that his countrymen were carrying on business inside the city walls, in violation of treaties, but he gave the matter little attention, as he is also of the opinion that the whole city of Nanking is open to foreign trade.

The authorities are considerably worried over what they term as "the foreign invasion of interior land."

I would respectfully ask for early instructions in the premises.

I have, etc.,

J. C. McNALLY.

[Inclosure 4.]

Minister Rockhill to Consul McNally.

No. 1760.] AMERICAN LEGATION,
Peking, December 16, 1908.

SIR: I have to acknowledge the receipt of your No. 37 of December 5, in reference to the purchase of a lot of land inside the walls of Nanking by an American citizen from another American, and the protest of the local authorities against the use of said land by the new purchaser on the ground that it was originally acquired solely for missionary purposes.

You request instructions as to the reply you should make to the note sent you by the Nanking foreign office on November 30 last, copy of which you inclose.

The American Government considers that all treaty ports in China are open in their entirety for purposes of trade, and also for residence unless otherwise agreed upon. At Nanking, no concession or settlement having been agreed upon, foreign residents have the right to lease, purchase, transfer, or sell real estate within the whole area of the city, whether they be missionaries or merchants. Your letter of November 11 to the director of the foreign office covers the case. I think you should adhere to the position you have taken in it and not recognize the limitations on treaty rights claimed by the Chinese.

I am, etc.,

W. W. ROCKHILL.

File No. 18063/4.

The Secretary of State to Minister Rockhill.

DEPARTMENT OF STATE,
Washington, February 23, 1909.

SIR: Referring to a dispatch, No. 37, addressed to the legation by the consulate at Nanking, and your instruction No. 1760 in reply, relative to the right of an American citizen to buy and sell real estate inside the walls of Nanking City, you are informed that the department approves the instruction mentioned and has advised Mr. McNally.

I am, etc., ROBERT BACON.

FUNCTIONS AND STATUS OF THE UNITED STATES COURT FOR CHINA.

PROCEEDINGS HAD IN THE DE MENIL CASE.

File No. 7655/24–26.

Minister Rockhill to the Secretary of State.

[Extract.]

No. 990.] AMERICAN LEGATION,
Peking, August 28, 1908.

SIR: I have the honor to inclose herewith a copy in translation of a note which I received on the 24th instant from his imperial highness, Prince Ch'ing, in which (1) he complains of the judgment rendered by the United States Court for China in the case of a killing of a Chinese subject by an American citizen, and asks me to take up the case and practically retry it.

In the second part of the letter Prince Ch'ing, referring to the United States Court for China, to its creation and jurisdiction, to the office of judge in said court, and to his position in relation to the Chinese Government, concludes by saying the "so-called judge is only an executive officer to be treated by the Chinese Government and officials only as a consul of high rank with specialized functions." The Chinese Government, it is stated, proposes, notwithstanding the fact that the judicial powers of the minister of the United States to China have been transferred to the United States Court in China, to consider the minister as "still having ultimate appellate jurisdiction in all matters concerning the exercise of judicial power over foreigners in Chinese territory," and will consequently only deal with the American minister when cases arise in which Chinese interests are involved.

I have, etc., W. W. ROCKHILL.

[Inclosure—Translation.]

The Prince of Ch'ing to Minister Rockhill.

F. O. No. 465.] FOREIGN OFFICE,
Peking, August 24, 1908.

YOUR EXCELLENCY: On the 2d day of the sixth moon (June 30) I received a dispatch from the superintendent of southern trade stating that in the case of the American traveler, De Menil, who shot and killed the lama, Pu Keng-lung, at Wei-hsi-t'ing in Yunnan Province, the viceroy of Ssu-ch'uan delivered the criminal to the American consul at Chungking who forwarded him to Shanghai to be tried in the United States Court. The Shanghai tao-t'ai deputed Li, the district magistrate of Shanghai, on the 13th and following days of the tenth moon of last year (November–December) to watch the proceedings of the court, but had not time to insist upon the fulfillment of treaty rights, and the judge of the United States Court set De Menil free. The decision of the American judge was that the criminal did not premeditate the killing of Pu Keng-lung, and he called it accidental killing, ignoring the fact that De Menil discharged his gun twice with the undoubted intention of killing his guard, Li Yu-shan, but that unexpectedly he missed the guard, Li Yu-shan, and accidentally killed the lama, Pu Keng-lung. So, although the killing of

Pu Keng-lung was accidental, yet in firing twice he had the purpose to kill some one. The decision of the American judge, that the killing was accidental, and that the man should, therefore, be released was exceedingly unjust and did not satisfy the demands of the case. The superintendent of southern trade has copied fully all the proceedings in this case and forwarded them to the board of foreign affairs, and the board has very carefully scrutinized them. In these records, under the date of December, 1907, 25th case, folio 10, we find the statement that the defendant being angry with his guard, Li, for loitering abused him, then snatching Li's gun pointed it at Li, who ran off in fear. The defendant then fired the gun, the bullet passing over Li's head. The defendant then reloaded and fired again, killing the lama. Li and Ch'en again testified that the defendant threatened Li with the gun, that Li ran away, and that the defendant fired in the direction in which Li ran. This was all brought out clearly by the judge, so that it is evident that the criminal De Menil intended to kill the soldier Li. Although he failed to kill the soldier, Li, and accidentally did kill the lama, he had murder in his heart. The testimony was clear and unmistakable. The decision of the judge that the affair was accidental and that no punishment should be inflicted nor even a fine assessed for the lama's death, how can this satisfy the minds of men or display justice?

Our board also observes that the criminal De Menil was traveling in Ssu-ch'uan Province, and that he passed into Yunnan Province contrary to the terms of his passport. The viceroy of Ssu-ch'uan treated him with great kindness, sending guards for his protection. The said criminal fell into a passion with his guard and fired at him, and thus killed an outside party. After thus taking human life he is not convicted of any crime and is not even fined. The great wrong done the murdered man is not in the least atoned for. When the people of Ssu-ch'uan and Yunnan hear of this the hair will rise on their heads. Their anger will grow and the consequences will be serious for travelers. In this case justice does not shine, and the good name of America suffers. It is our duty to refer this case to your excellency that your excellency may think of a way to straighten this affair out, determining the crime of which the aforesaid criminal is guilty, or the fine which he ought to pay, so that angry passions may be calmed and justice displayed. Furthermore, in the eleventh moon of the thirty-second year of Kuanghsu (December–January, 1906–7) a note was received from your excellency stating that the United States Congress had passed an act to establish a United States court in China, and the regulations of the court were inclosed. In the first section of the said act the following words appear: "which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by the United States consuls and ministers." The board of foreign affairs understands these regulations to mean that the judicial powers of the American judge are the same as those formerly exercised by the American minister and consuls, which derived their existence from the grant of judicial powers over foreigners made in the treaties.

The United States has the undoubted right to establish independently courts of law in its own territory, but the circumstances are very different in this case. The seventh section of the act states that the tenure of office of the judge of the said court shall be at the pleasure of the President. From this it appears that the status of this court is different from that of an independent judiciary. Although the term "judge" is employed it is evident that he is only an official of the executive department appointed for the conduct of foreign relations. So, in the estimation of the Chinese Government and officials, the American judge is to be treated only as a consul of high rank with specialized functions. In any legal case the provincial authorities will deal with him according to the rules for dealing with a consul. Therefore, although the American judge exercised part of the official functions of the American minister, yet the minister is the sole representative of America, and as long as China has not recalled the extraterritorial judicial powers the American minister at Peking will be regarded as having ultimate appellate jurisdiction in all matters concerning the exercise of judicial power over foreigners within Chinese territory. In all legal cases the board of foreign affairs will, as formerly, deal with the American minister. It is proper to state our position clearly.

A necessary dispatch.

[Seal of the Wai-wu Pu.]

File No. 7655/24–26.

The Secretary of State to Minister Rockhill.

No. 536.] DEPARTMENT OF STATE,
Washington, January 19, 1909.

SIR: The department acknowledges the receipt of your No. 990, of August 28, 1908, which, with inclosures, has been carefully considered. It is observed that the note of the Wai-wu-pu, of August 24, 1908, protesting against the decision of the United States Court for China in the case of De Menil, uses certain language in expressing its understanding of the functions and status of the court which is so incorrect that the department deems it advisable not to allow these observations to pass with the simple caveat with which you dismissed them in your reply of August 28, 1908.

The department, therefore, incloses herewith a memorandum from the law officer of the department, which deals in detail with the jurisdiction of the United States Court for China as defined both by the treaties between the United States and China and by the statutes of the United States. The law officer also examines in some detail the criticisms of the Chinese foreign office upon the action of the United States Court for China in the De Menil case.

You are accordingly instructed to avail yourself of the occasion of Judge Thayer's appointment to the United States Court for China to notify the Chinese Government of his appointment in the spirit of the department's No. 211, of November 10, 1906,[1] specifically asking the Chinese Government to instruct the high authorities at Shanghai and the other treaty ports as to the existence and functions of the court and to recommend to them cordial assistance to the American officials in the performance of their duties.

You will, at the same time, tactfully but explicitly bring to the attention of the Chinese foreign office the consideration set forth in the accompanying memorandum of the law officer of the department. The department believes that when the consideration set forth in this memorandum have been considered by the Wai-wu-pu the Chinese foreign office will not only acquiesce in the justice of the conclusions therein expressed as regards the functions of the United States Court for China, but will be convinced that the proceedings in the De Menil case were regular, according to the principles of American law, and that these proceedings disclose no violation of treaty rights and no intentional discourtesy on the part of the United States Court for China.

I am, etc., E. ROOT.

[1] See Foreign Relations, 1906, p. 407.

[Inclosure.]

DEPARTMENT OF STATE,
Washington, December 18, 1908.

MEMORANDUM IN REGARD TO THE FUNCTIONS AND STATUS OF THE UNITED STATES COURT FOR CHINA AND AS TO THE PROCEEDINGS OF THE COURT HAD IN THE DE MENIL CASE.

The treaty provisions by virtue of which the United States exercises extraterritorial jurisdiction in China are the following:

TREATY OF JULY 3, 1844.

ART. XXI. Subjects of China who may be guilty of any criminal act toward citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China; and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the consul, or other public functionary of the United States, thereto authorized, according to the laws of the United States. And in order to the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides.

ART. XXIV. * * * And if controversies arise between citizens of the United States and subjects of China, which can not be amicably settled otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations acting in conjunction.

ART. XXV. All questions in regard to rights, whether of property or person, arising between citizens of the United States and China, shall be subject to the jurisdiction of, and regulated by the authorities of their own Government. And all controversies occurring in China between citizens of the United States and the subjects of any other Government shall be regulated by the treaties existing between the United States and such Governments, respectively, without interference on the part of China.

ART. XXIX. * * * The merchants, seamen, and other citizens of the United States shall be under the superintendence of the appropriate officers of their Government. If individuals of either nation commit acts of violence or disorder, use arms to the injury of others, or create disturbances endangering life, the officers of the two Governments will exert themselves to enforce order, and to maintain the public peace, by doing impartial justice in the premises.

TREATY OF JUNE 18, 1858.

ART. XI. All citizens of the United States of America in China, peaceably attending to their affairs, being placed on a common footing of amity and good will with the subjects of China, shall receive and enjoy for themselves and everything pertaining to them, the protection of the local authorities of Government, who shall defend them from all insult or injury of any sort. If their dwellings or property be threatened or attacked by mobs, incendiaries, or other violent or lawless persons, the local officers, on requisition of the consul, shall immediately dispatch a military force to disperse the rioters, apprehend the guilty individuals, and punish them with the utmost rigor of the law. Subjects of China guilty of any criminal act toward citizens of the United States shall be punished by the Chinese authorities according to laws of China; and citizens of the United States, either on shore or in any merchant vessel, who may insult, trouble, or wound the persons or injure the property of Chinese, or commit any other improper act in China, shall be punished only by the consul or other public functionary thereto authorized, according to the laws of the United States. Arrests in order to trial may be made by either the Chinese or the United States authorities.

ART. XXVII. * * * All questions in regard to rights, whether of property or of person, arising between citizens of the United States in China shall be subject to the jurisdiction and regulated by the authorities of their own Government; and all controversies occurring in China between citizens of the United States and the subjects of any other Government shall be regulated by the treaties existing between the United States and such Governments, respectively, without interference on the part of China.

TREATY OF NOVEMBER 17, 1880.

ART. IV. When controversies arise in the Chinese Empire between citizens of the United States and subjects of His Imperial Majesty which need to be examined and decided by the public officers of the two nations, it is agreed between the Governments of the United States and China that such cases shall be tried by the proper official of the nationality of the defendant. The properly authorized official of the plaintiff's nationality shall be freely permitted to attend the trial and shall be treated with the courtesy due to his position. He shall be granted all proper facilities for watching the proceedings in the interests of justice. If he so desires, he shall have the right to present, to examine, and to cross-examine witnesses. If he is dissatisfied with the proceedings, he shall be permitted to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case.

It will be observed that these treaty provisions do not attempt to specify the manner in which, or the officers by whom, the extraterritorial jurisdiction conferred upon the United States shall be administered. The provisions in so far as they refer at all to the officers through whom extraterritorial jurisdiction is to be exercised, are couched in the most general terms such as the following: "By the consul or other public functionary of the United States thereto authorized, according to the laws of the United States" (art. 21, treaty of 1844); "by the public officials of the two nations acting in conjunction"

(ib., art. 24); "by the authorities of their own Government" (ib., art. 25); "the appropriate officers" (ib., art. 29); "the consul or other public functionary" (art. 9, treaty of 1858); "the proper official of the nationality of the defendant * * * the properly authorized official of the plaintiff's nationality" (art. 4, treaty of 1880). It would therefore appear that the question as to the title and the functions of the American officials who exercise the extraterritorial jurisdiction conferred by the treaties within Chinese territory are matters entirely within the discretion of this Government.

For a long time this Government saw fit to repose the judicial authority conferred by the treaty in its consular officers. Recently following the example of other nations who have acted under treaties substantially similar to those between the United States and China, this Government has deemed it best to transfer a considerable portion of the judicial authority heretofore exercised by our consular officers, and all the judicial authority heretofore held by the United States minister in China, to a tribunal whose functions are entirely judicial and which is called the United States Court for China. Under the provisions of the act creating this court it is also given appellate authority in regard to judicial matters over which consular officers retain jurisdiction, the appellate authority formerly exercised by the United States minister being now vested in the United States Court for China. No appeal lies from the decision of the United States Court for China to the minister of the United States at Pekin, provision being made by the act creating the court for China for an appeal to the "United States Circuit Court of Appeals for the Ninth Judicial District."

Under these circumstances, it must be assumed that the Wai-wu-Pu was under some misapprehension as to the scope and meaning of the act creating the United States Court for China when it indicated its intention to regard the American minister at Pekin as having ultimate appellate jurisdiction in all matters concerning the exercise of judicial power over Americans within Chinese territory.

At the same time it is hardly necessary to add that the Wai-wu-Pu is quite correct in its position that "in all legal cases the board of foreign affairs will as formerly deal with the American minister," except that it is not quite clear why the Wai-wu-Pu should set forth with such particularity its intention to deal with the American minister in "all legal cases," inasmuch as the American minister is naturally the person with whom the Wai-wu-Pu should deal in the future, as in the past, not only as regards legal matters, but all other matters American. It is believed that the considerations above set forth should be discreetly but explicitly brought to the attention of the Chinese foreign office.

Recurring once more to the provisions of the treaties under which the United States exercises extraterritorial jurisdiction in China, it will be observed that the treatties provide that "citizens of the United States who may commit any crime in China shall be subject to be tried and punished * * * according to the laws of the United States." (Art. 21, treaty of July 3, 1844.) Again, "citizens of the United States * * * who may insult, trouble, or wound the persons * * * of Chinese * * * shall be punished only * * * according to the laws of the United States." (Art. 11, treaty of June 18, 1858.) Again, "when controversies arise in the Chinese Empire between citizens of the United States and subjects of His Imperial Majesty * * * the law administered will be the law of the nationality of the officer trying the case." (Art. 4, treaty of Nov. 17, 1880.)

It is therefore expressly stipulated that the trial of an American citizen for killing a Chinese subject shall take place not only before a "functionary of the United States" but also "according to the laws of the United States." And the rules of Anglo-Saxon jurisprudence, both statutory and common law, must apply in accordance with the provisions of the act of Congress (R. S., 4083, 4130), and the act of June 30, 1906, creating the United States Court for China.

The argument of the Wai-wu-Pu that De Menil should have been convicted because his intent to kill his guard whom he did not injure, should be construed as an intent to kill the lama whom he did kill, thus supplying constructively the necessary criminal intent, is in accordance with the rules of American law, provided the court had found that there was, in fact, an intent to kill the guard. But a careful reading of the record in the case, and especially the judgment of the court, fails to show that the court found any intent on the part of the defendant to injure anyone. A quotation from the

judgment in which the evidence is summed up will show the attitude of the court upon this point.

The physical condition of the accused at the time of the shooting was bad and was aggravated by the rarefied mountain air of the locality, the loneliness of the place, and the wildness of his surroundings. This being so, it is not surprising that he should become irriated on account of the improper conduct of one of his escorts. However, when we consider that the lama who was killed, was unknown to the accused, that the first shot was fired for the mere purpose of intimidating Li and not with a view of hurting him, and that the surrounding circumstances were such as to affect seriously the nervous condition of the accused, the conclusion is irresistible that the shooting which caused the death of the lama was without the slightest criminal intent.

This leaves to be considered the question whether the conduct of the accused was of such a careless nature as to render the act complained of criminal in the eye of the law. We are of the opinion that it was not. The hamlet of Laku consists of only four or five huts, and is situated on a high mountain in a sparsely-settled country. The road upon which the lama was traveling was higher than the place where the accused stood when he fired the shot, and he testified that this fact had not been previously observed by him. The testimony shows that there were trees intervening between the lama and the accused at the time the fatal shot was fired, and it is doubtful whether the lama was in sight at the time. Had the shots been fired in a village located in a thickly settled portion of China, defendant's conduct would be characterized as criminal carelessness. All of the evidence goes to show that the accused has hitherto borne a good name, and that he is a peaceable law-abiding citizen. He was educated at Washington University, St. Louis, Mo., and is a duly licensed practitioner of medicine. He has already been under arrest for a number of months and has suffered much inconvenience and pain. He testified that he was arraigned before the Chinese courts at Artunza, which, though not having jurisdiction, heard the evidence and reached the conclusion that the killing was the result of an accident. In view of all of the circumstances, the court does not feel that the ends of justice would be subserved by imposing further punishment upon the accused. He is therefore acquitted.

On this finding of facts the doctrine of constructive intent is inapplicable, and the accused is necessarily acquitted.

Moreover, to rearrest and retry De Menil after his having once been acquitted would be contrary to the principle of Anglo-Saxon law embodied in the Constitution of the United States (Amendments, Art. V), "nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb." De Menil having been tried for murder and acquitted, a plea of former jeopardy would at once be successfully interposed if any attempt were made to retry him for the same offense.

Finally, the Wai-wu-Pu protests that the Shanghai taotai who represented the Chinese Government to watch the proceedings of the court, "had not time to insist upon the fulfillment of treaty rights." This complaint is not understood, inasmuch as the department had understood that the city magistrate of Shanghai, who watched the case on behalf of the Chinese Government, was given every facility, and was seated on the bench with the court, to afford him every opportunity to exercise his treaty rights. The case was called for trial before the United States Court for China on November 8, 1907, and the judgment was not given until December 2, 1907, over three weeks later. So far as the department is informed no protest, based on the allegation that inadequate time was being afforded, was made to the court during the course of the trial. It is true that in a dispatch from his honor, Laing, taotai of Shanghai, to Hon. Charles Denby, American consul general at Shanghai, in regard to this case, dated January 13, 1908, the taotai says that no copy of the judgment was sent to him until he wrote and asked for it, by which time the prisoner had already been released." If, through any oversight, every suitable opportunity was not given the Chinese representative to exercise his treaty rights or any courtesy was omitted it would naturally be a subject of great regret on the part of the department, and it is suggested that, without meaning thereby to intimate the slightest belief on the part of the department that the United States Court for China was in fact remiss in according all proper facilities and every courtesy to the Chinese city magistrate, a copy of this memorandum be sent to the United States Court for China out of greater caution in order that the treaty provisions in question may be drawn specially to the attention of the court.

File No. 7655/27–28.

The Acting Secretary of State to Minister Rockhill.

No. 562.] DEPARTMENT OF STATE,
Washington, March 15, 1909.

SIR: Supplementing the department's instruction No. 539, of January 29, 1909,[1] there is inclosed herewith for your information a copy of an instruction this day addressed to the consul general at Shanghai with reference to the so-called De Menil case. The substance of this instruction should be communicated to the Wai-wu-Pu.

I am, etc.,

HUNTINGTON WILSON.

[Inclosure.]

The Secretary of State to Consul Denby.

No. 203.] DEPARTMENT OF STATE,
Washington, March 15, 1909.

SIR: Referring to the department's instruction No. 188, of January 27, 1909,[1] in response to your dispatch of December 22, 1908,[1] in which your attention was called to the department's instruction[2] of the 19th of January, a copy of which is on file with the clerk of the United States Court for China, you are directed in reply to the communication from the Shanghai tao-t'ai inclosed with your dispatch of the 22d of December:

First. To call his attention to the views of the department regarding the status of the United States Court for China as set forth in the memorandum of the law officer of the department.

Second. To state that the protest of the viceroy of Yun-kwei, transmitted to you by the Shanghai tao-t'ai, for the first time makes the suggestion that the United States Court for China should, in adjudging the De Menil case have provided compensation for the family of the lama who was killed.

You will acquaint the Shanghai tao-t'ai with the fact that it is of course a sufficient answer to this suggestion to say that the case mentioned was a criminal prosecution for murder and not a civil suit for damages based on negligence. Such a suit might have been brought, if, in the opinion of the family of the deceased, his death was due to the negligence of the defendant, and such a suit might still be brought if the family of the injured man is so advised and if the defendant can be located within the jurisdiction of the United States Court for China.

You are authorized to inform the Shanghai tao-t'ai that the United States minister at Peking has been instructed to communicate with the Wai-wu-Pu in regard to this matter and explain to him that under our law damages can not be collected through a criminal prosecution for murder, but must be sought in an appropriate civil suit. A copy of your communication to the tao-t'ai should be furnished the United States Court for China and the legation at Peking.

If you have not already done so, you are instructed to furnish the United States Court for China with copies of your dispatch, No. 284, of the 22d of December, 1908, with its inclosure, and of the department's instruction in reply thereto.

I am, etc.,

(For the Secretary of State.)
WILBUR J. CARR, *Chief Clerk.*

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[1] Not printed.
[2] See instruction of Jan. 19 to Mr. Rockhill.

File No. 7655/36.

Memorandum from the Chinese Legation.

IMPERIAL CHINESE LEGATION,
Washington, June 9, 1909.

In the case of Douminet [De Menil], an American citizen, who caused the death of Pu Keng Lung, a lama monk, at Weihsi Ting, Yunnan Province, the prisoner was arrested and handed over to the American consul at Chungking, and by the latter transported to Shanghai, where the case was tried by the judge of the American court in November, 1907. The verdict was in favor of the accused, and before the Chinese assessor could pay a protest, the accused was acquitted. Much dissatisfaction was expressed at the verdict, for whether the killing was intentional or accidental, punishment should have been meted out to the prisoner or a fine imposed to be paid to the family of the dead man as compensation. The case was drawn by the Wai-wu-Pu to the attention of the American minister, who expressed his inability to interfere, as it was a matter decided by the judiciary.

Now a dispatch from the Wai-wu-Pu to the Chinese minister states that in a communication from the viceroy of Yunnan the relatives of Pu Keng Lung, the deceased, set forth that he was the breadwinner of the family, supporting his parents, wife, and children, and that his untimely death at the hands of the American citizen should receive some sort of satisfaction. It is also set forth that Douminet [De Menil] promised the parents of the deceased to compensate them in any manner they might desire for the killing of their son and to hold himself responsible for the consequences of his act. This promise is on record in his deposition at the examination before the court at Likiang Fu. Now that the American court has acquitted Douminet [De Menil] it seems but fair that the American Government should devise some way by which the relatives of the dead man should receive some sort of satisfaction, or that Douminet [De Menil] should be made to fulfil the promise he made to the relatives of Pu Keng Lung in Yunnan.

File No. 7655/36.

Memorandum to the Chinese Legation.

DEPARTMENT OF STATE,
Washington, July 29, 1909.

Referring to the memorandum left at the Department of State by the Chinese minister on the 10th ultimo[1] concerning the case of De Menil [Douminet], an American citizen, who was charged with the killing of a lama in Yunnan and acquitted by the United States Court for China at Shanghai on the ground that the killing was accidental, it is now pointed out that this case has on several occasions received the considerate attention of the Department of State, and this Government's position in regard to it has been communicated to the Chinese authorities at Shanghai by the American consul general at that place.

[1] Dated June 9, 1909.

The Department of State, however, can not fail to avail itself of the present opportunity to give a clear statement of the American law governing the case, in order that the Chinese Government may not misunderstand the attitude of the United States.

As is already known, De Menil, as the result of the killing of the lama, was tried before the United States Court for China on the charge of manslaughter. After a fair and impartial trial in accordance with the laws of the United States, in the presence of a representative of the Chinese Government, and at which the testimony of the Chinese witnesses was heard, the judge of the court reached the conclusion that the killing was the result of an accident and therefore acquitted the accused. The Chinese Government then protested against the decision of the court and requested that De Menil be retired. This request, however, could not be granted because the rearrest and retrial of De Menil, after his once having been acquitted, would be contrary to the principles of American law embodied in the Constitution of the United States (Amendments, Article V), which says, "nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb." De Menil having been tried for manslaughter and acquitted, a plea of former jeopardy could at once be successfully interposed if any attempt were made to retry him for the same offence.

The Chinese Government suggested also that the court in adjudging the De Menil case should have provided compensation for the family of the lama who was killed, but this Government explained that the case was a criminal prosecution for manslaughter and not a civil suit for damages based upon negligence.

The Chinese minister has suggested that "the American Government should devise some way by which the relatives of the dead man should receive some sort of satisfaction" or that De Menil "should be made to fulfill the promise he made to the relatives of Pu Keng Lung in Yunnan," namely, to compensate them in any manner they might desire for the killing of their son, and to hold himself responsible for the consequences of his act.

The Department of State, however, regrets its inability to comply with either of these requests. In the first place this Government can not be held responsible in damages to the relatives of the unfortunate lama for the act of a private citizen traveling in China. In the second place there is no way under the laws of the United States whereby this Government can compel a private citizen to fulfill a promise to the subjects of a foreign nation.

The only legal remedy which the relatives of Pu Keng Lung appear to have, under American laws, is that which was suggested, in accordance with this department's instructions, to His Excellency Ts'ai Nai Huang, customs tao-t'ai of Shanghai, by the American consul general at Shanghai, under date of April 24 last, namely, a civil suit against De Menil for damages based on negligence. As was stated by the consul general, such a civil suit might be brought if, in the opinion of the family of the deceased, and they are so advised by counsel, death was due to the negligence of the defendant, and if the defendant can be located within the jurisdiction of the United States Court for China, or some other court of competent jurisdiction.

The Department of State trusts that this explanation will enable the Chinese Government to understand the position of the United States in regard to the case and to further understand that in prosecuting De Menil criminally for his act, although such prosecution resulted, from the evidence submitted, in his acquittal of the charge, this Government has exhausted its legal remedies against the accused, and for any further redress the aggrieved Chinese subjects must look to a civil suit against De Menil in accordance with the suggestion already made by the Department of State to the Chinese Government.

PROTECTION OF CORPORATIONS ORGANIZED UNDER LAWS OF THE UNITED STATES AND OPERATING IN CHINA.

CASES OF THE TAI HONG CO. AND THE AMERICAN PRESBYTERIAN MISSIONARY SOCIETY.

File No. 14716/2–3.

Consul Pontius to the Assistant Secretary of State.

No. 177.] AMERICAN CONSULATE GENERAL,
Hankow, June 26, 1908.

SIR: I have the honor to state that with further reference to my No. 175, dated June 19, 1908, on the subject of the status of the Tai Hong Co., I inclose herewith copy of reply of legation to my dispatch forwarded to it. The legation's instructions will be complied with and the present inclosure is forwarded to the department in the hope that same will prove of assistance should the department wish to instruct this consulate in the matter also.

I have, etc.,

ALBERT W. PONTIUS.

[Inclosure.]

Minister Rockhill to Consul Pontius.

No. 1636.] AMERICAN LEGATION,
Peking, China, June 22, 1908.

SIR: Your No. 377, of June 13, 1908, on the subject of the status of the Tai Hong Co., has been received. You inclose certified copy of the certificate of incorporation under the laws of the State of Delaware, of this company, and report that you are "informed" that all shares of the company have passed to citizens of other (than American) nationality. You ask five questions, which the legation answers as follows:

1. Can a consular officer file the articles of incorporation of a company if produced by other than a duly accredited representative?

You should satisfy yourself that the certificate is presented by the properly authorized agent or attorney of the corporation.

2. Has a duly organized American corporation the right to continue operation as an American concern after the majority of stock has been disposed to other than Americans?

This depends upon the charter and by-laws of the corporation and the laws of the State (in this case Delaware) creating the corporation. As a general rule, "the mere transfer of shares between individuals does not affect the complete subjection of the corporation itself to the Government which created it."

3. What kind of documentary proof in this instance is necessary in order to empower a local representative to conduct business in the Tai Hong Co.'s behalf? For instance,

I am informed that as Ing Kong is the president of the company, he is fully empowered to act in its behalf; but as he has no written proof that such is the case, I have refused to recognize this contention.

The proof should be of such a character as to satisfy you of the regularity of the appointment.

4. Admitting that there are doubts as to this concern being at present a bona fide American corporation, has not this consulate the right to demand documentary proof as to the election of a president and secretary and their rights and authority in the premises?

5. If Ing Kong now holds the shares of the company in his name, has not this consulate a right to insist that some documentary evidence to this effect be shown?

As the corporation applies to you for assistance as an American juridical person, it is your duty to satisfy yourself that it is entitled to such protection. This will best appear by an examination of the charter and by-laws, minutes, etc., which you may properly ask to have submitted to your inspection. The facts thus revealed should be reported to the legation if further instruction seems desirable.

In cases of this kind something more concrete than mere information is absolutely necessary to enable the legation to reach a decision and the fullest possible statement of facts should be furnished.

I am, etc., W. W. ROCKHILL.

File No. 14716/2-3.

The Acting Secretary of State to Minister Rockhill.

No. 507.] DEPARTMENT OF STATE,
Washington, October 27, 1908.

SIR: With reference to the correspondence between the consulate general at Hankow and the legation, in regard to the Tai Hong Co., and the legation's No. 1636, of June 22, 1908, in this connection to the consulate general at Hankow, there is inclosed herewith a copy of the department's instruction, of to-day's date, to the consulate general at Hankow.

It is believed that the substance of this instruction may be of interest to certain of the various consuls in China, and you may, therefore, wish to send copies thereof to those offices where, in your opinion, the correspondence may be of value for future reference and guidance.

I am, etc., ROBERT BACON.

[Inclosure.]

The Secretary of State to Consul-General Martin.

No. 100.] DEPARTMENT OF STATE.
Washington, October 27, 1908.

SIR: With further reference to dispatch No. 177, of June 26, 1908, emanating from your consular office, and relating to the status of the Tai Hong Co., the department notes that the legation in its reply has covered, as fully as possible, the various questions submitted to it by the consulate.

It is assumed that a corporation duly organized under American laws is technically regarded, irrespective of the citizenship of its stockholders, as an American corporation, subject, as such, to American jurisdiction, and entitled, therefore, to American protection, in the discretion of this department. This being so, the filing of the article of incorporation in the consulate would seem to be almost as of right, it being understood that such filing indicates nothing except that the corporation is a duly organized American corporation.

Consulates should file articles of incorporation of any American company, unless specific reasons appear why this should not be done. At the same

time, a general warning should be given to the representative of each company who presents articles of incorporation for filing, that the department reserves to itself the determination as to whether or not a company, nominally American, in fact represents American beneficial interests to such a substantial degree as to cause the department to interest itself actively in its behalf.

It should also be stated that no attempt is made to lay down any definite rule as to the proportion of stock which must be beneficially owned by American citizens, but that the department, in forming any decision in regard to the matter, will take into consideration all the circumstances in each particular case.

The practice as suggested in the foregoing should be satisfactory to all bona fide American enterprises, and, in view of our present corporation laws in this country, and the absence of corporation laws especially designed for China, it would seem difficult for the department to take any other position.

I am, etc.,

(For the Secretary of State.)
W. J. CARR, *Chief Clerk.*

File No. 20866/3.

Chargé Fletcher to the Secretary of State.

[Extract.]

No. 1182.] AMERICAN LEGATION,
Peking, June 23, 1909.

SIR: I have the honor to inclose a copy of a dispatch, with its inclosures received from the consul general at Canton, with reference to his recognition of the American Chinese Presbyterian Missionary Society as entitled to American protection.

I have advised Mr. Bergholz to take no action until the department's decision has been received.

While the case is somewhat similar to that of the Tai Hong Co. (vide Mr. Bacon to Mr. Rockhill, No. 507, of Oct. 27, 1908), I have thought it best to refer it to the department for decision, at the same time stating that in my opinion the society as it presents itself in China does not seem to represent sufficient American interest to entitle it to our protection. Nor does it seem to fall within the spirit of our treaty provisions with regard to the privileges of American missionary societies.

Inasmuch as Mr. Bergholz reports that the agents of the society in China are none of them American citizens, I think, aside from the question of the status of the society itself, that this fact would be sufficient to base our refusal to recognize it as entitled to our protection.

It would not be too much to expect of all American missionary societies that they should employ Americans as the principal and responsible agents in China if they wish to secure American protection. This, of course, does not mean that native preachers and Bible vendors may not be employed, but only refers to persons at the head of and in charge of the missionary work and in control of its activities in the localities concerned.

I have the honor to request the return to the legation of the articles of incorporation inclosed, as well as the power of attorney.

I have, etc.,

HENRY P. FLETCHER.

[Inclosure—Extract.]

Consul-General Bergholz to Minister Rockhill.

No. 266.] AMERICAN CONSULATE GENERAL,
Canton, May 26, 1909.

SIR: I have the honor to inclose the articles of incorporation of the American Chinese Presbyterian Missionary Society and a power of attorney from this organization appointing certain Chinese to be its agents in China.

The society is composed wholly of Chinese, the majority of whom, it is stated in the articles of incorporation, are residents and citizens of the State of California, but there is nothing to show that they are citizens of the United States.

The object of this society is to propagate, promulgate, and disseminate among the people of the Chinese race in the United States, in China, and elsewhere the Christian religion, but out of the five agents appointed for this purpose in China all are Chinese, four being Chinese subjects and one a British subject. The first one alone is a clergyman ,the second, third, and fourth are merchants, and the fifth is a physician.

The society has already acquired several pieces of property in the interior, which it is proposed I shall consider American owned, and protect accordingly.

The question arises, however, whether this organization, comprised possibly of Chinese subjects and whose representatives in China are all Chinese, and with the exception of one, who is a British subject, Chinese subjects, can be considered as an American missionary society, whose property can be accorded the protection of the United States. I beg to be instructed on this point.

I have, etc.,

LEO BERGHOLZ.

File No. 20866/3.

The Acting Secretary of State to Chargé Fletcher.

No. 640.] DEPARTMENT OF STATE,
Washington, October 12, 1909.

SIR: I have to acknowledge the receipt of your No. 1182, of June 23, 1909, with which you transmit a copy of Mr. Bergholz's No. 266, of May 26, 1909, and the original inclosures thereto, relative to the recognition of the American Presbyterian Missionary Society.

The department has replied on the subject directly to Mr. Bergholz and incloses herewith a copy of its instruction.

I am, etc.,

ALVEY A. ADEE.

[Inclosure.]

The Secretary of State to Consul General Bergholz.

No. 191.] DEPARTMENT OF STATE,
Washington, October 12, 1909.

SIR: The department is in receipt of a dispatch from the American legation in Peking transmitting a copy of your No. 266, of May 26, 1909, with the original inclosures, in regard to the recognition of the American Chinese Presbyterian Missionary Society as entitled to American protection. Your No. 485, of July 22, 1909,[1] addressed to the department on the same subject, is also received.

It appears that this society was incorporated in California in 1908, a majority of the incorporators being described in the articles of incorporation as residents and citizens of California. All, however, were of the Chinese race. The society has appointed as agents in China five Chinese, none of whom is an American

[1] Not printed.

citizen. It has acquired land in China and desires protection as an American missionary society. You anticipate difficulty in having the deeds stamped by the authorities there, and request instructions as to "whether this organization, comprised possibly of Chinese subjects and whose representatives in China are all Chinese, and, with the exception of one who is a British subject, Chinese subjects, can be considered as an American missionary society, whose property can be accorded the protection of the United States."

The attitude of the department on the question of the protection of American corporations in Chica is outlined in an instruction to the American consul general at Hankow (No. 100, of Oct. 27, 1908), of which a copy was furnished to the consulates in China by the legation. This instruction states[1]:

"The department is of the opinion that the American Chinese Presbyterian Society, as it represents itself in China, does not seem to represent sufficient American interests to entitle it to the protection of this Government, nor does it seem to fall within the spirit of the provisions of the treaties with regard to the privileges of American missonary societies."

The department deems it advisable, therefore, to require more convincing proof of the citizenship of the incorporators of the society and of the persons at present holding the controlling interest therein. And further, in view of the actual situation in China, it is deemed desirable to require the American missionary societies to employ American citizens (not necessarily Caucasians) as their principal and responsible agents in China if they wish to obtain American protection.

The original inclosures in your dispatch to the legation are herewith returned.

I am, etc.,

(For Mr. Knox.)
ALVEY A. ADEE.

JURISDICTION OF TREATY POWERS OVER CITIZENS OF NON-TREATY NATIONS.

EXTRATERRITORIAL JURISDICTION.

File No. 19790/2.

Minister Rockhill to the Secretary of State.

No. 1137.] AMERICAN LEGATION,
Peking, April 13, 1909.

SIR: I have the honor to transmit herewith, for your information, copy of a note received from the Wai-wu Pu on the 5th instant, inclosing the form of passport it proposes issuing to foreigners belonging to countries which have no treaty with China, and who desire to travel in the interior of China. They are to be treated in every respect as Chinese subjects.

While the Chinese Government is willing to recognize the right of treaty powers to protect foreigners belonging to nations not having treaty relations with China, it declines to recognize that they can have jurisdiction over them. On the other hand, some of the treaty powers are inclined to contend that for occidentals in China extraterritoriality is a natural right, and will probably protest against China's claim of jurisdiction over this class of foreigners.

This question particularly interests France and Russia, as they protect in China the nationals of nearly all European nontreaty powers. The matter will probably be submitted to the diplomatic body for its consideration, and I would be obliged if you would instruct me as to your views on the subject.

I have, etc.,

W. W. ROCKHILL.

[1] Supra.

[Inclosure—Translation.]

The Prince of Ch'ing to Minister Rockhill.

THE FOREIGN OFFICE,
Peking, April 5, 1909.

YOUR EXCELLENCY: I have the honor to remark to Your Excellency that China ought to exercise full control over and make subject to the jurisdiction of Chinese law all natives of countries not in treaty relationship with China who are residing or traveling in the Empire, treating them in all respects like Chinese subjects. Formerly, because the method of procedure in issuing passports to such foreigners was not settled, the authorities of the different provinces were notified not to issue passports for the time being.

The board of foreign affairs has now settled the form of passport to be issued to natives of countries which have no treaty relations with China, and these forms have been issued to the provincial authorities. Hereafter if any native of a country which has no treaty with China desires permission to travel in China, he will apply to the commissioner of foreign relations (chiao she shih) if there is a chiao she shih, or to the customs tao'tai where no chiao she shih has been appointed, for a passport in the form issued by the board.

When the application is made through the consul of another country, the same form of passport will be issued, on verification of which the local officials will give protection and will treat the holders just as they treat their own people.

Besides notifying the different provincial authorities a copy of the passport form is now sent to Your Excellency with the request that you will notify the different consuls.

A necessary dispatch.

[Seal of the Wai-wu Pu.]

File No. 19790/2.

The Acting Secretary of State to Chargé Fletcher.

No. 616.] DEPARTMENT OF STATE,
Washington, July 30, 1909.

SIR: The department acknowledges the receipt of the legation's No. 1137, of April 13, 1909, relative to the form of passport which the Chinese Government proposes issuing to nationals of countries which have no treaty relations with China and who desire to travel in the interior of China, and in which it is requested that the department express its views upon the subject of protection by the United States to citizens of nontreaty nations.

The contention of the Chinese Government that treaty powers have no jurisdiction over citizens of nontreaty nations, judged by the well-established rules of international law, would seem to be valid, and the contention put forth by some of the treaty powers that "extra-territoriality is a natural right" would seem to be groundless and supported by no recognized authority on international law, at least in so far as can be ascertained.

The view taken by the Chinese Government in this matter has on previous occasions been approved by the department. In a report submitted to Congress by the Secretary of State in a letter dated December 18, 1906, it was stated that—

If it be asked what extraterritorial authority is exercised by the United States Government in any country, the answer must be found, first, in the treaty conferring extraterritoriality, and, second, in the statutes of the United States providing for the exercise of extraterritorial power by American consular

and diplomatic officers. That is to say, the question concerns itself, first, with international law and treaty, and, second, with our own municipal law.

In accordance, therefore, with the views above expressed, you will, if the matter is submitted to the diplomatic body for its consideration, assent to the Chinese Government's proposal, in such a way, however, as to avoid any inference of relinquishment of that jurisdiction indicated by Hinckley in the following passage, on page 78 of his work entitled "American Consular Jurisdiction in the Orient:"

So far as extraterritorial privileges are involved, American nationality includes all persons, whatever their civil status, who owe allegiance to the United States either as citizens by birth or by naturalization, or as native inhabitants of the insular possessions, or as seamen on American ships, or as assistants or guards in legations and consulates, or, to a limited extent, as employees of American citizens in oriental countries.

I am, etc., HUNTINGTON WILSON.

THE WHANGPOO RIVER CONSERVANCY SCHEME.

File No. 1571.

Minister Rockhill to the Secretary of State.

No. 233.] AMERICAN LEGATION,
Peking, February 23, 1906.

SIR: Referring to my No. 122 of October 12, 1905,[1] I have the honor to inclose a copy of a joint note of the representatives of the powers, signatories of the final protocol of September 7, 1901, protesting against the alleged action of the viceroy of Nanking in appointing a resident administrator of the Whangpoo Conservancy Board, in contravention of Article I of the revised agreement of September 27, 1905.[1]

I have also the honor to report that in conformity with Article II of the revised agreement referred to, Mr. Jan de Rijke, an experienced Dutch engineer, has been selected and appointed by China to undertake the work of the conservancy.

I have, etc., W. W. ROCKHILL.

[Inclosure 1—Translation.]

The Foreign Representative to Prince Ch'ing.

PEKING, *February 19, 1906.*

YOUR HIGHNESS: In the issue of the Shen Pao of January 2 there appeared the text of a document which purports to be a copy of a dispatch from the acting governor general of Nanking to the Shanghai tao-t'ai, containing instructions in regard to the establishment of a chief office of works for the conservancy of the Huangpu. We have the honor to inclose a copy of this dispatch and to request your highness to inform us whether it is authentic.

We would at the same time remind your highness that according to Article I of the revised agreement of September 27, 1905—

the works in connection with the improvement of the channel of the Huangpu River, and of the condition of the inner and outer bars at Wusung, together with the main-

[1] See Foreign Relations, 1905, p. 122.

tenance of such improvements, shall all be placed under the management of the Shanghai customs tao-t'ai and the commissioner of customs.

and in Article X it is laid down that—

the total sum annually provided for carrying out works and maintaining works already completed is to be paid in equal monthly installments by the provincial authorities concerned to the Shanghai customs tao-t'ai and the commissioner of customs.

We notice, however, that in the dispatch above referred to a resident administrator is appointed to transact all the business of the chief office of works, and to superintend its revenue and expenditures; that all such matters as applications to hasten remittances of money, the raising of loans, and all questions concerning funds for use in the conservancy work shall be in his charge; that he shall control the correspondence and books; and that as occasion arises he shall instruct the customs tao-t'ai and the commissioner of customs to consult and take action. It is perfectly clear, therefore, that if this dispatch is authentic the management of the Huangpu conservancy, both works and finance, is to be entirely in the hands of the resident administrator, and not, as stipulated in the two articles of the revised agreement above mentioned, in those of the customs tao-t'ai and the commissioner of customs.

We are very desirous of furthering the objects of the revised agreement of September 27, 1905, which was intended to secure the carrying out of the Huangpu conservancy works with diligence, care, and economy, but we are wholly unable to admit that the instructions of the acting governor general to the Shanghai tao-t'ai, as stated in the inclosed document, are in accordance with the terms of the revised agreement.

The favor of an early reply is requested.

We avail, etc.,

A. V. MUMM.
A. ROSTHORN.
EDM. DE PRELLE,
M. DE CARCER.
W. W. ROCKHILL.
M. DUBAIL.
E. SATOW.
C. BAROLI.
Y. UCHIDA.
W. J. OUDENDIJK.
D. POKOTILOW.

[Inclosure 2—Translation.]

The Viceroy of Nanking to the Shanghai Taotai.

Whereas it has been decided that the improvement of the channel of the Huangpu shall be taken over by China herself, and the board of foreign affairs have substituted a different arrangement which they have signed with the foreign representatives at Peking and which has received the imperial sanction and has been communicated to me for execution, it becomes my duty, in compliance therewith, to establish a chief office of works for the conservancy of the Huangpu. All the matters which that office shall have to carry out must be under the management of the Shanghai tao-t'ai and commissioner of customs. But in view of the importance of this undertaking—and putting aside for the moment the engagement of an engineer, which will be done under contract when a candidate has been definitely selected, and the appointment of an inspector of works, which will be made when the date of commencement of work is fixed—it is now necessary at the first foundation of this office to appoint in addition a resident administrator (tso pan) to reside at the office and transact business.

I find that Ku T'ang-sheng, who has the rank of a second-class secretary of a metropolitan board, appears to be a suitable person to be appointed resident administrator (tso pan) to transact all the business of the office and to superintend its revenue and expenditure. All such matters as making application for the prompt remittance of funds from various sources or raising loans from capitalists, and all questions respecting funds for use in conservancy work, when they are due, how much should be obtained, and whether or not they are excessive, shall be in his charge. He shall also control the correspondence and books of the office, and as occasion arises he shall instruct the customs tao-t'ai and commissioner of customs to consult and take action. His responsibility being heavy, he shall be granted a salary at the rate of Shanghai taels 800 per mensem.

Further, in view of the magnitude of the works to be undertaken by that office and of the length of the time they will occupy during which questions will

arise requiring advice and consultation, it is necessary that there should be an official of repute and experience to give advice on any matter, so that by the aid of his counsel the works may be carried out with expedition and economy, and in order that friction between Chinese and foreigners may be avoided. Now, I find that the former American consul general, Mr. Goodnow, is a reasonable and honorable gentleman, respected by Chinese and foreigners alike, who appears suitable to be appointed advisor, to examine into affairs in conjunction with the various officials of the conservancy office, for the purpose of assisting the management of the office and supplementing any deficiencies in the superintendence of the works of inspection. He will not, however, have independent authority. His monthly salary will be Shanghai taels 600.

Again, at the beginning, when work is being started, the resident administrator (tso pan) will not be able to cope single handed with the multifarious duties of the office, such as investigating foreshore questions, surveys, the preparation of maps and memoranda, as well as supervising the books and correspondence of the office. I find that the expectant tao-t'ai, Ho Wei, is an official of wide experience who would be suitable for the appointment of assistant administrator of this office, to help in discharging various functions. His monthly salary will be taels 200 for this purpose.

The several officials above mentioned are appointed by myself for the transaction of business. The authority for their retention or retirement should be vested in the high commissioner for southern ports, and when the engineer has arrived at the office the office shall proceed to draw up rules defining the duties of each person, which will be submitted to me for transmission to the Throne for approval and to the board of foreign affairs for purposes of record.

Besides sending these instructions I am informing the persons concerned of their appointments. The tao-t'ai, on receiving the present instructions, should comply with them without delay and consult with (his colleague) with a view to taking action (as directed).

File No. 1571.

The Acting Secretary of State to Minister Rockhill.

No. 129.] DEPARTMENT OF STATE,
Washington, April 7, 1906.

SIR: I have to acknowledge the receipt of your dispatch No. 233, of February 23 last, on the subject of the conservancy of the Whangpoo.

The department approves your signing the joint note, dated February 19 last, in which the representatives of the powers signatories of the final protocol of September 7, 1901, protested against the alleged action of the viceroy of Nanking in appointing a resident administrator of the Whangpoo conservancy board in contravention of Article I of the revised agreement of September 27, 1905.

I am, etc.,

ROBERT BACON.

File No. 1571/1.

Minister Rockhill to the Secretary of State.

No. 390.] AMERICAN LEGATION,
Peking, September 6, 1906.

SIR: I have the honor to inclose herewith for the information of the department a clipping from the North China Daily News of August 27, with reference to the Huangpu conservancy.

The article is a valuable one, in that it contains a summary of events up to the present conservancy scheme and shows the manner and condition of the work which is now being undertaken.

I have, etc.

W. W. ROCKHILL.

[Inclosure.]

[North China Daily News, Aug. 27, 1906.]

THE HUANGPU CONSERVANCY.

THE FIRST STEP.

The conservancy of the Huangpu has been recognized as a crying need for many years past, and those who saw the river deteriorating year by year might well have been excused if, after the many delays and obstacles that have arisen, they gave up all hope of any improvement being effected. In the early days of history of the settlement the small draft of the vessels engaged in Far Eastern trade enabled them to navigate the river without much difficulty, but the enormous increase in the water-borne trade of Shanghai, concurrently with an increase in the size of the vessels engaged, has led all interested in the prosperity of the model settlement to the conclusion that unless drastic improvements are made in the present state of Huangpu, trade and shipping are both to suffer. It has even been prophesied by those whose opinion should carry weight that if the river is left alone much longer at no distant date the obstructions to navigation will become so great that only the very smallest vessels will be able to come up to Shanghai. Several attempts to obtain the much-needed improvements were made from time to time without any success. At last in 1897 the Shanghai General Chamber of Commerce on its own initiative engaged Mr. J. de Rijke, who was then undertaking conservancy work for the Japanese Government, to investigate and report on the condition of the Huangpu. Mr. de Rijke, a Dutch conservancy engineer of repute, was perhaps, the best man who could have been chosen for the task. Apart from his experience in other parts of the world he was already to some extent familiar with the Huangpu, having in company with Mr. G. A. Escher, another well-known Dutch expert, reported on the condition of the Woosung Bar as long ago as 1876. In the short time at his disposal—May 25 to June 10, 1897—Mr. de Rijke made an exhaustive examination of the river, both above and below Shanghai. He was assisted in every possible way by Capt. Bisbee, the coast inspector at the time, who placed all available information at his disposal, together with plans, one of which, of the river from the mouth to the point, was prepared that year. Mr. de Rijke embodied the result of his investigations with two alternative schemes for the improvement of the river in a report to the chamber of commerce, dated January 10, 1898. The report will be dealt with later, but it should be mentioned here that Mr. de Rijke recommended that some of the most urgent work should be undertaken immediately, every year's delay adding to the labor, cost, and difficulty of improving the river.

THE PEACE PROTOCOL.

In September, 1901, regulations for improvement of the Huangpu were drawn up in annex 17 of the peace protocol, by the ministers and the Chinese authorities at Peking.

The conservancy board was to consist of the tao-t'ai, commissioner of customs at Shanghai, two members elected by the consular body, two members each to represent the chamber of commerce and shipping interests, a member of the municipal council of the International Settlement, and a member of the French municipal council, and, in addition, a representative of each country the total of whose entrances and clearances at Shanghai, Woosung, or any other port of the Huangpu exceeded 200,000 tons a year, to be designated by their respective Governments. The board was to appoint officials and employees, have general control of the river and of the conservancy work, and disburse all the funds collected for the work, which were to be derived from—

(*a*) An annual tax of one-tenth per cent on the assessed value of all lands and buildings in the French Concessions and the International Settlement.

(*b*) A tax of equal amount on all property with water frontage on the Huangpu from the lower limit of the Kianguan Arsenal to the place where the Huangpu falls into the Yangtze.

(*c*) A tax of 5 candareens per ton on all vessels of non-Chinese type and of a tonnage exceeding 150 tons entering or leaving the port of Shanghai, Woosung, or any port on the Huangpu.

(*d*) A tax of one-tenth per cent on all merchandise passing the customs at Shanghai, Woosung, or any other port on the Huangpu.

(*e*) An annual contribution from the Chinese Government equal in amount to the contribution furnished by the different foreign interests.

Hopes raised by these regulations were doomed to be dispelled, for nearly four years passed without any signs of work being commenced. China failed to appoint her representative on the board, the fulfillment of the terms of the protocol was persistently ignored or delayed, and the scheme existed on paper only until more strenuous efforts on the part of the diplomatic body at Peking led to the drawing up of a new convention about a year ago. This, however, is somewhat anticipating events.

THE "INTERNATIONAL PROJECT."

In February, 1902, Messrs. Franzius and Bates published an "international project" for the improvement of the Huangpu, "in consultation," so the report says, "with representative engineers in Europe." As Mr. de Rijke's second scheme is the one that has been adopted, it will suffice here to mention but a few details of this project. Messrs. Franzius and Bates criticised Mr. de Rijke's scheme in detail, and proposed to improve the channel at present in use. The normalized stream of the Huangpu was to be confined between "permanent structures," and the depth at low tide was to be at least 26 feet. The dredging required to carry out this project would have been enormous, and the maintenance of the work, when completed, would also have involved a serious outlay.

THE HUANGPU CONSERVANCY CONVENTION.

Nothing having been done up to last year, negotiations were again entered upon at Peking, and the Huangpu Conservancy Convention, replacing the protocol of 1901 and annex 17, was signed on September 27. By this convention the Chinese Government itself undertakes the work and agrees to defray the whole cost thereof. The customs tao-t'ai and the commissioner of customs at Shanghai are intrusted with the general management of the work, and China undertook, within three months of the signing of the convention, to select an engineer experienced in matters of river conservancy and, subject to the approval of the representatives of the signatory powers, to engage him to undertake the work. Every three months during the progress of the work a detailed report of work done and expenses incurred is to be submitted for examination to the consular body in Shanghai. Arrangements are made for the expropriation of moorings and the acquisition of property. The Chinese Government takes upon itself the whole of the expense of river improvement, without levying any tax or contribution, either on riparian property or upon trade or navigation, the whole of the duty on opium of Szechuan and of Soochow in Kiangsu being given as a guarantee for the devotion for 20 years of taels 460,000 (Haikuan) a year to these works. If the works are not prosecuted with care and diligence, the consular body of Shanghai may notify the tao-t'ai and the commissioner of customs, and in the event of their failing to act on this notification the matter may be laid before the representatives of the powers interested. Should China fail to carry out her part of the convention, the protocol of 1901, with annex 17, will immediately come into force again. Mr. de Rijke was appointed, in accordance with the terms of this convention, and arrived here in February last to take up the work.

RAPID DETERIORATION OF THE RIVER.

Mr. J. de Rijke's investigations, in 1897, showed how rapid the deterioration of the Huangpu is. In 1846, according to the late Capt. J. P. Roberts, Gough Island was a sand bank, invisible even at low tide. The stream in the ship channel was then far more powerful than at present; the currents were "so strong that it was quite a difficult task to row across it." The receding of the foreshore at the river mouth has been extraordinary. In his report Mr. de

Rijke gives the following figures showing what erosion took place between 1869 and 1893:

	Feet.
Outside, at Crooked Tree	820
At dyke curve	440
Opposite lighthouse	420

Rapid as this erosion was, it will be shown later that it is proceeding at a still greater rate at the present time, and though the consequences have been bad enough, with weaker shores the river would by this time have been inaccessible to big sea vessels, even at spring tides. There has been no kind of protection to the lower right bank at all, and though the current has weakened, the wash of passing vessels has continued the work of erosion. The ship channel is decreasing in width yearly, Gough Island extending to northward and westward as the right bank recedes. Nor would the result be so harmful if the river's channel retained its depths; it silts up more and more as the banks are in many places eaten away. The frequent accidents in the vicinity of Pheasant Point testify to the fact that the narrowness and crookedness of the channel are a serious danger to vessels meeting at this point. The outer and inner bars are both extending and the splitting forming at the mouth of the river is tending to silt up the channel inside the lighthouse.

MR. DE RIJKE'S FIRST SCHEME.

It is impossible in the limits of this article to go fully into Mr. de Rijke's proposals, but an outline of the two schemes he submitted may be of interest. His first plan was to train the river, by means of mattresses or zinkstuks of fascines, on both sides, so as to improve the present channel as far as the upper end of Gough Island. Opposite Gough Island a new mouth would be excavated across the Pootung Peninsula. By this scheme the outer and inner bars would have been avoided and the passage to the sea would have been shortened by 5,570 yards, or about $2\frac{3}{4}$ sea miles. There were, however, insuperable objections to this scheme. Not only would it mean a larger outlay than the other scheme, but the old mouth at Woosung would commence to silt up rapidly from the day the new mouth was opened. Woosung is a treaty port, a railway terminus, and has extensive fortifications, and the Chinese authorities, who are naturally not so anxious for the improvement of the river as the foreign community, would probably show a decided objection to a plan that would affect Woosung's position at the mouth of the river.

THE PRESENT SCHEME.

Mr. de Rijke therefore furnished an alternative scheme for training the river, and it is that which is now being put into execution. Mr. de Rijke, in 1897, noticed that a new bar was forming at the upper end of the ship channel, and that it was diverting the stream, during the ebb tide, into the Junk Channel. Most of the flood tide flowed up the Junk Channel and very little up the ship channel. Mr. de Rijke proposes to divert the main channel into the Junk Channel. To accomplish this the right bank will have to be strengthened and the tide through the ship channel gradually restrained by mattresses, or zinkstuks of fascines, sunk by stones and rubble. The zinkstuks will be laid on the bottom somewhat in the shape of a Greek "pi," and the transfer of power from one channel to the other will be effected gradually. Mr. de Rijke estimated, in 1898, that about 888,000 square yards of sink work would be required, but owing to the delay in commencing work it is probable that this amount will be exceeded. Dredging will be required at Pheasant Point, at the mouth, and a great deal in the Junk Channel, and considerable portions of Pootung and Pheasant Points will be removed. The new passage through the Junk Channel is at first to have a width of 600 feet, when it can be opened for the traffic now passing through the other channel. The most important of the training works will be those at and near the upper end of Gough Island. The total amount of mud to be removed by dredging he estimated in 1898 at 3,712,000 cubic yards, while incomparably greater quantities will be removed by the scour of the stream, which will be aided and directed by stirring up the bottom. The concave shore on the Woosung side of the mouth will be strengthened, regulated, and extended to over the outer bar by sink and pile works. On the opposite side of the outer bar other sink works may be required to divert the current from the Pootung Channel. The course of outgoing vessels from the point to the spit will then resemble a symmetrical but attenuated "S."

EROSION SINCE 1897.

As soon as it became definitely known that Mr. de Rijke was coming to take charge of the conservancy, the customs authorities here detached a surveyor for the purpose of preparing up-to-date soundings of the river. The new chart is now almost complete, and comparisons between it and Capt. Bisbee's chart of 1897 show with what amazing rapidity the bank of the ship channel is being eaten away. At places the bank has receded 740 feet, while Gough Island has extended 3,600 feet toward the mouth of the river since 1897. As the bank is undermined and worn away, the ship channel becomes narrower. It is estimated that since 1897, 90,000,000 cubic yards of the bank have been displaced over a frontage of about a mile. The most urgent work, therefore, is the strengthening of the right bank of the ship channel, and it is this which is now occupying Mr. de Rijke's attention. At present progress is, of necessity, slow, as large quantities of brushwood for the zinkstuks are required, and these can not be obtained until winter. In the meantime, bags of clay are being utilized for the preservation of the bank, and through them piles are driven.

THE RESTRAINING WORKS.

The ship channel is, of course, far deeper than the bars, and the restraining works for the purpose of turning the stream gradually into Junk Channel will not in any way impede navigation. Restraint will be effected by dams of sink work in layers about 3 feet high, over which any ships that can cross the bars will be able to pass safely, but which will help to kill the tide in that part of the river. These dams will be put down in eight or more places, and by degrees the current will be deflected toward the Junk Channel. The most difficult work is that at the upper end of Gough Island, and though it is urgent, speedy progress is impossible until coolies employed have been properly trained. The zinkstuks are to be held in mattresses 100 feet long by 60 feet wide, and loaded with stone or rubble until they sink. The process has to be repeated until the dam or protective works have reached the required height. At present about 65 coolies are at work on the right bank, and as soon as sufficient quantities of brushwood can be obtained the work will proceed more rapidly.

THE LEFT BANK.

The Junk Channel bar will be dredged and removed, and the concavity of the last bend, at present ending a little below the lighthouse, will be extended. The new route will altogether avoid the inner bar. The minimum of depth when the work is completed will be 18 feet at low tide. It is expected that the work will occupy at least five years. The difficulties experienced here are not unlike those encountered on the River Maas, the conservancy of which has resulted in a very permanent improvement.

THE STAFF.

The present staff consists of Mr. J. de Rijke, engineer in chief; Mr. Van de Veen, assistant engineer; a secretary; a foreign superintendent of works at Woosung, with an experienced Chinese assistant; a surveyor, and assistant surveyors, lent by the customs and engaged in a fresh survey of the river; and Chinese draftsmen, foreman, etc. The staff will be added to as the work progresses and circumstances require it.

CONCLUSION.

The success that has attended the conservancy work on the Haiho augurs well for the Huangpu. Mr. de Rijke's experience and ability alike qualify him for the important task he has undertaken, and if no impediments are placed in his way, in five years' time his plans for the permanent improvement of the Huangpu should be carried into effect. Mr. de Rijke's scheme has the advantage of requiring but a small outlay for maintenance when the work is once completed.

File No. 1571/3–5.

Minister Rockhill to the Secretary of State.

No. 712.] AMERICAN LEGATION,
Peking, August 30, 1907.

SIR: It appearing to me highly important that the diplomatic body should be fully and correctly advised concerning the working of the new agreement for the Huang-pu conservancy, signed at Peking, September 27, 1905,[1] I suggested to my colleagues that the consular body at Shanghai should be requested to supply us with such information, and, this proposal being agreed to, on the 6th of June last the inclosed letter was sent to the senior consul at Shanghai by the dean of the diplomatic body.

I inclose herewith a copy of the reply of the senior consul to the dean. I consider the reply as fairly satisfactory, but it demonstrates the necessity of carefully watching the work of the conservancy board to prevent future complications and possible delays.

The periodical reports which the senior consul is requested to make to the diplomatic body on this question will, it is hoped, prove of value, and contribute to expediting the work and insuring strict compliance with the terms of the agreement of September 27, 1905.

I have, etc.,

W. W. ROCKHILL.

[Inclosure 1.]

The Dean of the Diplomatic Corps to the Senior Consul at Shanghai.

PEKING, *June 6, 1907.*

SIR: It appearing to the diplomatic body highly important that it should be informed concerning the working of the new agreement for the Huangpu conservancy, signed at Peking, September 27, 1905, I have to request that you will transmit to me at your earliest convenience a report on the following points, on all of which the diplomatic body considers that it should be kept advised under the provisions of the new agreement above mentioned:

1. Have the works been carried out with diligency, care, and economy?
2. Are the measures which the Chinese Government has adopted for financing the enterprise such that its requirements are and will be satisfactorily insured?
3. In view of the possible reduction of the opium revenue, has any information been given you by the Chinese authorities concerning an additional guaranty for annual payments for the works?
4. Have the monthly instalments been regularly paid to the Shanghai taot'ai and the commissioner of customs, and since what date?
5. Where are the funds deposited and how and by whom drawn?
6. What interest is allowed on monthly balances of these funds, and to what purpose is such interest applied?
7. By whom are the annual accounts of the conservancy board audited?

I would be obliged if hereafter you would supply me quarterly, after the detailed report provided for by Article IV of the new agreement has been submitted and inspected by the consular body, with copies of said reports and the observations on them by your body, so that I may communicate them to my colleagues of the diplomatic body.

I have, etc.,

A. J. VAN CITTERS.

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[1] See Foreign Relations, 1905, p. 122.

[Inclosure 2.]

The Consul General for Belgium and Senior Consul of the Shanghai Consular Body to the Dean of the Diplomatic Corps at Peking.

CONSULAT GENERAL DE BELGIQUE,
Shanghai, 20 August, 1907.

EXCELLENCY: In pursuance of my letter of the 6th instant I have the honor to reply as hereunder on the points submitted in your letter of the 6th June:

I. Have the works been carried out with diligency, care, and economy?

The works have been carried out till now by the staff of the board with diligency, care, and economy, so far as the consular body is in a position to judge and so far as the said staff has been allowed to go on with the work. It seems to the consular body that the board does not come to its decisions with enough promptitude, which can only be explained by the impression under which labors the tao-t'ai, that he must ask advice of his superiors on any question of importance. The spirit of the convention gives to the board full powers to act without outside advice.

II. Are the measures which the Chinese Government has adopted for financing the enterprise such that its requirements are and will be satisfactorily insured?

If the Chinese Government understands that it is obliged by the convention to pay all the costs of the works, even if the amount required is more than twenty times 460,000 taels, the question "how exceptional high and extraordinary expenses above the annual payment of 460,000 taels shall be covered" will have to be settled between the foreign powers and the Chinese Government as soon as the engineer decides that such extraordinary expenditure is required.

III. In view of the possible reduction of the opium revenue, has any information been given you by the Chinese authorities concerning an additional guarantee for annual payments for the works?

In anticipation of the decrease in opium revenue the Shanghai tao-t'ai has already petitioned the imperial Government to appropriate money from other sources of revenue to make up possible losses.

IV. Have the monthly installments been regularly paid to the Shanghai tao-t'ai and the commissioner of customs and since what date?

From the quarterly report for June quarter it appears that the tao-t'ai has written to his codirector, Mr. Hobson, customs commissioner, that remittances on conservancy accounts commenced to reach him in July, 1904, and that the same total of 3,460,000 haikwan, 1,380,000 taels has reached him on the 1st July, 1907; that the balance of the money not expended, taels 1,124,743, is deposited in various banks under the responsibility of the tao-t'ai. The consular body is writing under this date to the board pointing out that the monthly installments should be put, according to the convention of 27 September, 1905, Article X, "entre les mains du tao-t'ai et du commissaire des douanes de Shanghai," that is to say, in the hands of the Whangpoo Conservancy Board.

V. Where are the funds deposited, and how and by whom are they drawn?

The consular body does not know, but it is pointing out to the board that the funds ought to be deposited in the name of the board in one of several banks, in one of which a current account should be opened on which money could be drawn by the joint directors or their delegate.

VI. What interest is allowed on monthly balances of these funds and to what purpose is such interest applied?

The June quarterly report shows that the interest account made up at the end of the fifth moon, current year (July 5, 1907), stands at 116,854.90 taels, but no details are given concerning the rate of interest or to what purpose said interest is to be applied. The consular body is of the opinion that this interest should be supplied to the works of the conservancy scheme, and is writing in that sense to the board.

VII. By whom are the annual accounts of the conservancy board audited?

The consular body thinks that such auditing should be done by an auditor to be appointed by the board.

The consular body has also considered these questions:

(A) Who is to provide for the always rather expensive maintenance of the works? And answers that the Chinese Government must provide for it, but is of opinion that the question should not be raised now.

(B) To what purpose should the proceeds from sale or lease of reclaimed land be applied? And answers to the conservancy work, and is writing in that sense to the board.

(C) The consular body is also of the opinion that the normal lines as described and settled by the board on the advice of the engineer must be respected and observed by the riparian owners.

(D) The question of who should be in charge of the bunding of the river along private properties is also of great importance, and has also been considered by us, but the Shanghai Chamber of Commerce, having appointed a committee composed of the principal riparian owners to study the question, it is perhaps advisable to await their report before taking further action.

I have, etc.,

D. TIFFERT.

File No. 1571/10–12.

Chargé Fletcher to the Secretary of State.

[Extract.]

No. 792.] AMERICAN LEGATION,
Peking, December 6, 1907.

SIR: Referring to Consul General Denby's recent dispatch, transmitting copy of a memorandum on the Whang-poo conservancy works submitted to the consular body at Shanghai by the German consul and signed by the leading representatives of German interests at Shanghai, I have the honor to report that the German minister, through Mr. Kemnitz, the first secretary of his legation, recently placed in my hands a memorandum prepared by Mr. Schellhoss, scientific attaché of the German consulate at Shanghai, copy inclosed,[1] criticizing the scheme of river improvement now being carried out by the Chinese Government under the direction of Mr. de Rijke, a Dutch engineer. It was intimated that the matter would be brought before the consular body and a request would be made for a reply to these criticisms from the engineer in charge.

The conservancy of the Whang-poo River, as the department will recall, was intrusted to the Chinese Government by the agreement of September 27, 1905,[2] copy of which was forwarded with Mr. Rockhill's No. 122, of October 12, 1905,[2] and I am of opinion that any interference, unless plainly justified by incontestable facts, would be unfortunate and inopportune.

By the provisions of Article XI of the agreement it is provided that—

> If the works are not carried out with diligency, care, and economy, by a majority vote the consular bdoy may unite to point out the fact to the Shanghai customs tao-t'ai and the commissioner of customs, and call upon them to direct the engineer to take steps to remedy the matters complained of, and if the work is still not properly done, they may recommend the engineer's dismissal and the selection and appointment of another engineer in the manner prescribed in Article I. In case no notice is taken by the Shanghai customs tao-t'ai and commissioner of customs of their representations, the consular body may report to the representatives of the powers interested.

and it is under this article that the criticisms are offered.

I have, etc.,

HENRY P. FLETCHER.

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[1] Not printed.
[2] See Foreign Relations, 1905, p. 122.

File No. 1571/10–12.

The Secretary of State to Chargé Fletcher.

No. 400.] DEPARTMENT OF STATE,
Washington, January 21, 1908.

SIR: I have the honor to acknowledge the receipt of your dispatch No. 792, of the 6th ultimo, inclosing a copy of a memorandum prepared by Scientific Attaché Schellhoss, of the German consulate general at Shanghai, together with illustrative sketches, criticizing the scheme for the improvement of the Whang-poo River.

You state that the criticisms are based on Article XI of the agreement of September 27, 1905; and that the concensus of opinion among diplomatic representatives in China is that interference with the Whang-poo conservancy scheme is at present inadvisable.

In reply I have to say that the department views with sincere regret any attempt on the part of a foreign power to interfere with the Whang-poo conservancy scheme at this present juncture, unless such interference is plainly justified by incontestable facts.

I am, etc., E. ROOT.

File No. 1571/19–21.

Chargé Fletcher to the Secretary of State.

No. 1193.] AMERICAN LEGATION,
Peking, July 2, 1909.

SIR: Referring to my No. 792, of December 26, 1907, and the department's instruction in reply, No. 400, of January 21, 1908, I have the honor to report that the question of the conservancy of the Whang-poo has again been raised by the German consulate at Shanghai and the German legation here.

On May 4 last the German consul at Shanghai proposed:

(a) To write to the diplomatic body at Peking suggesting that the Chinese Government be approached to devise means and ways to raise funds necessary for the completion of the Whang-poo conservancy.

(b) To write to the conservancy board that, in his opinion, in accordance with Article III of the Peking agreement of 1905, public tenders would have to be invited for the undertaking of any dredging work which will still be left to be done after the expiration of the dredging contract with the E. A. D. Co., the present contractors, or, if account is taken of the 250,000 cubic yards to be dredged free by the E. A. D. Co., as proposed by the consular body, after the expiration of the said contract and free extra dredging of these 250,000 cubic yards.

Mr. Denby voted in favor of this proposition at this meeting, but at the next meeting of the consular body, held on May 25, changed his vote for reasons which he reported to the legation as follows:

The consular corps considered a letter from the chamber of commerce, in which it was stated that the committee of said chamber had been authorized at the last general meeting to obtain a full report from an engineer of high standing on the work now in progress of improving the river approaches to Shanghai. They further state that their object in taking this step is not due to any want

of confidence in the carrying out of his scheme by Mr. de Rijke, but rather that the good work done by him may be confirmed by a competent expert. Sir Pelham Warren, British consul general, submitted also a letter from the China association corroborating the letter of the chamber of commerce.

Upon consideration of these two letters it was decided not to forward to the diplomatic body at Peking the resolution adopted in the meeting of May 11. It appears from the discussion that it was the opinion of the majority of the members that this letter would create unnecessary difficulties and be subject to misapprehension. Though I had voted for the motion, I changed my opinion, and voted with the majority at the meeting on the 25th instant. My reason for doing so was that if the chamber of commerce is to take into its own hands the investigation of the condition of the work, they would not fail to discover any danger that might exist in Mr. de Rijke's program in ample time to prevent any harm resulting therefrom. My intention with regard to the work carried on was simply to prevent the condition of the river becoming worse through failure of funds, and as I am assured that the Shanghai community will not allow lack of funds to prevent the carrying on of the work under any circumstances, there seems no occasion for interfering in any way with the carrying out of the scheme of Mr. de Rijke.

Not satisfied with this action of the consular body, the German minister, under date of June 14 last, submitted to his colleagues here the following proposition:

(1) That there should be a revision of Mr. de Rijke's scheme by an independent technical expert.

(2) That the "ship channel" should be maintained in the present condition until a sum sufficient for the completion of the work had been assured.

The letter containing these proposals was circulated by the dean for an expression of opinion by the diplomatic corps. Sir John Jordan, to whom the circular was first sent, stated that he regretted that he could not concur with his German colleague in these proposals. On the contrary, he pointed out that British shipping and commercial interests generally were satisfied with the progress of the conservancy work, and approved of Mr. de Rijke's scheme. In proposing to appoint an expert the Shanghai Chamber of Commerce had taken this step, not from the want of confidence in the carrying out of his scheme by Mr. de Rijke, but rather that the good work done by him might be confirmed. He did not see, therefore, any reason for adopting the first proposal, and as regards the second, he considered the diplomatic body scarcely in a position to issue instructions respecting the technical execution of the work.

Mr. Oudendijk, chargé d'affaires of the Netherlands, the next to express his opinion, pointed out that the diplomatic body had unanimously approved the choice of an engineer by the Chinese Government, and did not see on what grounds we should suggest another. If, he argued, the diplomatic body were to assume the responsibility of interfering in the technical execution of the work, the result would be that the conservancy board and the Chinese Government would be freed from all responsibility. The circular was then transmitted to this legation. I agreed with Sir John Jordan and Mr. Oudendijk.

With the exception of the Austrian minister and the Japanese minister, the latter of whom desired a conference on the subject, the other members of the diplomatic body concurred with the opinion of the British minister.

The subject will no doubt come up for discussion at a subsequent date in a meeting of the diplomatic corps, and I have the honor to request the department's approval or disapproval of my action.

Bearing in mind the department's instruction referred to, and agreeing with the opinion of Mr. Denby, above quoted, I did not feel that any action should be taken by the diplomatic corps at this time which could be construed as an interference in the conservancy work, nor tend to relieve the Chinese Government of its responsibility.

The agreement under which the conservancy work is being carried on by China was forwarded to the department in dispatch No. 122 of October 12, 1905.

In this connection I inclose clippings [1] from the North China Daily News of June 28, showing the satisfactory results of an inspection of the work so far accomplished.

I have, etc., HENRY P. FLETCHER.

File No. 1571/19–21.

The Acting Secretary of State to Chargé Fletcher.

No. 625.] DEPARTMENT OF STATE,
Washington, August 23, 1909.

SIR: The department acknowledges the receipt of your No. 1193, of the 2d ultimo, reporting various suggestions made by the German consulate at Shanghai, and the German legation at Peking, looking toward a revision of the present plan for the conservancy of the Whangpoo, and to the maintenance of the ship channel in its present condition until sufficient funds shall be assured to complete the work.

The department approves your action in opposing any interference by the diplomatic body with the prosecution of the work, especially in view of the danger that such interference might lessen the feeling of responsibility of the Chinese Government in the matter. The marked progress of the work on the new channel, as reported in the newspaper clipping forwarded by you, is very gratifying. At the same time the department would be glad to receive from you a report on the financial prospects of the enterprise, describing also the means that have thus far been adopted to secure the funds required, with such comment as may serve to explain the anxiety of the German legation in this regard.

I am, etc., HUNTINGTON WILSON.

File No. 1571/22–23.

Chargé Fletcher to the Secretary of State.

AMERICAN LEGATION,
Peking, September 16, 1909.

SIR: Referring to my No. 1193, of July 2, 1909, on the subject of the conservancy of the Whangpoo River, I have the honor to report that a meeting of the diplomatic corps was held yesterday to consider what steps should be taken to secure the necessary funds for carrying the work to completion.

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[1] Not printed.

Under the agreement of September 27, 1905 (see legation dispatch No. 122 of Oct. 12, 1905; Rockhill's Treaties, etc., vol. II, p. 20), China took upon herself the whole of the expense of the river improvement without levying any tax or contribution, either upon riparian property or upon trade or navigation (Art. IX), and engaged (Art. X) to devote annually to these works the sum of Haikwan 460,000 taels.

As the work progressed it was found that the cost of the work far exceeded the sum mentioned, viz, Haikwan 460,000 taels a year, and in the early part of last year a loan was made and this annual sum pledged for interest and reduction of the principal of the loan.

The money thus raised has been expended, and the engineer, Mr. de Rijke, estimated that a further sum of Mexican $7,898,820 will be necessary to complete the work in the next five years. To this estimate must be added each year Mexican $294,000, the sum required for salaries, rent, and general working expenses.

As can easily be seen, this will prove a heavy burden for China to bear. By Article XII, should China fail to furnish annually sufficient funds, in accordance with this new convention, in such manner that the execution of the works should be thereby impeded, or, should she omit to conform to any other essential stipulation of the present arrangement, the original provisions of the protocol of 1901 and of annex 17 thereto will immediately come into force.

The department will recall that by the final protocol and annex 17 (Rockhill, Vol. I, p. 90) the Whangpoo conservancy scheme was a joint Chinese and foreign undertaking. China disliked the foreign share in this work and the expense thereof, fearing that a vessel foreign interest would thereby be created. To escape this China voluntarily assumed the burden and expense of the conservancy by the agreement of September 27, 1905.

It seems inequitable that this large sum of money should be spent on improvements the benefits of which inure directly and almost entirely to the foreign trade, and foreign residents of Shanghai without contribution on their part.

China now faces the dilemma of returning to the original semi-foreign scheme or of continuing the work at an increased outlay of almost $10,000,000 Mexican in the next five years, and this at a time when China's finances can ill afford it.

It is estimated that 1,000,000 taels should be guaranteed by China immediately for the proper continuance of the work.

Upon my motion it was decided to appoint a committee composed of the Doyen, the British, German and Japanese ministers to call upon the Wai-wu Pu and explain the situation fully, and ascertain the wishes and attitude of the Chinese Government on the question.

In view of the fact that the work will cost a sum so far in excess of the amount estimated in the protocol and the agreement of 1905, (viz, haigwan, 460,000 taels yearly for 20 years) it would seem to be but reasonable that the Chinese Government be allowed to levy a surtax, to be agreed upon, both on riparian property and upon trade and navigation at the port of Shanghai.

On the other hand, the additional expense might be provided for in connection with the increase in the import duties so much desired by China and this proposed solution may be found to be of

value as an added inducement to certain nations to consent to such increase.

I have mentioned the matter to Mr. Liang Tun-yen. He was of opinion that China would prefer to carry out the conservancy work at her own expense for the reasons given above, but he complained bitterly of the enormous outlay involved. We also discussed the matter in its relation to the increase of the import duties. Our conversation on the last-mentioned topic I am making the subject of another dispatch.

I am, etc., HENRY P. FLETCHER.

File No. 1571/24–25.

Chargé Fletcher to the Secretary of State.

No. 1271.] AMERICAN LEGATION,
Peking, October 11, 1909.

SIR: I have the honor to acknowledge the receipt of the department's instruction No. 625 of the 23d August, last (file No. 1571/19–21) on the subject of the Whangpoo conservancy.

I have the honor to inclose copy of the aide mémoire which was presented to the Chinese Government by the committee of ministers representing the diplomatic body mentioned in my last dispatch on this subject. No formal reply from the Wai-wu Pu has been received, but I was yesterday informed by Mr. Liang that China did not intend, after spending the enormous sum she has already laid out, to allow it all to be wasted by a suspension of the conservancy works and consequent silting up of the channel. He said they had given orders to the taotai at Shanghai to continue the dredging and also to make a full report on the situation, so that the Chinese Government will be in a position to make an intelligent decision as to the future.

In discussing the matter with my colleagues I have taken the ground that China should not be forced to guarantee this additional expenditure without opportunity to consider the whole question, especially since orders have been given that dredging operations be continued.

I gathered from my conversation with Mr. Liang that, while China felt that she entered into the agreement of 1905 under a misapprehension of the financial burdens involved, she would prefer to proceed even at the great additional cost now estimated rather than allow foreign participation. It is quite natural, in view of past experiences, that China should desire to know definitely just how much more money will actually be needed for this work and what will be the results obtained.

The extreme attitude of the Shanghai community and consular body is not reflected in the diplomatic corps here, where there is a disposition to allow China time to consider the question fully, provided the work is not allowed to go backward meanwhile.

I have, etc.,

HENRY P. FLETCHER.

[Inclosure.]

MEMORANDUM.

His highness, the president, and their excellencies, the ministers of the Waiwu Pu, have taken careful notice of the successive progress of the works in connection with the straightening and the improving of the Whangpoo executed in the course of the last two years under the direction and the control of the conservancy board by their engineer in chief and in accordance with the agreement passed on the 27th of September, 1905, between the Chinese Government and the representative of the signatory powers of the final protocol of 1901.

They have also learned that these works have had the good result of deepening and widening the navigable channel of the Whangpoo in the Junk Channel, named provisionally since the passage of the Astrea the Astrea Channel, to such an extent as to permit the conservancy board to open this channel to general traffic during the day since the 1st of July last and also during the night since the 15th of September.

In order to be able to continue the necessary works for the completion of the amerlioration work of the above-named river in all its parts from the mouth to beyond the Chinese city and the simultaneous closing of the ship channel, the consular body of Shanghai has submitted to the diplomatic corps a report from the engineer in chief dated the 9th of August, 1909, giving full and completeparticulars of the expenses still to be incurred in order to attain this result. A second report has been submitted by the same engineer with the object of showing the financial conditions together with a table showing the division of the expenses spread over the five years still necessary to complete the work.

From these documents it is shown that this work will entail a further sum of $7,898,820 Mexican, increased by $1,470,000 Mexican for salaries and further general expenses, making a grand total of $9,368,820 Mexican.

Not included in this sum is certain work of clearing away in the upper part of the harbor, at the spot where there is a mudbank which should be dredged away, but which would undoubtedly reappear as long as access to this part is not forbidden to the innumerable Chinese junks, boats, houseboats, and rafts of wood and bamboo which are in the habit of anchoring there, and whose owners should, in case this part was dredged, be compensated and indemnified.

According to these above-named reports the division of the estimated expenses by Mr. de Ryke for the work of dredging, training, etc., will be as follows:

For the first year to July 1, 1910	$2,000,000
For the second year to July 1, 1911	1,670,000
For the third year to July 1, 1912	1,670,000
For the fourth and fifth years to July 1, 1914	2,558,820

To the total of these sums should be added for general expenses and salaries above mentioned the sum of $294,000 per year; total, $1,470,000.

At the same time the diplomatic body has been informed by the conservancy board that the funds set aside for this purpose till the 1st of April, 1909, are exhausted, and that it is absolutely necessary to find in the shortest time possible the sum of $1,000,000 in order to pass the first contracts.

The representatives of the signatory powers of the final protocol are pleased to think that the imperial Government is aware, like ourselves, of the absolute necessity and of the extreme urgency of continuing this work in order that the benefits obtained may not be lost.

They have, therefore, the honor to ask His Imperial Highness Prince Ching, and their excellencies the ministers of the Waiwupu, in what way the imperial Government of China—which has engaged itself by the final protocol in a general way to undertake the improvement of the Whangpoo, and by the agreement of 1905 to alone defray all the expenses—proposes to provide for all future expenditure for this work and to meet the immediate needs referred to above.

File No. 1571/22–23.

The Secretary of State to Chargé Fletcher.

No. 658.] DEPARTMENT OF STATE,
Washington, November 2, 1909.

SIR: The department acknowledges the receipt of your unnumbered dispatch of the 16th ultimo [Sept. 16], in which you report that a meeting of the diplomatic corps was held on the 15th ultimo [Sept. 15] to consider the steps that should be taken to procure the necessary funds for completing the conservancy of the Whangpoo River.

The department notes with interest your statement that China now faces the dilemma of returning to the original scheme as contained in the provisions of the protocol of 1901, and of Annex XVII thereto, which called for a joint Chinese and foreign undertaking, or else of continuing the work at an increased outlay of almost Mexican $10,000,000 in the next five years.

Your suggestion that the additional expense might be provided for in connection with the increase in import duties desired by China does not appear to the department at present entirely practicable, owing to the manifest lack of sympathy with which this proposal of the Chinese Government is viewed by several of the treaty powers, and the lapse of time that would necessarily have to occur in any case before an increase could be agreed upon and made effective. The imposition of a surtax upon riparian property and upon trade and navigation, as suggested by you, would probably not be objected to by this Government.

The department learns, however, that a persistent rumor obtains in Shanghai that the Chinese Government will probably be obliged to resort to a foreign loan to cover the additional funds necessary for carrying this important project to completion, and that certain British capitalists contemplate making the loan to China. Should the Chinese Government resort to a foreign loan for this purpose, this Government, in view of the vast commercial and other interests, actual and prospective, of the United States in the great international trade center of Shanghai, would expect that American capital would be permitted to participate therein.

You will informally convey to the foreign office the views of this Government upon this subject, and after discreetly ascertaining the decision of the Chinese Government, inform the department fully and promptly of the result of your inquiries.

I am, etc., P. C. KNOX.

File No. 1571/26.

Chargé Fletcher to the Secretary of State.

No. 1288.] AMERICAN LEGATION,
Peking, November 10, 1909.

SIR: Referring to my dispatch, No. 1271, of October 11, 1909, on the subject of the Whangpoo conservancy, I have the honor to inclose herewith copies of the ensuing correspondence between the

foreign office and the dean of the diplomatic body, and to state that at the last meeting of the foreign representatives on Monday, November 1, the reply of the Chinese Government (inclosure No. 4) was considered unsatisfactory and insufficient, and the dean was authorized to again address the foreign office and endeavor to obtain a more satisfactory and definite reply.

I inclose also two clippings on the same subject from the North China Daily News on the 14th and 18th of October.[1] M. de Rijke has now returned from Japan and a decision must shortly be reached as to whether the syndicate or the company will be given the contract for the dredging. It would seem that Astraea Channel has not suffered serious damage from the delay in resuming the dredging work.

I have, etc., HENRY P. FLETCHER.

[Inclosure 1.—Translation.]

Aide mémoire from the Wai-wu Pu to the Dean of the Diplomatic Corps.

PEKING, *October 9, 1909.*

His excellency the dean of the diplomatic corps, addressed to us a short time ago an aide mémoire on the subject of the systematizing of the work on the Whangpoo and in which he communicated the following:

From the report of the engineer in chief on the question concerning the means to be employed to procure the necessary funds and the manner of yearly disbursement thereof, it appears that it will take five years, at a total cost of $9,360,830, the dredging of a certain place, as mentioned in the report, not being included. An inquiry is therefore made as to the proposed manner of obtaining the necessary funds.

We find that the final protocol of 1901, concerning the dredging of the Whangpoo estimates the cost of the works during 20 years at an annual outlay of 460,000 haikwan taels and stipulates that this amount shall be defrayed by China and the foreign powers equally, i. e., one-half by China and the other half by the foreign powers. Later on, a new arrangement was made with the powers whereby China alone assumed liability for all expenses of the enterprise and guaranteed the sum 460,000 haikwan taels, which had already been fixed by the treaty of 1901, every year for a period of 20 years. According to Engineer de Ryke's plan of 1907 the work was to be finished in four years at a cost of 8,000,000 taels. As the said engineer had been recognized by all the powers, China necessarily had confidence in him. For this reason his plan was adopted. In accordance with the time stated the work should be finished next year without requiring any increase of funds. The said engineer should have completed the work in due course, according to the present estimate, and within the time fixed, but to our great surprise he now suddenly requires fresh sums for the work which is quite at variance with the arrangement made. China has expended large sums to open the new navigable channel and to close the old one, and does not wish to allow it to silt up, thereby losing the work accomplished. Our board has upon several occasions telegraphed to the Shanghai Taotai to seek means to procure funds and to press the engineer to complete at the earliest possible moment the work of dredging one section after the other without delay, and at the same time to send us by telegraph a detailed plan for the completion of the remainder of the work that we may examine it. As soon as we receive an answer we will acquaint you with it. In the meantime we send this aide mémoire for your excellency's information, and request that you likewise inform their excellencies the ministers of the other foreign powers of its contents.

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[1] Not printed.

[Inclosure 2.]

MEMORIAL.

The Wai-wu Pu to His Excellency the Dean of the Diplomatic Body.

PEKING, *16th October, 1909.*

It is in the records that we have sent a memorial on the 9th of October regarding the works for the correction of the Whangpoo River.

Now, we are in receipt of the telegraphic answer of the Shanghai tao-t'ai, in which he says:

According to the sum fixed China has provided sufficient funds, and the work hitherto done early has been examined and approved by officials and merchants of all nationalities. Also, all the ministers residing in Peking say that good results have been obtained. This shows that China, conforming to all articles of the special treaty concerning the correction of the Whangpoo River, acted in full accordance with them and did not delay. The cost for dredging work, amounting to 300,000 taels, is not included in the sum fixed by the special treaty. As this is a work of great importance, that company which has made the cheapest and most satisfactory tenders, in accordance with the terms of the specifications, has already been selected to undertake the work. As the engineer, de Rijke, is sick he has gone to Japan for treatment. The other works of all kinds which are executed in the original way have not been finished yet and still are carried on as usual; besides, as the construction of the jetties has not yet come to an end, how could the Li chi company (East Asiatic Dredging Co.) discontinue the work.

Out of this explanation of the Shanghai tao-t'ai we find that none of the different works have been suspended. As to the dredging work, likewise sufficient funds have been prepared already and a company has been selected for the execution. This shows sufficiently that China is acting according to the treaties and does not spare efforts. As these affairs are of greatest importance to the Chinese Government and the views are differing, the governor of Kiangsu, by imperial command, has been ordered specially to proceed to Shanghai to direct the Shanghai tao-t'ai to inspect in detail and to find reliable methods, in order to arrive at a satisfactory result.

Therefore we write to your excellency the dean, requesting to notify the other ministers residing in Peking.

[Inclosure 3—Translation.]

The Dean of the Diplomatic Corps to His Highness Prince Ching.

PEKING, *October 18, 1909.*

HIGHNESS: I have the honor to acknowledge the receipt of your highness's memorandum of the 16th instant, concerning the Whangpoo conservancy.

It is a matter of satisfaction to learn that the Chinese authorities have actually at their disposition a sum sufficient to enable the dredging work to be resumed, and that this work will be undertaken at once. I have the honor to call your highness's attention to the fact that the absence of Mr. de Rijke in Japan would not seem to have caused any delay in the execution of the work, as the nature of the work which is not at all complicated does not require the continual presence of the engineer in chief at Shanghai, and I presume to think that your highness will agree with me that in the present circumstances nothing prevents an immediate resumption of the work.

The foreign representatives attach great importance to uninterrupted continuance of the conservancy work, failing which free access to the port of Shanghai can not be assured and Chinese and foreign commerce would be affected in consequence. For this reason they would be highly gratified to learn of the decision reached by the Chinese Government.

I therefore request that your highness be so good as to inform me as soon as the work of the dredging has actually recommenced. I shall then be in a position to discuss with your highness and the ministers of your highness's board the working plan submitted by Mr. de Rijke and the question of raising the funds necessary therefor.

Be pleased to accept, etc.

[Inclosure 4—Translation.]

Prince of Ch'ing to the Dean of the Diplomatic Body.

OCTOBER 26, 1909.

YOUR EXCELLENCY: On the 6th day of the ninth moon (October 19), I received your excellency's dispatch in which it was said that the dredging work of the Whangpoo presented no special difficulty and asking that work might be commenced without delay. Furthermore it was said that all the foreign ministers regarded the steady continuance of the Whangpoo conservancy work as of the utmost importance and ask that it may be genuinely carried on without interruption, and that word may be sent when the dredging is recommenced so that negotiations may be reopened in regard to the estimate of the engineer, de Rijke, and the financial arrangements concerned with his estimates.

My board would remark that it is the duty of China to raise funds herself and carry out the Whangpoo conservancy work. And this work will be finished by the spring or summer of next year. China has met all her obligations under the special Whangpoo conservancy agreement, and other nations should not have any criticisms to make.

The dredging is something additional to the original estimates, and the Shanghai tao-t'ai now telegraphs that on the 12th day of the present moon (October 25) the engineer, de Rijke, will return to Shanghai from Japan, and that a date will be at once decided on for commencing work. There is no reason whatever for reopening negotiations. Now the Chinese Government looks upon this matter as of great importance and has specially deputed the governor of Kiangsu to investigate, and he should devise a satisfactory plan of work to provide for the future. All the recommendations of the engineer, de Rijke, will be carefully considered by the governor, and there is no need to reopen negotiations.

As in duty bound I send this reply to your excellency the dean and request that it may be communicated to all the ministers.

File No. 1571/24–25.

The Secretary of State to Chargé Fletcher.

No. 665.] DEPARTMENT OF STATE,
Washington, November 18, 1909.

SIR: The department acknowledges the receipt of your No. 1271, of the 11th ultimo, inclosing a copy of the aide mémoire presented to the Chinese Government by the committee of ministers representing the diplomatic body, and giving the present status of the Whangpoo conservancy plan.

The department approves of your attitude in this connection and is glad to learn that the important work of improving the river is not to be interrupted.

I am, etc., P. C. KNOX.

File No. 1571/27.

Chargé Fletcher to the Secretary of State.

No. 1301.] AMERICAN LEGATION,
Peking, November 23, 1909.

SIR: Continuing my dispatch No. 1288 of the 10th instant on the subject of the Whangpoo conservancy, I have the honor to report that the dredging of the Junk Channel will be resumed about De-

cember 1, the contract therefor having been awarded to the Chinese company, which seems to have reached an understanding with the foreign syndicate whereby its plant, employees, etc., will be taken over by the native company.

Fortunately the work has not suffered seriously from the two months' interruption of dredging work, and the Junk Channel seems to have been kept clear by means of the natural scour of the river. This fact is very encouraging and may make possible a revision of Mr. de Rijke's estimate for the funds necessary to complete the work.

As will be seen from the circular of the dean (inclosed), the Chinese Government is disposed to hold itself freed from the obligations of the final protocol of 1901 by the agreement of 1905, whereby she assumed the responsibility for this work. The question arose in the meeting of the diplomatic corps of November 1, when the British minister held that in case China failed to carry the work to completion under the agreement of 1905 that the foreign powers would have the right to return to the provisions of the protocol of 1901. I inclose a copy of his indorsement on the circular, stating his position in extenso. I am inclined to agree with him that it was the intention of the powers merely to suspend the provisions of the final protocol by the agreement of 1905, and in case China fails to carry out her agreement the provisions of the 1901 protocol may be enforced. But inasmuch as the natural forces seem to be assisting in the work, which, however, will now be resumed by China, the matter is not one demanding instant decision.

I should, however, be glad to receive the opinion of the department on the point raised by Sir John Jordan, as the question will arise when China has, in her opinion, completed the work. While, as stated above, I agree with Sir John on the main point, I nevertheless believe that it would be imprudent and impracticable to revise the cumbersome and ineffective provisions of the 1901 protocol. But China, with the 1901 protocol in the background, will be far more disposed to carry out effectively the work she has undertaken, and this I think we should insist upon.

I have, etc.,

HENRY P. FLETCHER.

[Inclosure 1.]

CIRCULAR.

Dean of diplomatic body to his colleagues.

PEKING, *November 6, 1909.*

Carrying into effect the decision reached at the meeting of the diplomatic body on the 1st instant, the dean yesterday went to the Wai-wu Pu to insist that the dredging should be begun again without delay. His excellency, Mr. Liang Tun-yen, promised to telegraph to Shanghai in this sense.

As to the meaning of the last official note from the ministry of foreign affairs of the 26th ultimo, transmitted to the diplomatic body by Circular 141, the discussions had with Mr. Liang Tun-yen permit no doubt to remain but that the Government believes itself freed from the obligations arising from the final protocol with respect to the improvement of the Whangpoo. The said minister of foreign affairs, nevertheless, recognized the necessity, and confirmed the intention of the Chinese Government to continue the work of improvement, but in its own right and in its own way.

[Inclosure 2—Indorsement of the British minister upon circular of the dean of the diplomatic body to his colleagues.]

PEKING, *November 6, 1909.*

I can not assent to the view that the Chinese Government is released from the obligations of the final protocol of 1901 and is at liberty to continue the conservancy work in its own right and in its own way.

The protocol of 1901 and the reglement attached thereto created a mixed conservancy board, with jurisdiction on the Whangpoo River from the lower limit of the Kiangnan arsenal to the Yangtze. The expenses of improving the course of the river were estimated at taels 460,000 a year for the first 20 years, half of which was to be provided by the Chinese Government and half by the foreign interests concerned. It specified the manner in which the revenue for the work was to be raised and provided that if it proved insufficient it could be increased by bringing the respective moieties up to a figure which would be adequate to meet the requirements of the case.

At the special request of the Chinese Government the protocol of 1905 was substituted for the above, and under this China undertook herself to carry out the conservancy work and to bear the whole expense of it.

There is nothing, to my mind, in this protocol or in the correspondence which passed at the time to show that there was any intention of reducing the work to be done, and consequently of diminishing the possible expenditure to be incurred. The work has now come to a standstill for want of funds, and the Chinese Government have officially stated that they expect to have all the work completed in the spring or summer of next year. This means that a large portion of the river included in the protocol of 1901 is regarded as excluded from the 1905 one, and that the Chinese are no longer liable for carrying the work as originally contemplated to completion. I hold that China is bound either to provide the funds for the completion of the improvement of the course of the Whangpoo as indicated in the protocol of 1901 or to revert to the principle laid down in that instrument, in accordance with which one-half of the funds is to be provided by her and the other half by the foreign interests concerned, whose share in the control of the expenditure of the money naturally revives.

(Signed) J. N. JORDAN.

File No. 1571/26.

The Secretary of State to Chargé Fletcher.

No. 684.] DEPARTMENT OF STATE,
Washington, December 21, 1909.

SIR: I have to acknowledge the receipt of your No. 1288, of November 10 last, inclosing copies of recent correspondence between the Chinese foreign office and the dean of the diplomatic corps upon the subject of the conservancy of the Whangpoo River, and transmitting at the same time two clippings from the North China Daily News referring to the same subject.

The department is relieved to learn that the work of dredging the channel of the Whangpoo is to be resumed at once, and trusts that satisfactory arrangements may be made without delay to provide the funds needed to complete the unfinished work of conservancy according to the plans of the engineer in chief.

Referring to your recent dispatches dealing with the straitened financial condition of China and the plans for replacing the revenue that is being lost through the suppression of the opium traffic, the department awaits with interest further information as to the method by which it is proposed to meet the unexpected increase in the cost of the work and the guaranties that will be furnished in lieu of the opium revenues of Hsu-chou and Szechuen, which are evidently no longer sufficient. There is no desire to embarrass the Chinese Government in its efforts to fulfill its obligations under the new agreement

of September 27, 1905, but the rapid growth of China's debts, with no corresponding increase in her revenues, and the apparent want of any definite fiscal system render the situation one which must be viewed with grave concern.

I am, etc., P. C. KNOX.

File No. 1571/28.

Chargé Fletcher to the Secretary of State.

No. 1334.] AMERICAN LEGATION,
Peking, January 3, 1910.

SIR: Replying to the department's instructions No. 658, of November 2 last, (file No. 1571/22–23) and supplementing my No. 1301, of November 23, on the subject of the Whangpoo conservancy, I have the honor to report that I took occasion to say to Mr. Liang Tun-yen, the president of the foreign office, on the 31st ultimo, that rumors had reached the department to the effect that China contemplated a foreign loan to cover the additional funds necessary for carrying this important work to completion, and that certain British capitalists contemplated making such a loan to China.

In reply he informed me that the report was untrue; that China did not feel obliged to expend the money which seemed to be called for now and held that in providing the funds called for by the agreement of 1905 she had discharged her full duty and responsibility under her engagement to the powers, but that, nevertheless, China, of her own free will and accord, would carry on the work. I told him that that was a matter of interpretation of the protocol of 1901 and of the agreement of 1905, which would be settled in due course; that present inquiry had reference merely to a reported loan. He again stated that China did not at present contemplate a foreign loan for this purpose, and if one became necessary in the future no one nation would be favored, but that China would borrow where she could get the money on the best terms.

I have, etc., HENRY P. FLETCHER.

File No. 1571/27.

The Secretary of State to Chargé Fletcher.

DEPARTMENT OF STATE,
Washington, January 11, 1910.

SIR: I have to acknowledge the receipt of your No. 1301, of November 23, 1909, on the subject of the Whangpoo conservancy.

The department agrees with the view expressed by Sir John Jordan, the British minister, that it was the intention of the powers to suspend the provisions of the final protocol by the agreement of 1905, and in case China fails to carry out her agreement the provisions of the 1901 protocol may be enforced. The department is disposed, however, to acquiesce in your belief that a revival of the cumbersome and ineffective provisions of the 1901 protocol would be perhaps imprudent and impracticable.

I am, etc., (For Mr. Knox.)
HUNTINGTON WILSON.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND CHINA.

Signed at Washington, October 8, 1908.
Ratification advised by the Senate, December 10, 1908.
Ratified by the President, March 1, 1909.
Ratified by China, February 12, 1909.
Ratifications exchanged at Washington, April 6, 1909.
Proclaimed, April 6, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Arbitration Convention between the United States of America and the Empire of China was concluded and signed by their respective Plenipotentiaries at Washington, on the eighth day of October one thousand nine hundred and eight, the original of which Convention, being in the English and Chinese languages, is word for word as follows:

The President of the United States of America and His Majesty the Emperor of China, taking into consideration the fact that the High Contracting Parties to the Convention for the pacific settlement of international disputes, concluded at The Hague on the 29th July, 1899, have reserved to themselves, by Article XIX of that Convention, the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment, have resolved to conclude an Arbitration Convention between the two countries, and for that purpose have named as their Plenipotentiaries, that is to say:

The President of the United States of America, Elihu Root, Secretary of State of the United States of America; and

His Majesty the Emperor of China, Wu Ting-fang, Envoy Extraordinary and Minister Plenipotentiary to the United States of America, Mexico, Peru, and Cuba;

Who, after having communicated to each other their Full Powers, found to be in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

Differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two Contracting States, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties before appealing to the Permanent Court of Arbitration shall conclude a special Agreement defining clearly the matter in dispute, the scope

of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that such special agreements will be made on the part of the United States by the President of the United States by and with the advice and consent of the Senate thereof.

ARTICLE III.

The present Convention shall remain in force for the period of five years from the date of the exchange of the ratifications.

ARTICLE IV.

The present Convention shall be ratified by the High Contracting Parties, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the present Convention, and have thereunto affixed their seals.

Done at the City of Washington, in duplicate, this 8th day of October, one thousand nine hundred and eight, corresponding to the 14th day of the 9th month of the 34th year of Kuang Hsü.

ELIHU ROOT [SEAL]
WU TING FANG [SEAL]

[Chinese text not printed.]

And whereas the said Convention has been duly ratified on both parts and the ratifications of the two governments were exchanged in the City of Washington, on the sixth day of April, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this sixth day of April in the year of our Lord one thousand nine hundred and nine, and of [SEAL.] the Independence of the United States of America the one hundred and thirty-third.

WM H TAFT

By the President:
P C KNOX
Secretary of State.

JOINT INTERNATIONAL COMMISSION FOR THE INVESTIGATION OF THE OPIUM QUESTION IN THE FAR EAST.

(Continued from Foreign Relations, 1908, p. 75 et seq.)

File No. 774/574–575.

Minister King to the Secretary of State.

No. 447.] AMERICAN LEGATION,
Bankok, January 2, 1909.

SIR: I have the honor to inclose the copy of a dispatch this day received from the foreign office in reply to your dispatch from the State Department bearing the date of October 22,[1] which was transmitted to the foreign office by me on December 2, 1908.

I have, etc.,

HAMILTON KING.

[Inclosure.]

The Minister for Foreign Affairs to Minister King.

FOREIGN OFFICE,
Bangkok, January 1, 1909.

Mr. MINISTER: I have the honor to acknowledge the receipt of your letter of the 2d inst. [ult.], transmitting a copy of a dispatch, dated October 22d, from the State Department.

I am pleased to learn of the satisfaction felt by the American Government that the Siamese Government will participate in the International Opium Commission to meet at Shanghai.

I beg to express my thanks for the communication of the names of the American commissioners.

In response to the request for similar information, I have the honor to say that His Majesty's Government has appointed as commissioners Phya Sakdi Sani, at present high commissioner of the monthon of patani; Luang Visutr Kosa, secretary of legation, at present attached to the ministry for foreign affairs; and Phya Manas Manit, secretary in the ministry of finance.

In preparation for the general meeting at Shanghai, the above-named commissioners will investigate in this country the subjects of the import of crude opium, its derivatives and chandu; the consumption of crude opium, licit and illicit; the internal manufacture and use of chandu; the use of the crude drug and preparations of the same; the use of morphine and other derivatives, licit and illicit; and the legislation of this country on the importation, sale, and use of opium and its derivatives. As you will observe, there are omitted from the above program certain subjects included in the program of the American commissioners, namely, the manufacture of morphia, and other opium derivatives, and the extent of poppy cultivation. These subjects have been omitted because Siam neither manufactures morphia nor cultivates poppy.

I avail, etc.,

DEVAWONGSE.

File No. 774/587–588.

Minister Rockhill to the Secretary of State.

No. 1078.] AMERICAN LEGATION,
Peking, January 5, 1909.

SIR: Referring to my dispatch No. 1027, of October 15, 1908,[2] I have the honor to inclose herewith copy of the regulations issued

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[1] See Foreign Relations, 1908, p. 105.
[2] Ibid., p. 103.

by the imperial maritime customs, effective from January 1 of this year, governing the importation of morphia and instruments for its injection.

I have, etc., W. W. ROCKHILL.

[Inclosure.]

CUSTOMS NOTIFICATIONS NO. ——— MORPHIA REGULATIONS.

On and after the 1st of January, 1909, the manufacture in China by Chinese and foreigners of morphia and of syringes, needles, and such like instruments for its use, is absolutely prohibited; and the importation of the same into China by Chinese and foreigners is likewise prohibited, except in the case of duly qualified foreign medical practitioners and foreign chemists and druggists complying with the following conditions:

(1) Duly qualified foreign medical practitioners desiring to import morphia and (or) instruments for its use must sign a bond before their consul stating the quantities to be imported and their values, the place whence arriving and the method of importation, whether by steamer (the name of which must be given), rail, or post, and guaranteeing that these articles will be employed for medicinal purposes only, either in their private practice or in some specified hospital. Upon the consul forwarding the bond to the customhouse a special landing permit will be issued after payment of duty.

(2) Foreign chemists and druggists desiring to import morphia and (or) instruments for its use must sign a bond before their consul stating the quantities to be imported and their value, the place whence arriving and the method of importation, whether by steamer (the name of which must be given), rail, or post, and guaranteeing that these articles will be used exclusively in the compounding of prescriptions or sold in small quantities only on the requisition of a duly qualified foreign medical practitioner. Upon the consul forwarding the bond to the customhouse a special landing permit will be issued after payment of duty.

(3) Any such importer of morphia and (or) instruments for its use found dealing with or selling such, otherwise than in accordance with the terms of his bond, will not be permitted to make any further importation.

(4) All morphia and (or) instruments for its use landed without customs special permit will be confiscated.

(5) Duty on morphia and instruments for its use imported under the above provisions will be levied at the reduced rate of 5 per cent ad valorem.

(6) Morphia and (or) instruments for its use shipped to China by foreign merchants from foreign ports before 1st January, 1909, may be landed under the old regulations during a period after that date, the limit of which will be fixed in every instance by the customhouse concerned according to the date of shipment and the distance of the port whence shipped. Any morphia so landed under the old rules must pay duty at the present tariff rate without reduction.

The necessary blank bond forms will be issued by the customs on application free of charge.

By order received through the inspector general of customs.

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Commissioner of Customs.

CUSTOM HOUSE,
----------, 1908.

File No. 774/525.

The Acting Secretary of State to the Italian Ambassador.

DEPARTMENT OF STATE,
Washington, January 23, 1909.

EXCELLENCY: Referring to my informal communication of the 9th instant,[1] regarding the Joint Opium Commission, which is shortly to meet at Shanghai, I have the honor to inform you that this Government has consulted the various powers participating in the coming conference, and I am now happy to be able to invite your Government to delegate representatives who will take part in the deliberations, which it is hoped will result in restricting, and be instrumental in the final suppression of, the opium evil.

Accept, etc.,

ROBERT BACON.

File No. 774/525.

The Acting Secretary of State to the Ambassador of Austria-Hungary.

No. 407.] DEPARTMENT OF STATE,
Washington, January 23, 1909.

EXCELLENCY: Certain powers have at various times during the past year been invited to participate in a joint commission for the investigation of the scientific and material conditions of the opium trade and the opium habit in the Far East affecting their possessions or direct interests in that region.

No Government having expressed any preference as to the date or place of meeting of the commission, the Government of the United States found itself invited to make suggestion, and it thereupon named January 1, 1909, and Shanghai. This time and place were found agreeable and convenient to the other powers concerned.

This Government proposed that each Government's commission should proceed independently and immediately with the investigation of the opium question on behalf of its respective country, with a view, first, to devising means to limit the use of opium in the possessions of that country; secondly, to ascertain the best means of suppressing the opium traffic if such now exists among the nationals of that Government in the Far East; thirdly, to be in a position so that when the commission meets in Shanghai the representatives of the various powers might be prepared to cooperate or to offer jointly or severally definite suggestions of measures which their respective Governments may adopt for the gradual suppression of opium cultivation, traffic, and use within their eastern possessions, thus assisting China in her purpose of eradicating the evil from her Empire; and, fourthly, to be able to inform the whole commission when it assembles regarding the regulations and restrictions now in force in its respective country, and to formulate and discuss proposals for

[1] Not printed.

amending such regulations in points in which they may be found in the course of the joint investigation to affect the production, commerce, use, and disadvantages of opium in the Far East.

The President appointed as commissioners on the part of the United States the Right Rev. Charles H. Brent, missionary bishop to the Philippine Islands; Dr. Charles D. Tenney, Chinese secretary of the American legation at Peking; and Dr. Hamilton Wright, eminent in medical and scientific research.

The commissioners of the United States have investigated in this country the subjects of the imports of crude opium, its derivatives, and chandu; the international consumption of opium, licit and illicit; the internal manufacture and use of chandu; the manufacture of morphia and other opium derivatives; the use of the crude drug and preparations of the same; the use of morphine and other derivatives, licit and illicit; the extent of poppy cultivation; and the Federal statutes regarding importation and municipal laws and ordinances governing the use of opium and its derivatives.

The powers which have accepted the invitation to participate in the conference are China, France, Germany, Great Britain, Japan, the Netherlands, Persia, Portugal, Russia, Siam, and the United States.

It was thought best, out of respect to the memory of the late Emperor and Empress Dowager of China, to postpone the conference until February 1, 1909, and, the other powers concurring, the above date has been determined upon.

It now affords me great pleasure to extend to your Government an invitation to delegate representatives who will take part in the deliberations which it is hoped will result in restricting and be instrumental in the final suppression of the opium evil.

Accept, etc.,

ROBERT BACON.

File No. 774/544a.

The Acting Secretary of State to Ambassador Reid.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, January 26, 1909.

Mr. Bacon informs Mr. Reid that Italy and Austria-Hungary have been invited to participate in International Opium Commission, and instructs him to so inform the embassies at Paris, Berlin, St. Petersburg, and the legations at Lisbon, The Hague, and Teheran.

File No. 774/545a.

The Acting Secretary of State to Ambassador O'Brien.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, January 26, 1909.

Mr. Bacon informs Mr. O'Brien that Austria-Hungary and Italy have been invited to participate in International Opium Conference, and instructs him to so inform the legations at Peking and Bankok.

File No. 774/558.

Bishop Brent to the Secretary of State.

[Telegram.—Paraphrase.]

SHANGHAI, *January 31, 1909.*

Gives names of Austrian and Italian delegates to opium conference and says notification of appointment should come through department. Asks names of Chinese commission at present.

File No. 774/562.

Bishop Brent to the Secretary of State.

[Telegram.—Paraphrase.]

SHANGHAI, *February 1, 1909.*

Informs the department that he has been unanimously elected chairman of the opium commission on nomination of Great Britain and China. Says, contrary to expectations, viceroy advocated Chinese monopoly and revision of treaties; that the session opened with general good feeling, and that the last Hague rules were practically adopted by committee on rules and order.

File No. 774/562.

The Secretary of State to Bishop Brent.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, February 1, 1909.

Mr. Bacon instructs him to convey to the commissioners assembled the good wishes of President Roosevelt and his conviction that the efforts of the commission toward the general suppression of the opium evil throughout the world will be of the greatest importance. Mr. Bacon adds that the department is pleased to know that he has been unanimously elected chairman of the opium commission, and that the conference has opened auspiciously.

File No. 774/564.

The Secretary of State to Bishop Brent.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, February 1, 1909.

Mr. Bacon informs him that consuls general of Austria and Italy, Bernauer and Faraone, appointed delegates to opium commission, and that China has delegated Tao-t'ao Liu Yü-lin, Tao-t'ai Kwan Ching-hsien, and T'ang Kai-sun.

File No. 774/572.

Minister Beaupré to the Secretary of State.

No. 103.] AMERICAN LEGATION,
The Hague, February 2, 1909.

SIR: I have the honor to state that on receipt of the department's cablegram of the 27th ultimo,[1] I immediately advised the minister for foreign affairs that the Governments of Italy and Austria-Hungary had been invited to participate in the deliberations of the Internationl Opium Conference at Shanghai and that his excellency has this day acknowledged the receipt of said advice.

I am, etc.,

A. M. BEAUPRÉ.

File No. 774/552–557.

The Secretary of State to Minister Rockhill.

No. 550.] DEPARTMENT OF STATE,
Washington, February 20, 1909.

SIR: There is inclosed herewith, for the information of the legation, a copy of the bill prohibiting the importation of opium into the United States which was recently passed by the Congress and approved by the President.

I am, etc.,

ROBERT BACON.

[Inclosure.]

[PUBLIC—No. 221.]

An act to prohibit the importation and use of opium for other than medicinal purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That after the first day of April, nineteen hundred and nine, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof: *Provided*, That opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations which the Secretary of the Treasury is hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereafter be imposed by law.

SEC. 2. That if any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any opium or any preparation or derivative thereof contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such opium or preparation or derivative thereof after importation, knowing the same to have been imported contrary to law, such opium or preparation or derivative thereof shall be forfeited and shall be destroyed, and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or by imprisonment for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have, or to have had, possession of such opium or preparation or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.

Approved, February 9, 1909.

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[1] See telegram of Jan. 26 to Ambassador Reid.

File No. 774/584.

Bishop Brent to the Secretary of State.

[Telegram.—Paraphrase.]

SHANGHAI, *February 26, 1909.*

Bishop Brent says the following resolutions were passed by the international commission:

The adoption of measures necessary to prevent shipment of opium and its derivatives to countries prohibiting their entry is the duty of all countries.

The commission recognizes the sincere efforts of China to suppress opium, and recommends that each Government make an investigation from a scientific standpoint of antiopium remedies and their properties, and of the effects of opium and its products.

The commission finds that the unrestricted distribution of morphine already constitutes a grave danger, which is spreading, and urges the adoption of drastic measures to control the distribution of all opium preparations liable to similar abuse.

Recommends that each Government in its own territory take measures for the gradual suppression of opium smoking.

The commission finds participating countries hold that use of opium except for medical purposes is a matter for prohibition or regulation, and that the regulations of each country aim at increasing stringency.

Urges on all countries concerned the advisability of reexamining their systems in view of experience of other countries.

Urges those Governments having concessions in China which have not taken effective action toward the closing of opium divans to take action as soon as possible.

Recommends negotiations with China by each Government having concessions for the prohibition of trade and manufacture of antiopium remedies containing opium or its derivatives.

Recommends that each Government apply its pharmacy laws to its subjects in concessions in China.

Bishop Brent thinks resolutions should be published immediately, but will await permission of department. Adds that he considers a conference necessary to complete work of commission.

Says commission is leaving for Peking.

File No. 774/584.

The Secretary of State to Bishop Brent.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, February 26, 1909.

Mr. Bacon informs him that department is gratified with resolutions passed by international commission, authorizes him to publish resolutions, and compliments him on the successful termination of this phase of his work.

File No. 774/617–618.

Minister Rockhill to the Secretary of State.

No. 1127.] AMERICAN LEGATION,
Peking, March 22, 1909.

SIR: I have the honor to inclose herewith for the information of the department a translation of an imperial edict issued on the 15th instant—after the adjournment of the International Opium Commission—reiterating the determination of the Government to stamp out the use of opium and the cultivation of the poppy.

The edict is of particular interest, as it shows that the attention of the Government is turning to the financial difficulties which the carrying out of the reform brings with it, and emphasizes the fact that no scheme has as yet been devised to meet the deficit in the revenues which will probably very shortly confront the Government. The determination of the Government to carry through the reforms seems, however, firmly fixed, to judge from the terms of this edict, "though the Government is in straightened circumstances," it says, "It will neither seek to satisfy its hunger nor quench its thirst at the expense of this harmful poison, so that it may rid the people of this great bane."

I am, etc., W. W. ROCKHILL.

[Inclosure.—Translation.]

PEKING, *March 15.*

Opium suppression is a necessary measure to the strengthening of our Empire, as well as the mainspring of the development and instruction of the people, involving, as it does, questions of hygiene, of enriching the people, of developing terrestrial profits, and of arresting a drain on the national wealth. All eyes are turned to this subject and much universal sympathy and assistance have been exhibited.

On the question three steps are closely interrelated and dependent, and these are: Prohibition of smoking and of plantation, and devising of means to raise revenue to fill the deficit caused in the opium duties. Should any one of these be inefficiently carried out, the other two will in consequence be hampered and success would be looked for in vain.

In recent years though officials addicted to the smoking habit have been examined and denounced on repeated occasions by the antiopium commissioners and viceroys and governors of the Provinces, there still exists a number of them who trifle with the interdict and veneer their faults in that respect. With regard to the prohibition of the poppy plantation in the Provinces, it was first decided to decrease the plantation gradually in 10 years. Later, the authorities of Yunnan, Szechuan, Shanse, Chihli, Heilungkiang, and other Provinces asked permission to forbid plantation entirely in one year. This, no doubt, shows great energy of purpose, but whether their intention is thoroughly carried out in all their Provinces, and whether the local officials succeed in inducing the people to plant other profitable products on their soil to yield them a living so that they gladly submit to the suppression, remains to be seen.

The duties and likin on this drug are required for the bulk of the army estimates. Recently the ministry of finance memorialized us and obtained permission to increase the price of salt to make up for these duties and likin. This plan, however, only aggregates four or five million taels and there still remains a large deficit.

We are eagerly bent on introducing a better government and between our agitation at the long weakness of our people, in whom it is difficult to infuse energy, and the fear that the expectations of the friendly powers may not be easily satisfied, we are filled with constant and pressing anxiety. We hereby reiterate the prohibition against smoking. The antiopium commissioners and

the high officials in the capital and Provinces are held responsible to forbid, faithfully and with energy, all officials, civil or military, to smoke. Those in command of troops or in charge of educational institutions are made responsible for suppression of smoking among soldiers and students. As to merchants and the people, the responsibility must rest with the ministry of the interior, the viceroys, governors, military governors, and the governor of the imperial prefecture of Shuntienfu. They will try to obtain the best prescriptions, establish antiopium institutes, and distribute free medicines when necessary. They should encourage their sense of honor and adopt the plans and practices of foreign countries so that the people's vices may be gradually lessened and finally eradicated.

As to the prohibitation of plantation, viceroys and governors, the governor of the imperial prefecture of Shuntienfu and military governors are commanded to direct their subordinates to carry out the suppression with care and thoroughness. They should also cause other grains to be planted in place of the pernicious drug, and they will be rewarded according to the degree of success they attain. The ministry of the interior will supervise these measures being put in operation.

In regard to devising means to fill the deficit of duties and likin, the ministry of finance is desired carefully to consider the question. It is, undoubtedly, an important point to be dealt with, but it may be disposed of by weighing advantages and drawbacks and considering all possible resources. Viceroys and governors who may have valuable suggestions on the question are ordered to memorialize the Throne for their adoption, so that those carrying out the suppression need not be hampered by financial considerations. Though the Government is in straitened circumstances, it will neither seek to satisfy its hunger nor quench its thirst at the expense of this harmful poison, so that it may rid people of this great bane.

Dividing, in this way, the responsibilities and actions, no evasion of burden will be permitted and all concerned are commanded to put forth their best energies to aid us in securing prosperous rule by taking natural advantages to ameliorate the condition of life among our people. After receipt of this edict each office in the capital or provinces is commanded to make a careful report of its plan of operation in this affair.

File No. 774/636–637.

Minister Rockhill to the Secretary of State.

[Extract.]

No. 1162.] AMERICAN LEGATION,
Peking, May 21, 1909.

SIR: I have the honor to inclose herewith copy in translation of a note received to-day from the Wai-wu Pu conveying its hearty thanks to the American Government for its assistance in this matter.

I presume that a similar note has been sent to each of the other powers represented on the commission.

I have, etc., W. W. ROCKHILL.

The Ministers of the Foreign Office to Minister Rockhill.

[Translation.]

FOREIGN OFFICE,
Peking, May 20, 1909.

YOUR EXCELLENCY: In the first moon of this year, when the International Opium Commission was held at Shanghai, the American Government took the lead in sending delegates, who, in consultation with the delegates of other nations, passed nine resolutions calculated to be of great assistance to China in the work of suppressing opium.

We now write to express the hearty thanks of the Chinese Government to the American Government, and beg Your Excellency to convey this expression of thanks to Your Excellency's Government.

We wish Your Excellency prosperity.

(Signed) PRINCE OF CH'ING.
SHIH-HSU.
LIANG TUN-YEN.
LIEN-FANG.
TSOU CHIA-LAI.

File No. 774/634–635.

Minister Rockhill to the Secretary of State.

No. 1163.] AMERICAN LEGATION,
Peking, May 21, 1909.

SIR: I have the honor to transmit herewith, for your information, copy in translation of a memorial recently submitted by the acting viceroy of Yunnan on the subject of the prompt suppression of opium cultivation and the creation of a new source of revenue to supply the place of that lost thereby.

The memorial gives also the text of an imperial edict of March 15 last, calling for memorials on the subject, which shows the serious apprehension the Imperial Government entertains as to the possibility of promptly accomplishing the desired ends.

Independent foreign observers have within the last year repeatedly reported that the progress made in the Province of Yunnan in doing away with poppy cultivation has been exceptionally great; that more has been accomplished in that direction in this district than in any other of the Empire. It is sincerely to be hoped that the present efforts of the provincial authorities to develop the mining industries of the Province may prove successful, as they should if properly conducted.

I have, etc., W. W. ROCKHILL.

[Inclosure—Translation.]

MEMORIAL.

Subject: Opium prohibition and the opening of mines in Yunnan.

Submitted by the acting viceroy of Yunnan. Imperial rescript issued April 29, 1909, "Let the boards concerned report."

This memorial is submitted in compliance with the imperial command to report on the aspects of opium suppression in Yunnan and in order to ask that instructions be issued to the boards concerned to foster the mining industry, so that a revenue may be derived therefrom to take the place of the tax on opium. The memorialist was telegraphically apprised of and reverently noted the imperial edict of March 15, 1909, as follows:

Edict regarding the suppression of opium. The present day is one of exertion toward solid achievement in governmental matters and the prosecution of great schemes for education and betterment. The suppression of opium smoking and cultivation and the raising of revenue to take the place of that formerly derived from the tax on native opium comprise the essential points of this question. Yunnan and other Provinces have memorialized us asking that all cultivation of opium be terminated within one year. But will this be attempted with sincerity; will the local officials be able to persuade the people to substitute the cultivation of crops useful for their clothing and sustenance; can they command the enthusiastic support of the common people? The form of revenue to be abolished is the main support of military establishments and the increased tax on salt is very inadequate. This question occasions the Throne much disquietude. We are issuing repeated commands to the opium-suppression commissioners, to other officials con-

cerned, and to the viceroys and governors, to interdict the use of opium, pointing out that it is incumbent on them to seek out efficacious prescriptions, to open bureaus and issue remedies. In the matter of the prohibition of opium cultivation we have directed the viceroys and governors and others to issue such directions to their subordinates leading to the total termination of opium production and the substitution of beneficial crops for this deleterious one as a consideration of the circumstances may lead them to think advisable. The task of devising revenues to replace the opium revenue we have intrusted to the board of finance and directed the viceroys and governors, also, if they are cognizant of any advisable methods to submit them to the Throne for consideration. At the same time all Government offices in and out of Peking are commanded on the receipt of this edict to submit plans for the accomplishment of the above ends.

From the above the memorialist reverently observes that the Throne considers it a matter of great importance to abolish this poison and in its abolition to devise new benefits for the people. The perception of this arouses inexpressible gratitude.

Opium suppression in Yunnan had its inception in a memorial by the late Viceroy Hsi-liang, wherein he advised that the period within which the total suppression of opium was to be accomplished be shortened to one year. He immediately issued very specific and complete proclamations. Under his direction a colloquial newspaper was started and leaflets were issued with explanations and illustrations. He sent literati to various places to lecture on the subject and urge the people to substitute for opium other crops, such as beans or wheat or mulberry trees for the nourishment of silkworms. In the autumn renewed instructions were issued to the local officials, and deputies were sent to instruct the people. Thus the country people were led to a knowledge of the harmful character of opium, and, awaking to this realization, gladly acceded to the viceroy's wishes. On the border of the Province and among the aboriginal tribes, whose nature is corrupt, opium is still privately grown, owing to the fact that in neighboring Provinces suppression has not been complete, or to the idea that their territory is safe from intrusion. But throughout the Province the amount of opium grown is now one or two tenths of what it was. In the memorial of the late viceroy was contained the statement that it was to be doubted whether in the space of one year the suppression could be made absolute, this reservation being made to obviate the possibility that he should be accused of false pretenses.

When the present memorialist assumed temporarily the duties of viceroy he issued orders to the local officials and literati to investigate the subject of suitable crops. But as the memorialist feared that it would not be easy for the people to procure good seed the same was selected and distributed at Government expense, and organizations for the prosecution of agricultural and stock-raising enterprises were encouraged. It was thought that in this way rapid progress would be made, the people being led along, the poison would for once and all be got rid of and increased profits would be obtained from the soil. These are the circumstances attendant upon the prohibition of opium (growing) in Yun-nan.

As for the inhibition of the use of opium the following observations may be made: It has already been ordered categorically that no more opium may be produced, and it has also been ordered that by certain definite dates all opium in stock must be exported. A petition has been submitted to the Throne that no more taxes on native opium may be collected; that the importation of opium from neighboring Provinces may be stringently prohibited; and that if any illicitly stored or transported opium be discovered, the same shall be confiscated and destroyed. It is now almost two years since opium-suppression bureaus were established throughout the Province. Remedies have been distributed and report has been made of the cure of more than 50,000 people. The size of the Province, the multitude of the people, and the short period of one or two years that has elapsed have made it almost impossible to effect a complete suppression. But who is not influenced to reform? The terrible results of the use of opium are pointed out, gracious kindness and stern reproof are mingled; appearances indicate that by these means complete interdiction will by degrees be consummated. This is the condition of the suppression of the use of opium in Yunnan at the present time.

A large deficit has been caused in the poor Province of Yunnan by the loss of the revenue formerly derived from native opium, for this constituted its main fiscal dependence. This has occasioned the memorialist and the Government officials much anxious thought. Various expedients for making good this present deficit are being suggested, such as the inauguration of a stamp tax, the increase of the imposts on tobacco and wines, the increase of the salt gabelle, or what would be even more stringent, the augmentation of the land

tax in various Provinces, but there is not one of these increased charges that would not be paid by the common people and the merchants, in effect, "cutting off good flesh to cure an ulcer," and this can not be regarded as expedient. The common people throughout the Empire are poor, and this is true especially in the frontier Provinces. In these there are no large commercial establishments and exactions from the people are with difficulty borne by them.

But it is evident that Yunnan is a Province rich in minerals—the five metals are all present. The Annam-Yunnan Railway (Tien-Yüeh) within the present year will be extended to the provincial capital and the relation of this railway to the mines will be one of reciprocal benefit. No delay should be permitted. The memorialist has been in Yunnan over a year and has made careful investigation among the literati; it has developed that the mines of Yunnan are at present all worked on a modest scale, the capital employed being small. The methods of excavation and extraction from the ore are all crude and of local character. The results of the separative processes are not complete. Financial loss is constantly reported. For instance, the Ke-chiu tin mine is an exceptionally successful venture. Yet foreigners of different nationalities have inspected the mine and report that not more than two or three tenths of the metal is extracted. This is to be regretted. Successive viceroys and governors endeavored to interest private capitalists in the working of mines, but they consider that the local methods are not profitable enough, not to mention the fact that there often actual losses. Hence they have foreborne to engage in these enterprises.

The late Viceroy Hsi-liang, thinking that the Ke-chiu mine was the chief source of revenue in Yunnan considered it incumbent upon him to devise some way of improving it. He dispatched two expectant tao-t'ais, viz, Wang Keng-ŷu and Miao Kuo-chün, to Penang to examine tin mines on the spot and buy machinery and also to enlist Chinese capital there. The rich Chinese capitalist Chien-t'ai and others have subscribed capital and engaged the services of a mining engineer named Lu Ts'an-kuang. Him they have sent to Yun-nan to undertake the working of the tin mines adjacent to the Ke-chiu mine. Their efforts in this direction have been strenuous.

It is difficult to collect any large amount of capital for the working of other mines than the above. If at the present time a large amount of capital could be enlisted and thoroughly competent mining engineers engaged to select and work, according to western methods, the richest mines, mining operations could thereafter be gradualy extended. In this event not only would an unparalleled source of profit be developed for the locality concerned but the nation itself would be provided with extremely remunerative assets. The great difference between the above projects and the imposition of further taxes deleterious to merchants and people is sufficiently manifest.

The memorialist reverently presents these projects and asks that if they be approved instructions may be issued to the boards of agriculture, industries, and commerce, and of finance to dispatch graduates of foreign mining schools, who are thoroughly conversant with the subject, to come to Yunnan to conduct investigations and the subsequent operations. Adequate capital should be subscribed, the best locations selected, and machinery purchased. If able men are secured the memorialist ventures to guarantee that the profits will be amply sufficient to make good the deficit referred to (in the first part of the memorial). The object of the memorialist is to enlarge the revenues and improve the means of livelihood of the people.

This statement of the case is reverently submitted to the discretion of the Throne, and it is hoped that the boards concerned may be instructed to acquaint themselves with it and take action.

File No. 774/636–637.

Commissioner Wright to the Secretary of State.

COMMISSION OF THE UNITED STATES OF AMERICA
TO THE INTERNATIONAL OPIUM COMMISSION,
Shanghai, June 3, 1909.

SIR: I have the honor to transmit herewith eight copies of the Report of the Proceedings of the International Opium Commission.[1] Separate copies have been placed in the hands of the First and Third Assistant Secretaries of State.

I understand, from a telegram recently received from our consul general at Shanghai, that the various national reports are not yet printed, but as soon as they are they will be forwarded as volume 2 of the proceedings of the commission.

I have, etc., HAMILTON WRIGHT.

File No. 774/634–635.

The Acting Secretary of State to Chargé Fletcher.

DEPARTMENT OF STATE,
Washington, July 12, 1909.

SIR: The department acknowledges the receipt of the legation's No. 1163, of May 21, 1909, inclosing a translation of a memorial recently submitted by the viceroy of Yunnan on the subject of the prompt suppression of opium cultivation and the creation of a new source of revenue, such as the opening of the mines, in its place.

The department has read the dispatch and its inclosures with interest.

I am, etc., HUNTINGTON WILSON.

File No. 774/651A.

The Acting Secretary of State to the diplomatic officers of the United States accredited to the Governments which were represented in the Shanghai International Opium Commission.

DEPARTMENT OF STATE,
Washington, September 1, 1909.

GENTLEMEN: The Government of the United States has learned with satisfaction the results achieved by the International Opium Commission, which concluded its labors at Shanghai on February 26, 1909. In the opinion of the leaders of the antiopium movement much has been accomplished by the commission; and by both the Government and people of the United States it is recognized that the results are largely due to the generous spirit in which the representatives of the Governments concerned approached the subject.

The Government of the United States appreciates the magnitude of the opium problem and the serious financial interests involved in

[1] Report of daily proceedings not printed. For "Report on the International Opium Commission and on the opium problem as seen within the United States and its possessions," see Senate Doc. No. 377, Sixty-first Congress, second session.

the production of and trade in the drug, and it is deeply impressed by the friendly cooperation of the powers financially interested and the desire as expressed by the resolutions of the commission that the opium evil should be eradicated not only from Far Eastern countries, but also from their home territories and possessions in other parts of the world.

During the investigation of the opium problem in the United States by the American commissioners, it became apparent that, quite apart from the question as it affects the Philippine Islands, a serious opium evil obtained in the United States itself; that this was primarily due to the large Chinese population in the country, to the intimate commercial intercourse with the Orient, and to the unrestricted importation of opium and manufacture of morphia.

Thus, the interest of the United States in the opium problem is material as well as humanitarian, and, as the result of the investigations made before the meeting of the commission at Shanghai, the Congress of the United States passed the following legislation:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That after the first day of April, nineteen hundred and nine, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof: *Provided,* That opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations which the Secretary of the Treasury is hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereafter be imposed by law.

SEC. 2. That if any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any opium or any preparation or derivative thereof contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such opium or preparation or derivative thereof after importation, knowing the same to have been imported contrary to law, such opium or preparation or derivative thereof shall be forfeited and shall be destroyed, and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or by imprisonment for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have, or to have had, possession of such opium or preparation or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.

It will be observed that this act excludes from the United States opium except for medicinal purposes. It is not unlikely that the Government of the United States may at an early date enact further legislation to place the entire manufacture and distribution of medicinal opium, its derivatives, and preparations and other habit-forming drugs, like cocaine and Indian hemp, under Federal supervision and control.

The United States, however, is not itself an opium-producing country, and in order to make its laws fully effective, and stamp out the evil, there should be control of the amount of opium shipped to this country. To this end it will be necessary to secure international cooperation and the sympathy of opium-producing countries.

In the original dispatches which led to the calling of the commission, the American Government considered the time had come to decide whether the consequences of the opium trade and habit were not such that the civilized powers should take measures in common to control the trade and eradicate the habit, and the suggestion was made that there be an international conference to consider the ques-

tion in its international bearing, and if feasible to draft an international agreement.

As, however, the Government of Great Britain intimated that procedure by way of commission seemed better adapted than a conference for an investigation of the facts of the trade and the consequences of the habit preliminary to any action by the powers jointly and severally, and inasmuch as the material placed before the conference might be insufficient to arrive at definite recommendations, the United States modified its original attitude. Therefore, in the latter part of 1906, the Government of the United States approached several of he powers more particularly interested in the question for an international commission of inquiry to study the scientific, economic, moral, and legislative aspects of the opium problem.

It was finally agreed by the Governments concerned that a commission should meet at Shanghai on the 1st of January, 1909. The commission met on February 1, having been postponed out of respect to the late Emperor and Dowager Empress of China, and adjourned on February 26, 1909. After a thorough and searching study of the opium question in all its bearings, the commission adopted the following resolutions:

Be it resolved: 1. That the International Opium Commission recognizes the unswerving sincerity of the Government of China in their efforts to eradicate the production and consumption of opium throughout the Empire; the increasing body of public opinion among their own subjects by which these efforts are being supported; and the real though unequal progress already made in a task which is one of the greatest magnitude.

2. That in view of the action taken by the Government of China in suppressing the practice of opium smoking, and by other Governments to the same end, the International Opium Commission recommends that each delegation concerned move its own Government to take measures for the gradual suppression of the practice of opium smoking in its own territories and possessions, with due regard to the varying circumstances of each country concerned.

3. That the International Opium Commission finds that the use of opium in any form otherwise than for medical purposes is held by almost every participating country to be a matter for prohibition or for careful regulation; and that each country in the administration of its system of regulation purports to be aiming, as opportunity offers, at progressively increasing stringency. In recording these conclusions the International Opium Commission recognizes the wide variations between the conditions prevailing in the different countries, but it would urge on the attention of the Governments concerned the desirability of a reexamination of their systems of regulation in the light of the experience of other countries dealing with the same problem.

4. That the International Opium Commission finds that each Government represented has strict laws which are aimed directly or indirectly to prevent the smuggling of opium, its alkaloids, derivatives, and preparations, into their respective territories; in the judgment of the International Opium Commission it is also the duty of all countries to adopt reasonable measures to prevent at ports of departure the shipment of opium, its alkaloids, derivatives, and preparations, to any country which prohibits the entry of any opium, its alkaloids, derivatives, and preparations.

5. That the International Opium Commission finds that the unrestricted manufacture, sale, and distribution of morphine already constitute a grave danger, and that the morphine habit shows signs of spreading. The International Opium Commission therefore desires to urge strongly on all Governments that it is highly important that drastic measures should be taken by each Government in its own territories and possessions to control the manufacture, sale, and distribution of this drug, and also of such other derivatives of opium as may appear on scientific inquiry to be liable to similar abuse and productive of like ill effects.

6. That as the International Opium Commission is not constituted in such a manner as to permit the investigation from a scientific point of view of anti-opium remedies and of the properties and effects of opium and its products, but

deems such investigation to be of the highest importance, the International Opium Commission desires that each delegation shall recommend this branch of the subject to its own Government for such action as that Government may think necessary.

7. That the International Opium Commission strongly urges all Governments possessing concessions or settlements in China, which have not yet taken effective action toward the closing of opium divans in the said concessions and settlements, to take steps to that end, as soon as they may deem it possible, on the lines already adopted by several Governments.

8. That that International Opium Commission recommends strongly that each delegation move its Government to enter into negotiations with the Chinese Government with a view to effective and prompt measures being taken in the various foreign concessions and settlements in China for the prohibition of the trade and manufacture of such antiopium remedies as contain opium or its derivaties.

9. That the International Opium Commission recommends that each delegation move its Government to apply its pharmacy laws to its subjects in the consular districts, concessions, and settlements in China.

Although no formal declaration was made, it was a matter of discussion and was recognized by the commission as a whole that the foregoing resolutions, however important morally, would fail to satisfy enlightened public opinion unless by subsequent agreement of the powers they and the minor questions involved in them were incorporated in an international convention.

Impressed by the gravity of the opium problem and the desirability of divesting it of local and unwise agitation, as well as the necessity of maintaining it upon the basis of fact as determined by the Shanghai Commission, the United States deems it important that international effect and sanction be given to the resolutions of the International Opium Commission, and to this end proposes that an international conference be held at a convenient date at The Hague or elsewhere, composed of one or more delegates of each of the participating powers, and that the delegates should have full powers to conventionalize the resolutions adopted at Shanghai and their necessary consequences. The Government of the United States suggests as a tentative program, based upon the resolutions and proceedings of the International Commission, the following:

(a) The advisability of uniform national laws and regulations to control the production, manufacture, and distribution of opium, its derivatives and preparations;

(b) The advisability of restricting the number of ports through which opium may be shipped by opium-producing countries;

(c) The means to be taken to prevent at the port of departure the shipment of opium, its derivatives and preparations, to countries that prohibit or wish to prohibit or control their entry;

(d) The advisability of reciprocal notification of the amount of opium, its derivatives and preparations, shipped from one country to another.

(e) Regulation by the Universal Postal Union of the transmission of opium, its derivatives and preparations, through the mails;

(f) The restriction or control of the cultivation of the poppy so that the production of opium will not be undertaken by countries which at present do not produce it, to compensate for the reduction being made in British India and China;

(g) The application of the pharmacy laws of the Governments concerned to the subjects in the consular districts, concessions, and settlements in China;

(h) The propriety of restudying treaty obligations and international agreements under which the opium traffic is at present conducted;

(i) The advisability of uniform provisions of penal laws concerning offenses against any agreements that the powers may make in regard to opium production and traffic;

(j) The advisability of uniform marks of identification of packages containing opium in international transit;

(k) The advisability of permits to be granted to exporters of opium, its derivatives and preparations;

(l) The advisability of reciprocal right of search of vessels suspected of carrying contraband opium;

(m) The advisability of measures to prevent the unlawful use of a flag by vessels engaged in the opium traffic;

(n) The advisability of an international commission to be intrusted with the carrying out of any international agreement concluded.

Without attempting to prescribe the scope of the conference, or to present a program which may not be varied nor enlarged, the Government of the United States believes that the foregoing suggestions might properly serve as the basis, at least, for preliminary discussion, and invites a formal expression of opinion not merely upon the topics outlined, but an enumeration of other aspects of the opium problem which may seem of peculiar importance to any participating nation. The United States considers it important that an exchange of views take place as early as possible before the meeting of the conference.

If the program, as outlined, meets with the approval of the Government to which you are accredited, it will be highly serviceable that on some subsequent date—for example, on or before December 1 of the current year—the participating Governments exchange their views, together with such recommendations and observations as occur to them. This course will not only facilitate the work of the conference and materially shorten its labors, but enable the Government of the United States to prepare in advance a definitive program based upon the suggestions and views of the participating Governments.

You are therefore directed to transmit a copy of this instruction to the minister for foreign affairs of the Government to which you are accredited, and at the same time to request that a delegate or delegates be appointed, furnished with full powers, to negotiate and conclude an agreement, provided that the Government to which you are accredited is favorable to the idea of an international conference for the suppression of the opium evil, as the result of the inquiries of the Shanghai Commission.

I am, etc., ALVEY A. ADEE.

File No. 774/651B.

The Acting Secretary of State to the Italian Chargé.[1]

DEPARTMENT OF STATE,
Washington, September 21, 1909.

SIR: I have the honor to inclose for your information a copy of a circular[2] instruction issued to the diplomatic officers of the United States accredited to the Governments which were represented in the Shanghai International Opium Commission, of which the Government of Italy was one.

Accept, etc.,

HUNTINGTON WILSON.

File No. 774/665–666.

Minister Bryan to the Secretary of State.

No. 552.]

AMERICAN LEGATION,
Lisbon, October 12, 1909.

SIR: Referring to the circular instructions, file 774, of September 1, 1909, with regard to the International Opium Commission, I have the honor to report that, prompted by the communication which I made to the foreign office on this subject when transmitting the substance of the said circular, the Portuguese Government has taken immediate action by naming a commission to thoroughly consider the recommendation of our Government on this subject. I inclose a copy, with translation, of the proclamation. Following is a list of the commissioners: Messrs. Jose de Azevedo Castello Branco, Arnaldo Guedes Rebello, Francisco Diogo de Sa, Jose Navarro de Andrade, Oscar Potier, Annibal Augusto Sanches de Sousa Miranda.

I have, etc.,

CHARLES PAGE BRYAN.

[Inclosure.—Translation.]

THE VICE OF OPIUM IN MAÇAU.

The official paper publishes to-day the following proclamation issued by the second section of the general bureau of the colonies:

It being indispensable to proceed at once to the study of measures to regulate the opium trade, which was the purpose of the deliberations of the international commission which met in Shanghai between the 1st to the 26th of February, and to adopt measures leading to the gradual suppression of the vice of opium to be enforced in the Province of Maçau, modifying the system now in force pursuant to the general principles of the new international accord, having especially in view whatever has been adopted by the neighboring English colony of Hongkong, His Majesty the King, through the department of the navy and colonies, has decided to appoint a commission composed of Councillor Jose de Azevedo Castello Branco, peer of the realm, former minister of Portugal to Peking, who will act as president; Councillor Arnaldo Guedes Rebello, colonel of artillery, former governor of Maçau; Lieut. Francisco Diogo de Sa, former chief of the naval station of Maçau and governor ad interim of the Province; Councillor Jose Navarro de Andrade, general inspector of the

[1] Sent also to the ambassadors of Japan, Great Britain, France, Germany, Russia, Austria-Hungary, and the ministers of Portugal, the Netherlands, Siam, Persia, and China.
[2] Supra.

financial department of the colonies; Oscar Potier, consul general of Portugal in Shanghai and delegate of the Portuguese Government in the International Opium Commission; Captain of Artillery Annibal Augusto Sanches de Sousa Miranda, former commander of the company of artillery of the Maçau garrison; Guelherme Augusto de Menzes, acting as secretary of the commission, also inspector of the financial department of the colonies, which commission, studying the subject under the general and special point of view of the Province of Maçau and at the same time duly taking into consideration the interests resulting to this Province from the trade of opium, either for consumption or for exports, will present to the Government suggestions of measures that it may consider advisable and opportune, so as to enable the Portuguese Government to comply with the tacit accord to collaborate effectively with the powers adhering to the final resolutions of the International Commission of Shanghai.

Etc., etc., etc.,

MANUEL PERIERA.

Signed at the Palace, October 4, 1909.

File No. 774/665–666.

The Acting Secretary of State to Minister Bryan.

DEPARTMENT OF STATE,
Washington, October 30, 1909.

SIR: I have the honor to acknowledge the receipt of your number 552, of the 12th instant, in which you report that the Portuguese Government has named a commission to consider the recommendations of this Government respecting measures to be taken for the eradication of the opium evil.

The department is gratified to learn of this prompt action in the matter on the part of the Government of Portugal.

I am, etc.,

HUNTINGTON WILSON.

File No. 774/679.

Chargé White to the Secretary of State.

AMERICAN LEGATION,
The Hague, November 23, 1909.

SIR: Referring to the department's circular instruction of September 1 last (file No. 774), entitled "International Opium Conference," I have the honor herewith to report that I am to-day in receipt of a reply under yesterday's date from the minister for foreign affairs of the Netherlands to Mr. Beaupré's note of September 22 last, transmitting to him a copy of the department's circular instruction above mentioned.

A copy and translation of the minister's note are herewith inclosed.

I have, etc.,

CHARLES D. WHITE.

[Inclosure.—Translation.]

The Minister for Foreign Affairs to Chargé White.

MINISTRY OF FOREIGN AFFAIRS,
The Hague, November 22, 1909.

Mr. CHARGÉ D'AFFAIRES: In reply to Mr. Beaupré's note of September 22 last, No. 203, I have the honor to advise you that the Government of the Queen, rallying to (accepting) your Government's proposition to bring together a sec-

ond international conference for the suppression of the abuse of opium, takes the liberty at the same time to propose The Hague as the place of meeting of the conference.

In case your Government should not have any objection to this proposition, I should esteem it of great value to know which Governments have adhered in principle to the meeting of the second conference, in order that the Government of the Queen may make the necessary preparations for issuing the invitations. Further, I should be greatly pleased to learn whether the adhering Governments have already made known their views in regard to the date of the meeting.

The Government of the Queen agrees as well to the provisional program indicated on pages 6 and 7 of the instructions that accompanied the note above mentioned, at the same time observing that for the Netherlands Indies, where the culture of the poppy does not exist and where opium régie is or will be introduced, the question is in the first place to arrive at an international entente in regard to the measures for combatting the smuggling of opium.

Reserving to myself the right to communicate to you in their time and place the names of the delegates which the Government of the Queen proposes to designate to take part in the conference, I embrace this opportunity, etc.,

R. DE VAN SWINDEREN.

File No. 774/682.

Ambassador Reid to the Secretary of State.

No. 1093.] AMERICAN EMBASSY,
London, November 29, 1909.

SIR: With reference to the department's circular instruction of the 1st of September last (file No. 774), I have the honor to inform you that I communicated a copy of the circular in question to the foreign office, in reply to which I have received a note stating that the Government of India is being consulted in regard to the proposal put forward by the Government of the United States for an international conference at The Hague to conventionalize the resolutions adopted by the Shanghai Opium Commission.

The note further states that it seems doubtful, however, whether they will be able to furnish their views on the subject until they have examined and considered the report of the Shanghai commission, which can only have reached them quite recently, and some little time may therefore elapse before their reply is received.

I have, etc.,

WHITELAW REID.

File No. 774/679.

The Secretary of State to Chargé White.

No. 89.] DEPARTMENT OF STATE,
Washington, December 23, 1909.

SIR: The department acknowledges the receipt of Mr. Beaupre's dispatch of the 23d ultimo, in which he reports that he was that day in receipt of a reply from the minister for foreign affairs of the Netherlands in regard to the department's circular instructions of September 1 last, proposing an international opium conference, with full powers, to the countries that were represented in the International Opium Commission that met at Shanghai.

The department also acknowledges the copy and translation of the note of the minister of foreign affairs, in which the Government

of the Queen accepts the proposal of the American Government to bring together a second international conference for the suppression of the abuse of opium, and its desire that the proposed conference should assemble at The Hague.

You will convey to the Government of the Queen this Government's appreciation of the ready assent given to the proposal for a second conference, and its pleasure that that Government should desire the conference to be held at The Hague. You will also inform the Government of the Queen that as soon as all Governments concerned have adhered to the proposal of this Government, the Government of the Queen will be informed as to the most suitable date for the meeting of the proposed conference.

In the meantime you are informed that China and Portugal have accepted the proposal of this Government, and that the latter has already appointed a distinguished commission to prepare for the conference.

I am, etc.,

(For Mr. Knox.)
HUNTINGTON WILSON.

File No. 774/682.

The Secretary of State to Ambassador Reid.

No. 1196.] DEPARTMENT OF STATE,
Washington, December 23, 1909.

SIR: The department acknowledges the receipt of your dispatch of November 29, last, No. 1093, in which you state that you have communicated to the foreign office a copy of the department's circular letter of September 1, calling for an international opium conference, with full powers, to meet at The Hague or elsewhere, and that you had received a note from the foreign office stating that the Government of India are being consulted in regard to the proposal put forward by the Government of the United States to conventionalize the resolutions adopted by the Shanghai opium commission.

You are informed that the Netherlands Government accepted the invitation of the United States on the 22d of last November, and at the same time proposed The Hague as the place of meeting. The Netherlands Government desires to be informed as to what Governments have adhered in principle to the meeting of the second conference in order that the necessary preparations may be made for issuing the invitations; also as to the date on which the conference is likely to meet. Further, the Netherlands Government has agreed to the provisional program contained in the circular letter proposing the conference.

In addition to the Netherlands, Portugal has given a favorable reply to this Government's proposal for a second opium conference, and has already appointed a distinguished commission to study the proposed program and to otherwise prepare for the conference. China has also accepted the invitation of this Government.

I am, etc.,

(For Mr. Knox.)
HUNTINGTON WILSON.

AGREEMENT BETWEEN CHINA AND JAPAN RELATIVE TO CHIEN-TAO, AND CONCERNING THE MINES AND RAILWAYS IN MANCHURIA.

File No. 5767/99–101.

Chargé Fletcher to the Secretary of State.

[Extract.]

No. 1240.] AMERICAN LEGATION,
Peking, September 6, 1909.

SIR: I have the honor to inclose translations of the Chinese text of two agreements [1] signed here on the 4th instant by the representatives of the Chinese and Japanese Governments for the settlement of the troublesome Manchurian questions. The department will note that the copies inclosed do not bear signatures, but the text may be regarded as authentic.

In view of the terms of article 4 and the indefinite extent of territory embraced thereby, I have to-day telegraphed asking the department's instructions as to what action, if any, the legation should take in regard to this particular feature of the agreement.

I have intimated to the Wai-wu Pu that if the agreement reached should be found to violate the principle of the "open door" and of equal commercial opportunity in Manchuria it would be a matter of serious concern to us.

I have, etc., HENRY P. FLETCHER.

File No. 5767/102–103.

Chargé Fletcher to the Secretary of State.

No. 1246.] AMERICAN LEGATION,
Peking, September 10, 1909.

SIR: Referring to my No. 1240, of the 6th instant, I have the honor to inclose copies of the "agreement" between the viceroy of Manchuria and the governor of Fengtien and the Japanese consul general with refesence to the working of mines "near" the Mukden-Antung Railway, mentioned in the agreement recently concluded between China and Japan. The department will note that the mining rights refer to particular minerals and that gold and silver mines are not included.

I have, etc., HENRY P. FLETCHER.

[1] Agreements printed with Mr. Jay's dispatch, No. 807, Sept. 11, ante.

[Inclosure.]

MEMORANDUM CONCERNING MINES ALONG THE LINE OF THE ANTUNG-MUKDEN RAILWAY.[1]

(1) The Japanese consul general hereby declares that when the present military railway between Antung and Mukden is changed to standard gauge the present route may be slightly changed but will not follow an entirely different route.

(2) The Japanese who are temporarily residing along the line of the railway will be prohibited by the Japanese consul general from surveying mining properties. Hereafter such work will be carried on under the provisions of article 3.

(3) All coal, iron, tin, and lead mines situated near the railway may be worked conjointly after officials of both countries have made an inspection. The operators concerned should specify exactly the localities to be worked and petition the viceroy of Manchuria and the governor of Fengtien, who, after giving their consent, will ask for an edict permitting the work to be carried on. The conditions of working the mines will be similar to those contained in the agreement of Lin-ch'eng Hsien.

(4) In the future operators of other nationalities are permitted to work coal mines, and are given better terms than those of the agreement of Lin-ch'eng Hsien in Chihli Province; thereafter the coal mines along the line of this railway which are permitted to be worked jointly shall, on petition, be granted the same privileges. The iron, tin, and lead mines which are worked jointly shall pay taxes and dues according to such regulations as may hereafter be issued by the board of agriculture, industries, and commerce.

(5) If hereafter operators of other nationalities are permitted to work iron, tin, or lead mines in the Province of Fengtien, and if after paying the taxes and dues fixed by the board they enjoy any special privileges, thereafter such companies of Chinese and Japanese as may be permitted to work these three sorts of mines along the line of the railway shall, on petition, be accorded the same privileges.

File No. 5767/104–106.

Chargé Jay to the Secretary of State.

[Extract.]

No. 807.] AMERICAN EMBASSY,
Tokyo, September 11, 1909.

SIR: I have the honor to inclose herewith copies, handed to me by the foreign office, of the agreements concluded on the 14th instant between Japan and China in relation to Chientao and other Manchurian questions which have been pending between the two governments.

The publication of the agreements has been received with universal approval by the Japanese press and people. The terms are regarded as indicative of friendly mutual comprimise in which the rights and interests of both parties have been satisfactorily upheld. The belief is general that the restoration of the intimate friendship which existed between the two countries before the late war is now nearer at hand.

Both the Kokumin Shimbun, the semiofficial organ, and the Jiji Shimpo, an independent journal, express the opinion that the recognition of Chinese sovereignty in Chientao was the only just course possible. They assert that Japan never regarded the question of

[1] The foregoing is the text of the "agreement" of 1907, furnished Mr. Fletcher by an official of the Wai-wu Pu.

territory as paramount, and only desired the protection of the lives and property of Korean subjects in the disputed district. The Kokumin goes on to say that the maintenance of Chinese territorial integrity is as essential to the welfare of Japan as to that of China, and that it is the only basis on which international questions can be satisfactorily adjusted.

I have, etc., PETER AUGUSTUS JAY.

[Inclosure 1.]

JAPANESE-CHINESE AGREEMENT CONCERNING MINES AND RAILWAYS IN MANCHURIA.

The Imperial Government of Japan and the Imperial Government of China, actuated by the desire to consolidate the relations of amity and good neighborhood between the two countries, by settling definitively the matters of common concern in Manchuria, and by removing for the future all cause of misunderstanding, have agreed upon the following stipulations:

ARTICLE I.

The Government of China engages that in the event of its undertaking to construct a railway between Hsinmintun and Fakumen, it shall arrange previously with the Government of Japan.

ARTICLE II.

The Government of China recognizes that the railway between Tashichao and Yinkow is a branch line of the South Manchurian Railway, and it is agreed that the said branch line shall be delivered up to China simultaneously with the South Manchurian Railway upon the expiration of the term of concession for that main line. The Chinese Government further agrees to the extension of the said branch line to the port of Yinkow.

ARTICLE III.

In regard to the coal mines at Fushun and Yuentai, the Governments of Japan and China are agreed as follows:

(*a*) The Chinese Government recognizes the right of the Japanese Government to work the said coal mines.

(*b*) The Japanese Government, respecting the full sovereignty of China, engages to pay to the Chinese Government tax upon coals produced in those mines. The rate of such tax shall be separately arranged upon the basis of the lowest tariff for coals produced in any other places of China.

(*c*) The Chinese Government agrees that in the matter of the exportation of coals produced in the said mines, the lowest tariff of export duty for coals of any other mines shall be applied.

(*d*) The extent of the said coal mines, as well as all detailed regulations, shall be separately arranged by commissioners specially appointed for that purpose.

ARTICLE IV.

All mines along the Antung-Mukden Railway and the main line of the South Manchurian Railway, excepting those at Fushun and Yuentai, shall be exploited as joint enterprises of Japanese and Chinese subjects, upon the general principles which the viceroy of the eastern three Provinces and the Governor of Mukden agreed upon with the Japanese consul general in the fortieth year of Meiji, corresponding to the thirty-third year of Kuangsu. Detailed regulations in respect of such mines shall, in due course, be arranged by the viceroy and the governor with the Japanese consul general.

ARTICLE V.

The Government of Japan declares that it has no objection to the extension of the Peking-Mukden Railway to the city wall of Mukden. Practical measures for such extension shall be adjusted and determined by the local Japanese and Chinese authorities and technical experts.

In witness whereof, the undersigned, etc.

[Inclosure 2.]

JAPANESE-CHINESE AGREEMENT RELATING TO CHIENTAO.

The Imperial Government of Japan and the Imperial Government of China, desiring to secure for Chinese and Korean inhabitants in the frontier regions the blessings of permanent peace and tranquility, and considering it essential in the attainment of such desire that the two Governments should, in view of their relations of cordial friendship and good-neighborhood, recognize the River Tumen as forming the boundary between China and Korea, and should adjust all matters relating thereto in a spirit of mutual accommodation, have agreed upon the following stipulations:

ARTICLE I.

The Governments of Japan and China declare that the River Tumen is recognized as forming the boundary between China and Korea, and that in the region of the source of that river the boundary line shall start from the boundary monument and thence follow the course of the stream Shih-yishwei.

ARTICLE II.

The Government of China shall, as soon as possible after the signing of the present agreement, open the following places to the residence and trade of foreigners, and the Government of Japan may there establish consulates or branch offices of consulates. The date of the opening of such places shall be separately determined: Lungchingtsun, Chutszchie, Toutaokou, Paitsaokou.

ARTICLE III.

The Government of China recognizes the residence of Korean subjects, as heretofore, on agricultural lands lying north of the River Tumen. The limits of the district for such residence are shown in the annexed map.

ARTICLE IV.

The Korean subjects residing on agricultural lands within the mixed residence district to the north of the River Tumen shall submit to the laws of China and shall be amenable to the jurisdiction of the Chinese local officials. Such Korean subjects shall be accorded by the Chinese authorities equal treatment with Chinese subjects, and, similarly, in the matter of taxation and all other administrative measures, they shall be placed on equal footing with Chinese subjects. All cases, whether civil or criminal, relating to such Korean subjects shall be heard and decided by the Chinese authorities in accordance with the laws of China and in a just and equitable manner. A Japanese consular officer or an official duly authorized by him shall be allowed freely to attend the court, and in the hearing of important cases concerning the lives of persons previous notice is to be given to the Japanese consular officers. Whenever the Japanese consular officers find that a decision has been given in disregard of law, they shall have right to apply to the Chinese authorities for a new trial to be conducted by officials specially selected in order to assure justice of the decision.

ARTICLE V.

The Government of China engages that land and buildings owned by Korean subjects in the mixed residence district to the north of the River Tumen shall be fully protected equally with the properties of Chinese subjects. Ferries shall be established on the River Tumen at places properly chosen, and people on either side of the river shall be entirely at liberty to cross to the other side,

it being, however, understood that persons carrying arms shall not be permitted to cross the frontier without previous official notice or passports. In respect to cereals produced in the mixed residence district, Korean subjects shall be permitted to export them out of the said district, except in time of scarcity, in which case such exportation may be prohibited. Collection of firewood and grass shall be dealt with in accordance with the practice hitherto followed.

ARTICLE VI.

The Government of China shall undertake to extend the Kirin-Changchun Railway to the southern boundary of Yenchi and to connect it at Hoiryong with a Korean railway, and such extension shall be effected upon the same terms as the Kirin-Changchun Railway. The date of commencing the work of the proposed extension shall be determined by the Government of China, considering the actual requirements of the situation and upon consultation with the Government of Japan.

ARTICLE VII.

The present agreement shall come into operation immediately upon its signature, and thereafter the Chientao branch office of the residency general, as well as all civil and military officers attached thereto, shall be withdrawn as soon as possible and within two months. The Government of Japan shall within two months hereafter establish its consulates at the places mentioned in Article II.

In witness whereof the undersigned, duly authorized by their respective Governments, have signed and sealed the present agreement in duplicate, in the Japanese and Chinese languages.

File No. 5767/99–101.

The Acting Secretary of State to Chargé Fletcher.

[Extract.]

No. 648.] DEPARTMENT OF STATE,
Washington, October 20, 1909.

SIR: I have to acknowledge the receipt of your number 1240, of September 6, 1909, with which you inclose translations of the Chinese text of the two agreements signed at Peking on the 4th idem by the representatives of the Japanese and Chinese Governments for the settlement of the Chientao and other Manchurian questions which have been pending between the two Governments.

The department heartily approves your action in intimating to the Wai-wu Pu during the progress of the negotiations that if the agreements reached should be found to violate the principle of equal commercial opportunity in Manchuria and the preservation of China's territorial integrity and administrative entity, it would be a matter of serious concern to this Government.

I am, etc.,

HUNTINGTON WILSON.

File No. 5767/65.

The Secretary of State to Ambassador O'Brien.[1]

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 11, 1909.

Referring to the convention signed at Peking September 4, 1909, between Japan and China regarding the Manchurian Provinces of the Chinese Empire, communicated to the department by the Japanese Embassy at Washington, Mr. Knox informs Mr. O'Brien that after a careful study of the communication, made in the spirit of that frank exchange of views which has ever characteriezd relations between Japan and the United States, and having in mind the principles to which China and Japan are equally obligated by their many engagements to all other nations having interests in the Far East, it is assumed that the joint exploitation of mines by these two countries along the South Manchurian and Autung-Mukden Railways does not involve a monoply of the privilege and right to open mines in that territory to the exclusion of Americans or others from that wide field of industrial enterprise, but that the provision of article 4 has for its object certain specified mines near the railways and designated in accordance with the provisions of the 1907 Mukden draft agreement.

Mr. Knox says the Government of the United States would be gratified to learn that the views herein expressed accord with those of Japan, and directs Mr. O'Brien that, in view of the Japanese foreign office memorandum of last June, which gave the department the distinct impression that Japan did not intend a monopoly of rights in Manchuria, and of semiofficial assurances to the same effect recently made to the American Embassy at Tokyo, he may present the department's friendly inquiry with a view to receiving an official statement which may be used to satisfy public opinion in the United States.

File No. 5767/114.

Ambassador O'Brien to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Tokyo, November 11, 1909.

Mr. O'Brien says Japanese minister for foreign affairs assures him that the Japanese agreement of September 4, 1909, with China does not intend an exclusive claim to mines in Manchuria; that Japan will not oppose a concession by China to any third party finding minerals within the territory in question, and that it was only designed so that neither China nor Japan should operate independently of the other.

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[1] Mutatis mutandis to the legation at Peking.

File No. 5767/116.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, November 14, 1909.

Mr. Fletcher reports that he has been informed by the president of the foreign office that the Chinese Government understands that article 4 of the agreement of September 4 does not confer upon Japan exclusive rights to mines along the two railroads mentioned, and that mines in the territory mentioned may, with the consent of the Chinese Government, be worked by third parties also.

File No. 5767/123A.

The Acting Secretary of State to Ambassador Reid.[1]

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 16, 1909.

Mr. Wilson informs Mr. Reid that on the 15th instant the department made public the following statement relating to the Chinese-Japanese Manchurian agreement of September 4 last:

In view of the widespread publicity of the statement that the recent Chinese-Japanese agreement relating to Manchuria created for Chinese and Japanese subjects a monopoly to carry on mining operations along the South Manchurian Railway and Antung-Mukden Railway, which would exclude American nationals from an extensive field of industrial enterprise, inquiry has been made of the two signatory powers and official assurance has been received from each to the effect that no such exclusive claim to mining rights was intended by the agreement; and that, if minerals are found by Americans or others within the designated territory, no objection will be made to their working such mines under concessions granted by China, the whole scope and purpose of the agreement being that any operation by Chinese and Japanese subjects of the mines within the territory mentioned should be joint as between themselves.

The above assurance confirms the conclusion already reached by the department as a result of its careful study of the agreement in the light of related and contextual evidence.

File No. 5767/137.

Chargé Fletcher to the Secretary of State.

[Extract.]

No. 1298.] AMERICAN LEGATION,
Peking, November 18, 1909.

SIR: In confirmation of the telegraphic correspondence with the department on the subject of the interpretation of Article IV of the Chinese-Japanese agreement relating to Manchuria, signed in Peking on the 4th September last, and in continuation of my dispatches Nos.

[1] Sent also to the American embassies at Paris, Berlin, St. Petersburg, and Tokyo, and to the American legation at Peking.

1240, of September 6 and 1246 of September 10, 1909, on this subject, I have the honor to inclose copies of notes exchanged with the Wai Wu Pai on the subject.

I have, etc., HENRY P. FLETCHER.

[Inclosure 1.]

Chargé Fletcher to the Prince of Ch'ing.

AMERICAN LEGATION,
Peking, November 16, 1909.

YOUR IMPERIAL HIGHNESS: In accordance with the instructions of my Government I have the honor to make friendly inquiry of Your Highness's Government as to whether or not the references in the Chinese-Japanese agreement signed on the 4th of September last, to joint Chinese-Japanese exploitation of mines along the South Manchurian Railway and the Antung-Mukden Railway involves a monopoly of the rights and privileges of opening mines in the territory designated in the agreement to the exclusion of American citizens and others from such a wide field of enterprise.

My Government assumes that such is not the case and would be gratified to learn that its views are in harmony with those of the Imperial Chinese Government.

I avail, etc., HENRY P. FLETCHER.

[Inclosure 2.—Translation.]

The Prince of Ch'ing to Chargé Fletcher.

THE FOREIGN OFFICE,
Peking, November 18, 1909.

YOUR EXCELLENCY: On the 4th day of the tenth moon of the first year of Hsuan-t'ung (November 15, 1909) I had the honor to receive your excellency's note reading as follows:[1]

In reply I have the honor to inform your excellency that it is the understanding of the Imperial Chinese Government that the reference in the said agreement to joint Chinese-Japanese exploitation of mines along the two railways mentioned does not involve a monopoly of the rights and privileges of opening mines in the designated territory, nor confer any exclusive rights to mines therein upon Japanese subjects, but that mines in the territory mentioned may with the consent of the Chinese Government be exploited by third parties also.

I send this reply for your excellency's information and request that you will transmit the same to the American Government.

A necessary dispatch.

(Seal of the Wai Wu Pu.)

File No. 5767/142.

Ambassador O'Brien to the Secretary of State.

[Extract.]

No. 901.] AMERICAN EMBASSY,
Tokyo, December 8, 1909.

SIR: On November 13th I had the honor to transmit with my dispatch No. 863 [2] a copy of my note to the minister for foreign affairs

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[1] Supra. [2] Not printed.

of the same date, touching the agreements of September 4 between Japan and China. I now beg to inclose a copy of his reply, dated November 25.

I have, etc.,

T. J. O'BRIEN.

[Inclosure.—Translation.]

The Minister for Foreign Affairs to Ambassador O'Brien.

DEPARTMENT OF FOREIGN AFFAIRS,
Tokyo, November 25, 1909.

Mr. AMBASSADEUR: The note which Your Excellency did me the honor of addressing to me under date of the 13th instant, on the subject of the agreement recently concluded between Japan and China respecting matters of common concern in Manchuria, was duly received.

Your Excellency in that note invites attention to the statement which I made to you on the 11th instant, to the effect that the intentions and claims of the Imperial Government, as made known by their previous assurances, remain unchanged in the presence of the agreement in question, and after referring to a communication from your Government respecting especially Articles III and IV of that agreement, and to my offer to explain in a more formal manner, if desired, the actual situation, you add the suggestion that it would be for the interests of all parties concerned, if that offer were carried out.

Anxious at all times not only to promote the relations of good understanding between our two countries, to which the Imperial Government always attach the highest value, but to give added proof of Japan's loyalty to the principle of equal opportunity, I gladly take advantage of the occasion which Your Excellency's suggestion affords me.

By the terms of the agreements creating the lease of Port Arthur and its neighborhood, Russia acquired certain rights on the Liao-tung Peninsula, and in pursuance of the Harbin-Port Arthur Railway concession, the same power acquired for the purpose of duly working the concession, certain property rights along the railway line.

By virtue of the treaties of Portsmouth and Peking, the lease of Port Arthur, Talien, and adjacent territory and territorial waters, and all rights, privileges, and concessions connected with or forming part of such lease, and the railway between Chang-chun and Port Arthur and all its branches, together with all rights, privileges, and properties appertaining thereto in that region, as well as all coal mines in the said region belonging to or worked for the benefit of the railway, were fully and definitely assigned and transferred to the Government of Japan.

The collieries at Fushun and Yuentai are two of the mines so assigned and transferred, and they are both being actively exploited. The agreement, which forms the subject of the present correspondence, makes no new concession in connection with those mines. It merely recognizes the existing exclusive right of Japan to work them.

The "general principles" referred to in the agreement in question, which, lacking the necessary confirmation of the Governments concerned, remained for the time being ineffective, relate exclusively to known mines—only a few in number—which have been actually located by Japanese.

Consistently with the foregoing explanation which I permit myself to hope will satisfy the solicitude of Your Excellency's Government, I am happy to be able to add the assurance that the provisions of the agreement of September 4 last, in reference to joint exploitation of mines along the said railways do not and were not intended in any way or to any extent to involve a monopoly of the right to discover, open, and operate mines in Manchuria, to the exclusion of American citizens, or any other persons.

I avail, etc.,

COUNT KOMURA.

POLITICAL REFORMS IN CHINA.

File No. 1518/226–229.

Minister Rockhill to the Secretary of State.

[Extract.]

No. 1054.] AMERICAN LEGATION,
Peking, December 4, 1908.

SIR: I have the honor to transmit herewith for your information, the program[1] of the ceremonies observed on the 2nd instant on the enthronement of His Imperial Majesty the Emperor.

I inclose also a copy of the imperial proclamation referred to in the enthronement ceremony document,[1] which, like the enthronement ceremony, conforms to ancient precedents.

The following day there appeared an imperial edict, copy of which I inclose, reaffirming in emphatic terms the determination of the new Government to carry out in its entirety the constitutional program as laid down by the late Empress Dowager on the 27th August last[2] (see my dispatch No. 1005, of Sept. 12, 1908), and thus finally dispels any uncertainty on the future policy of the new reign.

I have, etc.,

W. W. ROCKHILL.

[Inclosure.—Translation.]

Imperial edict.

On the 10th day of the eleventh moon (December 3, 1908), the grand secretariat received the following edict:

We have inherited the great succession. The enthronement ceremony is finished. We earnestly reflect upon the methods of government which have been handed down by the sacred ones, among which there are none which do not show reverence for heaven and respect for the ancestors, diligence in government, and love for the people.

In all the good work left incomplete by the preceding administration, there is nothing that we will not reverently carry forward.

On the 1st day of the eighth moon (August 27, 1908), the late Emperor reverently received the excellent decree of the late great Empress Dowager strictly ordering the officials and people of Peking and of the Provinces to carry out completely by the ninth year all the preparatory work so that at the appointed time the constitution may be proclaimed. Also proclamations calling for the members of Parliament to assemble and other decrees brightly manifested the sacred instructions, and all between the seas applauded. From ourselves down to the officials and people, high and low, all must sincerely obey the excellent decree previously issued. The eighth year of Hsuan T'ung is the limit of time. Let there be no "reabsorption of sweat" in this matter. Our hope is that this will certainly be carried out. Let the officials of Peking and the Provinces on no account look idly on, and procrastinate delaying the opportune time.

Let patriotism be shown forth! Exert yourselves that constitutional government may be established and court and 'wilds' (people) may have peace; and so we may comfort the spirits of the late great Empress Dowager and the late Emperor in heaven, and make firm the foundations of countless years of peaceful government.

Reverently received.

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[1] Not printed.
[2] See Foreign Relations, 1908, p. 189.

File No. 1518/247–248.

Minister Rockhill to the Secretary of State..

No. 1069.] AMERICAN LEGATION,
Peking, December 23, 1908.

SIR: In continuation of my dispatch No. 1051, of November 30 last,[1] I have the honor to transmit herewith a translation of a memorial submitted to the Throne by the grand secretariat, the boards and yamens, fixing the powers, duties, and prerogatives of the Regent of the Empire. This memorial was sanctioned by imperial rescript of the 13th instant.

I have, etc., W. W. ROCKHILL.

[Inclosure.—Translation.]

LAWS GOVERNING THE REGENCY.

(Imperial rescript issued December 13, 1908.)

The grand secretariat and the different boards and yamens have jointly memorialized in conformity with the edict of the late great Empress Dowager submitting a set of laws governing the Prince Regent. These he has submitted to the sacred glance of the Empress Dowager and all should be done as recommended. Let the several yamens obey.

I.—*Sacrificial announcement.*

The ordinances and ceremonies of the Regent are of the most august character and an imperial edict should be requested setting a time and designating officials to make the announcement at the Temple of Ancestors. The Prince Regent, also, should reverently receive his commission and seal before the sacrificial table of the late great Empress Dowager. For a commission it will be necessary merely to use the two edicts issued by Her late Imperial Majesty on the 20th and the 22d of the tenth moon (November 13, 15, 1908), without making out any additional document.

II.—*Edicts.*

The Government of the nation, military and civil, the dismissal and appointment of officials and their promotion and degradation, are all left to the determination and decision of the Prince Regent. The mode of procedure shall still be by the promulgation of imperial edicts. In affairs of exceptional import there will arise occasions when it will be incumbent on the Prince Regent to request a decree from Her Imperial Majesty the Empress Dowager, in which case the Prince Regent shall personally seek instructions as to his course. Others shall not arrogate this privilege to themselves and ask instructions of the Empress Dowager, nor shall they presume to transmit the same on their own authority.

III.—*Mode of address.*

In the presence of the Empress Dowager the Prince Regent shall speak of himself as "Minister" (Ch'en) and shall observe the rules applicable to that character.

In edicts he shall refer to himself as "Prince Regent" (Chien Kwo She Cheng Wang), without using his own name.

In referring to the Emperor the Prince Regent shall use the expression "Emperor" (Hwang Ti).

In addressing others the Prince Regent shall refer to himself as "I, the Prince Regent" (pen She Cheng Wang).

When addressing closely related members of the imperial clan, whether of higher or lower generations, princes down to dukes, the Prince Regent shall make use of the title of the person addressed. In case of all others, being

[1] Not printed.

officials of or above the fifth grade, or members of the Han Lin Yuan of or above the rank of compiler of the second class, or a Han Lin graduate of the third degree, he shall make use of the official title of the person addressed. If of or below the sixth grade he shall make use of the name and given name of the person addressed. Princes of the third order and downward, military and civil officials of all ranks, shall address the Prince Regent as such (She Cheng Wang), and shall refer to themselves by name. Closely related members of the imperial clan of higher or lower generations and princes shall use the form of address "Prince Regent" (She Cheng Wang), and shall refer to themselves by their titles.

IV.—*Worship on behalf of the Emperor.*

During the minority of the Emperor the Prince Regent shall represent His Imperial Majesty in all worship at altars and temples and also during the present mourning rites. But the yamens concerned shall in advance request instructions from the Throne as to whether the Throne desires to appoint any other official to conduct the worship in place of the Emperor.

V.—*Military powers.*

The Emperor has supreme control over the naval and military forces of the Empire. The military powers constitutionally appertaining to the Emperor shall all be transferred to the Prince Regent. The control and disposition of all Manchu and territorial forces in and outside of Peking, as well as of all land and naval forces whatsoever, shall be vested in the Prince Regent.

VI.—*The education of the Emperor.*

During the period when the Emperor is pursuing his studies the direction of the said studies and the appointing and conduct of his tutors shall be attended to by the Prince Regent.

VII.—*Procedure at audiences.*

On those occasions when His Imperial Majesty ascends to the Throne to receive congratulations on feast days or birthdays the Prince Regent shall not be classed with other officials and he shall not attend these ceremonies. When in the palace in the performance of family observances, the Empress Dowager receives congratulations, the Prince Regent shall perform said rites individually and not with the others.

All princes, nobles, and officials, after offering congratulations to the Emperor, shall proceed to a position before the Prince Regent and offer him congratulations also. These ceremonies shall be performed before the Prince Regent in the Wen Hua Hall, during which he shall remain standing. He may, at his discretion, acknowledge them with a salutation.

The members of the imperial clan of close relationship, being of a higher generation than the Prince Regent, shall be differentiated from the others, and the officers having the direction of the ceremonies shall memorialize the Prince Regent in advance, who may at his discretion, relieve such relatives from the necessity of performing them and permit their early withdrawal. Other princes, nobles, and officials shall perform three prostrations before the Prince Regent. After 100 days of mourning the Prince Regent shall receive the homage of princes, nobles, and officials in the order of their precedence, and on that occasion the above shall be the form of procedure.

VIII.—*The seats at audiences.*

It is intended to request that a throne be placed in the center of the Yang Hsin Hall and also a table. To the east of the throne a seat and table shall be provided for the Prince Regent. When princes, nobles, or officials have occasion to kneel in offering greetings or in returning thanks for imperial favor, these prostrations shall be made before the throne. At daily audiences princes, nobles, and officials shall first, kneeling, salute the Throne. They shall then rise and proceed to the eastern apartment, where the interview will be held. In the center of this room a table shall be placed and on the east side a chair for the Prince Regent. On the two sides shall be arranged lower stools. The Prince Regent shall be seated, and if he shall command the official being

interviewed to seat himself, the latter shall do so on one of the stools; but if not he shall remain standing until, at the termination of the interview, the Prince Regent dismisses him, when he shall depart.

No prince, noble, or official shall, on his own initiative, visit the Prince Regent in his residence, but all must await summons, except princes and nobles of close relationship and other relatives. Princes, nobles, and ministers of state may, however, when Government affairs of magnitude require it, at any time request an interview in the Prince Regent's unofficial apartments, and on being summoned may enter and see him. When princes, nobles, or officials receive promotion they may, as formerly, submit memorials reverently returning thanks to the Emperor for his grace, and need not with obeisances thank the Prince Regent.

IX.—*Affixing of seal and signature.*

The Prince Regent will affix his seal to and the members of the grand council will sign all edicts; afterward they may be promulgated.

If the Prince Regent shall receive in person the decree of the Empress Dowager he shall sign the same officially, affixing his seal, and finally the grand councilors shall sign their names.

X.—*Form of correspondence.*

Memorials shall continue to be addressed by officials to His Imperial Majesty the Emperor. When the Prince Regent is referred to in memorials or in any correspondence, his name shall be given one elevation.

XI.—*Representing the Emperor in Parliament.*

When a Parliament has been established, the Prince Regent shall attend the same in place of the Emperor. He need not attend the ordinary sessions, however.

When the constitutional commission meets, the Prince Regent shall likewise represent the Emperor there.

XII.—*Foreign relations.*

The Prince Regent shall have full authority in negotiating treaties and in appointing representatives abroad. The board of Foreign Affairs shall report and formulate upon such matters as the manner of receiving autograph letters from foreign rulers, and the audiences of foreign representatives in China.

XIII.—*The Prince Regent's equipage abroad.*

The Prince Regent shall enter and leave his chair at the Ch'ien Ch'ing Gate. The yamens whose duty it is shall draw up and report on regulations, modeled on the precedent established by Prince Jui-chung regarding the equipage, escort, and general preparations for movements of the Prince Regent outside the palace.

XIV.—*Income and expenditures of the Prince Regent.*

Every year the board of finance shall transfer to the department of the imperial household the sum of taels 150,000 for disbursement (in the maintenance of the Prince Regent's household.)

XV.—*Residence of Prince Regent.*

It is intended to request that a palace be constructed for the Prince Regent to the west of the Central Lake in the place called Chi Ling Yu, and that the "san Soa" inside the Tung Hua Gate be additional rest apartments.

XVI.—*Termination of his prerogatives.*

When the Emperor comes of age, his studies being completed, and his marriage takes place, the official body shall unite in asking his majesty to assume personal direction of the Government.

If it shall be necessary to add to the above regulations, or abridge them or to alter them, such changes shall be made only by the Prince Regent. No one else shall presume to do so.

File No. 1518/226–229.

The Acting Secretary of State to Minister Rockhill.

DEPARTMENT OF STATE,
Washington, January 21, 1909.

SIR: The department acknowledges the receipt of your No. 1054, of the fourth ultimo, reporting concerning the ceremonies on the second ultimo, in connection with the enthronement of His Imperial Majesty the Emperor of China.

The department has read with interest your despatch and the imperial proclamation and edict in that connection, and is glad to learn that the new Government, through the issuance of an imperial edict, has early expressed the determination to carry out the constitutional program laid down in August last by Her Imperial Highness the late Empress Dowager of China.

I am, etc.,

ROBERT BACON.

File No. 1518/277–278.

Minister Rockhill to the Secretary of State.

No. 1093.] AMERICAN LEGATION,
Peking, January 26, 1909.

SIR: I have the honor to inclose herewith for your information translation of an imperial edict which appeared on the 18th instant, from which you will see that the various Government boards and officials entrusted with carrying out the various reform measures to be put in force before the year 1917 are supposed to have performed all duties devolving on them in this connection for the year 1908. They are ordered to continue to show diligence, and opportunity is again taken to reaffirm the policies of the new reign.

The chief purpose of this edict is, however, to insure the selection by the various local authorities of suitable persons to serve on the local self-government boards of all cities, towns, and villages.

I have, etc.,

W. W. ROCKHILL.

[Inclosure.—Translation.]

IMPERIAL EDICT.

On the 27th day of the twelfth moon (January 18, 1909) the grand secretariat received the following edict:

The bureau for the collation of administrative methods has submitted to us a memorial reporting on the plans drawn up by the board of the interior for local self-government and the method of election.

Local self-government is the root from which springs constitutional government. Local self-government begins in cities, towns, and villages. It is a necessary first step. Let the board of the interior and the provincial viceroys and governors unite in instructions to the local officials to select and appoint reputable literati in each place to carry out the plan for local self-government. Let there be no delay. Let the affection of the Throne for the people and the mutual helpfulness of the officials and the people be manifested.

It must be made clear that local self-government is designed merely to supplement the administration of the local officials in places where the latter is

ineffective. The idea of local self-government does not imply the setting up of an independent authority separate from the authority of the local officials. The local organization of the Chou dynasty and the three elders of the Han dynasty evidence the fact that this idea has come down from ancient times.

The duty of electing the local government officers rests with the magistrates and the departmental magistrates, and the duty of selecting the latter with the viceroys and governors. Substantial benefit will result and errors avoided only if the right men are appointed officials and local government officers.

In addition to the above matters, the bureau for the collation of administrative methods also stated in their memorial that the duties imposed on the different government officers in connection with the first year of constitutional reform had all been performed, and these were enumerated. Let all officers in the capital and in the Provinces continue to carry out the program punctually. Let no gradual delay occasioned by flagging diligence on their part prevent the establishment of constitutional government at the time mentioned, so that confidence may exist and the desire of the people be gratified.

File No. 1518/289–290.

Minister Rockhill to the Secretary of State.

[Extract.]

No. 1113.] AMERICAN LEGATION,
Peking, February 20, 1909.

SIR: In continuation of my dispatch No. 989, of August 28, 1908,[1] bearing on constitutional reform in China, I have the honor to transmit herewith a translation of the regulations for the local self-government of cities, towns, and villages, approved by the Throne in the edict of January 18 last. (See my dispatch No. 1093, of January 26, 1909.)

It is to be noted that according to the program of reform sanctioned on August 27, 1908 (see my dispatch No. 1005, of September 12, 1908 [2]), these self-government regulations are to be put into force during the current year.

I have, etc.,

W. W. ROCKHILL.

[Inclosure.—Translation.]

REGULATIONS FOR THE LOCAL SELF-GOVERNMENT OF CITIES, TOWNS, AND VILLAGES.

(Sanctioned by the imperial edict of January 18, 1909.)

I.—GENERAL PRINCIPLES.

1. *Name and theory of "self-government."*

(1) The main object of self-government is the management of those local matters which affect the common welfare in such a way as to assist government officials; it is carried out by reputable literati, elected in accordance with fixed rules and subject to the supervision of the government officials.

2. *Territorial delimination of cities, towns, and villages.*

(2) In each prefecture, independent subprefecture, department, and district the city itself, with its immediate environs, shall be known as the "city." Among towns, villages, and hamlets a population of 50,000 or more shall con-

[1] See Foreign Relations, 1908, p. 182.
[2] See Foreign Relations, 1908, p. 189.

stitute a "town" (chen), while a less population shall constitute a village (hsiang).

(3) The limits of cities, towns, and villages shall remain as they always have been. If the boundaries are not clear or if defining of boundaries is necessary, the local official shall, with care, make such delimitations and report them to the provincial authorities for authorization. If changes in the boundaries are subsequently called for or if disputes arise, the city, town, or village council shall prepare a statement of the case and submit it to the general council (i shih huei) of the prefecture, independent subprefecture, department, or district for settlement.

(4) If, on account of changes in the population, it shall hereafter come about that a town shall come to contain less than 45,000 or a village more than 55,000 persons, the board of supervisors (tung shih huei) of the town, or village supervisor (hsiang tung) shall request the provincial authorities to alter the status of the same to that of a village or town, as the case may be.

3. *The limitations of self-government.*

(5) Those matters properly coming within the cognizance of self-government may be enumerated as follows:

(*a*) The educational affairs of the city, town, or village, i. e., the middle and primary schools, the kindergartens, educational societies, the offices for spreading education (ch'uan hsueh so), the lecture bureaus (hsuan chiang so), the libraries, the newspaper reading rooms, and other projects connected with educational affairs.

(*b*) The public welfare of the community, i. e., the cleansing of the thoroughfares, sanitation, public dispensaries, hospitals, and medical schools, parks, antiopium institutions, and other matters of that character.

(*c*) Work on public thoroughfares, the alteration and improvements of the same, the laying out of roads and streets, building of bridges, making of drains, the erection of public buildings, street lighting, and other similar undertakings.

(*d*) The agricultural, industrial, and commercial interests of the community, the improvement of vegetable, animal, and aquatic products, manufactures, technical schools, industrial exhibits, the improvement of manufacturing methods, the regulation of commerce, the opening of marts, the protection of agriculture, the improvement of irrigation and land, and similar projects.

(*e*) Works of merit undertaken by the community, aid to the poor, aid and protection to widows, aid to children, distribution of clothing and food, public accumulations of grain, teaching of trades to the poor, life-saving institutions, fire-fighting organizations, famine relief, supplying coffins and graves to the poor, the preservation of ancient landmarks, and other works of merit.

(*f*) Public undertakings, i. e., electric railways, electric-lighting plants, waterworks, and other similar undertakings.

(*g*) The providing of funds for the undertakings above mentioned.

(*h*) Other matters of public character which have been intrusted satisfactorily to the control of the literati in times past.

(6) Among the matters mentioned above in the first six clauses are some that come under the control of the National Government exclusively and not within the province of self-government.

(7) Each community shall devise a detailed scheme for the management of the above matters for itself, provided that in no way shall there be any infraction of the present regulations or of laws passed hereafter.

Penalties provided for in the local regulations shall be limited to monetary fines and the curtailment of voting privileges. Fines shall not exceed $10 in amount and temporary disenfranchisement shall not extend over more than five years.

4. *The machinery of local self-government.*

(8) Cities and towns shall create the following bodies in connection with local self-government:

(*a*) A council (i shih huei).

(*b*) A board of supervisors (tung shih huei).

(9) Villages shall create the following in connection with self-government:

(*a*) A council (i shih huei).

(*b*) A supervisor (hsiang tung).

(10) When it happens that a city, town, or village comes within the jurisdiction of two districts, or of a district and an independent department, there is no need to create an additional council, etc.

(11) When a city or town shall be so large that its inhabitants shall number 100,000 or more, its area shall be subdivided, and in each subdivision a division supervisor (ch's tung) shall be created who shall have charge of self-government in the said subdivision. Detailed regulations for his guidance shall be drawn up later.

(12) When the population of a village is so small that the number of its votes is not at least 10 times the smallest possible number of the members of its council it may not create self-government bodies for itself alone, but shall be incorporated with a neighboring city, town, or village under the same territorial jurisdiction. But if circumstances render this inadvisable a village supervisor (hsiang tung) shall hold office and the village body of voters shall take the place of the village council.

(13) When two villages shall have to take joint action on any matter of mutual interest they shall create a joint council to decide with regard thereto.

(14) The place of meeting of the city, town, or village council and of the city or town board of supervisors and of the village supervisor shall be in the city, town, or village council hall. This council hall may be located in a public building or in a temple.

5. *Residents and electors.*

(15) All residents, whether permanently or temporarily, of a city, town, or village, shall be voters therein, without regard to their being natives or not, or Peking bannermen, or members of Manchu garrisons. All residents shall be entitled to the benefits of the community and subject to its requirements.

(16) The residents of a city, town, or village must have the following qualifications in order to vote:

(*a*) They must be Chinese citizens.

(*b*) (*c*) They must have resided in the community for at least three consecutive years.

(*b*) (*b*) They must be at least 25 years of age.

(*d*) They must contribute annually in the way of taxes (finding its way ultimately to the board of revenue or to the provisional treasury) or in the way of voluntary contribution to some enterprises of common benefit the sum of at least $2.

Persons of good character and reputation may be endowed with the franchise even if not possessing qualifications (*c*) and (*d*).

Also, any person contributing more in regular revenue or voluntary subscription to enterprises of public benefit than any other voter shall have the right to vote, even if not possessing qualifications (*b*) and (*c*).

(17) Persons under any one of the following disabilities, even if possessing qualifications (*a*) and (*c*) of the preceding paragraph shall be debarred from voting:

(*a*) Persons of proven bad character and intimidating habits.

(*b*) Persons guilty of any more serious offense than the above.

(*c*) Persons of disreputable pursuits, concerning which more specific regulations must be drawn up.

(*d*) Persons accused of financial wrongdoing and not yet cleared.

(*e*) Opium smokers.

(*f*) Insane persons.

(*g*) Illiterate persons.

(18) According to these regulations a voter of a city, town, or village may both vote and be voted for.

Persons who possess qualifications (*c*) of paragraph (16) and are entitled to vote, if unable to exercise this privilege in person, may do so by proxy. The proxies must posses qualifications (*a*) and (*b*) of paragraph (16) and must not fail in any of the requirements of paragraph (17).

(19) The following may not vote for nor be elected as members of self-government bodies:

(*a*) Persons holding official position at the time.

(*b*) Persons serving as soldiers.

(*c*) Persons serving as policemen.

(*d*) Buddhist priests or religious instructors of other creeds.

(20) Persons studying in schools may not stand for election.

(21) Those elected to self-government offices may not refuse the said office nor resign during their term of office unless for one of the following reasons:
(*a*) Serious illness incapacitating them for holding office.
(*b*) Important affairs necessitating change of residence.
(*c*) Arrival at an age of 60 years and more.
(*d*) Completion of three continuous terms of office.
(*e*) Other reasons approved of by the city, town, or village council.
(22) Persons who, not having any of the above reasons, shall refuse office when elected, may be punished by the city, town, or village council with from one to five years' disbarment from voting.

II.—City, Town, and Village Councils.

1. *Number of members and length of term.*

(23) City and town councils shall have 20 members each. Cities and towns of more than 55,000 inhabitants may add on additional members at the rate of 1 member for each 5,000 inhabitants above 55,000 until there are 60 members.
(24) Village councils shall have members in proportion to the size of the population in the following ratios:

Under 2,500	6 members.
Under 5,000	8 members.
Under 10,000	10 members.
Under 20,000	12 members.
Under 30,000	14 members.
Under 40,000	16 members.
Above 40,000	18 members.

(25) The members of the council shall have the privilege of voting. Separate regulations shall be drawn up to govern this. Fathers and sons and elder and younger brothers may not serve simultaneously as members, and if elected sons and younger brothers shall refuse to serve.
No person may serve as a member whose father, son, or brother is a member of the board of supervisors of the city or town or who is a village supervisor in the city, town, or village where he is elected.
(26) City, town, and village councils shall elect chairmen and vice chairmen from among their number by a system of unsigned ballots. Detailed regulations must be drawn up later.
(27) Members shall serve for two years, half the number being elected annually. If all are elected simultaneously, half shall go out of office at the end of a year. The selection of those whose terms are to be one year shall be done by lot, and if an even division is impossible the greater number shall be reckoned as the half referred to.
(28) Chairmen and vice chairmen shall be elected for two years.
(29) Members, chairmen, and vice chairmen may serve continuous terms.
(30) If for any causes more than one-third of the members have vacated their offices there shall be a new election to fill said vacancies.
(31) On the vacating of his office by the chairman the vice chairman shall take his place, and on the vacating of his place by the latter an election shall be held to fill the vacancy.
(32) Members elected to fill a vacancy shall hold office during the term for which they were elected.
(33) Members, chairmen, and vice chairmen shall be unsalaried. An allowance for necessary expenses shall be made to the chairman and vice chairman, the size of which being determined by the board of supervisors or the village supervisor.
(34) Each council may engage correspondence and general secretaries whose number and salaries shall be fixed in separate regulations. These officers need not be qualified voters and shall be appointed by the chairman and vice chairman.
(35) In villages there shall be no settled number for members of the council, but the total number of voters shall be held to constitute the council. A chairman and vice chairman shall be elected from among the voters, and their tenure of office and reelection shall be subject to the restrictions imposed in paragraphs (28) and (29), and in case of vacancies occurring the provisions of paragraph (31) shall be put in effect. The provisions of paragraph (33) with regard to remuneration and allowance for expenses shall hold good for these offices.

2. *Functions of members.*

(36) Matters that will be left to the decision of city, town, and village councils are as follows:

(*a*) All those affairs of the city, town, or village coming within the province of self-government.

(*b*) The creation of a set of self-government laws (i. e., a constitutional charter) regulating the self-government of the city, town, or village.

(*c*) The finances of the local self-government body, the preparation of its budgets, and the provision for its extraordinary expenses.

(*d*) The drawing up of the annual financial statement of the self-government bodies.

(*e*) The method of raising funds to meet the expenses of self-government.

(*f*) The management of finances connected with self-government.

(*g*) The settlement of disputes arising out of elections.

(*h*) The fixing of penalties for offenses on the part of members of the council.

(*i*) The amicable settlement of lawsuits carried to local yamens.

(37) When a decision with regard to any matter has been made by the council, the chairman and the vice chairmn shall inform the local official of the said decision and shall then communicate it to the board of supervisors or the village supervisor for execution.

(38) The council shall exercise the function of electing the board of supervisors, or the village supervisor and the assistant supervisor, as the case may be, of supervising their actions, their correspondence, and their accounts.

(39) When the local officials inquire of the council with regard to any matters the council shall reply immediately, stating its own opinion regarding the same.

(40) The council shall communicate to the local officials its ideas on matters connected with local administration and self-government and await their decision with regard thereto.

(41) If the council shall consider that the actions of the city, town, or village board of supervisors, or supervisor, as the case may be, are in excess of their legitimate powers or detrimental to the public interests, or in contravention of the law, it shall communicate with the said board of supervisors, or said supervisor and veto said actions. If the objectionable course of action is persisted in, the council shall communicate with the general council of the prefecture, independent subprefecture, department, or district, that common action may be taken in the matter. If the dictum of the general council is not obeyed, the local officials shall settle the matter, and if the obstinate course of action is still persisted in, the local officials shall ask the viceroy or governor to request action on the part of the provincial assembly.

(42) The village body of voters shall be governed by the laws regulating councils.

3. *Council meetings.*

(43) Each council shall meet once a quarter, in the second, fifth, eighth, and eleventh moons, respectively, and each council meeting shall extend over 15 days, which period may be extended by the chairman of the council, for the purpose of concluding unfinished business, by not more than 10 days. Special sessions shall be held for the discussion of special business under instructions from the local officials, or at the request of the board of supervisors, or the village supervisor, or on the vote of at least one-third of the members. Notice of each session must be sent to the members of the council by the board of supervisors or the village supervisor at least 10 days before the date set for the session. But this need not be done in the case of special sessions

(44) If for any reason the chairman can not serve at any session the vice chairman shall take his place, and if he, too, can not serve, the members shall elect an acting chairman.

(45) The presence of at least half of the members shall be necessary for the transaction of business.

(46) The assenting or dissenting vote of half or more of the members present shall be a deciding vote. In case of a tie vote the chairman shall cast the deciding vote.

(47) The members of the board of supervisors and the village supervisor shall attend council meetings and express their ideas, but they shall be without votes.

(48) Members of the council shall not prevent their discussions from being made public, except that if there are urgent reasons the chairman of the council shall clear the chamber of spectators.

(49) When a matter closely connected with any member of the council, or with his parents or brothers, comes up, said member shall not be permitted to vote on said matter. If the chairman or vice chairman shall be under this disability, the provisions of paragraph (44) shall be complied with. If any matter brought up for settlement shall thus effect half or more of the members so that they may not vote thereon, the chairman shall refer it to the general council of the prefecture, etc., for settlement, or to the council of a neighboring city, town, or village.

(50) If any member during a meeting of the council shall not conform to the rules thereof the chairman shall interdict him from active participation, and persistence in his course of action shall render said member subject to expulsion. If disturbance arises so that the holding of a council meeting shall be impracticable the chairman shall suspend such meeting for the time being.

(51) Onlookers not conforming with the rules of the council shall be excluded by the chairman.

(52) The rules governing the council meetings and the conduct of onlookers shall be drawn up by the members of the council.

(53) The meetings of the village voters shall be governed by the rules of the village council.

III.—City and Town Boards of Supervisors.

1. *Number and term of office of members.*

(54) City and town boards of supervisors shall elect the following officers:

(*a*) A chairman (tsung tung); 1, 2, or 3 official members (tung shih); 4 to 12 nonofficial members (ming yü tung shih).

The number of official members of the board of supervisors shall not exceed one-twentieth of the number of the members of the council, and the nonofficial members shall not exceed in number two-tenths.

(55) From among the voters the council shall elect a first and second choice for the office of chairman of the board of supervisors. The local official shall submit the names of these two candidates to the viceroy or governor, who shall designate one to the office in question.

(56) The official members of the board of supervisors shall be elected by the council and their election shall be authorized by the local official.

(57) The nonofficial members shall be elected by the council from among the voters.

The elections provided for in paragraphs (55), (56), and (57) shall be conducted in accordance with rules to be drawn up later.

(58) The chairman and members of the board of supervisors shall hold office for two years.

(59) The nonofficial members of the board shall hold office for two years, one-half of their number being elected annually. When all are elected at one time half shall hold office for one year, the provisions of paragraph (27) being complied with.

(60) The chairman and members of the board shall draw salaries as fixed by the regulations therefor. The nonofficial members shall not draw salaries.

(61) All the members of the board shall be subject to reelection, and may hold office during successive terms.

(62) Officers of the board of supervisors may not simultaneously hold office in the council. Members of the council when elected to the board of supervisors shall resign from the former. Fathers and sons and elder and younger brothers may not simultaneously hold office in the board. When elected thereto the provisions of paragraph (25) shall be complied with.

(63) If the chairman of the board of supervisors for any reason can not perform the duties of his position the oldest member of the board shall take his place. If there shall be two whose ages are alike the one who has lived in the city or town the longer shall receive the post. In case of similarity in this respect also determination shall be by lot.

(64) If the official and nonofficial members to the extent of half or more of the total number shall vacate their posts elections shall be held to fill the vacancies.

(65) The terms of office of those elected to fill vacancies shall conform with the requirements of paragraph (32).

(66) When it is necessary for some one to be appointed to perform a special duty said appointments shall be made by the chairman and need not be made from among the voters, but the nomination must be approved by the board. Detailed rules must be drawn up later.

(67) The creation of officers to manage the correspondence, finances, and other interests of the board of supervisors shall be left to the detailed rules which must be drawn up hereafter. The above officers shall be appointed by the chairman, not necessarily from among the voters, or the corresponding officers of the council may be given these additional duties, as circumstances shall warrant.

2. *Duties and authority.*

(68) The functions of the board of supervisors shall be as follows:

(*a*) Supervision of the election of members of the council and the presentation of matters for their consideration.

(*b*) The execution of such measures as may be determined upon by the council.

(*c*) The execution of the laws, rules, and regulations, or the commands and commissions of the local officials.

(*d*) The adoption of methods for the performance of the above.

(69) If the board of supervisors shall observe that the actions of the council are in excess of its functions, legitimately, or that they contravene the law, or are detrimental to the public interests, it shall be their duty to call such facts to the attention of the council for reconsideration.

If the course of action is persisted in they shall communicate the circumstances to the general council of the prefecture, etc., for settlement. Continued persistence shall be dealt with as provided for in paragraph (41).

(70) The chairman shall direct all the actions of the board and all its official correspondence shall be issued in his name.

(71) The chairman shall be assisted by the officers of the board in their respective departments in his official duties.

(72) The nonofficial members shall assist in the transaction of those matters coming before the board.

3. *Meetings of the board of supervisors.*

(73) The board of supervisors shall convene once a month. Five days previous to each meeting the officers of the board shall inform the members of such matters as are to be brought up before the board at the said meeting.

(74) The chairman shall preside at meetings. If he is unable to perform this duty the provisions of paragraph (63) shall be complied with in the choice of a substitute.

(75) Two-thirds of the members of the board shall be a necessary quorum for the transaction of business. The meetings shall be conducted in accordance with the provisions of paragraph (46). The officers appointed to special duty shall always be present at the meetings when their services are required.

(76) During meetings of the board the members, the chairman, and the vice chairman of the council shall attend and give their opinions, but they may not vote.

(77) The members of the board may not take part in the discussion of any matter affecting the members of their family. If the chairman of the board comes under this restriction the provisions of paragraph (74) shall be complied with. If two-thirds or more of the members and nonofficial members of the board shall come under this restriction the matter in question shall be referred to the council for settlement.

(78) All proceedings of the board must be reported to the council and local official for record.

IV.—Village Supervisors.

1. *Number and term of office.*

(79) Each village shall have one supervisor and an assistant supervisor, elected by the voters and the council and authorized by the local official.

(80) No man may simultaneously hold the above two offices, and if a member of the council is elected to either, the provisions of paragraph (62) shall be complied with. The provisions of paragraph (25) shall be complied with in cases where father and son are simultaneously elected to these two offices.

(81) The term of office for the village supervisor and the assistant supervisor shall be for two years, and they may hold office during successive terms.
(82) The salaries of these two officers shall be determined by the regulations.
(83) When the supervisor can not perform the duties of his office, the assistant shall take his place.
(84) If both officers vacate their posts, the vacancies shall be filled by election.
(85) Deputies for special work shall be appointed by the village supervisor from among the voters or otherwise and authorized by the council.
(86) Secretaries, accountants, etc., shall be appointed by the supervisors and their salaries shall be fixed by the regulations. The above officers need not be voters; if circumstances warrant, the similar officers of the council may perform these duties in addition to their own.

2. *Duties and powers.*

(87) The duties of the village supervisor shall be as fixed by paragraphs (68) and (69).
(88) The village supervisor shall himself determine his course of action in regard to those matters coming in his jurisdiction.
(89) The assistant supervisor and the various officers shall assist the village supervisor.

V.—Provision for the Expenses of Self-Government.

1. *Various sources of funds.*

(90) The funds for the maintenance of self-government in cities, towns, and villages shall de derived as follows:
(*a*) Public revenue and income from public property.
(*b*) Public subscriptions.
(*c*) Fines collected in accordance with the regulations.
(91) Public revenue and public property shall be such as heretofore has been controlled by the literati and gentry for the community. If the city, town, or village has not heretofore been possessed of such public revenue or property, or if the same is insufficient, the council shall designate certain revenues or properties for the purpose, and such action shall be authorized by the local officials.
(92) Public subscriptions shall be classified under two heads, as follows:
(*a*) Additional subscriptions.
(*b*) Specific subscriptions.
Additional subscriptions shall be such as are made as part of the regular official taxes. Those which are especially collected under other names shall be known as specific subscriptions. Class (*a*) shall not exceed one-tenth of the regular taxes collected by the local official.
Corvees or payments in kind when tendered as specific contributions shall be assessed at an equitable valuation.
(93) The plans on which it is proposed to levy contributions for public work shall be submitted to the council, which shall obtain the authorization of the local official. Changes in and abolition of these subscriptions shall be made by the council and authorized by the local official.

2. *Control and collection.*

(94) The control of money subscribed for public purposes shall be exercised by the board of supervisors, or the village supervisor, along lines indicated by the council.
(95) Such public revenues and public property as has been contributed by private individuals for specific purposes shall not be devoted to other uses. If the method of expenditure indicated, however, has been changed or abolished in accordance with regulation this restriction shall not be effective.
(96) Additional subscriptions collected by the local official in accordance with law shall be handed over in a lump sum to the board of supervisors or the village supervisor. Specific contributions shall be collected by the board of supervisors or the village supervisor in accordance with a proclamation issued by the local official.
(97) Absentee owners of real estate or commercial concerns shall contribute pro rata for the public benefit.

3. *Budgets, statements of accounts and audits.*

(98) The board of supervisors or the village supervisor shall annually prepare budgets of the estimated receipts and expenditures for the following year and submit the same in the 11th moon to the council during its meeting for its ratification. After said authorization, in addition to complying with the provisions of paragraph 37, the local official shall submit the budget to the viceroy or governor for record and it shall also be published.

(99) In addition to the funds appropriated for regular expenses a contingent fund shall be provided for to meet any unusual demand. If this contingent fund proves insufficient, however, no other funds shall be appropriated without the authorization of the council.

(100) The board of supervisors or the village supervisor shall annually prepare a statement of the previous year's receipts and expenditures and submit the same for authorization to the council during its meeting in the second moon. After said authorization the provisions of paragraph 98 shall be complied with.

(101) Supervision of the receipts and expenditures shall be exercised in two ways as follows:

(*a*) Regular auditing.

(*b*) Irregular auditing.

Regular auditing shall be made monthly by the chairman of the board of supervisors or by the village supervisor as the case may be.

Irregular auditing shall be made at least once annually by the chairman of the board or the village supervisor, in conjunction with the chairman and assistant chairman of the council and at least one other member thereof.

VI.—Directing Self-Government.

(102) The self-government officials shall severally be under the direction of the appropriate local official. If the said local official sees that the present regulations have been transgressed in any particular he shall correct the fault. He may call for reports on the actions of the self-government officials, demand to see their books, make personal investigations, etc. He may at stated times report the nature of the self-government officials' actions to the viceroy or governor, which reports shall be collected and submitted to the board of the interior. If the city, town, or village concerned shall be in the jurisdiction of two districts, or of a district and an independent department, the two magistrates or the magistrate and the department magistrate shall exercise joint control.

(103) The local officials shall have the power of petitioning the viceroy or governor of the Province to dissolve the city, town, or village council, or the city or town board of supervisors, or to discharge the village supervisor, or any other official connected with self-government. After such dissolution or discharge new elections shall take place in accordance with the regulations, the reelections for the council and the board of supervisors taking place within 2 months and 15 days, respectively, of the date of dissolution. A new village supervisor shall be chosen within 15 days of the dismissal of the former incumbent.

If the council and board of supervisors of a city or town, or if the village council and the village supervisor shall simultaneously be dissolved and dismissed, within two months of said events a new council shall be created and the arrangements for the election and for the opening of the council shall be attended to by the general board of supervisors of the prefecture, independent subprefecture, department, or district. The board of supervisors or the village supervisor shall be elected within 15 days after the election of the new council.

VII.—Penalties.

(104) If any officer connected with self-government organization shall be guilty of accepting bribes or of embezzlement, he shall be compelled to make restitution in full and shall also be punished in accordance with the law.

(105) If any officer connected with self-government shall not prove amendable to the control of the local official, said local official shall obtain the authorization of his superiors having jurisdiction for taking measures accordingly.

(106) If any member of the council, or any other official of the board of supervisors, shall make use of his official position to interfere in matters not

connected therewith, he may be forbidden attendance at the session of the body of which he is a member for a period not less than 3 days nor more than 10.

For the same offense the chairman of the board of supervisors, the official members of the board, and the village supervisor shall be punished by the stoppage of the offender's salary for a period of not less than one-half month nor more than two months. For very serious offenses the penalty may be loss of office.

VIII.—Forms of Correspondence.

(107) The council, the board of supervisors, and the village supervisor in addressing the local official shall use the form prescribed for addressing superiors (ch'eng). In communication with each other and with the general council and general board of supervisors the form used shall be that adopted between equals (chih huei). The local officials in communicating with the council, etc., shall use the form adopted by superiors to inferiors (yü). The council, etc., in communicating with the provincial assembly shall use the form prescribed for inferiors to superiors (ch'eng), and the latter shall use the form prescribed for equals (chih huei).

(108) The council, etc., shall prepare wooden seals, whose form shall be authorized by the viceroy or governor and made by the local official under his instructions. When completed the local official shall report the same to his superior for record.

IX.—Supplementary Paragraphs.

(109) These regulations shall go into force at the time set in the nine-year program.

(110) Those things which in these regulations are left to the general councils and general boards of supervisors of the prefectures, independent subprefectures, departments, and districts shall, before the creation of these bodies, be performed by the local officials.

(111) Changes and alterations in these regulations shall be proposed by the council to the provincial assembly. The provincial assembly shall submit the same to the viceroy or governor, who shall forward them to the board of the interior, which shall submit them in a memorial to the Throne for sanction.

(112) The manner in which these regulations shall be put into operation shall be determined by the viceroy or governor and forwarded to the board of the interior for record.

[Translation.]

Regulations governing the elections to be held in cities, towns, and villages.

(Approved by the Throne in an imperial edict of Jan. 18, 1909.)

I.—General Principles.

(1) The qualifications for voting and for office shall be as set forth in the local self-government regulations.

(2) The elections for the council shall be managed by the board of supervisors or the village supervisor and the assistant village supervisor, while the elections for the latter shall be managed by the former.

(3) Election officers shall be appointed by the chairman of the council or the chairman of the board of supervisors from among the local self-government officers.

II.—Election of the Council.

1. *Date of elections.*

(4) The chairman of the board of supervisors or the village supervisor shall set some day each year, at least three months previous to the occurrence of the vacancy which it is desired to fill, for the election of the members of the council.

2. *Order of elections.*

(5) The electors shall be divided into two classes. The first class shall be composed of those voters contributing the most in taxes or subscription to the public welfare, provided that the total amount of the taxes and subscriptions of the members of this class must be 50 per cent of the entire amount derived from the whole body of voters.

All other electors shall constitute the second class.

(6) If the qualifications of a voter are such as to warrant his assignment to either class, the first or the second, he shall be included in the first class. In case of the necessity of a choice between two or more voters of similar qualifications the older of the two shall be included in the first class. In case of a similarity of age, also, the decision shall be by lot.

(7) Half of the members of the council shall be elected by each class of electors and the candidates elected need not be of that class by which they were elected. If there is an uneven number of members of the council the odd number shall be elected by the first class of voters. If the total number of electors of class 1 is not equal to the number of members of the council which the first class is supposed to elect, each elector shall elect one member, and the remainder shall be elected by the voters of the second class.

3. *Register of voters.*

(8) When it comes time for an election the chairman of the board of supervisors or the village supervisor shall appoint an official to make a register of qualified voters. No one not included in this register shall exercise the franchise or be elected to office. Special note must be made in this register of all those persons who according to law are qualified voters but may not hold office. The detailed rules for the making of the register shall be made by the board of supervisors or the village supervisor.

(9) Of every man there should be recorded the name, age, native place, length of residence locally, and the annual amount of taxes and subscriptions paid by him.

(10) The register of voters should be completed and in the local government offices two months before the election. It should also be published.

(11) During 20 days the board of supervisors or the village supervisor may correct errors and omissions on the presentation of adequate evidence. On the expiration of this term no application will be received. Emendations of the register shall be sent immediately to the council for authorization.

(12) The council shall take definite action on emendations within 10 days If the change is authorized it shall be made by the board of supervisors or the village supervisor.

(13) After the closing of the register no one may vote in supplementary elections during that year whose name is not included therein. The register shall be in the custody of the chairman of the board of supervisors or the village supervisor.

(14) Copies of the register shall be made and deposited for reference with the local official at the polling place, and at the place where the count of votes is made.

(15) When the register is published a circular should also be published setting forth the following facts:

(*a*) Date of holding elections.

(*b*) The polling and counting places.

(*c*) Method of voting.

The elections shall be held during two days, class 2 of electors voting the first day and class 1 the second day.

4. *Polling places.*

(16) The elections shall be held in the self-government building, and if the size of the building and the number of voters render it advisable a number of booths shall be made.

(17) The election shall be under the charge of officers appointed by the chairman of the board of supervisors or the village supervisor.

(18) No one but election officers and voters may enter the polling places.

(19) Polls shall be open from 8 a. m. to 6 p. m., and no one may enter after the closing hour.

(20) When the voting has been completed the election officers shall hand over the ballots in the ballot boxes to the office of returns and report fully on the incidents of the election. This report shall also be made to the chairman of the board of supervisors or the village supervisor.

(21) Detailed regulations governing voting shall be drawn up by the board of supervisors or the village supervisor.

5. *The record of voters, ballots, and ballot boxes.*

(23) The chairman of the board of supervisors or the village supervisor shall prepare a record of those who vote, and shall, 10 days before the election, prepare and deliver at the polling places blank ballots and ballot boxes of the form determined upon.

(24) The record of those voting should contain the name, age, native place, and place of residence of each individual.

(25) The above record should separately record the two classes of voters.

6. *Method of voting.*

(26) The names of those voting should be written in the record, and no one else shall vote.

(27) Voting must be done in person, except that those expressly excepted by paragraph (18) of the self-government regulations may send proxies, provided that proper proof is submitted to the election officers.

(28) Ballots shall not be given out until the voter has signed his name in the correct place in the record.

(29) Each voter shall be provided with one ballot only.

(30) On the ballot shall appear the name of the man voted for, and the name of the voter shall not appear.

(31) At the end of the ballot, in the place provided, the voter shall state what good record the candidate has had in previous positions and what commonly acknowledged excellencies he has. The voter shall also record the candidate's official rank, his place of residence, and his business, but no other remarks shall be made.

(32) Voters when in the polling places shall hold conversation with no one but the election officers and then only on matters connected with the voting.

(33) When he has registered his vote each voter shall immediately retire.

(34) Impostors and breakers of the voting regulations shall be expelled by the election officers.

7. *Returns offices.*

(35) The returns office shall be established in the self-government building.

(36) The returns office shall be composed of officers appointed by the chairman of the board of supervisors or the village supervisor to have direction of the opening of the ballots.

(37) On the next day after the voting the ballot boxes having all been turned in, the same shall be opened by the chairman of the board of supervisors or the village supervisor in the presence of the public. The time set for this operation shall be announced in advance.

(38) Voters shall be permitted to witness the opening of the ballot boxes, but if the former are too numerous the election officers may admit only certain individuals.

(39) On the next day after the count the officers in charge thereof shall make a full report thereon to the chairman of the board of supervisors or the village supervisor. The ballots, regular and irregular, shall within the year of the election be sent to the board of supervisors or the village supervisor for filing.

(40) The provisions of paragraphs (21) and (22) shall apply to the returns offices.

8. *Method of counting the ballots.*

(41) The ballots should be compared with the voting record and any discrepancies in the way of numbers, failure to vote, etc., should be clearly set forth.

(42) Irregularities that will be held to invalidate ballots shall be as follows:
(*a*) Lack of conformity to the legal form.
(*b*) Illegibility.
(*c*) Use of other than the regular ballots.
(*d*) Votes for persons not in the register of voters.
(*e*) Votes for persons not qualified to stand for office.

9. *Confirmation of elections.*

(43) Those receiving the greafest number of votes shall be held elected, and the sequence of the elected shall be determined by the number of votes received. In case of tie votes precedence shall go to the elder, and in case of similar ages as well the chairman of the board of supervisors or the village supervisor shall determine the sequence by lot.
(44) When the results of the election are authoritatively known they shall be published and the chairman of the board of supervisors or the village supervisor shall notify the successful candidates.
(45) The office must be accepted within five days of the notification of election thereto; failure to comply with this requirement shall be taken to mean nonacceptance of the post.
(46) If one man is elected by both classes of voters he shall within five days of receiving notification designate which office he desires to hold. Failure to comply with this requirement will be taken to indicate refusal of office.
(47) Cases of refusal of office as stated above shall be treated as provided in paragraphs (21) and (22) of the local self-government regulations.
(48) Elected candidates shall be reported by the chairman of the board of supervisors or the village supervisor to the local official, who shall issue certificates of election and also report the names to the viceroy or governor for transmission to the board of the interior.

10. *Invalidating of elections.*

(49) The following are circumstances invalidating elections:
(*a*) Falsification of the entry of the names of all the candidates in the register, if said falsification is well established.
(*b*) Irregular conduct of the election, if publicly admitted to have been the case.
(*c*) Stopping of the election in accordance with law.
(50) The following are circumstances annulling the election of individuals:
(*a*) Refusal of office.
(*b*) Resignation from office.
(*c*) Death.
(*d*) Irregular manner of election if said irregularity be proven.
(*e*) Falsification of returns, if proven.
(*f*) Loss of necessary qualifications, if proven.
(*g*) Removal of name as a punishment.
(52) New elections shall be held on the termination of terms of office, but if at any time one-third of the members shall have vacated their posts said vacancies shall be filled by election. If elections are determined to be invalid, new elections shall be held, also, and if the election of a particular member shall be held invalid the vacancy shall likewise be filled by electing a new member.
(53) In filling vacancies the vacancies that have longer to run shall be filled by those receiving the greater number of votes, and in case of tie votes the determination shall be made by age, and in case of similarity of age, also, the chairman of the board of supervisors or the village supervisor shall determine the question by lot.
(54) Elections to fill vacancies as well as new elections shall all be held as provided for by the present regulations.

11. *Contested elections.*

(55) When the voters recognize the existence of the following conditions, it shall be held that there exist grounds for the contesting of the election in question.
(*a*) When falsification of the entries of the names of all the candidates in the register is found to have occurred.

(*b*) When the elections have not been held as ordered by the regulations.
(*c*) When the elected candidates lack the necessary qualifications for office.
(*d*) When there has been falsification of returns of ballots.
(*e*) Loss of necessary qualifications after election.

(56) When the above grounds for protest occur the case shall be referred to the council for settlement. Appeal may then be made to the general council of the prefecture, etc., and thence to the local official. If there is still no acquiescence in the decision the local authorities may present the matter to the viceroy or governor for reference to and settlement by the Provincial Assembly.

(57) Protest, except in the case mentioned in clause 5 of paragraph (55) must be made within 30 days of the election.

(58) Unsuccessful candidates if convinced of their actual election may avail themselves of the privileges of the above two paragraphs.

III.—Election of Boards of Supervisors.

(59) The chairman of the board of supervisors shall hold office during two years and official and nonofficial members of the board of supervisors for one year. Three months before the date of the election of the board the chairman of the council shall summon the members of the council and shall ask the local official to be present in person or to be represented by a deputy on the day which the said chairman shall designate for the election.

(60) The chairman of the board of supervisors shall be elected by ballot and the candidates receiving votes equal in number to one-third of the members of the council shall be considered elected. The official and nonofficial members of the board of supervisors shall be elected on a ticket and those candidates shall be considered elected who receive votes equal in number to one-third of the members of the council. In the case of tie votes preference shall be given to the oldest candidate and if ages are similar the decision shall be by lot. If the required number of votes is not obtained a new election in the same manner must be held.

(61) When the election for chairman and assistant chairman of the board of supervisors has been held the chairman of the council shall forward a detailed report to the local official for transmission to the viceroy or governor. The latter shall appoint the officers in question and inform them of the fact. He shall also make a report to the board of the interior for record.

(62) In the same way the local official shall be requested to authorize the election of the official and nonofficial members of the board. Otherwise all shall be done as provided for the election of the chairman.

(63) The chairman and members of the board of supervisors shall be furnished with certificates of election by the local official.

(64) The detailed regulations for the election of the board of supervisors shall be drawn up by the council. In case of a contested election the general council shall be appealed to, whence the appeal may be carried to the local official and thence through the viceroy or governor of the Provincial Assembly.

IV.—Election of the Village Supervisor and the Assistant Village Supervisor.

(65) The village supervisor and the assistant supervisor shall hold office during two years. Three months previous to the expiration of their term the chairman of the council shall conduct the election of their successors. The presence of the local official or a deputy shall be requested.

(66) The election shall be conducted as provided for the chairman and assistant chairman of the city and town boards of supervisors, as set forth in the third and fourth clauses of paragraph (60).

(67) When the election is completed the procedure as provided for the installation of members of the board of supervisors shall be followed.

(68) The detailed regulations for these elections shall be drawn up by the council and the provisions of clause 2 of paragraph (64) followed.

V.—Penalties.

(69) For falsification of returns or of the register a fine of not less than $3 nor more than $30 shall be imposed. Complicity in fraud on the part of the

election officials shall be punished by imprisonment of not less than one month nor more than two months, or by a fine of not less than $30 nor more than $60.

(70) For the use of false names in voting, imprisonment of not less than one month nor more than six months and a fine of not less than $5 nor more than $30 shall be inflicted.

(71) For giving and receiving bribes for votes and for complicity in such acts imprisonment of not less than one month nor more than two months or a fine of not less than $30 nor more than $60 shall be inflicted. The bribe or its equivalent shall be confiscated.

(72) For intimidation of voters imprisonment of not less than one month nor more than three months or a fine of not less than $30 nor more than $100 shall be inflicted.

(73) For the carrying of deadly weapons by voters imprisonment of not less than one month nor more than two months shall be inflicted and the weapons shall be confiscated.

(74) For intimidation of election officials or disturbance of the election booths imprisonment of not less than one month nor more than six months and a fine of not less than $5 nor more than $30 shall be inflicted.

(75) For betrayal of information acquired in their professional capacity by election officers, whether the information in question be correct or not, imprisonment of not less than one month nor more than six months and a fine of not less than $5 nor more than $30 shall be inflicted.

(76) For failure to enforce the election rules or for making secret records of votes imprisonment of not less than one month nor more than three months or a fine of not less than $30 nor more than $100 shall be inflicted on election officers. The same penalty shall be inflicted for opening the ballot boxes or abstracting ballots therefrom at unauthorized times.

(77) Any infraction of these regulations shall debar the offender from voting or standing for office for not less than one year nor more than five years.

(78) Offenses against these regulations shall be tried by the local police court (shen p'an t'ing). Prior to the organization of these courts in any locality the local official shall have jurisdiction.

VI.—SUPPLEMENTARY REGULATIONS.

(79) These regulations shall go into effect simultaneously with the local self-government regulations.

(80) Alterations and additions to these regulations shall be made as provided for in paragraph (111) of the local self-government regulations.

(81) The election of officers for the first election of the different councils shall be appointed by the local officials from among the literati.

THE HUKUANG LOAN.

File No. 5315/208–209.

The Secretary of State to Minister Rockhill.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, May 24, 1909.

Mr. Knox refers legation's No. 1715, of September 27, 1904,[1] press reports understanding between English, French, and German financial groups under which Germans arrange to offer funds for construction of portion proposed Hankow-Szechuen Railway. Adds that if report is correct he will call the attention of the Wai-wu Pu to the assurance reported by Mr. Conger that in case China was unable herself to provide the sum necessary to build this railway American and British capitalists would simultaneously be notified, and he will also inform the foreign office that this Government holds

[1] See p. 146.

that this assurance guarantees to American and British capital the preference in bidding for any foreign loan floated for this purpose. Directs that he report fully and immediately results his investigation and action.

File No. 5315/212.

Minister Rockhill to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, June 1, 1909.

Refers to department's telegram May 24, and says he has seen the president of the foreign office three times on the subject. The latter informed Chang Chih-tung of Mr. Rockhill's reminder, assurance 1904, and United States position. Chang has not yet replied. The president of the foreign office thinks probably it is too late now to participate in the present loan, which is ready for signature, but as it only covers Hupeh section of road American capital might find employment financing construction Szechuen section. The president of the foreign office is very desirous to see America paticipate in the finance Chinese railway enterprises, and he is of opinion American capitalists should be represented in Peking as other groups are.

Asks what further action, if any, he shall take in regard to agreement about to be signed.

ROCKHILL.

File No. 5315/208–209.

The Secretary of State to Ambassador Reid.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, June 2, 1909.

Mr. Knox informs Mr. Reid that in 1904 the Government of the United States was informed through the legation in Peking of a promise which the Chinese Government had made in writing to the American and British ministers that in case China was unable herself to raise the necessary capital for the construction of a proposed Hankow-Chungking railway, American and British capital would be given the first chance over other foreign competitors, and that on two occasions, July 25, 1905, and September 19, 1905, the British ambassador in Washington inquired of the department whether American capitalists desired to participate in this enterprise, to which the department replied that publicity had been given the matter, but as yet the American financial groups had not intimated their intention regarding the undertaking. The department can not construe its replies to the British ambassador as indicating a relinquishment of the right of American capital to participate.

Adds that it is reported that British, French, and the German groups have now under consideration an agreement with China to

provide a loan for the construction of certain railways in China among which is the Hankow-Szechuen line, and the department is at the same time made aware that American capital is interested in this western line to such an extent that it would be glad to cooperate with the British interests in accordance with the understanding of 1904.

Instructs Mr. Reid to bring the foregoing to the attention of the minister for foreign affairs and to cable the substance of his views.

File No. 5315/208–209.

The Acting Secretary of State to Ambassador Reid.

No. 1024.] DEPARTMENT OF STATE,
Washington, June 3, 1909.

SIR: Referring to the department's telegram of June 2, 1909, with regard to China's written promise to give preference to American and British capital, should her own prove insufficient, for the construction of the Hankow-Szechuen Railway, I inclose herewith, for the information of the embassy, copies of the correspondence on file at the department relative thereto.

I am, etc.,

HUNTINGTON WILSON.

[Inclosure 1.]

Minister Conger to the Secretary of State.

No. 1715.] LEGATION OF THE UNITED STATES OF AMERICA,
Peking, September 27, 1904.

SIR: I confirm my telegram of to-day as follows:

SECRETARY OF STATE, *Washington:*

Twenty-seventh. Chinese Government has promised in writing that if foreign capital necessary Americans and British should have preference in railway Hankow to Chungking. French and British capitalists will meet in London October 20 to discuss question. British minister, recognizing our rights, inquires if American capitalists will not join. If they do not, I shall oppose concession to others unless otherwise instructed.

(Signed) CONGER.

Both the Thurlow Weed-Barnes Syndicate and the China Investment & Construction Co., of New York, have, through this legation, made application to the Wai-wu Pu for a railway concession from some point in the Province of Szechuen to Hankow, to which the Wai-wu Pu has replied that the British minister had also asked for such concession, but it was expected that the railway would be built by Chinese capital. If, however, it should be found necessary to employ foreign capital both the British minister and I would be notified, and British and American capital be given the first chance.

The French have recently been urging the Chinese Government to give them the concession, but have been replied to as above.

To-day the British minister came and informed me that French capitalists had approached British capitalists at home for the purpose of joining British and French capital in the enterprise, and that a joint meeting was to be held in London on October 20 to discuss the question.

He inquired if I thought American capitalists would join in such an undertaking. I replied that I did not know, but that I would wire the department what he had said, and that at any rate, whether they did or not, I should insist that the Chinese Government keep its promise with us. He told me that he had already telegraphed to London that the promise of preference was given by the Chinese Government as much to me as to him, and that American and British rights in the matter were equal.

I believe the Chinese Government is sincere in its expressed desire to favor American enterprises of this kind, but the outrageous action of the American-China Development Co. with the Hankow-Canton line has largely destroyed the faith of the Chinese in our capitalists.

I have, etc.,

E. H. CONGER.

[Inclosure 2.]

The British Ambassador to the Acting Secretary of State.

BRITISH EMBASSY,
Lenox, Mass., July 25, 1905.

DEAR MR. ADEE: You will recollect a conversation which I had with you toward the end of March last on the subject of the proposed railway from Hankow to Szechuen, when I mentioned to you that an English and French syndicate had come to an agreement with a view to joining in the construction of the line, provison being made for the participation of American and Belgian financiers should they wish to take part in the undertaking.

I am now in receipt of a telegram from Lord Lansdowne stating that His Majesty's Goverment consider that the time has come to call upon the Chinese Government to fulfill the promise which they made to His Majesty's Government in 1903 "with regard to the employment of British capital in the construction of the line, should Chinese capital not be sufficient."

His Majesty's Government accordingly propose to approach the Chinese Government with the object of obtaining a concession for the construction of the line, to be divided according to the terms of the agreement above referred to between the British and French syndicate, which has been approved by His Majesty's Government and the French Government.

Lord Landsdowne would be glad to be informed definitely whether it is still the wish of American capitalists to participate in the enterprise. In case American capital is forthcoming for the purpose I am to ask whether you would see any objection to putting the American group into communication with the British syndicate concerned—the Chinese Central Railways (Ltd.), 110 Canon Street, E. C. His lordship expresses the hope that he may be furnished with a reply at an early date, as it is desired to take action in the matter shortly.

Believe, etc.,

H. M. DURAND.

[Inclosure 3.]

The Acting Secretary of State to the British Ambassador.

DEPARTMENT OF STATE,
Washington, August 3, 1905.

MY DEAR MR. AMBASSADOR: I beg to acknowledge the receipt of your personal note of the 25th ultimo relative to the proposed railway from Hankow to Szechuen, in regard to which an English and a French syndicate have come to an agreement with a view to joining in the construction of the line, provision being made for the participation of American and Belgian financiers should they wish to take part in the discussion.

With reference to the promise made by the Chinese Government in 1903, you are so good as to inform me that His Majesty's Government now propose to approach the Chinese Government with the object of obtaining a concession for the construction of the line, to be divided according to the terms of the agreement above referred to, and ask whether the American capital is disposed to participate and to enter into communication with the Anglo-French syndicate.

In reply I would say that the department has not been advised of the intentions of American capitalists in this regard. I have thought it expedient, therefore, to cause appropriate publicity to be given to the matter.

I am, etc.,

ALVEY A. ADEE.

[Inclosure 4.]

The British Ambassador to the Acting Secretary of State.

BRITISH EMBASSY,
Lenox, Mass., September 19, 1905.

DEAR MR. LOOMIS: In a letter, dated August 3, which I had the honor to receive from Mr. Adee, relative to the proposed railway from Hankow to Szechuen, I was informed that the State Department had not then been advised of the intentions of American capitalists as regards their participation in the scheme.

I should feel greatly obliged if you would kindly inform me what has been the result of the action which Mr. Adee stated was being taken by the State Department in this question, as His Majesty's Government are anxious to obtain definite information on the subject.

Believe, etc., H. M. DURAND.

[Inclosure 5.]

The Acting Secretary of State to the British Ambassador.

DEPARTMENT OF STATE,
Washington, September 27, 1905.

MY DEAR MR. AMBASSADOR: I beg to acknowledge the receipt of your personal note of 19th instant, in which, with reference to the department's note of the 3d ultimo, you ask whether it has any information as the result of the action indicated in that note regarding the intentions of American capitalists in connection with the proposed railway from Hankow to Szechuen.

I regret that I am still unable to inform you in this regard. Notwithstanding the publicity which the department has on two occasions given to the matter, it has received no intimation of the intention of American capitalists as regards their participation in the scheme.

I am, etc., F. B. LOOMIS.

File No. 5315/212.

The Acting Secretary of State to Minister Rockhill.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, June 4, 1909.

Mr. Wilson acknowledges telegram of June 1 and directs Mr. Rockhill to inform foreign office that in view of reports that British, French, and German financial groups have under consideration agreement with China to provide loan for portion Hankow-Szechuen Railway this Government on June 2 recalled to British Government original understanding between China, Great Britain, and United States, stating at the same time that United States had taken no action which could be construed as relinquishment of right of American capital to participate in this enterprise.

WILSON.

File No. 5315/217.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, June 7, 1909.

Says that the substance of department's telegram of the 4th June was communicated to the foreign office on the 5th, and that on the

6th agreement was initialed by the representatives of Chinese Government and German, British, and French banks in Peking for a loan of five and a half million pounds sterling, 25 years at 5 per cent, the agreement to be formally signed when approved by Imperial edict to be issued shortly. Says that two million and a half were allotted for the construction of Hupeh-Hunan section of Canton-Hankow line and a like amount for the construction of main line Ichang to Kuang Hsui and branch line from Ching-men-chou through Sha-si to Hanyang, called Hupeh section of Szechuen-Hankow line; that balance of loan was allotted for redemption of bonds issued by American China Development Co.; and that the loan is guaranteed by the Chinese Government and is secured by revenues of the railways above mentioned and likin salt and imported rice taxes of Hupeh and general and salt likin of Hunan. Says that the price of bonds to the Chinese Government is 95. Adds that stipulations regarding construction, purchase of material, and general provisions are same as Tientsin-Pukow agreement.

File No. 5315/252–256.

Ambassador Reid to the Secretary of State.

No. 936.] AMERICAN EMBASSY,
London, June 8, 1909.

SIR: With reference to your cables of the 2d and 8th instant, both in regard to the construction of the Hankow-Szechuen Railway, I have the honor to inclose herewith copies of my notes to the foreign office based on the same, dated respectively[1] June 3 and June 8, and also a copy of a memorandum, also of this date, setting forth the views of His Majesty's Government on this question.

I have, etc.,

WHITELAW REID.

[Inclosure.]

Sir Edward Grey to Ambassador Reid.

FOREIGN OFFICE,
London, June 8, 1909.

MY DEAR AMBASSADOR: I send you the memorandum which I had intended to give to you to-day. I should have explained in giving it that nothing was further from our intention than to prejudice any rights or obligations which exist between the United States and the Chinese Government, but as far as the British financiers are concerned it is clear that they were entitled to act independently, and indeed could not be expected, after what had passed, to do otherwise.

Yours, etc.,

E. GREY.

[Inclosure.]

Memorandum from the British Foreign Office.

Whilst agreeing with the statement of the arrangements entered into in 1903 by the Chinese Government for the construction of the proposed Hankow-

[1] Not printed.

Szechuen Railway line, as set forth in the first two paragraphs of Mr. Whitelaw Reid's note of the 3d instant, it appears to His Majesty's Government that the subsequent features of the case have escaped the attention of the United States Government. The point of view of His Majesty's Government will perhaps be best elucidated by a brief recapitulation of these events as they are recorded in the archives of the foreign office.

In July, 1905, the question of raising a loan for the purpose of building this line arose, and His Majesty's ambassador at Washington was instructed to inquire whether American capitalists still desired to participate and to request that if American capital were forthcoming, the American group might be put in communication with the Chinese Central Railways (Ltd.) in London. Sir M. Durand was informed in reply that, notwithstanding the publicity given to the matter, no intimation had been received at the State Department as to any intention on the part of American capitalists to take the matter up.

In the meantime an agreement regarding railway construction in China was being discussed between certain British and French financial groups, and Sir M. Durand was instructed, by a telegram dated October 16, 1905, to inform the United States Government verbally that, as the conclusion of this agreement admitted no further delay, the British and French groups had decided to proceed in the matter of on the assumption that American capitalists did not desire to participate in the loan. On October 26 of that year His Majesty's ambassador reported by telegraph that he had made a verbal communication to Mr. Root in accordance with his instructions. No objections were raised at Washington to the course proposed, and on December 7, 1905, a copy of the Anglo-French agreement was communicated privately to Mr. Carter, of the United States embassy in London, at his request, under cover of a letter stating that, as the offer of a share of the loan to be reserved for American capital had not been taken up, that offer must be regarded as having lapsed. No reply appears to have been returned to this letter.

The negotiations entered upon in 1905 turned out to be of a complicated nature and have occupied the attention of the legations and the financial groups concerned almost continuously since that date. It is only in the last few weeks that a settlement has appeared in sight, as the result of much labor and considerable expense. The fact that these negotiations were proceeding has been a matter of common knowledge, and at no period since their inception has any intimation been received of a desire of American financiers to take part in them.

In these circumstances the United States Government will readily understand that His Majesty's Government would scarcely feel justified in interfering with the arrangements concluded, after such protracted and arduous negotiations and under their auspices, by the British financial group interested in the matter.

FOREIGN OFFICE,
June 7, 1909.

File No. 5315/285–286.

Ambassador Hill to the Secretary of State.

No. 331.] AMERICAN EMBASSY,
Berlin, June 9, 1909.

SIR: I have the honor to report that, in compliance with the department's telegraphic instruction of June 7, 1909, relating to the loan for the construction of the Hankow-Szechuen Railway, I saw in person, on the same day the instruction was received, the imperial secretary of state for foreign affairs, Baron von Schoen, to whom I made the communications contained in the instruction, leaving with him a memorandum, of which I inclose herewith a copy.[1]

Baron von Schoen listened to my statements until I had finished and then said: "We have taken no part as a Government in the ar-

[1] Not printed.

rangement of loans in China, and up to the present have left those matters entirely to the bankers."

The above sentence, which is cited verbatim, I have thought it desirable to report telegraphically, and have done so.

In further conversation Baron von Schoen said that his Government had so far refrained altogether from using influence to obtain loans for German banking houses, believing that the bankers understood their interests and did not require any Government action in their behalf. To this I said that if this were the universal rule, and if it were loyally observed, it might be best to leave those transactions entirely to those immediately concerned in them; but as matters now stand, since some governments use great pressure to obtain advantages for their nationals, it could not be to the others a matter of indifference if their citizens fail to receive due consideration, especially when that had been specifically promised.

When I had completed my communication and reached the point in the conversation which I have just stated, I asked Baron von Schoen if he had seen the announcement in the Paris edition of the New York Herald for June 7, 1909, reading:

> The final draft of the Yangtze Railroad loan agreement was signed to-day (June 6) by the Grand Councillor Chang Chih-tung and representatives of the German, English, and French banks.
>
> The terms * * * are for a total of five and one-half millions sterling, divided equally among the German, English, and French banks; the Germans to furnish the engineers and the materials for the Hankow-Szechuen line, and the English and French furnishing the engineers and materials for the Hupeh-Hunan of the Hankow-Canton line.

He replied that he had seen this announcement, but thought there might still be room, notwithstanding an apparent fait accompli, for negotiations of the New York group of bankers with the others.

In the course of a friendly discussion of the subject which followed after I had informed the secretary that my official business had come to an end, I stated that, in my personal opinion, my Government was, perhaps, the least aggressive of any of the great powers in demanding from the oriental countries special privileges of any kind, never having asked for anything but an open door and a fair field. On the other hand, I did not think my Government would find it possible to neglect the interests of American capital and enterprise in the East by passing over in silence the efforts of other Governments to secure special favors for their nationals to the exclusion of Americans; and I was glad to believe that the Imperial Secretary coincided with me in accepting the correctness of that position, and he was certainly able to aid in giving it support. Baron von Schoen assented to this view as being right and reasonable, and repeated the statement that Germany had up to the present pursued the policy of nonintervention in the matter of loans in China. I asked him if I might report that attitude to my Government, and he replied that he would be glad to have me do so.

I have, etc.,

DAVID J. HILL.

File No. 5315/226b.

The Secretary of State to Ambassador Reid.[1]

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, June 9, 1909.

Mr. Knox directs Mr. Reid to see the minister for foreign affairs at the earliest possible moment and to personally and informally discuss the present situation in China. Tells him to point out the menace to foreign trade likely to ensue from the lack of proper sympathy between the powers most vitally interested in the preservation of the principle of equality of commercial opportunity, and to add that the Government of the United States regards full and frank cooperation as best calculated to maintain the open door and the integrity of China, and to state that the formation of a powerful American, British, French, and German financial group would further that end. Directs him to state that this Government holds that the understanding with China of 1904 insures to American and British capital prior consideration in the flotation of a loan for the Hankow-Szechuen Railway, but that, notwithstanding this fact, the United States deems that an understanding between the American, British, French, and German groups would create a highly desirable community of interests. Adds that it is understood that the loan recently contracted embraces only the Hupeh portion of the proposed Hankow-Szechuen line, and suggests therefore that to include the entire road in the loan agreement and admit equal American participation would afford a satisfactory solution of this question.

File No. 5315/407–411.

Chargé Fletcher to the Secretary of State.

No. 1175.] AMERICAN LEGATION,
Peking, June 9, 1909.

SIR: Confirming my telegram of the 7th instant, I have the honor to inclose copy of the agreement between Chang Chih-tung, director general of the Canton-Hankow Railway and of the Hupeh section of the Szechuen-Hankow Railway, and the Deutsch-Asiatische Bank, the Hongkong and Shanghai Banking Corporation, and the Banque de l'Indo-Chine for a loan of five million five hundred thousand pounds (£5,500,000) sterling.

The proceeds of the loan are to be devoted to the construction by China of the Hupeh-Hunan section of the Canton-Hankow Railway and of the Hupeh section of the Szechuen-Hankow Railway and the redemption of the outstanding bonds issued by the American-China Development Co. on behalf of the Chinese Government on account of construction of the Hankow-Canton Railway.

The Hunan-Hupeh section of the Canton-Hankow Railway extends from Wuchang, the capital of Hupeh Province, through Yo-

[1] Same to American embassies at Paris and Berlin.

chou and Chang-sha, the capital of Hunan, to a point on the southern boundary of Hunan, connecting with the southern or Kuangtung section of the Canton-Hankow Railway.

The Hupeh section of the Szechuen-Hankow Railway extends from Ichang in Hupeh to Kuang-Hsui on the Peking-Hankow Railway, passing through Ching-men-chou and Haiang-yang, and includes also a branch line from Ching-men-chou through Shasi to Hanyang.

Two million five hundred thousand pounds is allotted to the construction of each of these sections, and £500,000 to the redemption of the American-China Development Co.'s bonds. If any excess of the latter sum remains after retirement of these bonds it is to be applied to construction of the Hunan-Hupeh section of the Canton-Hankow Railway.

The rate of interest on the loan is 5 per cent, and the term is 25 years. After 10 and up to the end of the seventeenth year of the loan China has the right to redeem the whole or any part of the loan at a premium of 2½ per cent of face value of the bonds. The price of bonds to the Chinese Government is fixed at 95.

The loan is guaranteed by the Imperial Chinese Government and is secured by—

(1) Hupeh general likin, amounting to 2,000,000 haikwan taels a year;

(2) Hupeh additional salt tax for river defense, amounting to 400,000 haikwan taels a year;

(3) Hupeh new additional 2-cash salt tax of September, 1908, amounting to 300,000 haikwan taels a year;

(4) Hupeh collection of Hukuang interprovincial tax on imported rice, amounting to 250,000 haikwan taels a year;

(5) Hunan general likin, amounting to 2,000,000 haikwan taels a year;

(6) Hunan salt commissioner's treasury regular salt likin, amounting to 250,000 haikwan taels a year, which are declared free from all other imposts and charges.

It will be noted that the general terms are similar to those of the Tientsin-Pukow Railway loan agreement, forwarded in my No. 817, of January 17, 1908. Two foreign chief engineers and two auditors, one for each section, respectively, are provided for, but do not seem to possess any real power to check expenditure.

The clause with reference to the abolition of likin is in the same language as Tientsin-Pukow agreement. The banks themselves or their agents will act as agents in the purchase of materials, etc. Chinese materials will be given preference, but if foreign materials are required those of German, British, and French origin will be given preference at equal prices. The agents will receive a commission of 5 per cent on purchase of foreign materials, but no commission on Chinese goods.

It is also provided that branch lines in connection with the railways named shall be built by China with such funds as she may have, but if foreign capital is required preference will be given to the banks mentioned. It may be that the banks will contend that this article gives them preference in the further extension into Szechuen, but it is the present intention of the Chinese Government to build that extension with Chinese funds, as the people of Szechuen strongly object to a foreign loan in this connection.

The agreement also provides for delegation and subdelegation of rights of the banks, but only to German, British, or French concerns.

I am confidentially informed by the representative of the British & Chinese Corporation, whose name does not appear in the agreement, but which is no doubt interested with the Hongkong & Shanghai Banking Corporation, that Chang Chih-tung has given an assurance in writing to the banks that the Imperial Government will not delegate its authority to the Provinces, as was done in the Kiang-su Railway, and that the local gentry will not be allowed to interfere in the matter.

The British & Chinese Corporation were originally interested in the Canton-Hankow Railway loan, but by insisting on stricter terms incurred the displeasure of the Chinese authorities and were excluded from active participation in this loan. I am told by its representative, Mr. Bland, who leaves shortly for London, that an effort will be made by his principals to interest American capital also, and that they will be prepared to lend China all the money she wants. It is very likely that money will be offered to China freely on terms as good or better than these, and there is some danger that she will be tempted to borrow more than sound principles of finance will justify.

Referring to the assurances given by China to Mr. Conger in 1904 and 1905, which have formed the subject of recent telegraphic correspondence between the department and the legation, I have the honor to inclose translation of the notes on which our rights to participate in a foreign loan for the Hankow-Szechuen Railway are based. The department will note that Mr. Conger, in reporting this matter, placed a stronger construction on these assurances than would seem to be justified by the translations inclosed. The validity of these assurances has not, however, been called in question by the Wai-wu Pu in the interviews with Mr. Rockhill and myself, and the legation is proceeding on the assumption that they are recognized as binding.

Immediately upon receipt of the department's telegram of May 24 last on this subject, Mr. Rockhill took up the matter with the Wai-wu Pu and in three or four personal interviews urged our claim in the premises. He was informed that the foreign office had no authority in the matter; that Chang Chih-tung has been solely empowered by imperial edict to deal with it; that they would inform him of our position and claim.

On receipt of your telegram of the 4th instant I went, on the 5th, to the foreign office and insisted upon our right to be consulted in accordance with the assurances heretofore given and informed them that we were in a position to take up the matter. I was informed that our representations had been communicated to Chang Chih-tung, who had made no reply.

On returning to the legation, I embodied your instructions in a note, copy of which I inclose.

The substance of your telegram of the 8th instant will be communicated to the Prince of Ching this afternoon and I have also asked for an appointment with Chang Chih-tung, the director general of the Hankow-Szechuen Railway, to whom I will also communicate its contents to-day or at the very earliest opportunity.

I have, etc.,

HENRY P. FLETCHER.

[Inclosure 1.]

Chargé Fletcher to the Prince of Ching.

AMERICAN LEGATION,
Peking, June 5, 1909.

YOUR IMPERIAL HIGHNESS: In further reference to the representations made by Mr. Rockhill and myself to Your Highness's board recalling the assurances given to this legation in 1904, to the effect that in case China was unable herself to provide the funds necessary for the construction of the Hankow-Szechuen Railway, American and British capitalists would simultaneously be notified, and informing Your Highness's board that the American Government held that this assurance guaranteed to American and British capital the preference in a foreign loan floated for this purpose, I now have the honor to inform Your Highness that the American Government, in view of the reports that British, French, and German financial groups have under consideration an agreement with China to provide a loan for the construction of a portion of this line, has recalled to the British Government the original understanding between China, Great Britain, and the United States, and has informed that Government that the United States has taken no action which could be construed as a relinquishment of the right of American capital to participate in this enterprise.

This legation has been informed that the representations heretofore made on this subject have been communicated to His Excellency Chang Chih-tung, director general of the Hankow-Szechuen Railway, and the attitude of my Government on the subject made clear to his excellency, but that he has made no reply on the subject.

I now have the honor to request Your Highness's board at once to notify His Excellency Chang Chih-tung and the other officials charged with this matter that the American Government insists that the assurances of 1904 be observed, and that American capitalists be consulted and allowed to participate in the loan about to be floated.

I trust that I may be favored with an early reply which I may communicate to my Government at Washington.

I avail, etc.,

HENRY P. FLETCHER.

[Inclosure 2.—Translation.]

The Chinese Foreign Office to Minister Conger.

FOREIGN OFFICE,
Peking, August 15, 1903.

We have the honor to acknowledge the receipt yesterday of Your Excellency's note,[1] saying that you had read in a London newspaper a statement to the effect that two British companies had applied to the Chinese Government for a concession to build a railway from Hsin-yang, in Hunan, via Hsiang-yang in Hupeh to Ch'eng-tu, Szechuen; that the said paper also said that there were Chinese who desired to construct the road, and that in the future, if foreign capital should be borrowed, it was proposed to first consult with the aforesaid two companies; that Your Excellency had to state clearly that your countrymen had long ago asked for a concession to build through the region mentioned, and that you had talked with us about it in a personal interview and had said that if it should be desired to borrow money for this purpose offers ought first to be made to the Americans; that if it should be allowed foreigners to construct the road, the concession ought first to be offered to Americans; that if arrangements should be made with others which would interfere with the just rights of Americans, you must enter your protest against them.

Our board finds on examination that with respect to the building of the Hankow-Szechuen Railway an English company had applied in the XXV year of Kuanghsu for such a concession, which was not granted; afterwards, in the fourth moon of the present year, the British chargé, Mr. Townley, had several times requested that the concession be given to British companies, and at that time our board replied that it had originally been proposed that the Chinese should themselves construct this road; that if in the future it should appear that the capital was not sufficient or that foreign capital ought to be borrowed,

[1] See p. 175.

since British and American companies had successively applied for concessions to build the road, when the time came application could be made to the British and American companies. In short, when companies of various nationalities apply to China for railway concessions, it must always remain with China to decide the matter. It is not possible to regard an application not granted as conferring any rights or as being proof that thereafter application must first be made to the persons concerned.

As in duty bound, we send this reply for Your Excellency's information.

We avail, etc.,

(Sixth moon, 23d day.)

[Inclosure 3.—Translation.]

The Prince of Ching to Minister Conger.

FOREIGN OFFICE,
Peking, July 18, 1904.

I have the honor to acknowledge the receipt of Your Excellency's letter of recent date, as follows:

I have the honor to inform Your Imperial Highness that I am in receipt of a letter from Mr. A. W. Bash, agent of the China Investment & Construction Co., requesting me to forward to Your Imperial Highness the inclosed letter, in which he makes application for a concession to provide a loan for the construction of a railway line from Ch'eng-tu, Szechuen, to Chungking and Hankow, in case the viceroy of Szechuen should find himself unable to prosecute his reported plan to raise money from native sources for such a line. He begs that your board will place his application on file. I have much pleasure in complying with Mr. Bash's request, and so forward the application inclosed.

In regard to the above I have the honor to state that the viceroy of Szechuen is even now engaged in selling shares and accumulating capital from Chinese sources for the purpose of building the line from Hankow to the Province of Szechuen. It is not intended that foreign capital shall be used, but if in the future the native capital proves to be insufficient, or if a time comes when they wish to borrow funds from foreigners to fill in with, then will the matter be dealt with as proposed in the letter written by my board to Your Excellency in the sixth moon of last year (Aug. 15, 1903), and companies composed of Englishmen and Americans will be consulted. As for the application of the China Investment & Construction Co., it can not be conveniently granted for the present.

It is my duty in the permises, therefore, to make this reply to Your Excellency, that you may be informed of the matter, and I trust that Your Excellency will issue proper instructions to the above-mentioned company.

I take, etc.,

File No. 315/227.

Ambassador White to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Paris, June 10, 1909.

Acknowledges telegram of June 9, 7 p. m., and says he has just had interview with the minister of foreign affairs, but that his note, though marked urgent and delivered yesterday, had not yet reached him. Says that he read the minister a paraphrase of department's instruction of June 7, 7 p. m., and that the minister said:

Why did not your Government let the other Governments know of Chinese assurance of 1904 before the signature of railroad loan agreement, negotiations for which have been in progress for months past between certain French, British, and German financiers, and to which, when completed, the three Governments gave their assent?

To which he added that he would have been very glad to see American participation in loan, but he feared the only way now for us to

do so would be to come to an understanding with the financiers concerned in it. Says that general conversation on lines of department's telegram of June 9, 7 p. m., then ensued. The minister concurred in department's view as to desirability of sympathy and cooperation between powers interested in open door and integrity of China; but with regard to suggestion in final paragraph of telegram he feared the agreement signed last Sunday, while only immediately affecting Hupeh portion, provided for the entire line in respect to which it is to become progressively operative. The minister was, however, vague as to details, but promised to inform himself accurately before Saturday next, when Mr. White is to see him again at 11.30. The minister several times repeated regret at not having known before of the Chinese promise, and concluded by suggesting that the agent of American financial group now coming to Europe had better approach those concerned in loan in Paris and elsewhere over whom respective Governments now have no direct control, having merely approved arrangement made by them.

File No. 5315/227.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, June 10, 1909.

Says that the department's telegram of the 7th was communicated to Prince Ching yesterday, and that to-day he had a long interview with Chang Chih-tung, who negotiated the loan. Chang informed him that if American capitalists had come forward during the negotiations he would have had no objections to allowing them to participate, but he was of opinion the matter had now gone too far to be reopened. Says he was assured by Chang and Wai-wu Pu that other foreign loans will be needed, and that American participation in them will be welcomed by China.

Says department's telegram of the 4th was received after interview with Chang; Mr. Fletcher conferred with colleagues and the representatives of the groups in Peking, and they are of opinion, which he shares, that American suggestion to include the whole Hankow-Szechuen line is impracticable at the present time, because the people of Szechuen are opposed to employment of foreign capital and are now raising funds from native sources for the construction of Szechuen portion of line. Adds that later on foreign capital may find employment in the construction of Szechuen portion, but at present natives of that Province are convinced that they are able to finance it.

Mr. Fletcher says the representatives of the groups here seem disposed to regard American cooperation in future business favorably, but think it is too late, as well as inexpedient, to try to delay final signature of the present agreement, which was reached after much difficulty, and that they will probably use every effort to have edict issued at once.

Says he has taken up with the president of Wai-wu Pu informally suggestion as to loan for entire line. The President is also of opinion the present is inopportune time to open discussion of project, but if foreign capital needed later American capital will have every opportunity.

File No. 5315/232.

Ambassador White to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Paris, June 12, 1909.

Refers to his telegram of June 10, midnight, and says that the minister for foreign affairs in further interview this morning repeated regrets and surprise at failure of United States to take action before signature, as negotiations were going on at Peking and in Europe for more than six months past and were widely known. The minister added, when Anglo-French Co., known as Chinese Central, formed in 1905, offers of participation were made to United States and officially declined through British ambassador at Washington, since which French Government has been unaware of any desire on part of United States to participate financially in Chinese development. The minister has acertained that the agreement signed 7th, which only lacks imperial decree to make it final, includes Hankow-Canton as well as Hankow-Szechuen line, and pointed out that it provides for equality of competition as regards supplies and materials, consequently he suggested if American financial group is able to underbid those of three signatory groups contracts could probably be awarded to it in that connection; otherwise he doubts possibility of American financiers now obtaining share in this particular enterprise, but the minister expressed cordial approval of American participation in Chinese development and readiness cordially to support it in future. Adds that a note in reply to his note of the 9th will be sent next week.

File No. 5315/227.

The Secretary of State to Chargé Fletcher.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, June 12, 1909.

Mr. Knox refers to legation's telegram of June 10, and says the British, French, and German ministers for foreign affairs recognize the importance of the suggestion for financial cooperation advanced in the department's telegram of June 9. Informs him that the German minister for foreign affairs has promised to take the matter up with the German bankers and is favorable to a group including Americans, and that the French minister for foreign affairs has stated that he would have been glad to see American participation, and suggests the necessity for American groups to reach an under-

standing with the financiers interested. Mr. Reid says that in his conversation on this subject with Sir Edward Grey, pointed out that of two joint national concessionnaires one can not have the right to fix the period at which the right of the other shall perish through nonuser, and adds that this view will be embodied in a memorandum which will be handed by the British foreign office to the British financiers concerned.

Says it would seem from this that the British, French, and German Governments consider that American participation in the Hankow-Szechuen loan should be arranged with the financiers themselves, and that the American group is now prepared immediately to enter on such negotiations with the British, French, and German financiers when the Chinese Government has fulfilled its clear duty by informing the representatives of the groups with whom this loan has been tentatively negotiated that American capitalists must be admitted. Adds that this is particularly essential, inasmuch as telegrams from the embassies at London and Paris indicate that in addition to the contract for the Hupeh section of the railway an understanding at least has been reached regarding the future financing of the remainder of the line. Directs that he ascertain the truth of this statement.

Mr. Fletcher is instructed to insist that the foreign office take action as suggested, and to state that, in accordance with the express agreement of the Chinese Government, the Wai-wu Pu should have notified the American minister of China's desire to float a loan for the Hankow-Szechuen Railway. Says that no such notification was received, and that this Government holds that the fact that negotiations have gone so far and that the representatives at Peking of the foreign groups would have it now considered too late to try to delay final signature of the present agreement does not in any wise absolve China from her plain responsibility to us. Mr. Fletcher is directed to remind the Wai-wu Pu that the loan contract was initialed on June 6, despite the fact that the legation had on several occasions prior to that date called attention to the assurances given by the foreign office to Mr. Conger in 1904. Says he may intimate, moreover, if it seems advisable, that in view of the above the present assurance that American capital will be granted participation in future loans can scarcely be considered a *quid pro quo* sufficient to warrant a waiver of present undoubted rights. Says China's failure to meet the just claim of the United States would be practically to evade a solemn obligation and would show an unfortunate lack of appreciation for the consideration which this Government has so long shown the Government of China and would not be compatible with China's repeated professions of friendship and good will.

Quotes the following ideas for Mr. Fletcher's information and for such use in the discussion of the question as he may deem discreet: Railroad loans floated by China have in the past generally been given an imperial guaranty and secured by first mortgage on the line when constructed. As far as the department is aware, these conditions were first altered in the case of the Tientsin-Pukow line, when provincial revenues were pledged as security for the loan. The proposed hypothecation of Chinese internal revenues for a loan in the flotation of which the United States is entitled to participation at least must, therefore, be regarded as involving serious political con-

siderations. While holding, therefore, that the assurance of 1904 of itself gives American capitalists rights equal to those granted British interests and superior to those claimed by others, the fact that the loan is to be secured on likin revenues makes it of the greatest importance that the United States should participate therein in order that this Government, owing to its lien on the provincial revenues, may be in a position to exercise an influence equal to that of the other three powers in any question arising through the pledging of these levies and to enable the United States moreover, at the proper time, again to support China in her endeavor in securing the abolition of likin and the increase of the customs tariff.

Adds that the department feels that in view of the unvarying friendship which the Government of the United States has shown toward China the Chinese Government should itself be the first to desire the salutary influence of direct American interest in this great investment.

File No. 5315/298.

The British Ambassador to the Secretary of State.

BRITISH EMBASSY,
Washington, June 14, 1909.

DEAR MR. SECRETARY: You will doubtless have already heard from your ambassador in London of the conversation that has passed between him and Sir Edward Grey regarding the proposed Hankow-Szechuen Railroad in China. I need therefore only observe that in July, and again in September, 1905, my predecessor at Washington inquired of the United States Government whether any American financiers desired to take part in that enterprise, and that your Government replied that the project had been announced publicly, but that no American financiers had intimated any wish to take part in it, and that thereupon my predecessor had, in October, 1905, verbally informed the United States Government that the British and French financial groups who were backing up the matter had under the circumstances assumed that American financiers had no wish to join and were proceeding upon that assumption. No objection was then or subsequently taken by the United States Government, and the United States embassy in London was informed that any suggestion or offer on the part of American financiers must be considered to have lapsed.

As His Majesty's Government now gather from your ambassador in London that a wish to join in the enterprise has now been expressed by some American financiers, I am instructed to say to you that nothing is or could be further from the wish of His Majesty's Government than to do anything which could be prejudicial to any rights or obligations existing between the United States and China. But so far as British capitalists are concerned, the action of the latter in going on alone appears to His Majesty's Government to have been justified under the circumstances, and they could not have been expected, after what had passed, to have done otherwise.

His Majesty's Government therefore earnestly hope that the United States will, having regard to these facts, think fit to instruct their

minister at Peking not to place obstacles in the way of the issue of an imperial edict approving the agreement for the making of the railroad which has been already signed. That agreement has been the outcome of protracted and difficult negotiations; were it now to be prevented from taking effect a situation would arise which His Majesty's Government could not view without serious apprehensions.

I am further instructed to convey to you the suggestion of His Majesty's Government that it would be desirable that, in any further arrangements regarding a loan in which a recently formed group of American financiers might desire to take part, communications should be addressed to the British, French, and German banks concerned.

I am, etc.,

JAMES BRYCE.

File No. 5315/247.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, June 15, 1909.

Says that Liang has had an interview with Chang and has explained to him the purport of department's telegram of the 12th. Chang later says he is willing to allow American participation in the present loan if the foreign bankers will agree, but he does not feel like asking them to admit us. Says that Chang has promised to delay memorializing for edict until time has been given to reach a solution if possible. Mr. Fletcher has been asked how far the United States would desire to change the present agreement. Says that the British and Germans are given greater rights in regard to chief engineers and auditors than French, who only participate in the financing and have equal preference in regard to materials.

Mr. Fletcher asks if the American group would be content to participate in the loan on the same footing as the French, and how much of the loan would they be satisfied with.

FLETCHER.

File No. 5315/248.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, June 16, 1909.

Mr. Fletcher states he is informed that representatives of the groups here have telegraphed their principals recommending American participation in the present loan, and adds that if such is the agreement, some one here should be authorized to sign for the American group without waiting for arrival American representative, as such delay would jeopardize successful issue.

File No. 5315/249.

Ambassador Hill to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Berlin, June 16, 1909.

Mr. Hill says that he has received a memorandum from the Foreign Office which is a reply to his of June 8 and 10, as follows:

The Imperial Government learns with satisfaction that American financiers intend to cooperate with those of Germany, England, and France in the construction of railways in China. It sees in this a fresh guaranty for the policy of the open door always pursued by the Imperial Government, and in the pursuance of which policy it has repeatedly concurred with the aims of American policy.

The Imperial Government has informed the financiers in question of the intentions of the American financiers. In what manner the various financial groups will arrange matters among themselves must, in the opinion of the Imperial Government, be left to these groups to decide, as was done in the German-English-French arrangement already made. Until now the Imperial Government was not aware that American financiers had any prior claims relating to the Hankow-Szechuen Railway.

File No. 5315/258–259.

The Secretary of State to Chargé Fletcher.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, June 16, 1909.

Mr. Knox acknowledges legation's telegram of the 15th, and informs Mr. Fletcher that the American group is willing to participate in this loan on the French basis—that is, 25 per cent of the total loan on terms identical with those of the French, having equal preference with French, British, and Germans in regard to all financial relations as well as to materials; says that, owing to the fact that the British, French, and German groups have so nearly reached the conclusion of their negotiations prior to the formation of the American syndicate, the American group will not insist upon rights in regard to chief engineers and auditors; informs him that in signifying its readiness to participate in this loan as above on the general outline which Mr. Fletcher already has telegraphed, the American group does not wish to consider itself bound by any provisions of the agreement not known to it and which may impose obligations upon it of which it knows nothing; adds that the American group expects, moreover, in addition to participation on the basis named, equal rights to appoint its own representative to act with the banking representatives of the other groups as provided in article 7 of the Tientsin-Pukou agreement, a copy of which agreement has been submitted to the members of the groups; but it does not feel competent to approve the terms of this agreement in entirety, owing to lack of knowledge as to what portion thereof governs present contract. Mr. Knox says it is assumed that in adapting the terms of the Tientsin-Pukou agreement to meet the conditions created by the introduction

of American and French in addition to British and German interests in the recent agreement, consideration will be shown to the special requirement of the American market covering engraved bond, etc., etc.

Mr. Fletcher is directed, when informing his inquirer concerning this attitude of the American syndicate, to point out that in taking this position the American group is influenced by its desire to establish harmonious relations with the British, French, and German interests in order to secure cordial cooperation in future enterprise, and that its action in waiving what might be claimed to be its just right may not be regarded as creating a precedent as to the basis for future participation in foreign financial operations in the Chinese Empire.

Refers to legation's telegram of the 16th, and says in case the British, French, and German groups are ready to accept American participation on the basis above stated he is authorized to sign this agreement on behalf of American syndicate.

File No. 5315/284.

Ambassador Hill to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Berlin, June 22, 1909.

Mr. Hill reports that the secretary of state for foreign affairs has informed him that the Imperial German Government has recommended to the German bankers to arrange for American participation in Hankow-Szechuen loan, and that the secretary does not doubt that the German bankers will follow this advice, adds that, in the secretary's opinion, it will facilitate a good understanding if the American bankers will not delay nor essentially modify the existing agreement with the Chinese Government, and will make their conditions as light as possible.

File No. 5315/305.

The British Ambassador to the Secretary of State.

BRITISH EMBASSY,
Northeast Harbor, Me., June 22, 1909.

DEAR MR. SECRETARY: I have just received from His Majesty's Government a dispatch which I hasten to communicate to you. They wish your Government to understand that they should very gladly recognize American cooperation in the matter of the Hankow-Szechuen loan, if the agreement which has been already concluded in China and now awaits only the requisite imperial sanction be not endangered, and if the protest lodged by your Government on the subject is waived and arrangements of a satisfactory nature are made between United States financial houses and the European financial groups that are concerned. The British group, however, state that

no person entitled to represent the American banks has arrived in London, and that accordingly there is no person with whom they can communicate in the matter. Messrs. J. P. Morgan & Co.'s London branch say that they have no information.

I shall be greatly obliged if you can let me have your view at as early a moment as possible.

Believe, etc.,

JAMES BRYCE.

File No. 5315/298.

The Secretary of State to the British Ambassador.

DEPARTMENT OF STATE,
Washington, June 23, 1909.

MY DEAR MR. AMBASSADOR: I beg to acknowledge the receipt of your letter of June 14 on the subject of the Hankow-Szechuen railway loan and the participation therein of the American group.

The assurance of the British Government that nothing is or could be further from their wish than to do anything which could be prejudicial to any rights or obligations existing between the United States and China is duly noted, although I should add that, even in the absence of this specific assurance, the Government of the United States could not have entertained any doubt that such would be the attitude of the Government of His Britannic Majesty.

After citing certain details of the arrangements and negotiations which were conducted by or on behalf of the bankers themselves, your excellency, I observe, gives me to understand that your Government, with a very proper regard for the interests of the British bankers, has been not without some apprehension lest these might possibly suffer by the insistence of the Government of the United States upon its right to demand of China an equal share in the proposed loan.

I am happy in turn to assure your excellency that the Government of the United States would certainly not wish to injure by its policy the legitimate interests of the British, French, or German bankers affected. This Government does not, however, share in the apprehension which your Government at first felt, and I am happy to find myself quite persuaded that the maintenance of our rights would in no wise jeopardize the interests of the British subjects in the arrangement. I need hardly assure you that our attitude will be as considerate of these interests as our plain duty shall permit.

On Thursday the 17th, again on Friday the 18th, and again on Monday the 21st, Mr. Mitchell Innes, of your embassy, who made inquiries on your excellency's behalf, was most fully and frankly explained the position of the United States; knowing that you had thus been informed, I had not hastened to reply to your letter now under acknowledgment. I am sure, also, that what has been communicated through Mr. Innes will have made clear to your excellency the fact that the Government of the United States finds itself entirely unable to modify the instructions to the legation at Peking or to admit that a third government, and much less that a group of foreign bankers, could expect to induce this Government to relin-

quish a right acquired for the benefit of its citizens through an official assurance from another government.

I am happy to say that our latest advices from Peking indicate that the loan agreement may soon be settled upon a basis of equal participation. Apparently it remains only for the British, French, and German bankers to come to terms with our own in a manner which this Government could accept as satisfactory. As we all know, foreign bankers in China are quite dependent upon their home governments, and it is a corollary to this fact that it would be extremely easy for the Governments concerned to put an immediate stop to the present controversy by informing their bankers that they should yield to the American group the share to which this Government holds a right over them by the pledge of China.

I am, indeed, to-day informed that the German Government has already adopted this course.

I am, etc.,

P. C. KNOX.

File No. 5315/301.

The British Ambassador to the Secretary of State.

BRITISH EMBASSY,
Northeast Harbor, Me., June 24, 1909.

DEAR MR. SECRETARY: I am desired by His Majesty's Government to say to you that there would appear to be some misapprehension in the mind of your Government as to the attitude of His Majesty's Government. Sir Edward Grey's idea in speaking to the United States ambassador in London was not to refer the United States to the British bank in China, but to suggest that a representative of the United States syndicate should meet in Europe representatives of the British, French, and German groups, and should arrange all details as to financial cooperation of the former on the understanding that the agreement already signed is left undisturbed. Sir Edward Grey is most anxious that an arrangement should be concluded for the participation of the American group and he still believes that this is the only means by which continued confusion can be avoided. As regards the matter of the "likin" dues which are pledged for payment of interest on the loan, no question of interference with Chinese administration will arise. According to the agreement concluded it is provided that the hypothecation of "likin" shall not interfere in the matter with the reform of the customs or alterations in the tariff, and that, should the "likin" dues be hereafter abolished, some other security will be provided by China in its place. His Majesty's Government understands that the French and German groups are as desirous as is the British group of welcoming American cooperation and are equally convinced that the best mode of arriving at a practical solution will be that representatives of all four groups should meet as soon as possible in conference in London or in one of the continental capitals. The United States representative would be furnished with the agreement concluded and would be supplied with all information.

I hope that you will see in this suggestion a means of speedily adjusting the matter, and I trust to have an early expression of the views of your Government.

I am, etc.,

JAMES BRYCE.

File No. 5315/289.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, June 24, 1909.

Mr. Fletcher reports that Liang has informed him that he has notified the representatives of the groups here that the loan will not be concluded unless the bankers settle with the American group; adds that Liang hopes matter can be speedily adjusted; that United States will be content with equal financial participation in this instance and not insist on equal right to furnish material.

File No. 5315/299.

The Acting Secretary of State to Ambassador Hill.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, June 25, 1909.

Mr. Wilson informs Mr. Hill that his telegram of the 22d is gratifying, and points out that terms on which American bankers are willing to participate are contained in departments's telegram of the 16th to Peking, quoted to him in telegram of June 19. Instructs Mr. Hill for his own guidance, and only if it should appear that there is some misunderstanding, that it should be made clear that this Government in waiving its just right for American capital to cover one-half of the Hankow-Szechuen loan expects substituted an American share of one-fourth of the total sum involved in the whole of the present loan agreement, including the Hupeh-Hunan section of the Canton-Hankow line as well as the Hupeh portion of the Hankow-Szechuen line.

Quotes telegram of 24th, from Peking,[1] and adds that the department is insistent that American participation will include equal right to furnish materials and has so informed Peking.

File No. 5315/299.

The Acting Secretary of State to Chargé Fletcher.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, June 25, 1909.

Mr. Wilson quotes telegram of the 22d instant from Berlin,[1] and informs Mr. Fletcher that the terms on which American bankers

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[1] Supra.

are willing to participate are contained in department's telegram of June 16. States for his own guidance, and only if it should appear that there is some misunderstanding, that it should be made clear that this Government, in waiving its just right for American capital to cover one-half of the Hankow-Szechuen loan, expects substituted an American share of one-fourth of the total sum involved in the whole of the present loan agreement, including the Hupeh-Hunan section of the Canton-Hankow line, as well as the Hupeh portion of the Hankow-Szechuen line. Refers to Mr. Fletcher's telegram of the 24th instant, and directs him to inform minister foreign affairs that the Government of the United States is gratified to learn that the loan will not be concluded without American participation. Adds that this Government, however, insists upon its equal right to furnish materials.

File No. 5315/334–335.

Ambassador Reid to the Secretary of State.

No. 953.] AMERICAN EMBASSY,
London, June 25, 1909.

SIR: With reference to my dispatch No. 941, of the 15th instant, and previous correspondence on the subject of participation of American financiers in the Hankow-Szechuen Railway loan, I have the honor to inclose herewith a copy of a note from the foreign office, dated the 23d instant, in reply to mine of the 12th instant (a copy of which was sent to the department in my dispatch 941 mentioned above).[1] The substance of the note of the 23d instant was cabled to the department on the same day.

I have, etc.,

WHITELAW REID.

The Minister for Foreign Affairs to Ambassador Reid.

FOREIGN OFFICE,
London, June 23, 1909.

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 12th instant on the subject of the proposed participation of American financiers in the Hankow-Szechuen Railway loan.

I entirely agree with all that your excellency says as regards the danger that would arise in China from the pursuit of conflicting interests and the consequent disagreements among western nations.

As I had the honor to explain verbally to your excellency, I also concur entirely in your view that, as a doctrine of international law, one of two joint concessionaires has no power to fix the term when the right of the other to its share in a concession should lapse through nonuser. I suggest, however, to your excellency that in certain matters of business that do not admit of indefinite delay circumstances arise which justify, and indeed compel, one party to a bargain to assume that the other party no longer desires to adhere to the arrangement if the latter party, after reasonable notice, gives no indication of its wishes. In the present case several years' notice was given, and it was not until the negotiations between China and the European groups concerned had been proceeding quite openly for many months and had, subject to imperial sanction, reached a successful issue that any claim to participation was put forward on behalf of American financiers.

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[1] Not printed.

The agreement which has been reached between British, French, and German financial groups and the Chinese Government is to the following effect:

A loan of £5,500,000 is to be raised by the three groups in equal shares for the construction of railways in Hupeh and Hunan.

The portion of the Hankow-Canton Railway which lay in these Provinces is to be constructed by a British chief engineer.

About 500 miles of the Hankow-Szechuen Railway, including branches, all in Hupeh, is to be constructed by a German chief engineer, and the remainder of the lines in Hupeh by a French engineer.

It is further agreed between the three groups that endeavors should be made to secure an extension of the line to Ch'eng-tu, the capital of Szechuen, to be constructed partly by a French and partly by a British chief engineer in such a manner that of the whole line from Hankow to Ch'eng-tu about a third each should be intrusted to German, French, and Bhitish chief engineers.

I venture again to express the hope that the American group will place no difficulties in the way of securing imperial sanction for the agreement which has been reached.

As regards, however, the participation of American capital in financial loans in China, I have the honor to suggest that the American group should place themselves in communication with the British, French, and German syndicates concerned.

His Majesty's Government entirely approve and welcome in principle the participation of American capital in Chinese railway loans, and they hope that an arrangement may yet be arrived at for an equal participation between the American and other foreign banks in the loan in question, leaving undisturbed the agreement concluded by the British, French, and German groups.

I have, etc.,

E. GREY.

Ambassador Hill to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Berlin, June 29, 1909.

Mr. Hill refers to department's telegram of June 25, 1 p. m., and says the foreign office informs him that the German group advised it on the 25th, under date June 24, that it had proposed to English and French groups, in reply to their suggestions, to telegraph Peking representatives accepting American participation as to one-fourth of two and one-half million pounds, provided American group does not participate in chief engineers and materials; negotiations to be conducted at Peking through Chinese and American legation or representative of syndicate there.

Adds that the foreign office explains amount as above by stating that of total of five and one-half million pounds, one-half million is to repurchase bonds from Belgians, two and one-half millions for Canton-Hankow line, and the remainder for Hankow-Szechuen line, to which alone American claim to preference applies.

File No. 5315/308.

The Secretary of State to Ambassador Reid.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, June 30, 1909.

Mr. Knox refers to Mr. Reid's telegram of the 26th,[1] and instructs him that if present Hankow-Szechuen Railway loan agreement be-

[1] Not printed; contained portions of text of Sir Edward Grey's letter of June 23. See p. 167.

tween Chinese Government and British, French, and the German financial groups contains provision for supplying railway material, to which United States attaches the greatest importance, to telegraph it in full, together with substance of any other important terms not contained in his telegram of the 26th and to forward by mail full text of agreement.

Informs him that the British ambassador here states that the agreement and full information will be furnished American representatives in London, and that the department is advised by the American group that their representatives and those of British, French, and the German groups will meet in Europe July 8.

File No. 5315/338.

The Acting Secretary of State to Ambassador Reid.[1]

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, July 9, 1909.

Mr. Wilson informs Mr. Reid that the New York representatives of the American group on July 7 communicated to the department a preliminary basis of American participation which their London representatives seemed not indisposed to discuss with the British, French, and the German groups.

Says this basis seemed to look to American participation to the extent of 20 per cent only, and that it apparently anticipated also equal footing as to all foreign materials and as to banking advantages, which last, however, would naturally be in proportion to the amount of capital supplied by each group.

Informs him that the Government of the United States will on no account accept less than equal participation as heretofore indicated, and that its protest at Peking will not be withdrawn until such arrangement is made, submitted to, and approved by the Department of State. Points out that the Chinese Government has assured the United States that "the loan will not be concluded unless the bankers (European groups) settle with the American group" and has so notified the European groups, and that the British, French, and the German Governments have assured the United States that they are favorable in principle to American participation. Says the principle involved is that of equal opportunity, and that it is inconceivable that the European groups would wish to sacrifice principle to a quibble as to a slight pro rata difference involved, for by doing so it is obvious that they would jeopardize the whole railway loan.

States that the text of China's promise does not directly concern the bankers, and that this Government has precisely explained its demands thereunder. Points out that the pledge of China and its interpretation are official matters concerning only the Governments of the United States and of China, and that these Governments have no differences on the subject.

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[1] Same to Berlin and Paris.

Gives for the information of the embassy the following account of the official engagement in question:

"The American minister at Peking, in a note dated August 12, 1903, called the attention of the Wai-wu Pu to a statement published in the London Times to the effect that British companies had applied to Chinese Government for a concession to build a railway from Sinyang, Hunan, to Ch'eng-tu, Szechuen, and the Chinese Government had replied that the line would be built by Chinese, and British had replied that if foreign funds were needed British should have preference. American minister reminded Wai-wu Pu that Americans had long ago applied for a similar concession, and that some months ago he had, in a personal interview, called the attention of the foreign office to this fact and had asked that if foreign capital were needed application should first be made to Americans, as they were first in the field. He concluded by stating in the note, 'I must enter my formal protest against any arrangement with others which may deprive my countrymen of their just claim to consideration in this connection.' Under date of August 15, 1903, the foreign office replied to Mr. Conger's note in regard to the American right to finance Hankow-Szechuen Railway that China intended to build this railway herself, but if in the future foreign capital was needed, since British and American companies had successively applied for concessions to build the road, application would be made to British and American companies." The note states that the British legation was notified to the same effect, and concludes by stating:

In short, when companies of various nationalities apply to China for railway concessions it must always remain with China to decide the matter. It is not possible to regard an application not granted as conferring any rights or as being proof that thereafter application must first be made to the persons concerned.

The matter was again twice brought up in 1904. In July, 1904, Mr. Conger forwarded the application of the China Investment & Construction Co. to finance this line, and foreign office on July 18 reiterated China's intention to build the line herself and added that if foreign funds were necessary the matter "will be dealt with as proposed in the note of August 15, 1903, and companies composed of Englishmen and Americans will be consulted." And again, on July 21, Mr. Conger, referring to a report that the French were negotiating for a loan for the construction of this line, reminded Prince Ching that "last year and again recently, he, Ching, had given him, Conger, a definite promise that if a loan should be made for the construction of the line mentioned the first application would be made to American and British capitalists."

"The foreign office in reply simply quoted legation's dispatch and denied the report referred to."

Says that it will be observed by these positive and unequivocal assurances that China pledged to the United States a one-half share in the whole Hankow-Szechuen line, including extension to Ch'eng-tu (not merely the line to Ichang, the Hupeh section), and that the right thus assured in the whole railway system then contemplated is vastly more than equivalent to 25 per cent of all that is definitely involved in the present tentative agreement of the European bankers. Points out that this tentative agreement after all, in the absence of the final edict and ratification by China, amounts to little more than an application, which, as the Chinese Government has itself stated, confers

no rights. Indicates that China's only complete obligations in this matter are that to the United States and that under whatever assurances Great Britain acquired about the same time.

Mr. Wilson concludes by saying that this Government will not recede from its position; that if the banking syndicate which undertook to sustain the American policy of equal participation ignore the national aspect of the transaction, or fail to cooperate in the broad purpose in view, the Government will seek other instrumentalities to secure proper American recognition; that it should be clearly understood that this Government is interested purely for broad national reasons; that the Government alone has any rights in this matter; and that it holds such rights in trust for the good of general American interests in China.

Directs that the foregoing be explained to the American group's representatives, who, it is understood, will now hold a second conference at Paris with the European groups.

File No. 5315/347.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, July 13, 1909.

Mr. Fletcher reports that the Chinese have been informed by the bankers in Peking that European bankers failed to agree with American bankers and negotiations were adjourned sine die, and that Chang has written a dispatch to the Wai-wu Pu stating that the matter should not be delayed and urging conclusion of the present loan agreement.

Says that in order Chinese Government should clearly understand position of the United States Government with reference to not only the assurances given to Mr. Conger, but also those to himself, he read to Liang a paraphrase of telegram received July 10, and informed Liang that he understood by it the bankers were to meet in Paris and pointed out to him the deplorable effect of any action on the part of China inconsistent with the assurances given. Liang said that the matter could not be delayed indefinitely and asked that Mr. Fletcher telegraph, urging speedy settlement. Mr. Fletcher has told the British minister he hoped China would not be pressed by the bankers into an awkward position. The minister and representative of British bank have both assured Mr. Fletcher they had no intention to do so; nevertheless, Chang undoubtedly has been pressed by the bankers to conclude the present agreement as it stands and is impatient.

File No. 5315/348.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, July 14, 1909.

Mr. Fletcher informs the department that he has just received a note from the foreign office quoting a communication from Chang

to the effect that the latter consented to delay memorializing for edict in the hope that an early settlement could be reached by the bankers, but that Chang now has been informed that American bankers were offered one-fourth of the Hankow-Szechuen loan and that they had declined, claiming one-fourth of the Hankow-Canton loan as well, to finance which Americans have no right and for the construction of which Chang is unwilling again to borrow American capital. Mr. Fletcher says that as the American bankers have refused the offer, which Chang considers just and equitable, if American bankers persist in their refusal Chang will delay memorializing for edict only a few days more, and he requested foreign office to notify Mr. Fletcher to this effect. Adds that the foreign office hopes that stringent orders will be sent to the American bankers to agree immediately and it requests speedy reply.

File No. 5315/436–445.

Chargé Fletcher to the Secretary of State.

No. 1207.] AMERICAN LEGATION,
Peking, July 14, 1909.

SIR: In continuation of my No. 1187 of June 25 last, on the subject of American participation in the pending Hukuang loan, I have the honor to report that on receipt of your telegram of June 25, in reply to mine of the 24th idem., I called on Mr. Liang Tun-yen at his residence on Monday, the 28th, and informed him that the American Government had learned with gratification of the announcement by the Chinese Government that the Hukuang loan will not be concluded without American participation. I informed him that I had telegraphed, as he had requested, that he hoped we would not insist upon our right to furnish materials, etc., and that I had received your reply to the effect that the American Government could not meet his hopes in this direction, and would insist upon the equal right of the Americans to furnish materials.

He said he hoped an agreement could be reached and that the matter could be disposed of at once, as Chang Chih-tung was blaming the Wai-wu Pu, and they were afraid he would become impatient and throw the whole matter over and refuse to have anything more to do with it.

As the details of the matter seemed to be in process of settlement in Europe, I took no further steps, awaiting information as to the result of the bankers' conference.

In confirming the telegrams exchanged with the department with reference to the text of the assurances given by China to Mr. Conger, I regret that my effort to place copies of these notes in the hands of the department at the earliest possible moment by open mail via Siberia should have miscarried. As soon as I discovered that these notes had not been copied to the department at the time they were written I endeavored to supply the omission and they have gone forward in the pouch with my first dispatch on this subject.[1] I intended that they should have gone in the open mail also. Mr. Con-

[1] See dispatch No. 1175, June 9, p. 152.

ger's notes in reply to which these notes were written were quoted in the foreign office notes, but in order that the department may have all the correspondence which I can find which had passed between the legation and the Wai-wu Pu before the present affair came up, I am inclosing herewith copies both of Mr. Conger's notes and the replies of the foreign office, the substance of which I have communicated by telegraph.

On the 9th instant I received a personal note from Mr. Liang Tun-yen, asking me to call to see him that afternoon. I did so, and he informed me that Messrs. Cordes (Deutsch-Asiatische Bank) and Hillier (Hongkong & Shanghai Banking Corporation) had called upon him and informed him that the representatives of the European bankers had met the American bankers' representatives in conference; that they had offered the American group one-fourth participation in the loan for the Hupeh section of the Hankow-Szechuen Railway, and that the Americans had refused, claiming that they were entitled to 25 per cent of the whole loan. I told him I had no information whatever as to the result of the meeting, but did not believe our bankers would accept less than 25 per cent of the present loan. I promised to let him know as soon as I heard from the department.

On the 11th instant (Sunday) I received your undated telegram informing me of the instructions sent to the embassies at London, Paris, and Berlin, by which the American bankers' representative was to be informed that the Government of the United States would not agree to American participation on a lower basis than 25 per cent of the present loan and that another meeting was to be held in Paris, etc.

I immediately wrote to Mr. Liang asking for an interview. He was absent at his country place until yesterday (13th), when he replied, asking me to call at the Wai-wu Pu. I did so and he informed me that he had received a long dispatch from Grand Secretary Chang Chih-tung, asking that the loan agreement be concluded as it stands. Mr. Liang said it would be difficult to hold Chang indefinitely, and that when he told me he had told the European bankers that the loan would not be concluded unless Americans were allowed to participate he did not mean that it should be held open indefinitely; that he thought we ought to be satisfied with one-fourth of the loan for the Hupeh section; that the bankers had been pressing Chang and himself to conclude, on the ground that we had been offered reasonable participation and had refused. He said he had as yet made no written communication to me in answer to my formal note of June 5, but that if the matter were much longer delayed he would have to write me a formal dispatch discussing the assurances given to Mr. Conger and the Chinese Government's position as to the present agreement. He said that our rights to one-half of a loan for the Hankow-Szechuen line were rather vague; that China had only promised to consult us, and that we must have known of these negotiations.

I said it seemed to me useless to reopen this phase of the matter, but I recalled to him that we had not been consulted; that we could not take notice of every newspaper report as to Chinese loans; that we had heard of it through the press, and not, as we were entitled, through the Wai-wu Pu. Mr. Rockhill had, before the agreement

was initialed, stated our position with regard to the assurances given Mr. Conger and notified the Wai-wu Pu of our readiness to take up the matter. He said he did not believe from Mr. Rockhill's representations that we expected to come into this loan, as there were no representatives of American financiers here and everyone believed the Americans had plenty of use for their money at home. I said that it was unfortunate he had placed such a light construction on Mr. Rockhill's representations. I then called attention to the fact that I had personally and in writing on the 5th of June given notice of our claims in regard to this loan (see my No. 1175, of June 9 last); that the next day, in the face of these oral and written representations, the loan had been initialed, and in order that there could be no possible question or misunderstanding of the American Government's interpretation, not only of the assurances given to Mr. Conger, but also of those made to myself, I read to him carefully the full text of your long telegram received on July 11, above referred to, and pointed out to him that the American Government regarded these assurances as positive and unequivocal, and that China had pledged one-half share in the whole Hankow-Szechuen loan to the United States.

I told him that the British, French, and German Governments had agreed to American participation in principle and that I had been assured by Sir John Jordan and Mr. Hillier that no pressure would be brought to bear on China whereby she might be placed in an awkward position. I told him that if any action should now be taken by China inconsistent with her assurances it would have a most deplorable effect in the United States. He admitted that China had not been asked by the diplomatic representatives of the powers interested to take any steps, but that the bankers had been pressing Chang Chih-tung and that the latter was getting impatient at the delay and wanted to go ahead and close up the present loan as it stands.

I earnestly requested him not to take any action which would place China in an awkward position and seriously effect the friendly relations of our two Governments; that I felt sure that the banks would agree to American participation on the basis of 25 per cent, when they realized that the attitude of China and the United States was firm on this point, and that whatever pressure was now being applied by the banks must be without their Governments' support. I concluded by stating that I could not conceive of China, by her own motion, disregarding the earnest representations of the American Government on account of the interest of private financial institutions.

Mr. Liang closed the interview by asking me to telegraph the department urging a speedy settlement and stated he would telegraph the Chinese minister at Washington to the same effect.

I returned to the legation and telegraphed the substance of the interview.

Yesterday afternoon Mr. Hillier called at the legation and stated that he understood the negotiations were postponed indefinitely. He knew nothing of any meeting in Paris. I explained clearly our position and told him I hoped the matter could be arranged on the basis of 25 per cent; that if his principals and others concerned would so authorize him the matter could easily be settled here. He said that

he thought the matter should be settled here; that he would again telegraph his principals.

I inclose copy of the note received to-day from the Wai-wu Pu, the substance of which I telegraphed you this evening and to which I will reply after receipt of the department's instructions.

I have, etc.,

HENRY P. FLETCHER.

[Inclosure 1.]

Minister Conger to the Prince of Ching.

No. 533.] LEGATION OF THE UNITED STATES OF AMERICA,
Peking, August 12, 1903.

YOUR IMPERIAL HIGHNESS: I have the honor to call Your Imperial Highness's attention to the statement published in the Times of London, under date of June 8 last, to the effect that certain British companies had applied to the Chinese Government for a concession to build a railroad from Hsin Yang, Hunan, via Hsiang Yang, Hupeh, to Ch'eng-tu, Szechuen. The article in question states that the Chinese Government replied that a native capitalist had already asked for this concession, whereupon the British responded that, if foreign capital should be required, preference should be given to them. I have the honor to remind Your Imperial Highness that my countrymen long ago made application for a similar concession and that some months ago in a personal interview with Your Imperial Highness I called your attention to this fact, and asked that, if foreign capital should be needed for the construction of such a railway, application should be first made to Americans. As my countrymen were first in the field with a proposal for this line of the railway, preference ought to be given them in any arrangement made for borrowing foreign capital or in granting any concession for such a line, should it be decided later to allow foreigners to construct it. I must enter my formal protest against any arrangement with others which may deprive my countrymen of their just claim to consideration in this connection.

I avail, etc.,

E. H. CONGER.

[Inclosure 2.]

Minister Conger to the Prince of Ching.

LEGATION OF THE UNITED STATES OF AMERICA,
Peking, January 20, 1904.

YOUR IMPERIAL HIGHNESS: On behalf of Thurlow Weed Barnes, an American representing the Hankow & American Syndicate (Ltd.), I have the honor to transmit herewith a petition for a concession to construct a railway from Hankow into the Province of Szechuen.

This syndicate, as I am informed, is composed of American and British capital, and is very highly recommended to me.

I improve the opportunity to renew to Your Highness the assurance of my highest consideration.

E. H. CONGER.

[Inclosure 3.—Translation.]

The Chinese Foreign Office to Minister Conger.

We have the honor to acknowledge the receipt of Your Excellency's note, saying that Mr. Thurlow Weed Barnes, representing the Hankow-American Syndicate, had sent an application which he requested you to forward; that the purport of it was an application to construct the Hankow-Szechuen Rail-

way, and that you understood that the capital subscribed was partly American and partly British, and that those who introduced the company affirmed that it was a reliable one, and that, as in duty bound, you forwarded the application for our consideration.

We find that our board some time ago memorialized with regard to the Hankow-Szechuen Railway, recommending that the ministers of the board of commerce should collect shares of Chinese capital for its construction. The request of Mr. Barnes it is useless therefore to consider.

As in duty bound we send this note for Your Excellency's information and trust that you will communicate its contents to Mr. Barnes.

We avail ourselves, etc.

TWELFTH MOON, 14TH DAY (January 30, 1904).

[Inclosure 4.]

Minister Conger to the Prince of Ching.

LEGATION OF THE UNITED STATES OF AMERICA,
Peking, China, July 6, 1904.

YOUR IMPERIAL HIGHNESS: I have the honor to inform Your Imperial Highness that I am in receipt of a letter from Mr. A. W. Bash, agent of the China Investment & Construction Co., requesting me to forward to Your Imperial Highness the inclosed letter, in which he makes application for a concession to provide a loan for the construction of a railway line from Chengtu, Szechuen, to Chungking and Hankow, in case the viceroy of Szechuen should find himself unable to prosecute his reported plan to raise money from native sources for such a line. He begs that your board will place this application on file.

I have much pleasure in complying with Mr. Bash's request and so forward the application inclosed.

I avail myself of the opportunity to renew, etc.,

E. H. CONGER.

[Inclosure 5.]

Minister Conger to the Prince of Ching.

LEGATION OF THE UNITED STATES OF AMERICA,
Peking, China, July 21, 1904.

YOUR IMPERIAL HIGHNESS: I have the honor to call the attention of Your Imperial Highness to an article in a Tientsin paper, said to have been translated from a Chinese official newspaper, in which it is stated that the viceroy of Szechuen has received an official communication from the French consul at Chungking to the effect that he has a telegram from the French minister at Peking stating that French capitalists are negotiating with the Wai-wu Pu as to the loan of French money for the construction and management of a railway line from Chungking to Hankow. I inclose the article for Your Highness's consideration and have the honor to inquire if the statements therein contained are correct, and, if so, to remind Your Highness that last year and again recently Your Imperial Highness gave me a definite promise that if a loan should be made for the construction of the line mentioned the first application would be made to American and British capitalists.

I avail, etc.,

E. H. CONGER.

[Inclosure 6.—Translation.]

The Prince of Ching to Minister Conger.

I have the honor to acknowledge the receipt of Your Excellency's letter in which you say that you have recently seen an article in an English newspaper, said to have been translated from an official Chinese newspaper, saying that the viceroy of Szechuen has received an official communication from the French consul at Chungking to the effect that he has a telegram from the French minis-

ter at Peking, stating that French capitalists are negotiating with the Wai-wu Pu as to the loan of French money for the construction of a railway line from Chungking to Hankow, and that these negotiations have been about completed. Your Excellency inclosed the article in question and asked if the statements contained therein are correct, and if they are correct you wished to remind me that last year, and again recently, I had given a definite promise that if a loan should be made for the construction of the line mentioned the first application would be made to American and British capitalists.

In regard to the above matter I have to state that there is no truth whatever in the said newspaper article, hence this letter in reply to that of Your Excellency that you may be informed of the matter; and at the same time I avail myself of the opportunity, etc.

Cards inclosed.

SIXTH MOON, 14TH DAY (July 26, 1904).

[Inclosure 7.—Translation.]

The Prince of Ching to Chargé Fletcher.

FOREIGN OFFICE,
Peking, July 14, 1909.

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's note regarding the Hankow-Szechuen Railway loan, as well as the memorandum on the same subject, in which you state that it is still the desire of the American Government to consult with regard to the raising of this loan. I have communicated with His Excellency Chang Chih-tung on this subject, and am now in receipt of his reply, as follows:

The relations between China and the United States are of a long-standing and friendly character, and they are augmented at the present time by the remission of a portion of the indemnity of 1900 and the summoning of students to America. For all of this I render my grateful recognition.

It is now the desire of the American Government to segregate a certain portion of the French-British-German loan for itself. If this matter had come up before the signing of the agreement with the banks of the three countries mentioned I would have no reason for objection. But the agreement has now been signed and there is now no way to discuss the loan with America. It is hardly feasible to direct the makers of this loan to broach this new proposition lest other difficulties arise.

My board was just in the course of investigating this matter and taking action when I received another dispatch from His Excellency Chang Chih-tung to the following effect:

I have received written communications from the three foreign banks as follows:

"The representative dispatched by the American banks is in consultation with our banks in London, and our banks have agreed to assign one-quarter of the loan for that portion of the Hankow-Szechuen Railway within the Province of Hupeh as the American share. The American representative submitted this proposition (i. e., to his superiors, Tr.) and received telegraphic instructions to add one-quarter of the loan for that portion of the Canton-Hankow Railway within Hunan and Hupeh—that is to say, one-quarter of £5,000,000. The desire of the American banks to add on this sum certainly can not be agreed to by our banks. Thus our consultations have not been productive of definite results, of which fact, as in duty bound, we hasten to inform you."

America, in entering into the discussion at such a late hour, is certainly making herself the cause of delay. I was originally unwilling that America should participate in this loan, yet I take into consideration the long-continued friendship between China and America; and, also, in the 29th year of Kuanghsu, in the 6th moon (August, 1903), the Wai-wu Pu acknowledged the receipt of Mr. Conger's request that America be allowed to undertake the construction of the Hankow-Szechuen Railway, although there is no evidence that such request was granted, so that there is this record to be referred to.

America, in desiring to consult in regard to this loan, is very late on the scene. Even if the three banks are willing to come to an understanding with the American banks and make a division, the agreement is already signed and can not be changed. Still I do not insist on my original stand against American participation. In order to further cement the friendly bonds between the two countries I am willing to make concessions. I now learn that the three banks are willing to allow America one-quarter of the loan for the Hupeh section of the Hankow-Szechuen Railway, but that the Americans desire to add on one-quarter of the loan for the Hupeh-Hunan section of the Canton-Hankow Railway, which has caused the three banks to discontinue negotiations. For any further delay to be occasioned is very strange.

With regard to the Canton-Hankow Railway I learn that formerly, because the American-China Development Co. secretly sold two-thirds of the capital shares to the Belgians, thus breaking the agreement, a loan was sanctioned by the throne of £1,100,000 to redeem to China all interest in this railway. It is unreasonable now once more to borrow American capital to construct this railway. Moreover, there has been no record since the

31st year of Kuanghsu, the 12th moon (December, 1905), when China had redeemed the Canton-Hankow Railway, that that line has authorized the borrowing of any American capital. Why does America now, without any pretext, still desire to lend funds for the purposes of this railway? Most emphatically, no such course can be considered. At the mere mention of it the literati and people of the three Provinces would rise up in protest against it as absolutely out of the question; unfavorable criticism would rise up like a flood. I, also, would be most unwilling, after this railway has been redeemed from the Americans, to again borrow American capital for its construction.

I may add that some time ago I received instructions to delay memorializing, but now a long time has elapsed, my responsibility in the matter is very great. The hopes of everyone are getting impatient and further delay is inexpedient. I intend to wait a very few days more for word. If the Americans refuse to come to an agreement with the banks of the other three nations to take one-quarter of the loan for the Hupeh section of the Hankow-Szechuen Railway, a most just and equitable arrangement, I will then be forced into a position where I can not make the change desired. On no account can I then delay further. I shall be obliged to submit to the throne the agreement already concluded, so that this important work may not be subjected to further procrastination. I desire that you will communicate this to the American minister.

Your Excellency has orally discussed this matter at the board of foreign affairs and has received a full reply. The difficulties pointed out by His Excellency Chang Chih-tung will, I hope, be borne in mind by your Government. I earnestly hope that stringent orders will be sent to the American banks to come to an immediate agreement, so that the desire of China to foster our friendly relations may not be disappointed. I request that you will communicate the above to the American Government, and I earnestly look for a speedy reply.

A necessary dispatch.

[Seal of the Wai-wu Pu.]

File No. 5315/351a.

The President of the United States to Prince Chun, Regent of the Chinese Empire.

[Telegram.]

THE WHITE HOUSE,
Washington, July 15, 1909.

I am disturbed at the reports that there is certain prejudiced opposition to your Government's arranging for equal participation by American capital in the present railway loan. To your wise judgment it will of course be clear that the wishes of the United States are based, not only upon China's promises of 1903 and 1904, confirmed last month, but also upon broad national and impersonal principles of equity and good policy in which a regard for the best interests of your country has a prominent part. I send this message not doubting that your reflection upon the broad phases of this subject will at once have results satisfactory to both countries. I have caused the legation to give your minister for foreign affairs the fullest information on this subject. I have resorted to this somewhat unusually direct communication with Your Imperial Highness, because of the high importance that I attach to the sucessful result of our present negotiations. I have an intense personal interest in making the use of American capital in the development of China an instrument for the promotion of the welfare of China, and an increase in her material prosperity without entanglements or creating embarrassments affecting the growth of her independent political power and the preservation of her territorial integrity.

WM. H. TAFT.

File No. 5315/348.

The Secretary of State to Chargé Fletcher.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, July 15, 1909.

Mr. Knox refers to Mr. Fletcher's telegrams of July 13 and 14 and informs him that he may solemnly warn the Government of China that there appears no reason to doubt that, as a result of early meetings in Paris or Berlin, the American group will reach with the European bankers an agreement for equal participation in the present loan by American capital; that it would be inconsistent with the dignity and moral right of the United States and with a policy hitherto friendly on the part of China if the United States were expected for one moment to consider less than such equal participation, and that if the reasonable wishes of this Government should now be thwarted the whole responsibility would rest upon the Chinese Government, which in return for the uniform friendliness of the United States, disregarding its obligation and its true interests, would have evaded by petty excuses its true duty and would have acted with singular unfriendliness to the United States.

Says that in view of the expressions of the German, French, and English Governments recognizing the equity of American demand for participation and having regard to China's specific promises and moral obligations to this Government, the department is amazed at the apparent influence of individuals in so long retarding the consummation of so equitable an arrangement as is proposed.

Mr. Knox says that this Government greatly deplores a situation in which it seems that individuals in China or elsewhere are able to defeat the practical operations of the policy of the open door and equal opportunity, and if the objections of bankers of other countries to equal American participation are so insistent as not to be overcome by the wishes of China and of their own Governments, the time has arrived when China should exercise its right to determine the matter by confining her dealings to those who are willing to respect her highest interests. Says that Americans would welcome an opportunity to arrange for the whole loan, if necessary, by reason of further persistency of the individuals who refuse to meet the situation broadly.

Informs Mr. Fletcher of the sending of telegram to-day by the President to His Imperial Highness Prince Chun.[1]

Tells Mr. Fletcher he should be able to make sure, through the foreign office, of its delivery and friendly explanation by them to the regent, and he may, if custom permit and if it is advisable, seek an audience also with the regent.

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[1] Supra.

File No. 5315/351.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, July 15, 1909.

Mr. Fletcher reports that he has suggested to Liang, stating that it was wholly on his own responsibility, the feasibility of increasing the present loan by about 12½ per cent and admitting equal American financial participation in the revised loan, and that Liang has promised to make this suggestion to Chang. Says bankers in Peking think this arrangement will be satisfactory. Asks if Chang will agree will department approve. Adds that it is admitted the present loan is insufficient.

FLETCHER.

File No. 5315/351.

The Secretary of State to Chargé Fletcher.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, July 16, 1909.

Mr. Knox acknowledges Mr. Fletcher's telegram of the 15th and informs him that the department approves his suggestion with regard to increasing the amount of the present loan and admitting equal American financial participation in revised loan, and that it would regard such an arrangement satisfactory, provided American interests enjoyed absolutely equal rights in every particular.

The Prince Regent of China to the President of the United States.[1]

[Translation.]

PEKING, *18th July, 1909.*

GREETING: We have made ourselves fully acquainted with Your Excellency's message transmitted to us by cable. We feel greatly indebted to Your Excellency for the warm regard and the deep interest in the general state of affairs in China. With regard to the question of the foreign loan, and in return for Your Excellency's great kindness, the ministers of the Wai-wu Pu (foreign office) have been instructed to negotiate with the American chargé d'affaires ad interim at Peking so as to come to a suitable decision and take action accordingly.

File No. 5315/359.

The Secretary of State to Chargé Fletcher.

[Telegram.—Paraphrase.]

DEPARMENT OF STATE,
Washington, July 20, 1909.

Mr. Knox informs Mr. Fletcher that the department approves his arranging in Peking for equal American participation in present

[1] Received through the Chinese minister, July 19, 1909.

loan, revised in accordance with his telegram of July 15, and on terms stated in department's telegram July 16, and that he may arrange by separate document or by amending present agreement, or both, as the case may require. States that it is understood that "every particular" in department's telegram July 16 includes all rights with regard to materials, engineers, auditors, and any other benefits which would naturally accompany a fourth interest in the loan. Adds that the conditions enumerated in department's telegram June 16 still apply, except where modified by department's telegram July 16.

File No. 5315/360a.

The Secretary of State to Chargé Fletcher.

[Telegram.]

DEPARMENT OF STATE,
Washington, July 21, 1909.

The President directs that you hasten to convey through the Wai-wu Pu to His Highness the Prince Regent his high appreciation of the Prince Regent's prompt action in instructing that arrangements be made through the American chargé d'affaires for equal participation of American capital in the railway loan as requested by the President in his telegram to the Prince Regent of July 15. The President especially appreciates the cordial spirit of His Imperial Highness's message.

This section should synchronize with that based on the department's instruction of July 20.

KNOX.

File No. 5315/432–435.

Chargé Fletcher to the Secretary of State.

No. 1213.] AMERICAN LEGATION,
Peking, July 23, 1909.

SIR: In continuation of my No. 1207 of the 14th instant, on the subject of American participation in the pending Hukuang Railway loan, I have the honor to inclose my reply to the note of the Wai-wu Pu, dated July 14 (copy of which was forwarded to you by the last mail). The department will observe that I have embodied in my note the substance of its telegram of July 15.

On the afternoon of July 15, I called at the Wai-wu Pu and suggested to Mr. Liang—stating that the suggestion was made wholly upon my own responsibility—the feasibility of increasing the loan by about 12½ per cent and admitting equal American participation. I explained that the European bankers had offered to admit us to participate to the extent of about 12½ per cent, so that if the loan were increased by the difference an agreement should be possible. I informed him that I understood that the amount of the present loan would prove insufficient for the construction of the two sections mentioned. He approved the idea and promised to have it presented to Chang Chih-tung.

I also told the bankers here of my suggestion to Mr. Liang and that I had hoped it might prove a basis of settlement. It seemed to meet their approval, but Mr. Cordes expressed doubt as to Chang Chih-tung's attitude. This proposal has been discussed between the bankers and the Chinese for the last few days. Yesterday Mr. Hillier (of the Hongkong and Shanghai Banking Corporation) called. He informed me that the bankers here had conferred and were about to telegraph to their principals to the effect that I thought an increase of the loan by £500,000, which should be allotted to the Hupeh section of the Hankow-Szechuen line, and an arrangement of the bankers whereby the American bank should finance £1,500,000 of the loan thus revised, would satisfy my Government, and that I would be authorized to withdraw the American protest, and the agreement thus altered would be ratified and signed. He then added that it should be understood that no other conditions of the loan agreement shoul be changed in any respect. I asked him what he meant. He said he referred to those provisions of the agreement which had reference to the service of the loan and the right of the banks to furnish sums needed for the completion of these lines in the future. He stated that more money would be required in the future for the Hankow-Canton line, and thought that as we claimed nothing on the Hankow-Canton line we should be content with one-half of any sum which would be needed in the future for the completion of the Hankow-Szechuen line. As this interview was closing, I received the department's telegram of the 20th instant, and explained to Mr. Hillier your position that the American participation in the present loan, revised as proposed, should be equal in every particular to that of the other banks, and that it should include all rights with regard to furnishing materials, appointment of engineers and auditors, and of any other benefits which would naturally accompany a one-fourth interest in the loan. He remarked that we were now claiming more than we had claimed in the London conference. I replied that we had heretofore indicated a willingness, in the interests of harmony, to accept one-fourth participation practially on the French basis, but that this offer had not been met in the same spirit and had been rejected. He promised again to confer with his fellow bankers and to communicate our position to the principals in Europe.

The bankers and China seem to attach great importance to reaching a settlement on the basis of the present agreement, altered only as to the amount. Chang has stated that he did not wish to use any American money on the Hankow-Canton line and the bankers have endeavored to have our participation in this loan limited in all respects to the Hankow-Szechuen line. As the increased amount would, as the agreement is drafted, have to be allotted to one or other line, I see no objection to having it allotted to the Hankow-Szechuen line. This to some extent saves the face of the bankers and of China, but I have clearly stated was only a question of allotment; that our participation in the present and future benefits of the agreement must be absolutely equal and just, as if we were a party to the agreement, which to all intents and purposes we would become by a separate but synchronous document.

On the receipt of the department's telegram of July 15, I called on Mr. Liang Tun-yen, on the evening of the 16th, and asked if his board had received the telegram which the President had sent direct

to His Imperial Highness the Prince Regent. He informed me that it had been received and would be submitted the following day, and that he would acquaint me with the reply made by the Regent. I asked him to see that the friendly nature of the telegram was explained to His Imperial Highness, so that no misunderstanding might arise. He said he could not present the matter personally, but would see that it came before the Regent in the proper light. Mr. Liang seemed to think that the telegram would have a good effect, as it would make further quibble on the part of Chang Chih-tung difficult, and would also save his face if his agreement should be altered by the interposition of the Regent.

Under these circumstances and for other considerations, I did not think it necessary to ask an audience of the Regent, but should it seem advisable later to do so, I shall avail myself of the department's authority in this respect.

On the receipt of the department's telegram of July 21, containing the direction of the President to convey to the Prince Regent, through the Wai-wu Pu, the President's appreciation of the prompt action of His Imperial Highness and of the cordial spirit of His Highness's message, I embodied these instructions in a formal note to Prince Ching (copy inclosed) and handed copy of it to Mr. Liang Tun-yen this morning. At the same time, as instructed, I handed him a memorandum (copy inclosed) containing the substance of the department's telegrams of July 16 and 20, making clear to him your position with reference to equal American participation in the present loan.

He promised to make it known to the bankers, and again expressed the hope that the matter might soon be settled.

With reference to the note of the Russian minister, mentioned in my telegram of the 18th instant, I am of opinion that it will not materially alter the situation. Mr. Korostovetz called on me on the 20th and explained that while Russia had no such rights as ourselves with respect to the present loan, she felt that, by reason of her large commercial interests in the Yangtze, especially in the tea trade of Hankow, and on the principle of the open door, he was justified in notifying China of Russia's readiness and willingness to participate in this or any other foreign loans needed by China. He said the Russo-Chinese Bank was practically a governmental concern, and he believed Russia should have financial interest in China as well as the other powers. He asked me what I thought would be the position of my Government. I replied that his Government could learn that more definitely through the embassy in Washington, but that I personally thought the American Government would welcome Russian financial interests in China on the principle, which we have always adhered to, of equality of commercial opportunity and the open door. He said that the European bankers would be approached by the Russo-Chinese Bank for a share of this loan, and that the bank would be content with a very small share. He asked me what would be the attitude of our bankers if the Russo-Chinese Bank asked them for a share. I replied that this would be a matter for the bankers to decide later, but that our present concern was to secure American participation in the loan, and that I trusted he would not interfere with our efforts to reach a settlement. He said he had no such in-

tention. He stated that if the present agreement were upset he would ask to participate in the loan subsequently arranged, though he admitted he did not see his way clear to insist. Russia has at present a number of important and somewhat involved questions pending with the Chinese Government and is not in a position to support in any extreme way the desire of the Russo-Chinese Bank to participate in this loan. I see no objection, however, to bona fide Russian participation in Chinese financial enterprises, though the bonds will likely be sold in Paris.

I have, etc.,

HENRY P. FLETCHER.

[Inclosure 1.]

Chargé Fletcher to the Prince of Ching.

No. 550.] AMERICAN LEGATION,
Peking, July 16, 1909.

YOUR IMPERIAL HIGHNESS: I have the honor to acknowledge the receipt of Your Highness's note of July 14 last on the subject of the participation of American financiers in the Hukuang Railway loan.

Your Highness quotes the text of two communications received by Your Highness's board from His Excellency Chang Chih-tung, director general of the Canton-Hankow Railway and of the Hupeh section of the Hankow-Szechuen Railway.

In the first of these communications His Excellency states, with reference to the desire of American capitalists to participate with the British, French, and German financiers in the loan about to be contracted for, that—

> If this matter had come up before the signing of the agreement with the banks of the three countries mentioned I would have no objection. But the agreement has now been signed and there is now no way to discuss the loan with America. It is hardly feasible to direct the makers of this loan to broach this new proposition lest other difficulties arise.

This communication from the director general was evidently written some time ago. He has no doubt since been informed by Your Highness's board that the matter of American participation did come up before the pending loan agreement was initialed.

Your Highness's board will recall that Mr. Rockhill, on May 25 last, in an official interview with His Excellency Liang Tun-yen, referred to certain reports appearing in the newspapers to the effect that Germans, British, and French were arranging a loan for the construction of a railway from Hankow toward Szechuen, and he stated that if this report was correct he would have to remind the Wai-wu Pu that China had assured Mr. Conger that in case China was unable herself to provide the funds necessary to build this railway American and British capitalists would simultaneously be notified, and he informed Your Highness's board that the American Government holds that this assurance guarantees to American and British capital the preference in any foreign loan floated for this purpose. Your Highness's board promised to bring this matter to the attention of His Excellency Chang Chih-tung, who, it was stated, was in charge of these railway matters.

The subject was again brought up by Mr. Rockhill in an interview at the Wai-wu Pu on May 28 last, and he was informed by His Excellency Liang Tun-yen that he had no reply to make and could say nothing definite on the subject.

Again, on June 1, Mr. Rockhill and I called at the Wai-wu Pu. Mr. Rockhill stated that he was that day turning over the legation into my charge, and he referred to the telegram which he had shown His Excellency Liang Tun-yen on May 25 on the subject of American participation in the Hankow-Szechuen Railway loan, and asked his excellency if he was in position to give him an answer to the representations which he had already made on this subject. His excellency replied that he had referred the matter to His Excellency Chang Chih-tung, but that he had as yet received no reply.

On June 5, acting under directions from my Government, I again called at the Wai-wu Pu and asked for a reply to the representations which had been made

by Mr. Rockhill on this subject. I was informed that no reply had been received from His Excellency Chang Chih-tung, and on the same day I sent to your Imperial Highness a formal communication, as follows:

In further reference to the representations made by Mr. Rockhill and myself to Your Highness's board recalling the assurances given to this legation in 1904 to the effect that in case China was unable herself to provide the funds necessary for the construction of the Hankow-Szechuen Railway American and British capitalists would simultaneously be notified, and informing Your Highness's board that the American Government held that this assurance guaranteed to American and British capital the preference in a foreign loan floated for this purpose, I now have the honor to inform Your Highness that the American Government, in view of the reports that British, French, and German financial groups have under consideration an agreement with China to provide a loan for the construction of a portion of this line, has recalled to the British Government the original understanding between China, Great Britain, and the United States, and has informed that Government that the United States has taken no action which could be construed as a relinquishment of the right of American capital to participate in this enterprise.

This legation has now been informed that the representations heretofore made on this subject have been communicated to His Excellency Chang Chih-tung, director general of the Hankow-Szechuen Railway, and the attitude of my Government on the subject made clear to His Excellency, but that he has made no reply on the subject.

I now have the honor to request Your Highness's board at once to notify His Excellency Chang Chih-tung and the other officials charged with this matter that the American Government insists that the assurances of 1904 be observed and that American capitalists be consulted and allowed to participate in the loan about to be floated.

I trust that I may be favored with an early reply which I may communicate to my Government at Washington.

On the following day, notwithstanding the oral and written representations made by this legation, and to which even no reply was made, an agreement for a loan of £5,500,000 (five million five hundred thousand pounds sterling) for the construction of the Hupeh-Hunan section of the Canton-Hankow Railway and of the Hupeh section of the Hankow-Szechuen Railway was initialed by His Excellency Chang Chih-tung and representatives of the British, French, and German banks in Peking.

In view of these facts, I can not understand the statement of His Excellency Chang Chih-tung quoted above.

On the 9th of June I addressed another formal note to Your Highness's board on the subject and had the honor in a number of personal interviews with President Liang subsequently to point out clearly the attitude of my Government with respect to the assurances given in 1903 and 1904 to Mr. Conger and the importance which the President and Government of the United States attached to American participation in the pending loan on a footing of equality with the European bankers, and I alluded to the unfortunate effect which would be caused in the United States were China to exclude us.

At length on June 24 I was informed by His Excellency Liang Tun-yen that the bankers with whom the pending loan agreement was negotiated had been notified that China would not conclude the agreement unless a settlement were reached with the American capitalists. This welcome intelligence I lost no time in sending to my Government. The representatives of the European and American bankers arranged to meet in London on the 8th instant to adjust the matter. It would seem by the letter of the Peking bankers to His Excellency Chang Chih-tung that the Americans were offered at this conference only one-eighth of the loan. This they could not accept, and no agreement was reached, as my Government holds that we are entitled to and should receive equal treatment. Another meeting will undoubtedly soon be held. The British, French, and German Governments have all indicated their willingness to have Americans participate equally in this loan. Your Highness's board has expressed itself to the same effect. It is, therefore, not likely that the European bankers will refuse to heed the wishes of all the Governments concerned.

The decision of this question rests with the Government of China. The position of my Government with reference to the assurances heretofore given, as well as the broad policy of friendship and cooperation which it wishes to pursue in availing itself of them, has been fully explained in my personal interviews. The American Government sincerely hopes that the Imperial Chinese Government, having respect for these assurances and for the uniform friendship which has always existed between our two countries, as well as for the broad lines of national and international policy, will plainly notify the framers of the pending agreement that the American bankers must be admitted to participate equally in the loan required.

If your Highness's Government will adopt this just and equitable course, I venture to predict that the matter will quickly be settled and a satisfactory agreement reached. It is inconceivable that after such plain expression of Your

Highness's Government's wishes individuals would longer seek to defeat the policy of all the Governments concerned.

If, on the other hand, the United States were expected to consider less than equal participation by its bankers in this loan, it would be inconsistent not only with the dignity and moral right of the American Government, but also incompatible with a policy hitherto friendly on the part of China.

I must solemnly warn Your Highness's board that if the reasonable wishes of the American Government should now be thwarted, the whole responsibility would rest upon the Chinese Government.

My Government finds it difficult to believe that China, in return for the uniform friendliness of the United States, intends to disregard her obligations and true interests and act with such singular unfriendliness to America.

In view of the expressions of the British, French, and German Governments recognizing the equity of the American demand for participation, and having regard to China's specific promises and moral obligations, this legation and the Department of State are amazed at the apparent influence of individuals in so long retarding the consummation of so equitable an arrangement as is proposed.

The American Government greatly deplores a situation in which it seems that individuals in China or elsewhere are able to defeat the practical operations of the policy of the open door and equal opportunity.

Should the objections of the bankers of the other countries to equal American participation prove so insistent as not to be overcome by the wishes of China and of their respective Governments, the time would seem to have arrived when China should exercise her right to determine the matter by confining her dealings to those who are willing to respect her highest interests.

I avail, etc.,

HENRY P. FLETCHER.

[Inclosure 2.]

Chargé Fletcher to the Prince of Ching.

AMERICAN LEGATION,
Peking, July 22, 1909.

YOUR IMPERIAL HIGHNESS: I have the honor to inform Your Highness that I have been directed by the President of the United States to convey through Your Highness's board to His Imperial Highness the Prince Regent the President's high appreciation of the prompt action of His Imperial Highness the Prince Regent in instructing that arrangements be made through the American chargé d'affaires for equal participation of American capital in the pending railway loan, as requested by the President in his telegram to the Prince Regent of July 15. The President especially appreciates the cordial spirit of His Imperial Highness's message.

I avail, etc.,

HENRY P. FLETCHER.

[Inclosure 3.]

MEMORANDUM.

Chargé Fletcher to His Excellency Liang Tun-yen.

AMERICAN LEGATION,
Peking, July 22, 1909.

Referring to his conversation with His Excellency Liang Tun-yen, president of the board of foreign affairs, on July 15, in which it was suggested that the pending loan might be increased to, say, £6,000,000 (six million pounds sterling) and American capitalists admitted to participate equally with British, French, and German capitalists in the loan thus revised, the American chargé d'affaires has the honor to inform the board of foreign affairs that he has submitted this proposal to his Government and is now in receipt of a telegraphic reply approving this suggestion and instructing him that the American Government would regard such an arrangement as satisfactory provided American interests enjoyed absolutely equal rights in every particular—that is to say, all rights with regard to the furnishing of material, appointment of engineers and auditors, and any other benefits which would naturally accompany a fourth interest in the loan.

File No. 5315/393–394.

The Chinese Chargé to Minister Rockhill.[1]

IMPERIAL CHINESE LEGATION,
Washington, July 24, 1909.

SIR: I have the honor to inclose a translation of a cablegram addressed to you from His Excellency Liang Tun-yen, president of the Wai-wu Pu (Foreign Office), Peking.

The message, as you will see, relates to the question of America's participating in the railway loan, which my Government has been negotiating in the last few months.

I avail, etc.,

OU SHOU-TCHUN.

[Inclosure.—Telegram.—Translation.]

The President of the Wai-wu Pu to Minister Rockhill.

PEKING, *July 24, 1909.*

In the matter of the Szechuen-Hankow Railway loan, I have been consulting and negotiating with His Excellency Chang Chih-tung and the European bankers who are interested, and it is now proposed to borrow, in addition to the original sum of £5 500,000, half a million pounds more. Of this total sum, £3,000,000 will be devoted to the Canton-Hankow Railway and the remaining £3,000,000 to the Szechuen-Hankow Railway. The American bankers will furnish one-half of the sum for the Szechuen-Hankow Railway, namely, £1,500,000. In thus arranging for the participation of the United States in the loan to be floated we have in fact done our best to accede to the wishes of the American Government. (Hon. Henry P. Fletcher, your chargé d'affaires at Peking, insists, however, on the principle of America's participation in the loan on an equal basis with the other three nationalities interested, a principle which would seem to be of no very great importance, with the result that the negotiations can not be successfully concluded.) Now, the negotiations with the European bankers were begun first, and an agreement had been signed with them, but China, always mindful of the friendly relations with the United States, was willing to do whatever was possible to gratify the wishes of the American Government in order to maintain the very harmonious relations. Your Excellency is thoroughly acquainted with the situation in Peking, and is aware of the complicated circumstances, which may not be entirely known to His Excellency the President. I shall consider it a very great favor if you will be so kind as to inform His Excellency President Taft of the difficulties in our way, so that it will be possible for the matter to be settled at an early date. Please send me a reply by cable.

File No. 5315/383a.

The Acting Secretary of State to Chargé Fletcher.[2]

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, July 27, 1909.

Mr. Wilson informs Mr. Fletcher that Mr. Rockhill has to-day handed to the department the following telegram, dated 24th, addressed to him by Liang Tun-yen through the Chinese legation here.[3]

Directs that he immediately convey to the Wai-wu Pu the department's acknowledgment of the receipt of this outlined suggestion and explain that before giving it consideration this Government must have from Mr. Fletcher full information as to its actual effect, and

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[1] Minister Rockhill on leave in Washington.
[2] Same to London, Paris, and Berlin.
[3] See inclosure to note of July 24 from Chinese chargé to Mr. Rockhill.

especially as to the method of providing for complete proportional participation in all those particulars which the policy of the United States compels it to regard as of such paramount importance and which are of the essence of a real quarter share.

File No. 5315/416a.

The Secretary of State to Chargé Fletcher.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, August 6, 1909.

Mr. Knox states that in replying to the proposition of the Chinese Government, made to this Government through Mr. Rockhill, as recited in department's telegram of July 27, Mr. Fletcher may arrange for American participation in the pending railway loan on the basis that American bankers take one-fourth of the loan and in the same proportions are to have and enjoy all the rights, powers, privileges, and discretions granted to and vested in the English, German, and French bankers under the terms of the agreement of said bankers with His Excellency Chang Chih-tung, inclosed in dispatch of June 9; and further that Americans and American goods, products, and materials shall be entitled to the same privileges and preferences reserved in said agreement to British, German, and French nationals and materials.

Adds that for each of the two railroads named in said agreement there shall be a board of engineers, the chairman of each board to be the chief engineer; an American engineer, to be approved by the American bankers, shall be a member of each board; the chairman of the Hupeh-Hunan section to be English; the chairman of the Hupeh section of Szechuen-Hankow Railway to be German; an American chief engineer shall be chosen for the next section of the Szechuen-Hankow line constructed by foreign capital; and that American bankers are to have their proportionate representation in the purchasing agencies for the railroads to be constructed and their proportionate share of all advantages therein.

File No. 5315/417.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, August 10, 1909.

Mr. Fletcher reports that to-day in conference he submitted draft of agreement embodied in department's telegram of August 6; that China declines any reference to extensions into Szechuen, and that the department's proposal as to board of engineers unacceptable, because they are not willing to modify the provisions article 17, but the banks say they will not object to employment American engineers by the managing director as an alternative. Quotes the following, which was proposed:

1. The amount of the loan to be increased to £6,000,000, of which £3,000,000 shall be allotted to the Hupeh-Hunan section and £3,000,000 to the Szechuen-Hankow line, Hupeh section.

2. American group to be allotted one-half participation in the amount for Szechuen-Hankow line, Hupeh section, namely £1,500,000 with corresponding

banking advantages. It is further understood that American materials shall be entitled to the same privileges and preferences reserved in the original agreement to British, French, and German materials, and that the said American bankers shall share equally in the commission on the purchase of materials.

3. The provisions of the original agreement in regard to future and supplementary loans remain unaffected by this present arrangement, except that the American rights to one-half participation in future and supplementary loans for the Szechuen-Hankow line, Hupeh section, are hereby recognized.

4. A supplementary agreement to be drawn up in the above sense by the four groups and approved by Chinese Government. The American objection to the original loan agreement will then be withdrawn stipulating original agreement ratified and signed unchanged except as to the amounts.

Explains that paragraph 3 is intended to make clear the position as to future loans, which is the great stumbling block. Says that as Americans will always encounter objections in any loan for the Hankow-Canton line, and as American rights on the Hankow-Szechuen line are safeguarded, he believes the provision is the best he can secure under the circumstances of the case. Says it would relieve Liang much embarrassment if the department will accept this arrangement, and that if accepted, financial details will be arranged accordingly. Mr. Fletcher considers practical advantage of providing for American engineers and auditors to be slight. Adds that under the circumstances United States shall have equal preference materials of both lines and commissions on purchases will be pooled, United States will receive the one-fourth.

File No. 5315/417.

The Secretary of State to Chargé Fletcher.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, August 15, 1909.

Mr. Knox authorizes Mr. Fletcher to say to the Chinese Government that this Government will consent to the arrangement as to chief engineers, as set out in article 17 of the agreement, provided the Chinese Government will assure employment of American engineers by managing director; it also being clearly understood that American materials are to have same preferences and privileges reserved to British, German, and French materials in respect to both roads and their branches, as provided in the agreement. Directs him to make it clear to Chinese Government that American rights are to be as detailed in department's telegram of August 6, except as modified above and in these additional particulars, namely: United States agrees to the increase in loan and its allotment, as stated in articles 1 and 2, in Mr. Fletcher's telegram of August 10, to which this is the answer, and to the provisions of article 3, which it is understood place future and supplementary loans for the two sections covered by the agreement upon the same basis as the present loan. Mr. Knox says that in agreeing to this allotment of the loan the United States does not waive equal right to materials in all lines and branches covered by the contract, and that whenever the department has the assurance of the Chinese Government and the banking groups that we have reached a common understanding upon these points, and the banking groups have arranged matters between themselves and the Chinese Government in such a way as to engraft upon the original agreement a full recognition of the American rights this Government will withdraw its objections to the original agreement.

File No. 5315/530–533.

Chargé Fletcher to the Secretary of State.

No. 1231.] AMERICAN LEGATION,
Peking, August 18, 1909.

SIR: Continuing my No. 1213, of July 23 last, on the subject of American participation in the Hukuang Railway loan, I have the honor to report that, on the receipt of the department's telegram of July 27, 9 p. m., I called on Mr. Liang Tun-yen and, as instructed, conveyed to him your acknowledgment of the suggestion contained in his personal telegram to Mr. Rockhill. I explained, as I had done fully before, the importance which we were compelled to attach to a real quarter share, but informed him that I was very anxious to find a solution satisfactory to all parties, and that it seemed to me that the next step was to ask the bankers for a reply to the proposal made in accordance with your telegram of July 20. This he promised to do, and the bankers telegraphed to their principals for instructions.

On receipt of the department's confidential telegram of July 30, I called on Mr. Liang and the bankers, and was informed by the latter that they were not in position to make an official or definite reply to our proposal.

Inasmuch as it seemed to me important to have a reply from them, and being ignorant of the nature of the department's proposition, I replied to you suggesting that it might be well to withhold the department's proposition until the banks replied. I had reason to believe the banks were considering our proposition for one-fourth participation. At length, on Saturday, August 7, the three bankers here called at the Wai-wu Pu and, I understand, informed Mr. Liang that they were authorized to accept his mediation in the matter. On the same day I received your telegram of August 6 containing the department's proposition. I immediately communicated with Mr. Liang and arranged an interview for Monday afternoon—the 9th. I then submitted a paraphrase of your telegram of the 6th, and he suggested that, as he had discussed the matter with the bankers and found very little difference between us, a meeting should be arranged for the following day. I agreed, and on Tuesday, the 10th, met Mr. Liang, Mr. Hillier, Mr. Cordes, and Mr. Casenave at the Wai-wu Pu. I submitted a draft of an agreement embodying your telegram of August 6, except that part which related to the appointment of an American chief engineer for the next section of the Hankow-Szechuen line, as I had been privately informed by Mr. Liang that any reference to the Szechuen extension at this time would evoke a storm of criticism from the people of Szechuen.

The bankers said they had no authority to accept our proposal for the creation of a board of engineers and to do so would necessitate a change in the present agreement, which they did not believe either Chang Chih-tung or their principals would accept. Mr. Liang was of the same opinion. It was also thought the creation of such a board would give rise to many difficulties in practice. I then asked if the bankers would object to the appointment of American engineers in subordinate capacities. They all said they would have no objection, and it was understood, though not specifically stated, that such appointments would be made.

The bankers then referred to the conversation they had had with Mr. Liang on the previous Friday (6th August) and asked him if he

had the memorandum then drawn up. He had mislaid it, but attempted to draw it up from memory with their assistance and with certain changes I suggested. The alternative proposal (copy inclosed), which I telegraphed you on the same day, was the result.

When the question with reference to materials was reached, the bankers proposed that our participation in this respect be limited to one-half preferred materials on the Hankow-Szechuen line. I pointed out the impracticability of this and declined to submit to you any proposition which did not recognize the same preference for American materials on both lines as enjoyed by English, French, and German materials. In this I was supported by Mr. Liang, although some doubt was expressed as to Chang Chih-tung's attitude. Finally the bankers agreed to this and it was incorporated in the alternative proposal.

As to future loans: When this feature was reached it was pointed out that as it was likely more money would be needed for the completion of the Hankow-Canton than for the Hankow-Szechuen line, we should not ask participation in future loans for that line, but that they would, on the other hand, clearly recognize our right to furnish one-half of any foreign capital borrowed by China for the Hankow-Szechuen line. Facing the undeniable fact that since the American-China Development Co.'s fiasco American participation in any loan for the Hankow-Canton Railway will encounter serious opposition from the officials, who fear a storm of protest from the gentry, and, realizing that our participation in the present loan is based on assurances which have reference solely to the Hankow-Szechuen line, I felt that if we could secure a clear recognition of our rights in this regard we could allow the future to take care of itself, and I therefore agreed to submit to you Article III in its present form.

As to Article IV: It was understood that an inter-bank agreement should be drawn up to provide for American participation, which, when acepted by the American Government, should be submitted to Chang Chih-tung and taken note of by him in his memorial for an edict approving the original loan agreement, "changed only as to the amounts"; and it was understood that the edict would be formally communicated by the Wai-wu Pu to the chief of this mission at the same time and in the same manner as communicated to the English, French, and German ministers.

The details of the changes and provisions which would be necessary to provide for American participation were discussed informally by running through the agreement article by article and noting them. Mr. Cordes, on behalf of the banks, brought up the question of additional security in connection with the increase of the loan to £6,000,000. Mr. Liang thought the security sufficient. After a short discussion, the bankers waived the question, as it was evident they could not insist in a change in the agreement in this respect while resisting all other alterations. Further discussion of the details of the inter-bank agreement was postponed until a definite reply had been received from the department and bankers' principals on the alternative proposal. The conference finished, the results were telegraphed to Europe and to the department.

As I telegraphed you, I do not believe, under the circumstances, that much practical advantage will be gained from insistence upon a provision for subordinate engineers. The chief engineer is practically in entire control, and we shall have to rely upon his good

faith. I do not believe he will risk giving undue preference to the materials of his nationals in view of future extensions or other loans where nationality of engineer will be different.

I was informed by the bankers that working regulations had been drawn up for construction, etc., which provide greater guaranties as to expenditure, etc., than is provided for in the Tientsin-Pukow Railway agreement, and that they would furnish me with a copy of them. These regulations were an after thought and, as I telegraphed you on the 17th instant, provision for their recognition was inserted, I am informed, after the recent exposures in connection with the Tientsin-Pukow Railway (see my No. 1221, of Aug. 3, 1909), although they had been prepared in the form of a letter from Chang Chih-tung, at the time the agreement was initialed, and therefore did not appear in the copy forwarded in my No. 1175, of June 9 last. I shall forward a copy of these regulations as soon as possible.

A few days later I was informed privately that all the bankers had been authorized to conclude on the basis proposed.

On the 16th instant I received your telegram of August 15, and the following day handed to Mr. Liang, at his private residence, a memorandum embodying your instructions, copy of which is inclosed herewith. In discussing this reply of the department he stated that he did not believe Chang Chih-tung would make objections to the employment of American engineers, and that the assurance that American engineers would be employed could be given.

I then told him that I should expect appropriate official recognition of American participation in the loan after a common understanding had been reached by all concerned. He replied that that was quite natural, and that there would be no difficulty on that score.

I told Mr. Liang that Mr. Straight, the representative of the American group, was expected Thursday, and that immediately upon his arrival we would proceed to the preparation of the interbank agreement. He expressed much pleasure at the prospect of an early settlement, and said the matter should not be unnecessarily delayed, as Chang, whose patience had been put to its most severe test, was now being exposed to the criticism of the gentry of Hunan and Hupeh for the employment of foreign capital at all. (See inclosure 3.)

Mr. Liang's position throughout these negotiations has been most difficult, and for many weeks Chang Chih-tung, his patron and political sponsor, wielding at present the strongest influence in Peking, has declined to receive him. While this may seem childish, it is none the less a fact, the explanation of which would unnecessarily prolong this already very long dispatch.

I hope to submit the outlines of the interbank agreement to the department on Friday, the 20th.

I have, etc.,

HENRY P. FLETCHER.

[Inclosure 1.]

BANKERS' ALTERNATIVE PROPOSAL RE HUKUANG LOAN.

(1) The amount of the loan to be increased to £6,000,000, of which £3,000,000 shall be allotted to the Hankow-Canton line, Hupeh-Hunan section, and £3,000,000 to the Szechuen-Hankow line, Hupeh section.

(2) American group to be allotted one-half participation in amount for Szechuen-Hankow line, Hupeh section, namely, £1,500,000, with corresponding banking advantages. It is further understood that American materials shall be

entitled to the same privileges and preferences reserved in the original agreement to British, French, and German materials, and that the said American bankers shall share equally in the commission on the purchase of materials.

(3) The provisions of the original agreement in regard to future and supplementary loans remain unaffected by this present arrangement, except that the American rights to one-half participation in future supplementary loans for the Szechuen-Hankow line, Hupeh section, are hereby recognized.

(4) A supplementary agreement to be drawn up in the above sense by the four groups and approved by the Chinese Government. The American objection to the original loan agreement will then be withdrawn and the original agreement ratified and signed unchanged except as to the amounts.

[Inclosure 2.]

Memorandum for Mr. Liang.

AMERICAN LEGATION,
Peking, August 16, 1909.

Referring to the conference held at the Wai-wu Pu on August 10, in which it was proposed that—

(1) The amount of the loan to be increased to £6,000,000, of which £3,000,000 shall be allotted to the Hankow-Canton line, Hupeh-Hunan section, and £3,000,000 to the Szechuen-Hankow line, Hupeh section.

(2) American group to be allotted one-half participation in amount for Szechuen-Hankow line, Hupeh section, namely, £1,500,000, with corresponding banking advantages. It is further understood that American materials shall be entitled to the same privileges and preferences reserved in the original agreement to British, French, and German materials, and that the said American bankers shall share equally in the commission on the purchase of materials.

(3) The provisions of the original agreement in regard to future and supplementary loans remain unaffected by this present agreement except, that the American rights to one-half participation in future and supplementary loans for the Szechuen-Hankow line, Hupeh section, are hereby recognized.

(4) A supplementary agreement to be drawn up in the above sense by the four groups and approved by the Chinese Government. The American objection to the original loan agreement will then be withdrawn and the original agreement ratified and signed unchanged except as to the amounts.

The American chargé d'affaires has the honor to inform the Chinese Government that the American Government will consent to the arrangement as to chief engineers as set out in Article XVII of the agreement of June 6 last, provided the Chinese Government will assure the employment of American engineers by the managing directors; it being also clearly understood that American materials are to have the same preferences and privileges reserved to British, German, and French materials in respect to both roads and their branches as provided in the said agreement.

The American Government will agree to the increase in the loan and its allotment as stated in Articles I and II of the proposal above quoted. It will also agree to the provisions of Article III (above), which it understands places future and supplementary loans for the two sections covered by the agreement upon the same basis as the present loan.

In regard to the above allotment of the loan the American Government does not waive equal rights with regard to materials in all lines and branches covered by the contract.

It is clearly understood that except as modified above, American rights are to be as detailed in the department's telegram of August 6, a paraphrase of which was handed to the president of the Wai-wu Pu on the 9th instant (a copy of which is attached).

Whenever the American Government has the assurance of the Chinese Government and the banking groups that a common understanding has been reached upon these points and the banking groups have arranged matters between themselves and the Chinese Government in some way as to engraft upon the original agreement a full recognition of the American rights, the American Government will withdraw its objections to the original agreeemnt.

File No. 5315/458.

The Secretary of State to Chargé Fletcher.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, August 27, 1909.

Mr. Knox informs Mr. Fletcher that the United States, prior to the initialing of the loan contract, protested against it and insisted upon the right of equal American participation, but unable to bring this about through the ordinary channels, and after refusal of bankers to admit American banks on equal terms, the President communicated directly with His Imperial Highness the Prince Regent, with the result that the Wai-wu Pu was instructed by His Imperial Highness to take up the matter with the American chargé d'affaires with a view to meeting the American claims, and as a means of bringing this about and upon the suggestion of the United States, China has consented to increase the railway loan for the purpose of admitting equal American participation. Mr. Knox says the United States has practically reached an agreement with China as to the basis of that participation, namely, that American bankers will take one-fourth of the total loan with the understanding that the proceeds of the American allotment are to be used for the Hankow-Szechuen line, Hupeh section, and the further understanding that Americans and American materials shall have all the same rights, privileges, preferences, and discretions for all present and prospective lines that are reserved to British, German, and French nationals and materials under the terms of said agreement, except this, that the United States does not now insist upon a chief engineer for either section, being assured by China that American engineers will be employed upon the engineering corps of both sections, and excepting also this, that American participation in future loans for branches is to be one-half in the Kankow-Szechuen line, Hupeh section. Adds that American rights in all other respects are to be as broad as the contract.

Says it is obvious that the correct and only proper thing now to do is to formally make a record of the arrangement in the form of an agreement between the parties for whose benefit it has been made, these parties being China on the one hand and the bankers who agree to furnish the money on the other. Says that whether this be accomplished by the direct and straightforward method of changing the present agreement so as to include all the other modifications incident to American participation, as well as the change in amount of loan, and by making the American bankers' group who are to furnish the money a party to the agreement to furnish it, or whether all this is to be evidenced by an additional agreement to supersede the original one is perhaps not essential, provided that whatever form it takes the papers must conform to the facts and the American bankers must be parties throughout, and any supplementary agreement would have to be part and parcel of the original.

Directs Mr. Fletcher that he himself will not sign any agreement in any capacity; that the United States will take the assurance of the Chinese Government on the other points in which it is interested, as set forth in previous telegrams and which are not directly covered

by the agreement; and that the United States agrees to do nothing but withdraw its objections when the matter is closed to its satisfaction.

Mr. Knox says he will not consent to any plan tending to make this transaction seem other than what it really is, namely, an agreement between American bankers and the Chinese Government on the same footing as the arrangement for the bankers of other countries with that Government.

Having outlined the situation, and referring to Mr. Fletcher's telegram of August 20, Mr. Knox gives the following specific instructions:

First. The Government of the United States insists upon an amendment to give the American group an equal voice as to the purchasing agencies.

Second. The parties to the agreement must be China and of the second part the European groups and the American group, as in the amended draft which Straight sent, with this addition, after the words all of New York, " constituting the American group." Also it should be signed not by Mr. Fletcher but by the representative of the American group. This Straight draft would serve as an excellent model for the agreement.

Third. The original agreement having been essentially changed, in fact, in other particulars, in consequence of and in addition to the mere change in amount of loan, all changes now necessitated in the text of the agreement are the intended and indispensable result of the increase of the amount and of China's agreement that Americans shall participate; therefore this Government sees no reason for isolating in a supplementary agreement changes entirely germane to the change in amount as well as to all other provisions of the original agreement.

One instrument is therefore much preferable, and Mr. Fletcher is instructed to urge a single agreement including all alterations and amendments now involved in the substance of the supplementary and amendatory points now accepted by all parties or herein further suggested.

Fourth. Turning from the general to the purely banking interests, the American group especially dislike the restriction, except at the time of first issue, of the market for their bonds. We are informed that they also wish, among various other things, the amendment of article 14, in the sense that proceeds of their part of the loan are to be deposited with the American group in New York or with such banks in China as they may from time to time designate for the purpose, the International Banking Corporation being at present designated. All such details, however, must be adjusted directly by American group's representative, under instructions from his principals. His action will be subject to Mr. Fletcher's approval and will be supported by the legation's good offices, so far as consistent with his paramount duty to give his strongest efforts to the questions of purchasing agencies, materials, and such broader national concerns.

Fifth. When such text of agreement has been agreed on and found by Mr. Fletcher fully conformable to his instructions, he will address to the Chinese Government a note to the effect that, in view of their assurances as to the employment of American engineers by

the managing director, and upon the distinct understanding that American participation in the pending railway loan is to include the enjoyment in the same proportions of all the rights, privileges, and discretions granted to and invested in the English, German, and French interests, and, further, that Americans and American goods, products, and materials shall be entitled to the same privileges and preferences reserved to English, German, and French nationals and materials in respect to both roads and their branches, he is prepared, on behalf of the United States, formally to withdraw objection to the agreement. Says that Mr. Fletcher's note may conclude with an expression of gratification that this matter is now settled upon a basis so well understood between the two Governments, and that such a note, duly acknowledged as evidence of its acceptance, will be as satisfactory as a protocol would have been, and at that stage he may finally withdraw objection.

File No. 5315/550–551.

Chargé Fletcher to the Secretary of State.

No. 1239.] AMERICAN LEGATION,
Peking, September 5, 1909.

SIR: Continuing my No. 1231, of the 18th of August, on the subject of American participation in the Hukuang Railway loan, I have the honor to report that Mr. Straight, the representative of the American group of bankers, reached Peking on the 19th ultimo, and on the following day a conference was held at the Hongkong and Shanghai Bank, at which were present Mr. Hillier of the British, Mr. Cordes of the German, Mr. Casenave of the French bank, and Mr. Straight and myself.

The European bankers had prepared a draft of an agreement embodying the points on which a common understanding seemed to have been reached. This draft agreement was discussed article by article, and I telegraphed that evening its substance.

I explained to the bankers that we expected satisfactory assurances from the Chinese as to the employment of American engineers, and that our acquiescence in any agreement would depend upon the receipt of such assurances. This was understood and concurred in by the bankers. The draft agreement embodied the four alternative proposals telegraphed to the department on August 10, and provided for American participation in the loan in accordance therewith.

In regard to auditors it was first arranged that they should be appointed and paid by the European banks. Subsequently the latter agreed with Mr. Straight to give the American group a voice in their appointment, it being understood that a German would be appointed for the Hankow-Szechuen line and an Englishman for the Canton-Hankow line, but that Americans would be eligible for appointment in the accounting department.

The provisions with regard to preliminary expenses were also subsequently changed in the sense that this matter was to be the subject of a subsequent equitable arrangement amongst the banks.

In regard to the purchasing agencies no changes were made in the original agreement, provided that the Deutsch-Asiatische Bank would act as purchasing agent for the Hankow-Szechuen line and a

company nominated by the Hongkong and Shanghai Banking Corporation for the Canton-Hankow line, but it was agreed that all commissions would be pooled and our group receive 25 per cent of the total commissions. While this arrangement served to protect the banking interests, it did not give us as much voice in the purchases as would be desirable in order to see that American materials receive due consideration. However, as the auditors' monthly statements will show the foreign materials purchased and the country of origin, some check is provided in this regard, and also it seemed difficult to devise American participation in these agencies in a practical way under the circumstances. Since the receipt of the department's telegram of August 28, however, we have endeavored to secure a provision that one of the purchasing agencies shall be nominated by the Deutsch-Asiatische Bank and the American group and the other by the English and French groups. This is the best arrangement possible, I believe, and we are now awaiting instructions from Berlin and America in this regard.

To return to the draft agreement: The provisions with reference to the market of the bonds was discussed at some length, and it was finally decided to change the provision to read, "No party to this agreement shall issue bonds on the markets of the others."

On the 28th I received the department's telegraphic instructions in reply to my telegram of the 20th August. On the following day, accompanied by Mr. Straight, I called on Mr. Liang Tun-yen at his private residence and read to him the department's telegram. He seemed greatly annoyed at first that we should change the modus operandi. I explained to him fully why the Chinese Government should be a party to the agreement. I urged upon him, in accordance with your instructions, the advisability of a single agreement. He replied that as far as he was concerned he would be willing to have the matter settled in this way, but that Chang had the decision of the question. He said he would refer the matter to Chang (through Chang's secretaries, as Chang refuses to see Liang). Chang is really very ill, and this fact seems to complicate the already sufficiently complicated situation. I have been informed that Chang refuses to change the original agreement, "except as to amount," but he is willing to sign a supplementary agreement providing for American participation, and we will draw up and submit to him a draft of such agreement as soon as the matter of the purchasing agencies is settled.

The Russian minister called at the Wai-wu Pu again on Saturday, the 4th instant, to endeavor to secure participation, but assured Liang that he would not interfere with the agreement which we have practically reached, but hoped that a share might be allotted to him by the French group, and asked if, in that event, China would officially recognize the Russian participation. Liang said he thought that could be arranged, but that the agreement with the four groups could not now be delayed.

I do not believe it politic or expedient to insist further on our inclusion in the original agreement, because Chang has set himself against any further change in that particular agreement. This is quite childish, but rather than risk a crisis and consequent anti-American recriminations, I have decided to accept, as I feel authorized to do by your instruction of August 28, the less simple solution. I regret I can not secure the single instrument.

The German representative has taken advantage of the department's position that the agreement must be signed by China of the first part instead of the European banks to say to China that the Americans do not really want to participate in the loan, but desire to defeat any loan at all, and point out that we no sooner receive concession in regard to one point than we raise others. The Chinese, under the influence of the rival interests, are becoming restive and are complaining of our action, and I fear the effect on future American enterprises of similar nature if too obdurate a position is taken on this matter of the form of the agreement, and I think it most essential that the matter be disposed of as soon as possible.

I inclose copies of the working regulations referred to in my No. 1231 of the 18th ultimo, together with a letter which was originally intended to be addressed by Chang Chih-tung to the banks, but which will now be considered as part of the working regulations.

I shall of course keep the department informed by telegraph of the progress of the negotiations.

I have, etc. HENRY P. FLETCHER.

[Inclosure 1.]

WORKING REGULATIONS DRAWN UP BY THE DIRECTOR GENERAL OF THE HUPEH-HUNAN SECTION OF THE CANTON-HANKOW RAILWAY AND THE HUPEH SECTION OF THE SZECHUEN-HANKOW RAILWAY.

1. *The managing director.*—Under the terms of his appointment by the director general he will be clearly instructed as to the extent of the railway line under his control, and his administration will comprise all matters relating to the said railway line, as, for instance, the selection and appointment of Chinese and foreign officers, the determination of the amount of their salaries, the examination into their character for industry, the deciding of engineering work of every description, as well as the dealing with Chinese and foreign correspondence; also the drawing and transfer of funds and the ordering of materials. As to his powers in matters connected with the employment of the staff and with the control of funds, their promotion or dismissal in the one case and sanction or refusal in the other, he shall, as such cases arise, report to the director general, whose authority having been obtained the managing director will give his signature, and the decision will then take effect.

2. *The codirector* will be appointed by the director general and will be associated with the managing director in the administration of the railway affairs. Should the managing director be called away from his post by important work, or should he be sent by the director general on a mission of inquiry, the codirector can in such cases be called upon to temporarily assume the powers of the managing director with a view to the avoidance of injurious delay; but on the return of the managing director to his post the administration shall revert to his control in order to preserve the centralization of power.

3. *The chief engineer.*—Under the terms of his agreement, as approved by the director general, the extent of the railway line in the respective Provinces as described therein will pass under the special control of the chief engineer in respect to construction works of every description for its entire length, and he shall be the head of all the engineers of that line. In the arrangement of all necessary estimates and whenever matters are referred to him for his opinion or investigation he must prepare betimes suitable proposals without delay and submit them to the managing director, who will refer them to the director general, and after they have received his approval they may then be put into effect.

4. *Chinese and foreign officers for the line generally.*—The Chinese officers shall be chosen for their familiarity with the customs and people of the locality, the foreign officers for their experience and professional attainments, and for all such officers alike their character and reputation under ordinary circumstances are matters of the highest importance. Chinese officers shall be ap-

pointed after an examination of their antecedents and seniority, and foreigners will be engaged only after examination of their diplomas, certificates, and letters of recommendation. All must be examined with the greatest care as to the degree of their qualifications for employment. The Chinese staff will have their posts allotted to them by the managing director and the foreign staff by the chief engineer, but they all come under the general control of the managing director. If there are gentry of the Province of ability such as to fit them for employment, the managing director shall recommend them to the director general, who will issue special commissions for their employment, placing them on the same footing as deputies, all alike being subject to the general control of the managing director.

5. *Chinese and foreign sectional officers.*—The whole line being of great length, it will be necessary, in order to expedite the work of construction later on, to divide it into sections with due regard to local conditions, fixing beforehand the dates on which work on the various sections is to commence; but as the managing director and the codirector will ordinarily be resident at the head office, and consequently unable to exercise supervision at all points, it will be necessary for the managing director to select suitable Chinese officers and recommend them to the director general for appointment to such-and-such sections of the line as resident sectional deputies, and for the chief engineer to select and recommend foreign officers of the best character and attainments to be submitted to the director general for appointment to such-and-such sections of the line as resident sectional engineers. All Chinese officers and workmen on such sections will be under the control of the sectional deputies, and the foreign officers of the sections will be under the control of the sectional engineers, their posts being assigned to them by the chief engineer, but all being under the general control of the managing director.

6. *Requisition of funds.*—All the requisitions on funds are to be made in accordance with the procedure laid down in the agreement. The managing director will instruct the chief engineer beforehand to prepare and present for approval a statement of the work which it is proposed to carry out during the ensuing three months, with an estimate in round figures of the sum required, to be presented for approval to the managing director. The managing director will then issue a certificate in duplicate, one copy of which will be handed to the foreign auditor and one to the contracting banks, and the said banks shall, after receipt of the certificate, hold the funds in readiness to be drawn against as occcasion may require, the managing director at the same time reporting thereon to the director general for his information.

7. *Accounts.*—In the management of accounts brevity and clearness must be the guiding principle, so that they may be taken in at a glance. Every disbursement must be exhibited by corresponding Chinese and foreign entries, in order that Chinese and foreigners can both examine them. The vouchers must bear four signatures before they can become valid—first, that of the payee; secondly, that of the Chinese and / or foreign accountant in Chinese employ; thirdly, that of the Chinese and / or foreign controller in Chinese employ. After these three signatures have been obtained the voucher will be handed in to await verification and signature by the managing director. The accounts will be trial balanced every three months and submitted to the managing director, who will present a further copy to the director general. There will further be a general balance at the end of every year, when the construction accounts of the railway and the traffic receipts and expenditures will be published in Chinese and English for the information and satisfaction of the public. Such trial balances shall not be more than 10 days and the general balance not more than 1 month late, so as to avoid the accumulation of arrears.

8. *The track.*—For the projected Canton-Hankow and Szechuen-Hankow main lines the director general established offices three years ago, and has repeatedly dispatched Chinese and foreign survey parties along the routes to examine the local conformation and the important cities and market towns. The trace of the line having thus been determined, plans were made and kept for reference. The survey having therefore been to a large extent completed, the conditions prevailing differ widely from those of other lines where no preparations at all have been made. The chief engineer, on commencing work, must therefore proceed with the construction in accordance with the plans prepared wherever the line has already been surveyed and must not lightly depart from them. Where the line has not been surveyed he must continue the survey, and must in every case submit detailed plans and explanations for presentation by the managing director to the director general, who will decide as to the carrying out of the

same. If after resurvey there should be any alterations really necessary, the alterations to be made may be presented in separate plans, with explanations, te be laid before the director general for reconsideration and decision. With regard to important sites for railway stations and storage yards, the greatest care must be used in their selection, a secret report being submitted in advance, which must on no account be allowed carelessly to leak out.

9. *Tenders.*—Whenever materials are to be purchased the engineer in chief will be directed by the managing director to prepare specifications giving particulars of the quality and pattern of the materials to be supplied. These specifications will be submitted to the managing director, who will issue a notice inviting tenders to be opened on a certain date, after which the orders will be allotted. In selecting tenders the most favorable offer must be taken, and besides, in effecting purchases, only such goods must be chosen as conform to the quality specified. The date for opening tenders will be previously reported by the managing director to the director general, who will appoint an official to superintend the opening of the tenders jointly with the official appointed for the purpose by the managing director.

10. *Purchase of land.*—In addition to the head construction office of the railway, a special department will be established for the purchase of land, for which special officers will be appointed to act in cooperation with the managing director. Detailed plans of all the land required for the stations and permanent way will be prepared by specially appointed deputies in cooperation with engineers, the measurement, area, and class of the land being clearly marked thereon. Apart from the arable land, a report enumerating the dwelling houses, graves, copses, gardens, ponds, and the like, which might have to be expropriated, will be furnished to the managing director to be submitted for decision to the director general, who, in conjunction with the viceroy and governor of the Province concerned, will issue proclamations, whereupon the resident sectional deputy, acting conjointly with the official deputies and non-official deputies (i. e., chosen from the gentry) and the local authorities, will summon the owner of the land to be present at the measurement and pegging out of his land, the price for which will be paid in accordance with the official scale, not the slightest room being left for dispute.

11. *Purchase of materials.*—In addition to reference to this subject contained in article 18 of the agreement, and in its supplementary protocol, it is understood that whenever materials are required every effort must be made to have recourse in the first instance to materials of Chinese origin, and which Chinese merchants are able to supply, with a view to preventing the profits leaving the country.

12. *Contracts for work.*—In the case of contracts for work, care must be taken that the contractor is a really solid and reliable man and has had previous experience in contract work, or can furnish substantial guaranties in the shape of a money deposit. He will apply to the managing director, who will, after satisfying himself on these points, sanction his admission to the contracts. On no account must questionable members of the gentry or rowdy characters be allowed to assert a monopoly, resulting in delay and cheating. Detailed regulations for contracts must moreover be drawn up so as to secure the closest possible protection against delay to important work.

13. *Supplementary regulations.*—The foregoing regulations have been drawn up by the director general, and are to be communicated to the managing directors of each administration, who are to observe and carry them into practice. No infringement will be permitted. If there are points requiring further elaboration, either managing director may submit proposals to the director general, who will consider the question of their adoption, and his approval must be awaited before they can become effective.

[Inclosure 2.]

HUKUANG RAILWAYS LOAN.

[Letter originally intended to be addressed by Chang Chih-tung to the banks, but now to be considered as part of working regulations.]

IMPERIAL CHINESE GOVERNMENT 5 PER CENT HUKUANG RAILWAYS LOAN OF 1909.

By article 18 of the present agreement it is provided that at rates and qualities equal to those of German, English, French, or other foreign materials, preference shall be given to Chinese materials and goods already manufactured in China, in order that Chinese industries may be encouraged.

Now, the most widely used railway materials are sleepers and rails. China produces much timber, and therefore Chinese sleepers should be purchased if of suitable quality.

As regards rails, it is agreed that one-half shall be purchased from the countries of the contracting banks or from other countries and one-half from the Han Yang Iron Works. If the output of the Han Yang Iron Works proves really insufficient for requirements, more can in that case be purchased from the countries of the contracting banks and other countries, in order to obviate delay. If, on the other hand, the output of the Han Yang Iron Works is sufficient, more rails can be purchased from them. All purchases will still be executed in the manner laid down by article 18 of the agreement.

Further, as regards engineers and other technical employees on the various sections, it shall be within the discretion of the director general to appoint either Chinese or Europeans; or, on account of their familiarity with the survey of the line, he may take into consideration the appointment of Japanese, provided, always, that such persons are suitable through possessing some knowledge of the language of the engineer in chief.

Again, since this loan is raised by the Chinese Government with the object of furnishing the necessary capital for constructing Government railways, the chief and branch bureaus established by the two Provinces shall be entirely under the control of officers deputed by the director general, and if among these officers it is found necessary to employ gentry, they shall act as deputies in all respects under the orders of the director general.

Article 14 of the present agreement stipulates that two days prior to the issue of a requisition upon the loan funds, the managing director of the railway or his representative shall in addition thereto issue statements in duplicate clearly setting forth the object of such requisition, one copy of which shall be handed to the bank and one to the auditor. The intention of this stipulation is that the managing director and the auditor shall each fulfill his responsibilities within his own province, and further that the auditor shall be enabled to discharge to the full his duties as auditor.

If the auditor is of opinion that in any requisition there are disbursements which should not be made, he shall be entitled, on the one hand, to apply to the managing director for specific information and to discuss the matter with him, and at the same time to give notice to the bank temporarily to suspend the issue of such funds. As soon as he shall have satisfied himself by inquiry that the payments are actually such as are permissible under the terms of the agreement, he must at once notify the bank that they are to issue such funds accordingly. He shall not intentionally delay or obstruct matters to the hindering of important work, and it shall be imperative upon the auditor to act in all respects in conformity with the conditions of the present agreement, which he must neither infringe nor pervert.

A further point to be noted is that the Chinese officials acting in this business are in no way entitled to any commissions whatsoever, and the banks shall not privately offer them gratuities. If it should be discovered that private offers of gratuities have been made, the banks will be held liable to a heavy monetary penalty.

Again, on the conclusion of this loan it will be necessary forthwith to organize an administration. The practice to be followed hereafter by the said administration has been laid down by the director general in a set of 13 working regulations, of which a copy is annexed hereto.

The foregoing particulars have been expressly and explicitly referred to and set down in this letter, because they are not dealt with in sufficient detail in the agreement itself, and they are to be loyally observed by each party.

Copies of this letter are hereby made in quadruplicate, one to be held by each party.

PEKING, *June —, 1909.*

File No. 5315/487.

The British Ambassador to the Secretary of State.

No. 239.] BRITISH EMBASSY,
Northeast Harbor, Me., September 8, 1909.

SIR: His Majesty's Government wish me to convey to you their proposed solution of the difficulties that have arisen in regard to

negotiations about the international railway loan in China, which are now almost at a deadlock in connection with the appointment of engineers to supervise the construction of different sections.

His Majesty's Government think that the proper and equitable solution is that each of the three groups originally concerned should make some sacrifice so as to allow the participation of the American group. They understand that the British group is willing to do this and suggest accordingly that the whole Szechuen line from Hankow, with any branch line contemplated, should as nearly as is practicable be equally divided between the four powers as respects the engineers as well as otherwise, and that the agreement with the Chinese Government should be so modified as to permit of the American group signing it. His Majesty's Government further propose that should the Chinese Government object to the making of any definite arrangement at present for the construction of the Szechuen line beyond the Hupeh section the Chinese Government should undertake as regards the extension beyond Ichang to apply to the four powers for the capital required for that purpose.

Before the advent of the American group it had been agreed that the Hupeh section of the line should fall to the German group, while the extension beyond was to be shared between the British and French groups. While the above proposal will entail the diminution of the German section, it would likewise involve the diminution of the British and French shares of the extension, and it seems to provide, so far as His Majesty's Government can see, the only fair arrangement possible.

I am desired by His Majesty's Government, in communicating this suggestion, which they have made at Berlin and at Paris, to express the hope that the United States Government will, if they concur, be prepared to give it their support.

I have, etc., JAMES BRYCE.

File No. 5315/487.

The Acting Secretary of State to the British Ambassador.

[Telegram.]

DEPARTMENT OF STATE,
Washington September 11, 1909.

Replying to your telegram [note] of September 8, Government of United States appreciates interest and friendly disposition of His Majesty's Government in respect to American participation in the proposed Chinese railway loan.

I have the honor, however, to advise Your Excellency that previous to the receipt of Your Excellency's message the Government of United States had communicated to the Chinese Government terms and conditions upon which the Government of United States would be willing that American interests should participate in that loan, and that therefore, while these propositions are pending, Government of United States is not prepared to take any action upon the friendly suggestions of the British Government.

ALVEY A. ADEE.

File No. 5315/537.

Aide Mémoire.

DEPARTMENT OF STATE,
Washington, October 4, 1909.

Mr. Kroupensky, chargé d'affaires of the Russian embassy, called at the department to-day and was received by Mr. Phillips.

He referred to the attitude of his Government in regard to the recent Chinese loan negotiations, saying that it was in entire sympathy with the position of the United States, and that it would not in this instance insist upon spoiling the present negotiations by asking for participation in the Hupeh-Hunan loan. He said that his Government, however, was conscious of a desire on the part of the British, French, and German groups to stand together in future deals in China, and that therefore, as to all future loans, the Russian Government desired to make known to the United States that it would wish to be a party thereto, believing that its attitude was in pursuance of the policy of the "open door" to which all nations were committed.

Mr. Kroupensky said that his Government desired some expression from the United States to the effect that in the future the United States would do nothing to debar the Russian financial interests from taking an equal part in the loans in China. He asked that we instruct our chargé d'affaires in Peking to this effect and that, should American financial interests in future themselves appear to object to Russian interference, the Government of the United States would make it clear to them the course to be pursued in the matter. Mr. Kroupensky said that France had already been approached on the subject and had given satisfactory assurance to Russia on the above lines.

File No. 5315/576–577.

Chargé Fletcher to the Secretary of State.

No. 1264.] AMERICAN LEGATION,
Peking, October 5, 1909.

SIR: In continuation of my No. 1239, of the 5th ultimo, on the subject of the Hukuang loan, I have the honor to report that the negotiations, which had practically resulted in an agreement, have been brought to an abrupt pause by the death of the aged grand councilor, Chang Chih-tung, the director general of these railways, as I have to-day telegraphed the department.

The department has noted from the telegrams passing between the department and the legation the progress of the negotiations since my last dispatch on this subject.

The question of the provisions of the agreement with regard to the purchasing agencies was practically the only one to be settled by the various interests. The bankers' conferences finally resulted in the proposal which I telegraphed you on the 24th ultimo and which the department approved by its telegram of September 25.

Immediately on receipt of the department's telegram I notified President Liang Tun-yen informally that we were ready to close, so that it should be clearly understood that the responsibility of further delay in the signature of the agreement could not be laid at our door.

The last proposal with respect to the purchasing agencies seemed to meet with the approval of the European bankers, although neither China nor ourselves were so notified. The Hongkong Banking Corporation and the British legation both professed ignorance of the reasons which actuated the British Government in asking the bank to delay signature, and up to this time the embargo has not been lifted.

That the agreement as telegraphed to the department has not been signed is due, in my opinion, to the action of the British Government.

I inclose copy of the agreement as it now stands.

The death of Chang Chih-tung gives the British Government an opportunity of reconsidering the whole Yangtze railway loan question and of undertaking the negotiations de novo.

I am informed that in the last three weeks conferences have been held by the British, French, and German groups in Europe, and that a new agreement had been or was about to be concluded. The object, and presumably the result, of these conferences was the decrease of the German interests, but in what respect I am unable to report.

Whether the agreement shall be concluded as it now stands, with the substitution of another Chinese official to represent the Chinese Government in the place of Chang Chih-tung, or whether the whole matter be taken up afresh, our position as far as the Hankow-Szechuen line is concerned is incontestable.

Both the German and British rights in the Hankow-Canton line seem to rest largely on the assurances of Chang Chih-tung, which, as far as I am aware, have never received the definite sanction and approval of the Central Government, although in view of the advance of funds for the redemption of the Hankow-Canton Railway loan by the Hongkong Government, the British would seem to have a moral claim on the Central Government which would be impossible to evade.

In conversation a few days ago with Sir Chen-tung Liang Chêng, former Chinese minister to Washington, he informed me that he had promised the Secretary of State, Mr. Root, that in the event of foreign capital being necessary America should have the first call, in view of the fact that the American concession was canceled by China against our desires. The whole matter of the railways in the Hukuang Provinces was, however, in the hands of Chang Chih-tung, and his subsequent transactions with the British would seem to have given them superior rights.

The department is familiar with the circumstances attending the introduction of German interests in the Hankow-Canton line, but it may be worth while to recall the fact that their claims are based on the agreement made in March last with Chang Chih-tung, never ratified by edict, whereby they undertook to lend him the necessary funds for the construction of the Hankow-Canton line on what are known as the "Pukow" terms. This tentative agreement encountered strong British objection on the ground that on September 9, 1905, Chang Chih-tung, then viceroy of the Hukuang Provinces,

by a letter to the British consul general at Hankow, Mr. E. H. Fraser (see Mr. Rockhill's dispatch No. 1079,[1] of Jan. 7, 1908), had given assurances binding the viceroys and governors of the three Provinces of Hupeh, Hunan, and Kuangtung and their successors in office to accept, at equally favorable terms, British financial support if (foreign funds) required to build the Yueh-Han (Hankow-Canton) Railroad.

A compromise of the British and German claims was finally reached by the transfer of the German interests from the Hankow-Canton line to the Hankow-Szechuen line, the French interests being joined to the British. This compromise took the form of the agreement initialed here on June 6 last. Neither this legation nor, as far as I am aware, the Government at Washington, was cognizant of the inclusion of the Hankow-Szechuen line in this agreement until the latter part of May, and then only by means of press reports to that effect. Neither the British nor the Chinese Government approached us to learn whether our rights in connection with the Hankow-Szechuen line would be insisted upon.

It is idle for either the bankers or the Governments concerned to plead ignorance of the existence of these rights, and I have lately been informed that the proposal to include the Hankow-Szechuen line and thus find a way out of the impasse in which the British and German interests found themselves was first made some time in the latter part of April.

The change of attitude on the part of the British Government is due, in my opinion, largely to the influence of Mr. Valentine Chirol, who criticized in the Times the action of his Government and the legation here for failing to cooperate with American interests and for surrendering to the Germans. Mr. Rockhill also had, as the department has no doubt been informed, an interview with Sir Edward Grey, at which Mr. Chirol was present, in which the whole loan situation was reviewed. Dr. Morrison, the Peking correspondent of the Times, has also been favorable to a frank recognition on the part of the British interests of our rights, and has freely criticized the haggling of the Honkong Bank, which he has attributed to German influence which is represented on the board of directors of this institution.

There is undoubtedly a strong inclination in certain influential British quarters to try to curtail, if not entirely eliminate, the German interests in the Yangtze railway loans, and it might be that the death of Chang Chih-tung will be seized upon as offering a favorable opportunity to effect this. And it is not impossible that the two lines and the loans for their construction may be separated, in which event we should insist upon—and I think the British Government would support—an absolutely equal American participation in the Hankow-Szechuen line in every respect.

This course, however, would mean a sharp conflict between German and British interests, and if the Germans were forced out of the Yangtze Valley they would insist upon compensation at the hands of the Chinese Government in loans in Shantung and elsewhere, and the objectionable "spheres of influence" policy would be revived in another form.

[1] Not printed.

I am strongly of opinion that the present agreement or, better, an agreement frankly providing for the equal treatment of all parties with regard to engineers, auditors, purchasing agencies, etc., is far preferable to a reopening of the whole question, when special local rights and interests will be insisted upon.

The existing conditions make it almost impossible for China at present to borrow money for her industrial development on any except the old "concession" lines. In one respect this is exceedingly unfortunate for China, in closing to her the open financial market, but in another it is a salutary check on what, with unlimited opportunity to borrow and ignorant if not corrupt methods of expenditure, might easily lead to bankruptcy.

Before leaving the subject of loans for the construction of railways in Hunan and Hupeh, I feel it my duty to point out to the Government that there exists in both these Provinces strong opposition to the borrowing of foreign capital. During the lifetime of Chang Chih-tung this opposition would have amounted to little more than talk; for, having been so long viceroy of these Provinces, his influence would, I believe, have been sufficient to overcome all local objection. I do not believe that this local opposition should be yielded to on the part of the Central Government. It was a local movement of misguided patriotism which compelled the repurchase of the Hankow-Canton line, but for which the railway would now be in operation. The Provinces have had ample opportunity to proceed with the construction with native capital of these lines and have failed utterly. It is clear that the line should and can only be built by the Imperial Government, and it would be a political blunder of the first magnitude if the Central Government were to yield to this outcry. At the same time the Central Government is woefully weak and may, now that Chang Chih-tung's influence in the Yangtze is withdrawn, hesitate to adopt the strong line with these Provinces which will be necessary not only for the success of the undertaking but for the prestige and authority of the Central Government. Liang Tun-yen, however, clearly realizes this, and has repeatedly stated that the local opposition would not be allowed to interfere with the consummation of this important project.

I have, etc.,

HENRY P. FLETCHER.

File No. 5315/511a.

The Acting Secretary of State to Ambassador Reid.[1]

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, October 17, 1909.

Mr. Wilson says that the substantial agreement as to the Hukuang loan seems some time since to have been reached at Peking between the Chinese Government and the representatives of the four groups, only one or two details of phraseology still remaining to be made definite, and that department's reports tend to the impression that

[1] Repeated to American legation, Peking.

now the acquiescence of the British Government alone is necessary to a consummation in which five powers are greatly interested.

Says that inasmuch as the relative British interest involved is now no less than it was when the agreement was about to be confirmed without American participation, and assuming always that the congeniality of our policies in the Far East has made American participation with Great Britain as agreeable to the British as it is to the American Government, the Government of the United States would be disappointed if further delay for the reason reported should confirm the impression above mentioned.

Mr. Wilson further says that this Government understands that there would be no hesitation, unless on the part of the British, in proceeding at once to final settlement; and viewing broadly the principle of cooperation and the important bearings of the interests involved, the Government of the United States would be constrained to feel keen disappointment if the Government of Great Britain did not see its way clear to cause to be reflected by the British group an attitude as conciliatory as that of the other cooperating interests.

Directs him to take early opportunity to impress the foregoing upon the minister for foreign affairs and thereafter inform the department by telegraph as to the proposed policy of Great Britain in this negotiation, which it seems very desirable to complete at an early date.

File No. 5315/564–565.

Ambassador Reid to the Secretary of State.

No. 1061.] AMERICAN EMBASSY,
London, October 20, 1909.

SIR: Referring to your cipher cable instruction of October 17 and to my preliminary reply No. 484 of the 18th, I beg now to forward a memorandum communicated to me to-day by Sir Edward Grey in the course of a conversation with him on the subject of the delay in the railway negotiations at Peking.

Such points of the conversation as are not covered in this memorandum are stated in my cipher cable dispatch sent to-day.

I have, etc.,

WHITELAW REID.

[Inclosure.]

MEMORANDUM—HUKUANG LOAN.

FOREIGN OFFICE,
London, October 20, 1909.

The United States Government may be assured that the delay in reaching a settlement in the matter of the international railway loan in China is not due to any action on the part of Great Britain.

The case stands as follows:

An intergroup agreement arrived at in Berlin on May 14, 1909, placed the British in possession, as regards engineers, of the whole of the Hankow-Canton and of one-third of the Hankow-Szechuen Railway, as against one-third of the latter line only to the Germans and French, respectively.

Subsequently the American group claimed to participate in the loan for the Hankow-Szechuen line, and negotiations were entered with a view to meeting their wishes.

Early last month negotiations appeared to have reached something like a deadlock, in connection with the appointment of engineers to supervise the construction of the different sections. The only equitable solution appeared to His Majesty's Government to be that each of the three groups originally concerned should make some sacrifice in order to allow of American participation. His Majesty's Government accordingly suggested to the French and German Governments that the whole of the Szechuen line from Hankow, with any branch line constructed, should, as nearly as practicable, be divided equally among the four powers, as regards engineers as well as in other respects, and that the agreement with the Chinese should be modified so as to permit of the Americans signing it. His Majesty's Government further proposed that, should the Chinese Government object to making any definite arrangement at present for the construction of the Szechuen line beyond the Hupeh section, China should undertake, as regards such extension—i. e., beyond Ichang—to apply to the four powers for the capital required.

Before the advent of the American group, it had been agreed that the Hupeh section of the Szechuen line should fall to the German group, while the extension beyond was to be shared between the British and French groups. The foregoing proposal, while entailing a diminution of the German section, likewise involved a decrease in the British and French shares of the extension and provided, as far as His Majesty's Government could see, the only fair arrangement possible.

The German group, however, objected on the ground that the proposal would curtail in a one-sided manner their rights acquired by the agreement of May 14, and that by the preliminary contract with China of the 7th March of this year the German group were to have the engineer for the Hankow-Canton line, and that they only gave up this right on the condition that the engineer for the section of the 800 kilometers of the Hankow-Szechuen line, already granted by the Chinese Government, should be their nominee. In these circumstances the English proposal appeared to them to be unfair and incompatible with the agreement of the 14th of May, since it obliged them to give up acquired rights on the first 800 kilometers of the Hankow-Szechuen line, while the English group retained without any curtailment their rights on the Hankow-Canton Railway. According to the views of the German financiers, it would be only fair that, should the Hankow-Szechuen line be divided into four, the Hankow-Canton line should also be divided.

On the other hand, it appears to His Majesty's Government that, under the arrangement proposed by the Germans, the British group would be making a double sacrifice—one on the Hankow-Szechuen line and one on the Canton-Hankow line—while the Germans would be compensated for the sacrifice they made on the Hankow-Szechuen line and one on the Canton-Hankow line by what they gained at the British expense on the Canton-Hankow line, and would thus be making no sacrifice at all.

The British group therefore consider that they are doing all that can fairly be asked of them by offering to make the sacrifice on the Hankow-Szechuen line and expecting the Germans to do the same, for the sole question at issue is how to redistribute the engineering sections on the Hankow-Szechuen line in such a way as to admit of the American claim to appoint an engineer on one-half of the extension without doing violence to the existing equilibrium of parties.

By the Berlin agreement of the 14th May, one-third of the Hankow-Szechuen line—namely, the Honkow-Ichang line, with branches to Hsianyang and Kuang-shui—was allotted to the German group, and the remaining two-thirds—namely, the extension from Ichang to Hsiangyang to Ch'eng-tu—were allotted to the Chinese Central Railway (Ltd.), an Anglo-French company constructed ad hoc and representing the British and French groups.

In strict equity, therefore, the German group and the Chinese Central Railways (Ltd.) should surrender 267 and 533 kilometers, respectively, in order to satisfy the American claim to appoint an engineer on one-half of the extension, which is assumed to be 1,600 kilometers in length.

It may be admitted, however, that the German section, as the first to be constructed, is relatively of greater value than the deferred section of the Chinese Central Railways (Ltd.), and in order to promote a settlement His Majesty's Government would be willing that the Germans should surrender only the Hsiangyang-Kuangshui section to the Chinese Central Railways (Ltd.), estimated at 200 kilometers, as a contribution to the sacrifice of some 600 kilo-

meters imposed upon the latter by the American claim to one-half of the Ichang-Ch'eng-tu extension.

The relative strength of the three groups over the whole line with its extensions would then be:

	Kilometers.
Germans	600
Americans	800
Chinese Central Railways (Ltd.)	[1] 1,000

File No. 5315/563.

Chargé Fletcher to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Peking, October 27, 1909.

Mr. Fletcher reports that both the German minister and the German bankers' representative seem favorable to the solution proposed by him yesterday, namely, the construction of section Hsiangyang to Kuangshui under American engineers, and promise to recommend it to Berlin. He adds that the British are favorable also, and that all recognize danger of delay.

File No. 5315/563.

The Acting Secretary of State to Chargé Fletcher.[2]

[Telegram.]

DEPARTMENT OF STATE,
Washington, October 30, 1909.

Mr. Wilson refers to Mr. Fletcher's telegrams of October 26[3] and 27 and says on the understanding that the arrangement as to section to be built under American engineer in no way disturbs American rights secured under agreements contained in original and supplementary agreements, which department has approved, and that it affects nothing but engineering privileges, no objection is seen to it. Department assumes that the proposition relating to purchasing agencies is understood as expressed in its telegram of September 25.

Informs him that it has been informally pointed out to the German embassy here that at the suggestion of Germany the department had brought to the attention of the British Government the delay in the consummation of the loan, that reports from Peking had later indicated that this delay was due to Germany, that this Government was much gratified to have learned that there had been reached at Peking an agreement which the German minister and the representative of the German bankers had recommended to Berlin upon the one controverted point, and that it seemed now peculiarly in the power of the German Government to bring the matter to an instant conclusion.

[1] This includes the British and French shares, which thus amount to 500 kilometers each.
[2] Same to London, Paris, and Berlin.
[3] Not printed.

File No. 5315/574.

The Secretary of State to Ambassador Reid.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 11, 1909.

Mr. Knox quotes the following, to be repeated to Berlin and Paris:

This Government is highly gratified to learn that the settlement of the Hukuang loan as contained in your telegram of November 9, 6 p. m.—namely, "that an American engineer should be appointed for Hsiangyang-Kuangshui section of 200 kilometers to cooperate with and to be subject to general direction of the German chief engineer; appointment American engineer to be recognized by Chinese Government by letter; by private arrangement Hankow-Ch'eng-tu-Szechuen section to be divided as follows: First section, 500 kilometers, French chief engineer; second, 600, American chief engineer; and third, 500, English chief engineer"—is acceptable to His Imperial German Majesty's Government provided that American engineer for Hsiangyang-Kuangshui section will not interfere with judgment of German chief engineer regarding purchase of materials. This condition is agreed to by the United States on the understanding that it shall in no way prejudice the rights of our nationals for the same privileges and preferences with regard to materials and for a voice in the selection of purchasing agencies as already agreed upon.

Believing that the powers interested are now as one as regards conditions of the Hukuang loan, it is hoped that His Imperial German Majesty's Government will at once cause instructions to be sent to the German representative at Peking to sign the agreement. You will urge an immediate favorable reply.

States that inasmuch as the above settlement is understood to be in harmony with the proposals of the British Government as stated in Mr. Reid's telegrams of October 18 and 20,[1] it is hoped that the British Government will at once cause instructions to be issued to the Hongkong and Shanghai Banking Corporation to sign the agreement. Directs him to urge an immediate favorable reply.

File No. 5315/603–604.

Ambassador Reid to the Secretary of State.

No. 1081.] AMERICAN EMBASSY,
London, November 16, 1909.

SIR: With reference to the department's cable November 6, 1 p. m.,[1] in which was embodied a memorandum to be communicated to the foreign office in reply to their memorandum of the 20th ultimo,[2] I have the honor to inclose herewith a copy of the memorandum in question, which was forwarded to Sir Edward Grey on the 9th instant.

I have, etc.,

WHITELAW REID.

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[1] Not printed.
[2] See inclosure to No. 1061, of Oct. 20, 1909, from London, p. 207.

[Inclosure.]

Ambassador Reid to the Minister for Foreign Affairs.

MEMORANDUM.

AMERICAN EMBASSY,
London, November 9, 1909.

Now that there has been signed and ratified by an unpublished imperial decree an agreement by which American and British interests are to cooperate in the financing and construction of the Chin Chou Tsitsihar Aigun Railroad, the Government of the United States is prepared cordially to cooperate with the British Government in diplomatically supporting and facilitating this, so important alike to the progress and the commercial development of China.

The Government of the United States would be disposed to favor ultimate participation to a proper extent on the part of other interested powers whose inclusion might be agreeable to China and which are known to support the principle of equality of commercial oportunity and the maintenance of the integrity of the Chinese Empire.

However, before the further elaboration of the actual arrangement the Government of the United States asks the British Government to give their consideration to the following alternative and more comprehensive projects:

1. Perhaps the most effective way to preserve the undisturbed enjoyment by China of all political rights in Manchuria and to promote the development of those Provinces under a practical application of the policy of the open door and equal commercial opportunity would be to bring the Manchurian highways and the railroad under an economic and scientific and impartial administration by some plan vesting in China the ownership of the railroads through funds furnished for that purpose by the interested powers willing to participate. Such loan should be for a period ample to make it reasonably certain that it could be met within the time fixed, and should be upon such terms as would make it attractive to bankers and investors. The plan should provide that nationals of the participating powers should supervise the railroad system during the term of the loan, and the Governments concerned should enjoy for such period the usual preferences for their nationals and materials upon an equitable basis inter sese.

The execution of such a plan would naturally require the cooperation of China and of Japan and Russia, the reversionary and the concessionaries, respectively, of the existing Manchurian railroads, as well as that of Great Britain and the United States, whose special interests rest upon the existing contract relative to the Chin Chou Aigun Railroad.

The advantages of such a plan to Japan and to Russia are obvious. Both those powers, desiring in good faith to protect the policy of the open door and equal opportunity in Manchuria, and wishing to assure to China unimpaired sovereignty, might well be expected to welcome an opportunity to shift the separate duties, responsibilities, and expenses they have undertaken in the protection of their respective commercial and other interests for impartial assumption by the combined powers, including themselves, in proportion to their interests. The Government of the United States has some reason to hope that such a plan might meet favorable consideration on the part of Russia, and has reason to believe that American financial prticipation would be forthcoming.

2. Should this suggestion not be found feasible in its entirety, then the desired end would be approximated if not attained by Great Britain and the United States diplomatically supporting the Chin Chou Aigun arrangement and inviting interested powers friendly to the complete commercial neutrality of Manchuria to participate in the financing and construction of that line and of such additional lines as future commercial development may demand, and at the same time to supply funds for the purchase by China of such of the existing lines as might be offered for inclusion in this system.

The Government of the United States hopes that the principle involved in the foregoing suggestions may commend itself to His Britannic Majesty's Government. That principle finds support in the additional reasons that the consummation of some such plan would avoid the irritations likely to be engendered by the uncontrolled direct negotiations of bankers with the Chinese Government, and also that it would create such community of substantial interest in China as would facilitate a cooperation calculated to simplify the problems, fiscal and monetary—reforms now receiving such earnest attention by the Imperial Chinese Government.

File No. 5315/593.

The Secretary of State to Ambassador Reid.[1]

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 17, 1909.

Mr. Knox informs Mr. Reid that he may represent to the British foreign office that the German group has now consented that an American engineer shall be appointed for the Hsiangyang-Kuangshui section to cooperate under the general direction of the German chief engineer, and that this arrangement has been approved by the German foreign office, which has at the same time officially recognized the equal rights of American and other nationals under the original and supplementary agreements and notably under article 18 of the latter, which reads:

> With regard to article 18, such modifications or extensions of the provisions respecting the appointment of purchasing agents for the two lines as may be necessary to secure equal consideration for British, German, French, or American materials, and equal facilities for the receipt of tenders in the markets of the four countries, shall be made the subject of an equitable arrangement between the director general and the four banks.

Directs that he urge a like favorable decision at London in order that the agreements may be forthwith signed at Peking.

File No. 5315/598.

Chargé Hitt to the Secretary of State.[2]

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Berlin, November 24, 1909.

Mr. Hitt reports that the foreign office has informed him that the German bankers are authorized and prepared to sign at once the agreement with the Chinese.

Refers to departments telegram of November 17, 8 p. m., and says that foreign office agrees that it is understood by the Imperial German Government that the Government of the United States agrees to the American engineer on the Hsiangyang-Kuangshui section being under the direction of the German chief engineer of the entire Hupeh section, and that the American engineer shall not interfere with the judgment of the German chief engineer regarding the purchase of materials on the condition that the broad rights applicable to the whole of the Hankow-Ch'eng-tu line assured to American nationals on an equal footing with the nationals of the other interested powers are not disturbed thereby.

Mr. Hitt says the provision regarding article 18, quoted in the department's telegram above referred to, has been communicated by the German bankers to the British group and the willingness of Ger-

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[1] Repeated to Berlin.
[2] Repeated to London and Peking.

man bankers to accede thereto has been signified, but in view of the attitude of the British Government that engineering question must be disposed of before other questions are decided on, the foreign office does not wish to bind itself at present to accept the same.

File No. 5315/619.

The Secretary of State to Chargé Hitt.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 9, 1909.

Mr. Knox informs Mr. Hitt that according to the department's reports the Hukuang loan negotiations are now being interrupted by unwillingness of French group to indorse the arrangement already agreed upon by the Governments of the United States, Great Britain, and Germany, and that this Government is joining with the Government of Great Britain in urging the Government of France to instruct their bank representatives to sign the original and supplementary agreements as they stand, leaving the details of possible future extension to be settled later by private arrangement, as proposed by Straight.

Adds that the Government of the United States would be glad if the German Government also would take similar action.

File No. 5315/619.

The Secretary of State to Chargé Blanchard.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 9, 1909.

Mr. Knox says that by referring to the department's previous telegrams it will be clear that the Governments of the United States, Great Britain, and Germany have already reached an agreement as to the Hukuang loan and are now ready to instruct their respective groups to sign, and that the French group alone are reported to raise objections which pertain to the possible future extension from Ichang to Ch'eng-tu. Directs him to submit to the French foreign office that the Government of the United States would be constrained to feel keen disappointment if the Government of France did not assume an attitude as conciliatory to American interests as that of the other cooperating powers by causing their bankers to sign immediately the original and supplementary agreements as they stand, leaving the details of possible future concession for extension to be settled later on by private arrangement.

Adds that in view of the increasing opposition in Chinese Provinces the Government of the United States believes that it would be for all concerned a misfortune of the most far-reaching consequence

if the French Government failed now to cause their bankers to complete the arrangement without further delay.

Mr. Blanchard is instructed to impress this upon the foreign office and report the prospects. Informs him that Great Britain is making similar representations, and it is believed that Germany will also join.

File No. 5315/625.

Ambassador Reid to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
London, December 11, 1909.

Mr. Reid says the foreign office has received a reply from the French Government which is considered unsatisfactory and as demanding more than the English can accede to, and that the foreign office has to-day telegraphed representative of British group now negotiating in Paris to sacrifice in favor of French sufficient mileage to make French and German sections equal in length. Adds that it is hoped French foreign office will accept such a compromise.

File No. 5315/629b.

The Acting Secretary of State to Ambassador Reid.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 15, 1909.

Mr. Wilson says that according to information received to-day, it appears that the French would be satisfied with 600 kilometers. Asks if the concession to French interests referred to in Mr. Reid's telegram of the 11th has been actually made by British group, and adds that if it has, an immediate settlement should be reached.

File No. 5315/633.

Chargé Blanchard to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Paris, December 16, 1909.

Referring to instruction of December 9, Mr. Blanchard says the difficulty lies between French and English groups, and that French Government is ready to adhere as soon as it obtains in the Hankow-Canton and Hankow-Ch'eng-tu lines a share equal to the share of other powers. He says the partition between engineers, as proposed by Great Britain, is unacceptable to France. Points out that projected international loan comprises about 3,200 kilometers, 800 for each participant, and that American and German have received their legitimate share, which represents a quarter of the operation, whereas

English reserve 1,400 kilometers, 900 on the Hankow-Canton and 500 on the Hankow-Ch'eng-tu line, proposing to the French to be content with eventual 500 kilometers on the Szechuen line. Adds that so soon as English group will consent to reserve to French a share equal to that of their partners there will be no further opposition, and that this would be the case if the 900 kilometers of the Hankow-Canton line remained controlled by English and third section of Szechuen line by French engineer. Says that otherwise, French determined not to sign.

BLANCHARD.

File No. 5315/655.

The Secretary of State to Chargé Blanchard.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 27, 1909.

Mr. Knox informs Mr. Blanchard that it has been represented to this Government that France would withdraw its objection to the signature of the Hukuang loan agreements provided the French group receives engineering rights on an additional 100 kilometers of the Ch'eng-tu extension. Mr. Knox says if this report is well founded the Government of the United States is prepared to share equally with Great Britain in making such sacrifices of engineering rights, provided that the original and supplementary agreements are thereupon signed without further delay, and subject also to the following two conditions: First, that notwithstanding the surrender by the United States of such engineering privileges, America's equal rights in all matters relating to the purchase of materials for the Ch'eng-tu extension and branches is guaranteed, and, second, that a satisfactory arrangement be made for interchangeability of bonds.

Directs that this proposal be communicated to the Foreign Office, with an inquiry as to whether it is acceptable, and that the proposal be repeated to London by telegraph, for similar immediate action, and to Berlin for the information of German Government.

[To be continued in Foreign Relations, 1910.]

FUNERAL OF THE EMPEROR OF CHINA.

APPOINTMENT OF MINISTER ROCKHILL AS SPECIAL AMBASSADOR TO ATTEND CEREMONIES.

File No. 14911/93-94.

Minister Rockhill to the Secretary of State.

[Extract.]

No. 1101.] AMERICAN LEGATION,
Peking, February 9, 1909.

SIR: I have the honor to transmit herewith copy of a circular of the dean of the diplomatic body, which I received yesterday, inform-

ing me that the Chinese Government would invite the diplomatic body to be present at the funeral ceremonies of His Majesty the late Emperor on May 1 next, and that it would see with pleasure the sending by the various powers of special embassies for the occasion.

I have, etc.,

W. W. ROCKHILL.

[Inclosure.]

CIRCULAR OF DEAN OF THE DIPLOMATIC BODY.

Circular No. 17.]

PEKING, *February 6, 1909.*

The dean has the honor to inform his honorable colleagues that he has just received the visit of a member of the Wai-wu Pu, who advised him officially that the Chinese Government expects to invite to the funeral of His Majesty the late Emperor, which will take place on the 1st of May, all the foreign representatives actually at Peking, and that furthermore it will feel itself much honored if the heads of States see fit to send special ambassadors for the occasion.

Furthermore, Mr. Chou said to me that the Prince Regent would be greatly obliged if the ambassadors extraordinary could reach Peking about April 25 so that they could be invited to pay their respects to the coffin of Her Majesty the late Empress Dowager.

Mr. Chou told me confidentially that the Prince Regent had agreed to return the visit of foreign princes at their legations, and that he expected after the funeral to invite them and all the heads of missions at Peking to a dinner at the palace.

(Signed) M. DE CARCER.

File No. 14911/92.

The Acting Secretary of State to Minister Rockhill.

DEPARTMENT OF STATE.
Washington, March 2, 1909.

SIR: Refering to the department's telegram of the 20th ultimo,[1] I transmit herewith your commission as ambassador extraordinary to represent this Government at the ceremonies which are to take place in May next incident upon the burial of the remains of His Majesty Kwang-hsü, late Emperor of China.

I am, etc.,

J. C. O'LOUGHLIN.

File No. 14911/97–98.

The Chinese Minister to the Secretary of State.

No. 30.] IMPERIAL CHINESE LEGATION,
Washington, May 3, 1909.

SIR: I have the honor to inclose a translation of an imperial message from His Majesty the Emperor of China to His Excellency the President of the United States of America. I thank you to forward it to its high destination.

Accept, sir, etc., WU TING FANG.

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[1] Not printed.

[Inclosure.—Translation.]

The Emperor of China to the President of the United States.

GREETING: Your Excellency has appointed Hon. W. W. Rockhill, your minister at our court, as special envoy recently to pay respects to the remains of Their Imperial Majesties the late Empress Dowager and the Emperor, and to attend the imperial funeral of the latter. In thus designating a special envoy to our court to convey to us your sympathies on the occasion of our national bereavements Your Excellency has given a fresh manifestation of the friendly ties between the two nations. We appreciate deeply Your Excellency's action and are grateful for it. From now on there will be a still closer friendship and relationship between the two countries. We send Your Excellency this imperial message to express our thanks and to wish Your Excellency's happiness may be prolonged and peace may be enjoyed by the two nations.

PEKING, *13th day, third moon, first year of Hsuant'ung* (May 2, 1909).

File No. 14911/103–104.

Minister Rockhill to the Secretary of State.

[Extract.]

No. 1149.] AMERICAN LEGATION,
Peking, May 6, 1909.

SIR: I have the honor to report that the special ambassadors [to attend the imperial funeral ceremonies] were received in audience and presented their letters of credence on April 26. Prince Fushimi, the special representative of Japan, was received first. I followed as dean, and the other ambassadors in the order agreed upon. The ambassadors were received separately; the audience in each case was short, but dignified and impressive. The ambassadors, in presenting their letters of credence, expressed briefly the condolence and sympathy of the heads of the state and of the nation they represented. This was acknowledged by the Prince Regent, who requested that his thanks be conveyed to the various chiefs of state. The letters, which had been presented to him, were placed on a table in front of the imperial throne, which was not occupied by the infant Emperor. The Prince Regent occupied a position in front at the right of the throne, in the same chair which was formerly occupied by the late Emperor when audiences were granted by him and the late Empress Dowager, who sat on the throne proper.

The next official ceremony took place on April 29. The ambassadors, accompanied by their staffs, assembled at a pavilion inside the Tung-hua-mên of the palace and separately advanced to the hall in which the remains of the late Empress Dowager were lying in state. This ceremony was also simple and dignified. Each ambassador, followed by his suite, entered the hall, bowed to the imperial coffin, then bowed to the Prince Regent, who was standing beside it, and retired. Half an hour later the same ceremony was observed before the remains of the late Emperor, lying in state in another hall situated inside the east gate of the Coal Hill.

The funeral of the late Emperor took place on Saturday, May 1. The ambassadors and their suites assembled outside the eastern gate of the Coal Hill at a temporary pavilion erected for that purpose. The funeral procession had already been formed. At 10.30 the procession started, the staffs of the ambassadors leading, accompanied

by officials of the Wai-wu Pu. They were followed by the grand council, the Imperial Princes, after whom were the ambassadors in the order set out in the program. After the foreign representatives walked the Japanese Prince Fushimi and some officers of his staff. Next came the Prince Regent, surrounded by palace officials. Immediately behind him was carried the catafalque, draped in embroidered yellow silk, and on which the imperial remains were borne. The ambassadors walked in the procession for about a quarter of a mile to a temporary pavilion which had been erected about 100 yards south of the Hou-mên, where they arranged themselves along the left side of the street. The Prince Regent advanced, bowed to each ambassador, thanked him for his presence, and the cortège proceeded on its way to the Hsi Ling, four days' journey from Peking. All foreigners in Peking were afforded an opportunity to witness the procession, and the day passed off without unpleasant incident of any kind.

On Sunday, May 2, Prince Ch'ing entertained Prince Fushimi at tiffin at his residence, and the other officials of the Wai-wu Pu gave a luncheon to the ambassadors and their suites at the new botanical gardens.

On Monday, May 3, the Price Regent entertained Prince Fushimi, of Japan, and the special ambassadors and chiefs of missions here at a formal luncheon in the banqueting hall in the winter gardens of the palace. This entertainment is noteworthy as the first ever given by a sovereign of China in the imperial palace. The Regent was extremely cordial, shaking hands with various representatives and showing an evident desire to be pleasant. I had the honor of sitting beside the Regent at table, and he talked pleasantly both to me and Prince Fushimi, who sat facing him. After luncheon the Regent presented to each of the envoys his photograph.

The department will recall that under the provisions of Annex 19 of the final protocol of September 7, 1901 (par. 6), it was agreed that if the Emperor should decide upon inviting the representatives of the powers to banquet, it should be given them in the imperial palace and His Majesty should be present in person.

On the following day a luncheon was offered to all the special ambassadors and their staffs at the Wai-wu Pu Building. This was the last official entertainment, and most of the special envoys are leaving Peking to-morrow or next day.

Russia was represented by Gen. Palytzyne, of the council of the empire and the general staff. He was accompanied by five or six officials and made the Russian Legation his headquarters.

France, Spain, Portugal, Brazil, and Mexico were represented by their diplomatic representatives at Tokyo.

The other powers accredited their ministers here as special ambassadors for the funeral ceremonies.

Funeral offerings of silver wreaths were presented by Russia, Japan, France, and England.

I inclose copy of a note[1] which I have received from the Prince of Ch'ing, advising me of the telegram of thanks sent the American Government by the Regent for having accredited me ambassador extraordinary for the occasion.

I have, etc.,

W. W. ROCKHILL.

[1] Not printed.

File No. 14911/97–98.

The Acting Secretary of State to the Chinese Minister.

DEPARTMENT OF STATE,
Washington, May 7, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 3d instant, transmitting a translation of a message from His Majesty the Emperor of China to the President, in which the Emperor expresses appreciation of the designation of a special envoy to represent the Government and people of the United States at the ceremonies attending the funeral of their late Majesties the Empress Dowager and Emperor of China.

In compliance with your request the message has been forwarded to the President.

Accept, etc.,

HUNTINGTON WILSON.

COLOMBIA.

ARBITRATION WITH GREAT BRITAIN.

File No. 19446/1.

Minister Dawson to the Secretary of State.

No. 251.] AMERICAN LEGATION,
Bogota, April 13, 1909.

SIR: I have the honor to report that on March 5, 1909, the National Assembly approved and the President ratified a treaty with Great Britain providing for the settlement by arbitration of differences of a legal nature or those relating to the interpretation of treaties between Colombia and Great Britain. Copies of the Spanish and English texts are inclosed.

I have, etc.,

T. C. DAWSON.

[Inclosure.]

The National Constitutent and Legislative Assembly decrees:

(Only article.) The arbitration treaty celebrated in this capital on December 31, 1908, between Dr. Francisco José Urrutia, minister for foreign affairs of the Republic of Colombia, on the one part, and Francis W. Stronge, minister resident of His Britannic Majesty, on the other part, is hereby approved.

Done in Bogota, March 5, 1909.

President, JORGE HOLGUÍN.
Secretary, GERARDO ARRUBLA.

OFFICE OF THE PRESIDENT,
Bogota, March 5, 1909.

Let the above be published and executed.

R. REYES.

Minister for foreign affairs,
Dr. FRANCISCO JOSÉ URRUTIA.

Agreement between the Republic of Colombia and the United Kingdom of Great Britain, providing for the settlement by arbitration of certain questions which may arise between the two Governments.

The Government of His Britannic Majesty and the Government of the Colombian Republic, signatories of the convention for the pacific settlement of international disputes, concluded at The Hague on the 29th of July, 1899;

Taking into consideration that by Article XIX of that convention the high contracting parties have reserved to themselves the right of concluding agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment;

Have authorized the undersigned to conclude the following arrangement:

ARTICLE I.

Differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the convention

of the 29th of July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting States, and do not concern the interests of third parties.

ARTICLE II.

In each individual case the high contracting parties, before appealing to the Permanent Court of Arbitration, shall conclude a special agreement defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the arbitral tribunal and the several stages of the procedure.

ARTICLE III.

The present agreement is concluded for a period of five years dating from the day of signature.

Done in Bogotá, in duplicate, on the thirtieth day of December, 1908.

[L. S.] FRANCISCO JOSÉ URRUTIA.
[L. S.] FRANCIS STRONGE.

MINISTRY FOR FOREIGN AFFAIRS,
Bogotá, February 24, 1909.

The above is a true copy.

FRANCISCO RUÍZ,
Subsecretary.

STATUS OF AMERICAN IMMIGRANTS IN COLOMBIA.

PROTECTION AGAINST COMPULSORY MILITARY SERVICE.

File No. 17450/2.

Minister Dawson to the Secretary of State.

[Extract.]

No. 246.] AMERICAN LEGATION,
Bogota, March 22, 1909.

SIR: As inclosure No. 2 with this legation's No. 205, of December 5, 1908,[1] there was sent to the department a translation of the recent immigration law of Colombia.

The department will observe that by articles 2 and 14 the Colombian consuls abroad are constituted immigration agents and their duties as such defined;

That by articles 5 and 6 immigrants will not be allowed to come to Colombia unless they sign a declaration expressly subjecting themselves to Colombian laws and Colombian courts, and renouncing the right to protection through the diplomatic channel;

That by articles 9 and 10 immigrants and their sons shall be subject to Colombian military service in case of international war; and

That by article 11 immigrants who may participate in any strike shall be deported as pernicious foreigners.

I can find nothing in our treaty or consular convention with Colombia which expressly or impliedly authorizes Colombian consuls to exercise jurisdiction as immigration agents within the territory of

[1] Not printed.

the United States, or any authority for the general proposition that the functions of immigration agents can be considered as included in those of consuls. Whether in fact or in practice their exercising such functions in the United States could result harmfully is a matter upon which, in my judgment, it is not necessary for this legation to offer an opinion.

It seems that the Department of State has never found it necessary to pronounce either directly in favor of or against the doctrine that a domiciled immigrant is subject to general military service in case of international war. That he is subject to police duty, can be required to take part in defending the city of his residence against siege, etc., would seem clear, but the existence of an unqualified obligation to defend the general political interests of the country to which he has emigrated in case it engages in international war is perhaps still an open question. (See Moore's International Law Digest, Vol. IV, sec. 548.)

I have, etc.,

T. C. DAWSON.

File No. 17450/2.

The Acting Secretary of State to Chargé Hibben.

No. 92.] DEPARTMENT OF STATE,
Washington, May 19, 1909.

SIR: I have to acknowledge the receipt of Mr. Dawson's No. 246 of March 22 last, discussing the provisions of the recent Colombian immigration law. In reply I have to say that while American citizens may by contract renounce rights and privileges pertaining to them, the United States does not and can not permit its citizens to renounce a right and duty pertaining to the United States, namely, the right and duty of this Government to protect its citizens in foreign parts, whenever, in its opinion, it is necessary or proper to do so.

The United States looks with disfavor upon any local regulation which seeks to subject its citizens residing in Colombia or elsewhere to the performance of actual military service. Freely admitting the doctrine of temporary allegiance, due to the country of domicile, the United States is unwilling to permit a foreign Government to exact that actual military service which is required by exclusive allegiance, but is inconsistent with temporary allegiance, to the country of domicile and the paramount allegiance due the United States.

You will, therefore, make known these views to the Colombian minister of foreign affairs, at the same stating that the United States does not question the right of Colombia to define the condition of alien residents, but can not admit that foreign Governments can deprive the United States of the right to the control and protection of its citizens in foreign countries, unless and until such citizens shall have expatriated themselves in the manner prescribed by law.

I am, etc.,

HUNTINGTON WILSON.

File No. 7804/36.

Chargé Hibben to the Secretary of State.

No. 287.] AMERICAN LEGATION,
Bogota, July 14, 1909.

SIR: I have the honor to acknowledge the receipt of the department's No. 92 of May 19, in regard to the attitude of the Government of the United States toward the administrative decree of the President of the Republic of Colombia, No. 1258, of November 17, 1908, which attempts to define the status of foreign immigrants in this country.

I beg to inclose herewith copy of my note[1] to the acting minister for foreign affairs, under date of June 30 last, making known to him the views of our Government on this matter. To this communication I have had no reply. I beg to report also that, at the same time, the British chargé d'affaires ad interim at this capital forwarded to the Colombian Government a somewhat similar note.

I have, etc.,

PAXTON HIBBEN.

TREATIES BETWEEN THE UNITED STATES AND THE REPUBLICS OF PANAMA AND COLOMBIA RELATING TO THE PANAMA CANAL, BOTH SIGNED JANUARY 9, 1909.[2]

TREATY WITH PANAMA.[3]

The United States of America and the Republic of Panama, mutually desiring to facilitate the construction, maintenance, and operation of the interoceanic canal across the Isthmus of Panama and to promote a good understanding between the nations most closely and directly concerned in this highway of the world's commerce, and thereby to further its construction and protection, deem it well to amend and in certain respects supplement the treaty concluded between the United States of America and the Republic of Panama on the 18th of November, 1903, and to that end have appointed their respective plenipotentiaries, to wit:

The President of the United States of America, Elihu Root, Secretary of State of the United States;

The President of the Republic of Panama, Carlos Constantino Arosemena, envoy extraordinary and minister plenipotentiary of the Republic of Panama,

Who, after exchange of their full powers, found to be in good and due form, have agreed upon the following articles:

ARTICLE I.

It is mutually agreed between the high contracting parties that Article XIV of the treaty concluded between them on the 18th day of November, 1903, be, and the same is hereby, amended by substitut-

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[1] Based on instruction of May 19, and not printed.

[2] IMPORTANT NOTE.—*These treaties being of a tripartite nature are nonoperative owing to failure of Colombia to ratify them.*

[3] Ratified by United States, Mar, 3, 1909; ratified by Panama, Jan. 27, 1909.

ing therein the words "four years" for the words "nine years," and accordingly the United States of America agrees to make the annual payments therein provided for beginning four years from the exchange of said treaty instead of nine years from that date.

The United States of America consents that the Republic of Panama may assign and transfer, in advance, to the Republic of Colombia, and to its assigns or nominees, the first ten annual installments of two hundred and fifty thousand dollars each, so falling due under said treaty as thus amended, on the 26th days of February in the years 1908 to 1917, both inclusive, and its right and title thereto, and, upon the direction and acquittance therefor of the Republic of Panama, will pay said ten installments as they respectively fall due directly to the Republic of Colombia, its assigns or nominees, for account of the Republic of Panama. Such installments as may have matured when the ratifications of this treaty shall be exchanged pursuant to its terms shall be payable on the ninetieth day after the date of such exchange.

ARTICLE II.

Final delimitation of the cities of Panama and Colon and of the harbors adjacent thereto, under and to effectuate the provisions of Article II of said treaty of November 18th, 1903, shall be made by agreement between the executive departments of the two Governments immediately upon the exchange of ratifications of this treaty.

It is further agreed that the Republic of Panama shall have the right, upon one year's previous notice, at any time within the period of fifty years mentioned in Article VII of said treaty of November 18th, 1903, to purchase and take over from the United States of America so much of the water mains and distributing system of the waterworks mentioned in said articles, for the supply of the city of Panama, and of the appliances and appurtenances thereof, as may lie outside the Canal Zone, and terminate the provisions of said treaty for the ultimate acquisition by the Republic of Panama of said waterworks, upon payment of such sum in cash as may be agreed upon as just by the Presidents of the two high contracting parties, who are hereby fully empowered so to agree; if there shall arise any dispute or difference between the high contracting parties with respect to such delimitation, or if their Presidents shall not be able to agree as to the sum so to be paid, then upon the request of either party, any such difference shall be submitted to the tribunal of arbitration hereinafter provided for.

ARTICLE III.

It is further agreed that all differences which may arise relating to the interpretation or application of the treaty between the United States of America and the Republic of Panama concluded on the 18th day of November, 1903, which it may not have been possible to settle by diplomacy, shall be referred, on the request of either party, to a tribunal of arbitration to consist of three members, of whom the United States shall nominate one member, the Republic of Panama shall nominate one member, and the two members thus nominated shall jointly nominate a third member, or, in the event of their fail-

ure to agree within three months after appointment, upon the nomination of the third member, such member shall be appointed by the President of Peru. Said tribunal shall decide by a majority vote all questions respecting its procedure and action, as well as all questions concerning the matters submitted to it. The tribunal shall deliver duplicate copies of its decisions upon any of the matters submitted to it, as hereinafter specified, to the United States and to the Republic of Panama, and any such decision signed by a majority of the members of the tribunal shall be conclusively deemed the decision of the tribunal. Any vacancy in the membership of the tribunal caused by the death, incapacity, or withdrawal of any member shall be filled in the manner provided for the original appointment of the member whose office shall thus become vacant. The determinations of said tribunal shall be final, conclusive, and binding upon the high contracting parties hereto, who bind themselves to abide by and conform to the same.

The temporary working arrangement or modus vivendi contained in the Executive orders of December 3rd, 6th, 16th, and 28th, 1904, and January 5, 1905, made at Panama by the Secretary of War of the United States, and by the President of Panama, on December 6, 1904, which was entered into for the purpose of the practical operation of the aforesaid treaty of November 18, 1903, shall be submitted to revision by the Executive Departments of the two Governments with the view to making the same and the practice thereunder conform (if in any respect they shall be found not to conform) to the true intent and meaning of the said treaty and to the preservation and protection of the rights of the two Governments and of the citizens of both parties thereunder; and any question as to such conformity arising upon such revision which shall remain in dispute shall be submitted to said tribunal of arbitration.

It is now agreed, however, that the rate of duty to be levied by the Republic of Panama and fixed at ten per cent *ad valorem* by the first proviso to said Executive order of December 3rd, 1904, may be increased to any rate not exceeding twenty per cent *ad valorem*, at the pleasure of said Republic.

ARTICLE IV.

There shall be a full, entire, and reciprocal liberty of commerce and navigation between the citizens of the two high contracting parties, who shall have reciprocally the right, on conforming to the laws of the country, to enter, travel, and reside in all parts of the respective territories, saving always the right of expulsion of undesirable persons, which right each Government reserves to itself, and they shall enjoy in this respect, for the protection of their persons and their property, the same treatment and the same rights as the citizens or subjects of the most favored nation; it being understood and agreed that citizens of either of the two Republics thus residing in the territory of the other shall be exempt from military service imposed upon the citizens of such Republic.

And the United States of America further agrees that the Republic of Panama and the citizens thereof shall have and shall be accorded on equal terms all such privileges, rights, and advantages in respect

to the construction, operation, and use of the canal, railroad, telegraph, and other facilities of the United States within the Canal Zone, and in respect of all other matters relating thereto, operating within or affecting the Canal Zone or property and persons therein, as may at any time be granted by the United States of America in accord with said treaty of November 18th, 1903, directly or indirectly, to any other nation or the citizens or subjects thereof, it being the intention of the parties that the Republic of Panama and the citizens thereof shall be with respect thereto placed at least on an equal footing with the most favored nation and the citizens or subjects thereof.

ARTICLE V.

It is expressly understood and agreed that this treaty shall not become operative nor its provisions obligatory upon either of the high contracting parties until and unless the treaties of even date between the Republic of Colombia and the Republic of Panama and between the Republic of Colombia and the United States of America are both duly ratified and the ratifications thereof are exchanged simultaneously with the exchange of ratifications of the present treaty.

ARTICLE VI.

This treaty shall be ratified and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof, we the respective plenipotentiaries have signed the present treaty, in duplicate, in the English and Spanish languages and have hereunto affixed our respective seals.

Done at Washington the 9th day of January, in the year of our Lord one thousand nine hundred and nine.

(Signed) ELIHU ROOT. [SEAL.]
(Signed) C. C. AROSEMENA. [SEAL.]

TREATY WITH COLOMBIA.[1]

The United States of America and the Republic of Colombia, being equally animated by the desire to remove all obstacles to a good understanding between them and to facilitate the settlement of the questions heretofore pending between Colombia and Panama by adjusting at the same time the relations of Colombia to the canal which the United States is now constructing across the Isthmus of Panama, have resolved to conclude a treaty and to that end have appointed as their plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States;

The President of the Republic of Colombia, Señor Don Enrique Cortes, envoy extraordinary and minister plenipotentiary of the Republic of Colombia at Washington;

Who, after communicating to each other their respective full powers, which were found to be in due and proper form, have agreed upon the following articles:

[1] Ratified by United States, Feb. 24, 1909; not ratified by Colombia.

ARTICLE I.

There shall be mutual and inviolable peace and sincere friendship between the Governments and peoples of the two high contracting parties without exception of persons or places under their respective dominion.

ARTICLE II.

In consideration of the provisions and stipulations hereinafter contained it is agreed as follows:

The Republic of Colombia shall have liberty at all times to convey through the ship canal now in course of construction by the United States across the Isthmus of Panama the troops, materials for war, and ships of war of the Republic of Colombia, without paying any duty to the United States; even in the case of an international war between Colombia and another country.

While the said interoceanic canal is in course of construction, the troops and materials for war of the Republic of Colombia, even in the case of an international war between Colombia and any other country, shall be transported on the railway between Ancon and Cristobal, or on any other railway substituted therefor, upon the same conditions on which similar service is rendered to the United States.

The officers, agents, and employees of the Government of Colombia shall, during the same period, be entitled to free passage upon the said railway across the Isthmus of Panama upon due notification to the railway officials and the production of evidence of their official character.

The foregoing provisions of this article shall not, however, apply in case of war between Colombia and Panama.

ARTICLE III.

The products of the soil and industry of the Republic of Colombia, such as provisions, cattle, etc., shall be admitted to entry in the Canal Zone subject only to such duty as would be payable on similar products of the United States of America under similar conditions, so far as the United States of America has any right or authority to fix the conditions of such importations.

Colombian laborers employed in the Canal Zone during the construction of the canal, who may desire that their own families supply them with provisions for their personal use, shall be entitled to have such provisions admitted to the Canal Zone for delivery to them free of any duty, provided that declaration thereof shall first have been made before the commissary officers of the Isthmian Canal Commission, in order to obtain the previous permit for such entry, and subject to such reasonable regulations as shall be prescribed by the commission for insuring the *bona fides* of the transaction.

ARTICLE IV.

Colombian mails shall have free passage through the Canal Zone and through the post offices of Ancon and Cristobal in the Canal Zone, paying only such duties or charges as are paid by the mails of the United States.

During the construction of the canal Colombian products passing over the Isthmian Railway from and to Colombian ports shall be transported at the lowest rates which are charged for similar products of the United States passing over said railway to and from the ports of the United States; and sea salt, exclusively produced in Colombia, passing from the Atlantic coast of Colombia to any Colombian port on the Pacific coast, shall be transported over said railway free of any charge except the actual cost of handling and transportation, not exceeding one-half of the ordinary freight charges.

ARTICLE V.

The United States recognizes and accepts notice of the assignment by the Republic of Panama to the Republic of Colombia of the right to receive from the United States payment of $250,000 in American gold in each year from the year 1908 to the year 1917, both inclusive, such assignment having been made in manner and form as contained in the treaty between the Republic of Colombia and the Republic of Panama bearing even date herewith, whereby the independence of the Republic of Panama is recognized by the Republic of Colombia and the Republic of Panama is released from obligation for the payment of any part of the external and internal debt of the Republic of Colombia.

ARTICLE VI.

The Republic of Colombia grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the canal enterprise, and for all vessels in distress passing or bound to pass through the canal and seeking shelter or anchorage in said ports, subject in time of war to the rules of neutrality properly applicable thereto. Such vessels shall be exempt from anchorage or tonnage dues on the part of the Republic of Colombia.

The Republic of Colombia renounces all rights and interests in connection with any contract or concession made between it and any corporation or person relating to the construction or operation of a canal or railway across the Isthmus of Panama.

ARTICLE VII.

As soon as practicable after the exchange of ratifications of this treaty and the contemporaneous treaties of even date herewith between the United States of America and the Republic of Panama, and between the Republic of Colombia and the Republic of Panama, the United States of America and the Republic of Colombia will enter into negotiations for the revision of the treaty of peace, amity, navigation, and commerce between the United States of America and the Republic of New Granada, concluded on the 12th day of December, 1846, with a view to making the provisions therein contained conform to existing conditions, and to including therein provision for a general treaty of arbitration.

ARTICLE VIII.

This treaty, duly signed by the high contracting parties, shall be ratified by each according to its respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

But it is understood that such ratifications are not to be exchanged nor the provisions of this treaty made obligatory upon either party, until and unless the aforesaid treaties between the Republic of Colombia and the Republic of Panama, and between the United States of America and the Republic of Panama, bearing even date herewith, are both duly ratified, and the ratifications thereof are exchanged simultaneously with the exchange of ratifications of this treaty.

In witness whereof, we, the respective plenipotentiaries, have signed the present treaty in duplicate, in the English and Spanish languages, and have hereunto affixed our respective seals.

Done at the City of Washington, the 9th day of January, in the year of our Lord nineteen hundred and nine.

(Signed) ELIHU ROOT [SEAL]
(Signed) ENRIQUE CORTES [SEAL]

TREATY BETWEEN THE REPUBLICS OF PANAMA AND COLOMBIA.[1]

The Republic of Colombia and the Republic of Panama, equally animated by the desire to remove all obstacles to their good understanding, to adjust their pecuniary and other relations to each other, and to secure mutually the benefits of amity and accord, have determined to conclude a convention for these purposes, and therefore have appointed as their respective plenipotentiaries, that is to say:

The President of the Republic of Colombia, Enrique Cortes, envoy extraordinary and minister plenipotentiary of the Republic of Colombia, in Washington, and

The President of the Republic of Panama, Carlos Constantino Arosemena, envoy extraordinary and minister plenipotentiary of the Republic of Panama, in Washington,

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The Republic of Colombia recognizes the independence of the Republic of Panama and acknowledges it to be a free, sovereign, and independent nation.

ARTICLE II.

There shall be a mutual and inviolable peace and friendship between the Government of the Republic of Colombia and its citizens on the one part and the Government of the Republic of Panama and its citizens on the other part, without exception of persons or places under their respective dominion.

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[1] Ratified by Panama, Jan. 30, 1909; not ratified by Colombia.

ARTICLE III.

The Republic of Panama assigns and transfers to the Republic of Colombia, and its assigns and nominees, in lawful and due form, the first ten annual installments of two hundred and fifty thousand dollars gold coin each becoming due to it, the Republic of Panama, from the United States of America, on the 26th days of February in the years 1908 to 1917, both inclusive, under and pursuant to the provisions of Article XIV of the treaty between the United States of America and the Republic of Panama concluded November 18, 1903, and under and pursuant to the amendment thereof, embodied in a treaty of even date between said nations, whereby said Article XIV is amended by substituting the words "four years" for the words "nine years," so that the first annual payment of which that article treats shall begin four years from the exchange of ratifications of said treaty on February 26th, 1904, instead of nine years from said date, in such manner that the said installments shall be paid by the United States of America directly to the Republic of Colombia or its assigns and nominees for account of the Republic of Panama, in lawful and due form, beginning the 26th day of February, 1908. Such installments as may have matured when the ratifications of this treaty shall be exchanged pursuant to its terms, shall be payable on the ninetieth day after the date of such exchange.

In consideration of the payments and releases which the Republic of Panama makes to the Republic of Colombia, the latter recognizes and agrees that the Republic of Panama has no liability upon and no obligations to the holders of the external and internal debt of the Republic of Colombia, nor to the Republic of Colombia, by reason of any such indebtedness or claims relating thereto. The Republic of Colombia recognizes and agrees that it is itself solely obligated for such external and internal debt; assumes the obligation to pay and discharge the same by itself alone; and agrees to indemnify and hold harmless the Republic of Panama, should occasion arise, from any liability in respect of such external and internal indebtedness, and from any expense which may result from failure or delay in respect of such payment and discharge.

ARTICLE IV.

Each of the contracting Republics releases and discharges the other from all pecuniary claims and obligations of any nature whatever, including the external and internal debt of the Republic of Colombia, which either had against the other on the 3rd day of November, 1903, it being understood that this reciprocal exoneration relates only to the national debts and claims of one against the other, and that it does not relate to individual rights and claims of the citizens of either Republic. Neither party shall be bound to allow or satisfy any of such individual claims arising from transactions or occurrences prior to November 3, 1903, unless the same would be valid according to the laws of the country against which the claim is made, as such laws existed on November 3rd, 1903.

ARTICLE V.

The Republic of Panama recognizes that it has no title or ownership of any sort to the fifty thousand shares of the capital stock of the New Panama Canal Company, standing in the name of the Republic of Colombia on the books of said company at Paris, and the Republic of Panama confirms the abandonment of all right and title which, with respect to said shares, it made in the courts of justice of France.

ARTICLE VI.

The citizens of each Republic, residing in the territory of the other, shall enjoy the same civil rights which are or shall hereafter be accorded by the laws of the country of residence to the citizens of the most favored nation. It being understood, however, that the citizens of either of the two Republics residing in the other shall be exempt from military service imposed upon the citizens of such Republic.

All persons born within the territory now of the Republic of Panama, prior to the 3rd day of November, 1903, who were, on that day, residents of the territory now of the Republic of Colombia, may elect to be citizens of the Republic of Colombia or of the Republic of Panama; and all persons born within the territory now of the Republic of Colombia who were, on said 3rd day of November, 1903, residents of the territory now of the Republic of Panama, may elect to be citizens of the Republic of Panama or of the Republic of Colombia, by making declaration of their election in the manner hereinafter provided, within one year from the date of the proclamation of the exchange of the ratifications of this treaty, or, in case of any persons who shall not on that day be of full age, within one year from their attainment of their majority according to the laws of the country of their residence.

Such election may be made by filing in the office of the minister or secretary of foreign affairs of the country of residence a declaration of such election. Such declaration may be made before any officer authorized to administer oaths and may be transmitted by mail to such minister or secretary of foreign affairs, whose duty it shall be to file and register the same, and no other formality except the transmission thereof shall be required and no fees shall be imposed for making of filing thereof. It shall be the duty of the respective departments of foreign affairs of the high contracting parties to communicate promptly to each other the names, occupations, and addresses of the persons so exercising such election.

All persons entitled to make such declarations who shall not have made the same within the period hereinbefore limited shall be deemed to have elected to become citizens of the country within whose present territory they were born. But no further declaration shall be required from any such person who has already by formal declaration before a public official of either country, and in accordance with its laws, made election of the nationality of that country.

The natives of the countries of either of the two contracting Republics who have heretofore or shall hereafter become citizens by naturalization, or otherwise as herein provided for, in the other Re-

public, shall not be punished, molested, or discriminated against by reason of their acts of adhesion to the country whose citizenship they have adopted.

ARTICLE VII.

Both Republics agree, each for itself, that neither of them shall admit to form any part of its nationality any part of the territory of the other which separates from it by force.

ARTICLE VIII.

As soon as this treaty and the contemporaneous treaties of even date between the United States of America and the Republic of Colombia and between the United States of America and the Republic of Panama shall be ratified and exchanged, negotiations shall be entered upon between the Republics of Colombia and Panama for the conclusion of additional treaty or treaties, covering questions of commerce, postal, telegraph, copyright, consular relations, extradition of criminals, arbitration, and the like.

ARTICLE IX.

It is agreed between the high contracting parties and is declared, that the dividing line between the Republic of Colombia and the Republic of Panama shall be as follows, to wit:

From Cape Tiburon on the Atlantic to the headwaters of the Rio de la Miel, and following the range by the Cerro de Gandi to the Sierra de Chugargun and that of Mali, going down by the Cerros of Nique to the heights of Aspave, and from there to the Pacific at such point and by such line as shall be determined by the tribunal of arbitration hereinafter provided for, and the determination of said line shall conform to the decision of such tribunal of arbitration as next provided.

As to the territory submitted to arbitration (the region of Jurado) the boundaries and attribution of which to either the Republic of Colombia or the Republic of Panama will be fixed by the determination of the line aforesaid by said tribunal of arbitration, the title thereto and the precise limits thereof, and the right to the sovereignty thereof as between the high contracting parties, shall be conclusively determined by arbitration in the following manner:

A tribunal of arbitration shall be created to investigate and determine all questions of fact and law concerning the rights of the high contracting parties to or in all the territory in the above-mentioned region of Jurado. The tribunal shall consist of three members; the Republic of Colombia shall nominate one member, the Republic of Panama shall nominate one member, both of whom shall be nominated within three months after the exchange of ratifications of this treaty, and the two members of the tribunal thus nominated shall jointly nominate a third member, or, in the event of their failure to agree within three months next after the appointment of the last of them, and on request of the President of either of the high contracting parties, the third member of the tribunal shall be appointed by the President of the Republic of Cuba.

The tribunal shall hold its sessions at such place as the tribunal shall determine.

The case on behalf of each party, with the papers and documents, shall be communicated to the other party within three months after the appointment of the third member of the tribunal.

The countercases shall be similarly communicated with the papers and documents within three months after communication of the cases respectively.

And within two months after communication of the countercase the other party may communicate its reply.

The proceedings of the tribunal shall be governed by the provisions, so far as applicable, of the Convention for the Pacific Settlement of International Disputes signed at The Hague by the representatives of both the parties hereto on the 18th day of October, 1907.

The tribunal shall take into consideration all relevant laws and treaties and all facts proved of occupancy, possession, and political or administrative control in respect of the territory in dispute.

ARTICLE X.

This treaty shall not be binding upon either of the high contracting parties, nor have any force until and unless the treaties signed on this same date between the Republic of Colombia and the United States of America and between the Republic of Panama and the United States of America are both duly ratified and ratifications thereof are exchanged simultaneously with the exchange of the ratifications of this treaty.

ARTICLE XI.

The present treaty shall be submitted for ratification to the respective Governments, and ratifications hereof exchanged at Washington as soon as possible.

In witness whereof, we, the respective plenipotentiaries, have signed the present treaty in duplicate in the Spanish and English languages, and have hereunto affixed our respective seals.

Done at the city of Washington, the 9th day of January, in the year of our Lord one thousand nine hundred and nine.

(Signed) ENRIQUE CORTES. [SEAL.]
(Signed) C. C. AROSEMENA. [SEAL.]

COSTA RICA.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND COSTA RICA.

Signed at Washington, January 13, 1909.
Ratification advised by the Senate, January 20, 1909.
Ratified by the President, March 1, 1909.
Ratified by Costa Rica, June 28, 1909.
Ratifications exchanged at Washington, July 20, 1909.
Proclaimed, July 21, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Arbitration Convention between the United States of America and the Republic of Costa Rica was concluded and signed by their respective Plenipotentiaries at Washington on the thirteenth day of January, one thousand nine hundred and nine, the original of which Convention, being in the English and Spanish languages, is word for word as follows:

The Government of the United States of America, signatory of The Hague Convention for the Pacific Settlement of International Disputes, concluded at The Hague on July 29, 1899, and the Government of the Republic of Costa Rica, being desirous of referring to arbitration all questions which they shall consider possible to submit to such treatment;

Taking into consideration that by Article XXVI of the said Convention the jurisdiction of the Permanent Court of Arbitration established at The Hague by that Convention may, within the conditions laid down in the regulations, be extended to disputes between signatory powers and nonsignatory powers, if the Parties are agreed on recourse to that Tribunal;

Have authorized the undersigned to conclude the following Convention:

ARTICLE I.

Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July, 1899, for the pacific settlement of international disputes, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two Contracting States, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement, defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States, by and with the advice and consent of the Senate thereof, and on the part of Costa Rica shall be subject to the procedure required by the Constitution and laws thereof.

ARTICLE III.

The present Convention is concluded for a period of five years, and shall remain in force thereafter until one year's notice of termination shall be given by either party.

ARTICLE IV.

The present Convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of Costa Rica in accordance with the Constitution and laws thereof. The ratifications shall be exchanged at Washington as soon as possible, and the Convention shall take effect on the date of the exchange of its ratifications.

Done in duplicate in the English and Spanish languages at Washington, this 13th day of January, in the year one thousand nine hundred and nine.

ELIHU ROOT [SEAL]
J. B. CALVO [SEAL]

And whereas the said Convention has been duly ratified on both parts and the ratifications of the two governments were exchanged in the City of Washington, on the twentieth day of July, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-first day of July in the year of our Lord one thousand nine hundred and nine, [SEAL.] and of the Independence of the United States of America the one hundred and thirty-fourth.

WM H TAFT

By the President:
ALVEY A. ADEE
Acting Secretary of State.

CUBA.

OWNERSHIP OF WRECKS OF THE MAINE AND SPANISH WARSHIPS IN CUBAN WATERS.

File No. 11893.

The Cuban Minister to the Secretary of State.

[Translation.]

No. 434.] LEGATION OF CUBA,
Washington, February 19, 1908.

EXCELLENCY: Referring to your department's memorandum dated January 14, 1903,[1] whose second paragraph reads:

> The question presented has been considered by the proper Executive Departments and the conclusion has been reached that whatever authority or rights this Government may have had formally [formerly] in the wrecks above referred to may properly be considered as having lapsed in favor of the Government of Cuba.

and pursuant to my Government's instructions I have the honor to ask Your Excellency to inform me whether the conclusion reached by the proper Executive Departments mentioned in the above-quoted memorandum refers solely and exclusively to the wrecks of the Spanish ship *Alfonso XII* stranded at la Boca del Mariel and that of the battleship *Maine* in the port of Habana, or applies also to the wreck of the other Spanish war vessels destroyed during the war this country waged against Spain in 1898 that may be found along the coast of the island of Cuba.

I avail, etc.

GONZALO DE QUESADA.

File No. 11893.

The Acting Secretary of State to the Cuban Minister.

No. 241.] DEPARTMENT OF STATE,
Washington, February 27, 1908.

SIR: I have the honor to acknowledge the receipt of your note of the 19th instant, in which you inquire whether the decision reached by this Government recognizing Cuba's rights in the matter of the wrecks of the *Alfonso XII* and the *Maine* also applies to the wrecks of all the Spanish warships destroyed during the war of 1898 in Cuban waters.

In reply I have the honor to say that your inquiry has been given due course, and the department hopes to be able to answer it at an early date.

Accept, etc.,

ROBERT BACON.

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[1] Not printed.

File No. 11893/13.

The Secretary of State to the Cuban Minister.

No. 22.] DEPARTMENT OF STATE,
Washington, August 4, 1909.

SIR: I have the honor to acknowledge the receipt of your note of May 15 last,[1] in which you refer to the Department's note of April 29, 1908, and inquire whether any decision has been reached concerning the rights of the Cuban Government in the wrecks of all Spanish war vessels destroyed in Cuban waters in 1898.

In reply I have the honor to advise you that the result of the careful investigation given to the matter is to raise a very serious doubt as to the competency of the executive branch of the Government to dispose of the property rights of the United States in the wrecks of the *Maine* and in the wrecks of the Spanish vessels destroyed by the naval forces of the United States in the war of 1898. This doubt is emphasized by the circumstance that several bills have been considered by Congress, all based on the proposition that the wrecks of the *Maine* (and, by implication, of the other vessels) are the continuing property of the United States and as such subject to such disposition as Congress may order.

In view of this, it is the purpose of the Executive to relegate the question of the disposition to be made of the vessels to the Congress at its approaching regular session.

Accept, etc.,

P. C. KNOX.

EMPLOYMENT OF COUNSEL BY DIPLOMATIC OFFICERS.

DIPLOMATIC IMMUNITIES.

File No. 14963/39–47.

Minister Morgan to the Secretary of State.

[Extract.]

No. 887.] AMERICAN LEGATION,
Habana, March 4, 1909.

SIR: In continuation of the legation's dispatch No. 764, of September 25 last,[1] prepared by Mr. G. Cornell Tarler, second secretary of legation, while acting in the capacity of chargé d'affaires ad interim, and which related to the assault upon him by a Cuban named Yarini on the evening of September 22, I have the honor to report that consequent upon my representations to the Cuban foreign office that Mr. Tarler, when attacked, was performing the functions of a foreign minister, and that the assault therefore became punishable by "correctional imprisonment," and should accordingly be investigated by a judge of instruction, and not by a correctional court. The trial of Yarini occurred on the 1st instant in the audiencia of Habana.

[1] Not printed.

I have the honor to inclose, in duplicate, cutting from the Habana Telegraph [1] of to-day's date, stating that it is expected that the judge of the audiencia considers his court incompetent to try Yarini. Should this case be relegated to the correctional court, it would become a question whether or not Mr. Tarler should waive his diplomatic privileges and be personally represented by counsel, and the legation will have to request instructions from the department on this point.

I have, etc.,

EDWIN V. MORGAN.

File No. 14963/39–47.

The Acting Secretary of State to Minister Morgan.

No. 233.] DEPARTMENT OF STATE,
Washington, March 15, 1909.

SIR: I have to acknowledge the receipt of your No. 887, of the 4th instant, referring to the prosecution of Yarini for the assault made by him on Mr. G. Cornell Tarler, secretary of your legation.

You state that the case is now before the audiencia, but that it may be relegated to the correctional court, in which case "it would become a question whether or not Mr. Tarler should waive his diplomatic privilege and be personally represented by counsel." You ask for instructions on this point.

In reply I beg to say that it scarcely seems correct to regard as a waiver of diplomatic immunity an authorization on the part of the department that Mr. Tarler should employ counsel to represent him.

The department is of the opinion that Mr. Tarler should employ counsel, and, if necessary, become the prosecuting witness in any criminal proceedings which may be necessary according to Cuban law in bringing his assailant to justice.

I am, etc.,

HUNTINGTON WILSON.

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[1] Not printed.

DENMARK.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND DENMARK.

Signed at Washington, May 18, 1908.
Ratification advised by the Senate, May 20, 1908.
Ratified by the President, January 8, 1909.
Ratified by Denmark, February 15, 1909.
Ratifications exchanged at Washington, March 29, 1909.
Proclaimed, March 29, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Arbitration Convention between the United States of America and the Kingdom of Denmark was concluded and signed by their respective Plenipotentiaries at Washington on the eighteenth day of May, one thousand nine hundred and eight, the original of which Convention, being in the English and Danish languages, is word for word as follows:

The Government of the United States of America and His Majesty the King of Denmark, signatories of the Convention for the pacific settlement of international disputes, concluded at The Hague on the 29th July, 1899;

Taking into consideration that by Article XIX of that Convention the High Contracting Parties have reserved to themselves the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment;

Have authorized the Undersigned to conclude the following arrangement:

ARTICLE I.

Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two Contracting States, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration shall conclude a special Agreement defining clearly the matter in dispute, the scope of

the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that such special agreements on the part of the United States will be made by the President of the United States, by and with the advice and consent of the Senate thereof, and on the part of Denmark by the King in such forms and conditions as He may find requisite or appropriate.

ARTICLE III.

The present Convention is concluded for a period of five years, dating from the day of the exchange of the ratifications.

ARTICLE IV.

The present Convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by His Majesty the King of Denmark.

The ratifications of this Convention shall be exchanged at Washington as soon as possible, and it shall take effect on the date of the exchange of its ratifications.

Done in duplicate in the English and Danish languages, at Washington, this 18th day of May in the year 1908.

ROBERT BACON [SEAL.]
C. BRUN. [SEAL.]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington on the twenty-ninth day of March, one thousand nine hundred and nine.

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-ninth day of March in the year of our Lord one thousand nine hundred and
[SEAL] nine, and of the Independence of the United States of America the one hundred and thirty-third.

WM H TAFT

By the President:
P C KNOX
Secretary of State.

DOMINICAN REPUBLIC.

MESSAGE OF THE PRESIDENT OF THE DOMINICAN REPUBLIC TO THE DOMINICAN CONGRESS.

File No. 27/251.

Minister McCreery to the Secretary of State.

No. 139.] AMERICAN LEGATION,
Santo Domingo, March 5, 1909.

SIR: I have the honor to report that President Caceres presented his annual message to the Dominican Congress at its opening, on the 27th ultimo.

The message is practical and sensible. It appeals to the common sense of the Dominican people.

The President refers to the return to the Republic of the majority of Dominicans absent from political causes.

Reference is made to the cordial relations existing between the Republic and all nations. The boundary question with Haiti is mentioned and the confident opinion expressed that the good sense of the two Governments will find a satisfactory solution.

The question of the ownership of church edifices, which has recently arisen between the Roman Catholic Church and the Government, is submitted to the Congress.

Improvements in the administration of justice and the public-school system are recommended.

A new tariff will soon be submitted to the Congress by the Executive.

The receipts of the Government during the past year amounted to $4,019,172.69, of which $3,232,889.93 were customs dues. The obligations of the Governemnt, both foreign and domestic, were promptly met. The value of exports was $9,595,320.96 and of imports $4,905,171.67. About $1,700,000 of the debt contracted before the bond issue of $20,000,000 remains unpaid for the reason that certain creditors have not accepted payment. The balance remaining of the $7,564,823 now on deposit in New York to the credit of the Republic, after the liquidation of outstanding credits and the purchase of certain concessions, will be employed in public works.

The President states that this balance should be employed in the economic development of the country only after serious studies and surveys have been made. The President gives the assurance that this money will be honestly expended in public works.

The message recommends more stringent sanitary measures; changes in the laws relating to municipalities; improvements in the army, republican guard, and navy; the passage of a banking law, and the encouragement of agriculture and immigration.

I have, etc.,

FENTON R. MCCREERY.

ECUADOR.

PROTECTION OF WONG KOON HOU, A CHINESE CITIZEN OF HAWAII.

File No. 15077/41–43.

Minister Fox to the Secretary of State.

[Extract.]

No. 424.] AMERICAN LEGATION,
Quito, December 30, 1908.

SIR: I have the honor to inclose herewith copies of certain correspondence between the consul general at Guayaquil and myself with regard to the desire of one Wong Koon Hou, a Chinese citizen of the Territory of Hawaii, to be allowed to enter the port of Guayaquil. I beg to state that the documents submitted through the consul general were:

1. Certificate of Hawaiian birth No. 178, dated May 6, 1901, issued by the secretary of the Territory.
2. Certificate of residence No. 9830, dated May 7, 1901, issued by the collector of internal revenue for the district of Hawaii.

The latter designates this man as Chinese laborer and the certificate contains the following note:

No Chinese laborer, whether he shall hold this certificate or not, shall be allowed to enter any State, Territory, or District of the United States, from the Hawaiian Islands.

I sincerely trust for approval for my action.

I have, etc.,

WILLIAMS C. FOX.

[Inclosure 1.]

Consul General Dietrich to Minister Fox.

No. 57.] AMERICAN CONSULATE GENERAL,
Guayaquil, December 24, 1908.

SIR: Mr. Tay Sing has just handed me certificate of birth and certificate of residence of Mr. Wong Koon Hou, of Honolulu, which certificates I inclose herewith for your inspection. I am informed that Mr. Wong Koon Hou is now at Payta, Peru, and wishes to come to Guayaquil, and for that reason forwarded papers to Mr. Tay Sing, to ascertain whether there would be any difficulty of his being allowed to land here.

I find that I have not in the consulate the act of Congress approved May 5, 1892, as amended by the act of November 3, 1893, and therefore I am unable to satisfy myself clearly on this point, although I feel certain that he is entitled to the same protection as an American citizen, and in my opinion should be allowed to enter Ecuador as an American citizen.

The acts referred to above, which I have not here for examination, you no doubt have at the legation. They will be found in volume 27, page 25, and volume 28, page 7, respectively. If you will refer to these volumes, you can clear up this subject for me. I have told Mr. Tay Sing to wait until I could

hear from you on this subject before attempting to advise this man in the matter.

I will thank you if you will send copy of the acts of May 5, 1892, and November 3, 1893, when returning Mr. Wong Koon Hou's papers to me for the files of the consulate.

I have, etc.,

HERMAN R. DIETRICH.

[Inclosure 2.]

Minister Fox to Consul General Dietrich.

AMERICAN LEGATION,
Quito, December 29, 1908.

SIR: I have to acknowledge your communication of the 24th instant, in which is requested advice as to whether Mr. Wong Koon Hou, of Honolulu, Hawaiian Islands, a citizen thereof of Chinese birth and who is now in Payta, Peru, could come to Guayaquil without any difficulty to his landing being interposed by the Ecuadorian authorities.

In reply I have to state that it is inferred that this inquiry is made on behalf of Mr. Wong because he is of the Chinese race, and further because the immigration of people of this race is proscribed by the law of Ecuador. It is also assumed that it is desired to enlist the good offices of the legation in this case.

My instructions clearly limit this legation to the exercising of good offices in behalf of Chinese subjects living in Ecuador, and this is confined to friendly intervention, in case of need, for the protection of the persons and property of these Chinese.

It appears from the statement and the papers submitted that Mr. Wong is not a Chinese subject, neither is he living in Ecuador, nor has he ever been here. In my opinion this case does not, therefore, come within the purview of my instructions in the matter of the protection of the Chinese in this country.

With regard to your contention that Mr. Wong is entitled to the same protection as an American citizen, and to enter Ecuador as such, I would say that it is not within the province of this legation either to decide upon the hypothetical question or incumbent upon it to ask the Government of Ecuador to do so. The papers are herewith returned.

I am, etc.,

WILLIAMS C. FOX.

File No. 15077/41–43.

The Secretary of State to Minister Fox.

No. 77.] DEPARTMENT OF STATE,
Washington, March 17, 1909.

SIR: I have to acknowledge the receipt of your number 424, of December 30, 1908, in which you inclose copies of correspondence between the legation and the consulate general at Guayaquil concerning the desire of Wong Koon Hou, a Chinese citizen of Hawaii, to enter the port of Guayaquil.

Your instruction to the consul general informing him that the case of Mr. Wong did not come within the purview of your instructions from the department concerning the protection of Chinese in Ecuador is approved.

In this connection your attention is called to the inclosed memorandum, prepared by the law officer of the department, on the Ecuadorian Chinese-exclusion law as affecting Chinese citizens of the United States, with particular reference to the case of Wong Koon Hou.

I am, etc.,

P. C. KNOX.

[Inclosure.]

MEMORANDUM BY THE SOLICITOR.

On December 30, 1908, Minister Fox to Ecuador advised the department that he had declined to intervene in favor of one Wong Koon Hou, a Chinese laborer, who desired to enter Ecuador from Peru in spite of the laws of the former country prohibiting the immigration of Chinese and who had applied to the consul at Guayaquil for information as to his right so to do. It seems that Wong Koon Hou is a native of Hawaii and was a citizen thereof at the time of its annexation by the United States, and this is presumably the reason for his appeal to the United States consul, although such appeal may have been made because, under instructions from the department, the legation at Ecuador exercises its good offices in case of need on behalf of Chinese subjects residing in that country. However, it does not appear that Wong Koon Hou has ever resided in Ecuador, so that such instruction would apparently have no bearing upon this case.

The joint resolution of July 7, 1898, providing for the annexation of the Hawaiian Islands to the United States, prescribes that "no Chinese by reason of anything herein contained shall be allowed to enter the United States from the Hawaiian Islands."

However, when a government was provided by Congress for the Territory of Hawaii (act of Apr. 30, 1900, 31 Stat. L., 141) it was declared (§4):

> That all persons who were citizens of the Republic of Hawaii on August 12, 1898, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.
>
> And all citizens of the United States residing in the Hawaiian Islands who were resident there on or since August 12, 1898, and all citizens of the United States who shall hereafter reside in the Territory of Hawaii for one year, shall be citizens of the Territory of Hawaii.

At first sight, in apparent contradiction to said section 4 of the act of April 30, 1900, is section 101 thereof, which provides:

> That Chinese in the Hawaiian Islands when this act takes effect may, within one year thereafter, obtain certificates of residence as required by the act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May 5, 1892, as amended by an act approved November 3, 1893, entitled "An act to amend an act entitled 'An act to prohibit the coming of Chinese persons into the United States,' approved May 5, 1892," and until the expiration of the said year shall not be deemed to be unlawfully in the United States if found therein without such certificates: *Provided, however,* That no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Territory, or District of the United States from the Hawaiian Islands.

This contradiction, however, is believed to be more apparent than real, and to be satisfactorily explained by the Attorney General as nonexistent in view of the "evident construction that section 101 applies and was intended to apply only to those Chinese who were not citizens of the Republic of Hawaii on August 12, 1898. (23 Op. At. Gen., 351.) It is held in this opinion that a Chinese person born or naturalized in the Hawaiian Islands prior to the annexaton of that Territory and who has not since lost his citizenship, is a citizen of the United States. (See also 23 Id., 310.)

In this view of the case, then, it would seem that Wong Koon Hou is a citizen of the United States and, as such, entitled to enter this country. This being so, have we a right to protest against his exclusion from Ecuador?

We have no rights in the matter by virtue of treaty obligations.

Moreover, we ourselves exclude Chinese of the laboring class. The Chinese-exclusion law (act of July 5, 1884, Ch. 220, §15), provides "that the provisions of this act shall apply to all subjects of China and Chinese, whether subjects of China or any other foreign power." Under this provision, it has been held by the Attorney General that natives of China who are subjects of Great Britain are prohibited entrance into the United States. (20 Op. Atty. Gen., 729.)

The Republic of Haiti by a law passed August 10, 1903, apparently undertook to expel and exclude Syrians from that country. The language of this act is ambiguous and the department conducted considerable correspondence with Haiti[1] as to its meaning. On August 29, 1905, the department wrote the Haitien minister:

> In view of these ambiguities [in the law] and in the absence of any express adjudication of the Haitien courts declaring that persons of Syrian origin who have in good faith and not in fraud of the Haitien law obtained naturalization in the United States are excluded by the terms of the law, this Government does not feel that it can acquiesce in the construction placed upon the law in your note.

[1] See Foreign Relations, 1905, p. 532.

It seems to be fairly inferable from the language that in the case of a law unmistakably excluding Syrians of all nationalities without unnecessary hardship the United States would offer no objection. This inference is borne out by the subsequent nonaction of this Government in regard to the cases of the various Syrian citizens of the United States who were expelled from Haiti.

Furthermore, on August 27, 1908, the department sent to our minister at Panama a memorandum from this office referring to the Panaman law prohibiitng the immigration of Syrians, as follows:

> Panama's action in excluding Syrians would seem to be the exercise of the undoubted right of a sovereign nation to exclude foreigners classified as undesirable by the local law. In view of this fact and of our own action against the immigration of Chinese, it is submitted that we have no ground for objecting against such action of Panama.

It would appear, therefore, that even though Wong Koon Hou be a citizen of the United States, and as such entitled to enter the United States, this gives the Government no basis upon which to lodge a protest against his exclusion from Ecuador, provided that such exclusion is a result of a general law reasonably administered. It is therefore believed that Minister Fox's course in declining to take up this case with the Government of Ecuador should be approved.

DEPARTMENT OF STATE,
Washington, March 5, 1909.

PROTECTION OF AMERICAN MISSIONARIES IN ECUADOR.

File No. 19132.

The Acting Secretary of State to Minister Fox.

No. 81.] DEPARTMENT OF STATE,
Washington, June 19, 1909.

SIR: In a letter of April 20 last[1] the board of foreign missions of the Methodist Episcopal Church communicated to the department a telegram received from the Rev. Harry F. Compton, its missionary at Quito, stating that he has been attacked by a mob, and asking the board to "advise Washington." The board asked that the good offices of the department be exercised in Mr. Compton's behalf.

In your absence from Ecuador a telegram was sent to the consul general at Guayaquil, and subsequent reports from him to the department show that Mr. Compton desired to go to Malchingui, a town near Quito, where certain of his church members resided. Being warned that the populace were opposed to his coming, he applied to the Quito authorities for an escort. This was refused (apparently with the idea that no real danger threatened him), but the authorities gave him a letter to the prefect of the town. Compton, with his wife and daughter, thereupon went to Malchingui. About midnight 500 or more persons forced their way into the house, pounded upon their bedroom door, and threatened the family with violence if they did not depart immediately. Insults and threats seem to have been used freely. The Americans hastened to leave on their mules, stones and epithets being hurled at them as they fled.

It appears that the populace had been roused against "the Protestant" Compton by a fanatical and threatening sermon of the village priest. The purported text of it is inclosed with the dispatches and is highly unfriendly and threatening—urges, in fact, that the intruder be stoned.

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[1] Not printed.

Upon Compton's complaint some steps were taken by the authorities to arrest the leaders of the mob. Their families petitioned Compton's clemency when he returned with policemen. He took advantage of the occasion to preach to them for half an hour without molestation. The prisoners, it appears, were shortly afterwards set free upon signing an agreement to keep the peace. Compton seems to think the authorities should have made a more severe example of the delinquents, and claims that threats are continuing to be made against him and that he ought to be furnished with an escort when necessary.

In Foreign Relations, 1899, page 261, is printed correspondence in a somewhat similar case in Ecuador. The department then took the ground that, Catholocism being the established religion of the State, protests could properly be made for threatening sermons by the clergy.

No doubt is entertained that the Government of Ecuador is fully as anxious as is this Government that no untoward incident shall occur to disturb Americans engaged in legitimate and peaceful pursuits in a friendly country.

You will bring this phase of the matter diplomatically to the attention of the Ecuadorian Government, calling its attention especially to the alleged provocative and threatening utterances of the curate of Malchingui in a sermon which seems to have been the real incentive of the attack.

I inclose for your information a translation of a statement which Mr. Compton declares to be a correct summary of the sermon.[1]

I am, etc.,

HUNTINGTON WILSON.

COMPENSATION FOR DIPLOMATIC OFFICERS ACTING IN ARBITRATION CASES.

File No. 2540/168–169.

The Secretary of State to Minister Fox.

No. 97.] DEPARTMENT OF STATE,
Washington, December 3, 1909.

SIR: The department has received your unnumbered dispatch of December 15, 1908,[1] inclosing a letter addressed to you by Mr. Archer Harman, president of the Guayaquil & Quito Railway Co., regarding the payment of the expenses incurred by you as the company's arbiter in the settlement of its controversy with the Ecuadorian Government, and the company's willingness to compensate you for your services in the arbitration.

The department is pleased to note in Mr. Harman's letter the expressions of high appreciation on the part of the American stockholders of your work in their behalf as a member of the arbitral board created under Article XXVII of the contract of July 14, 1897, between the Government of Ecuador and the railway company.

Mr. Harman alludes to very considerable personal expenses incurred by you and expensive cables transmitted during the period of negotiations, and writes, "We feel it only fair that we should be

[1] Not printed.

permitted to reimburse you the expenditure you have incurred." The department is in accord with Mr. Harman in thinking it just and proper that these expenses should be defrayed by the railway company, and to bring about that end you are instructed to write to Mr. Harman, and referring to his letter of December 5, 1908, bring to his attention any items that you may find in the accounts of the legation to have been paid by it but which were incurred in your work as arbitrator for the railway company. Moreover, if you personally have been put to any expense in the matter which the Government has not borne, you should, of course, be reimbursed.

Mr. Harman likewise expresses himself as of opinion that compensation to you for your services as member of the board would be fair, and says that he awaits an indication from you before seeking the proper authority to make arrangements therefor. The department has carefully considered this proposal and has been forced to the conclusion that it would not comport with the dignity of the American diplomatic service nor be a wise precedent to establish to permit a party interested in an arbitration before an American diplomatic officer to remunerate him for the discharge of his duties in any capacity whatever.

In conveying to you this conclusion the department wishes to felicitate you upon your part in the satisfactory development and termination of the negotiations in question, in which your conduct has been such as to merit and receive the hearty appreciation of all parties in interest.

I am, etc.,

HUNTINGTON WILSON.

FRANCE.

TERMINATION OF COMMERCIAL AGREEMENTS BETWEEN THE UNITED STATES AND FRANCE.

File No. 5869/209.

The Acting Secretary of State to the French Ambassador.

DEPARTMENT OF STATE,
Washington, April 30, 1909.

EXCELLENCY: The Congress of the United States has effectively declared its intention to supersede the present customs tariff law of the United States by a new law which is now under discussion and which will probably be enacted within a few weeks.

One of the necessary results of this change will be that the commercial agreements made by the President under the authority of the act of July 24, 1897, will no longer be applicable to the conditions which will exist under the new law. The Government of the United States accordingly finds it necessary to give notice of the intention to terminate all of these agreements.

By direction of the President, I have therefore the honor to give through your excellency to the Government of France formal notice on behalf of the United States of the intended termination of the three commercial agreements signed, respectively, on May 28, 1898, August 20, 1902, and January 28, 1908. Further communication on this subject will be made after the passage of legislative measures affecting the bases on which these agreements were concluded.

Accept, etc.,

HUNTINGTON WILSON.

File No. 5727/272a.

The Acting Secretary of State to Ambassador White.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 30, 1909.

For your information and for immediate communication to the French Government, I quote following letter of notification addressed to-day to the French ambassador here.[1]

WILSON.

[1] Supra.

File No. 5869/209.

The Secretary of State to the French Chargé.

DEPARTMENT OF STATE,
Washington, August 7, 1909.

SIR: Referring to the department's note to your embassy dated April 30, 1909, in which, by direction of the President, the department gave through your embassy to the Government of France notice on behalf of the United States of the intended termination of the three commercial agreements between the United States and France signed, respectively, on May 28, 1898, August 20, 1902, and January 28, 1908, and in which it was stated that further communication on this subject would be made after the passage of legislative measures affecting the bases on which these agreements were concluded, I have the honor to inform you that the new tariff act of the United States approved August 5, 1909, contains the following provisions affecting these agreements, viz:

That the President shall have power and it shall be his duty to give notice, within ten days after the passage of this act, to all foreign countries with which commercial agreements in conformity with the authority granted by section three of the act entitled "An act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, have been or shall have been entered into, of the intention of the United States to terminate such agreement at a time specified in such notice, which time shall in no case, except as hereinafter provided, be longer than the period of time specified in such agreement, respectively, for notice for their termination; and upon the expiration of the periods when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importations from said countries shall be subject to no other conditions or rates of duty than those prescribed by this act and such other acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the terms of said commercial agreements shall remain in force: *And provided further*, That in the case of those commercial agreements or arrangements made in accordance with the provisions of section three of the tariff act of the United States approved July twenty-four, eighteen hundred and ninety-seven, which contain no stipulations in regard to their termination by diplomatic action, the President is authorized to give to the Governments concerned a notice of termination of six months, which notice shall date from April thirtieth, nineteen hundred and nine.

By the President's direction in pursuance of the foregoing provisions of law, I have now the honor to inform you that the said commercial agreements between the United States and France will cease to be in force at the expiration of the period of six months dating from April 30, 1909, namely, on October 31, 1909.

Accept, etc.,

P. C. KNOX.

File No. 5869/224.

The French Chargé to the Secretary of State.

[Translation.]

FRENCH EMBASSY,
Manchester, Mass., August 10, 1909.

MR. SECRETARY OF STATE: In a letter under date of August 7 Your Excellency kindly informed me under what conditions the Federal

Congress had decided to terminate the commercial conventions concluded by the United States with various powers. According to what Your Excellency was pleased to announce to me, the agreements existing between our two countries, and which were signed on May 28, 1898, August 20, 1902, and January 28, 1908, are to terminate on October 31 next.

The French Government having learned of this decision at the same time that it received knowledge of those concerning other countries with which the United States were likewise bound by commercial conventions, the minister of foreign affairs has asked me to make the following representations to Your Excellency:

Mr. St. Pichon can not explain the reason of the differential treatment which is being imposed on France.

Mr. Jusserand represented to the Federal Government that as our conventions did not contain any dissolving clause they were of a permanent nature, and that in order to break them at any time an understanding at least was necessary.

Your Excellency replied to the French ambassador that none of the conventions of this class could survive the law by virtue of which it had been concluded, and that if by a decision which a vote of Congress would have to render legal an extension were granted it would be the same for all.

Your Excellency added that the periods of six months or one year prescribed in several conventions could not at any rate by themselves have the effect of prolonging these acts beyond the Dingley law, and that these periods could only refer to denunciations of conventions during the then undetermined continuance of said law.

Your Excellency moreover gave it to be understood on several occasions that no differential treatment should be applied to any one in any event. It is really impossible to understand how, when extensions were recognized as possible, an arbitrarily curtailed one should be granted in the case of the Franco-American convention, while longer ones were granted to others.

There was nothing to lead the negotiators of 1898, 1902, and 1908 to believe that in signing agreements in which they reserved no right to abrogate them, at least as long as the Dingley law should last, they would place their country in a worse situation than by reserving such right. I have received orders to dwell most particularly on this point, which is considered very important by the French Government.

On the other hand, the American Government can not but be aware that in thus abrogating of its own accord and without any understanding with the French Government a system which was the result of conferences and a formal understanding, it not only strikes a blow at French products, but also replaces American goods under the action of the laws from which these conventions had removed them. It does not seem that American commerce has any more interest than ours in making such a hasty change.

In view of the intense excitement which so grave a decision can not fail to cause in France, since it subjects our commerce to the most disadvantageous differential treatment of those that have been provided by the new measures, the minister of foreign affairs requests me to ask Your Excellency, and I should be obliged to you to let me

know, what are the reasons that may explain an attitude so different from that which you yourself have repeatedly manifested so plainly.

Please accept, etc.,

PIERRE LEFEVRE-PONTALIS.

File No. 5869/224.

The Acting Secretary of State to the French Chargé.

DEPARTMENT OF STATE,
Washington, August 23, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 10th instant, relative to the termination of the three existing commercial agreements between the United States and France, signed on May 28, 1898, August 20, 1902, and January 28, 1908, respectively. Your Government desires to know the reasons for the differential treatment on the part of the United States as respects the dates of termination of the commercial agreements with France and those with certain other countries of Europe.

In reply I have the honor to remind you that these commercial agreements, not being treaties in the constitutional sense, and hence not requiring the concurrence of the Senate of the United States, but having been negotiated under the authority of and in accordance with the legislative provisions contained in section 3 of the tariff act of July 24, 1897, would, in the absence of enabling legislation by Congress, have been terminated ipso facto on the going into effect of the tariff act of the United States approved August 5, 1909, which has changed the bases on which these agreements were negotiated. In order, however, to avoid the abrupt termination of these international compacts, the Congress adopted the provisions contained in section 4 of the new tariff act. It was deemed proper that the stipulations in regard to termination by diplomatic action contained in certain of the commercial agreements should be observed faithfully in every case. This, of course, involved the giving of six months' prior notice of the intention to terminate the agreements in force with two countries of Europe and of one year's prior notice in the case of the agreements with four other countries of Europe. Inasmuch as the agreements with France, Switzerland, and Bulgaria contain no stipulations in regard to their termination by diplomatic action, it was deemed proper by the Congress of the United States that these agreements should not be terminated abruptly, but should be continued in force until the expiration of six months from April 30, 1909, the date when the foreign Governments concerned were formally notified by the Government of the United States of the intended termination of the commercial agreements under the Dingley tariff. This provision by the Congress has afforded a delay of nearly three months following the passage of the tariff act before the agreements with France shall be terminated. As you are aware, the President of the United States, in the giving of the formal notices on August 7, 1909, has been obliged to follow implicitly the prescriptions of the new tariff act of the United States.

As an evidence that the Congress of the United States intended no discrimination against France in the provisions of section 4 of the

new tariff act, the fact may be cited that the commercial arrangements between the United States on the one hand and Switzerland and Bulgaria on the other hand, which will be terminated on the same date as the commercial agreements with France, namely, on October 31, 1909, guarantee to the commerce of the United States during the continuance in force of these arrangements the unqualified enjoyment of the complete conventional tariffs of Switzerland and Bulgaria; in other words, the tariff treatment of the most favored nation for all importations into those countries from the United States.

Accept, etc., HUNTINGTON WILSON.

File No. 5869/226.

The French Chargé to the Secretary of State.

[Translation.]

FRENCH EMBASSY,
Manchester, August 25, 1909.

MR. SECRETARY OF STATE: In a letter under date of August 10 I had the honor to communicate to your excellency some observations which the French Government had been induced to make to you on account of the proposed application of a differential treatment to French products on and after October 31 next.

Not having yet received any reply to this communication, the minister of foreign affairs has asked me to inform your excellency that the minister of commerce would be particularly happy if the conciliatory attitude of the United States Government would, by satisfying to a certain extent the demands of French public opinion, enable him to refrain from applying the general tariff on October 31 next to American products which now enjoy the minimum tariff.

The French Government is far from seeking to use retaliatory measures against American commerce, as they would be of no benefit to anyone, and it does not wish to neglect any effort looking to a commercial understanding between the two countries. It would be happy if the United States Government would appreciate its intentions and facilitate the means of carrying them out.

Therefore the minister of foreign affairs has asked me to request your excellency to kindly examine whether the President of the United States has not some constitutional means of postponing until the extreme expiration date of the reciprocity conventions the enforcement of the duties in the new tariff against French products now admitted under the benefit of section 4 of the Dingley tariff.

I should be thankful to your excellency if you would kindly send me your answer to the letter which I had the honor to write you on August 10 and enable me at the same time to answer the question asked by the minister of foreign affairs.

Please accept, etc.,

PIERRE LEFÈVRE-PONTALIS.

File No. 18659/62.

The Acting Secretary of State to the French Chargé.

No. 747.] DEPARTMENT OF STATE,
Washington, October 8, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 16th [1] ultimo, referring to your previous notes of August 25 and August 28, last, relative to the termination of the existing commercial agreement between the United States and France and the application of the provisions of the new tariff act of the United States.

In your note of August 25, 1909, you inquire, on behalf of your Government, whether the President of the United States has not some constitutional means of postponing until the extreme expiration date of the commercial agreements between the United States and other countries the enforcement of the duties in the new tariff against the imports from France, which are now admitted under the benefit of section 3 of the Dingley tariff law.

In reply I have the honor to inform you that the question which you raise has been given most careful consideration, and the conclusion reached is that there is no constitutional means available to the President of extending the operation of the provisions of the commerial agreements between the United States and France after October 31, 1909. As you were informed in the department's note of August 23, 1909, in response to your note of August 10, the President of the United States, in the giving of the formal notice on August 7, 1909, was obliged to follow implicitly the prescriptions of section 4 of the new tariff act of the United States, which specifically provided for the continuance in force of those agreements which contain no stipulations in regard to their termination by diplomatic action until the expiration of six months from April 30, 1909; that is, until October 31, 1909. The Congress having changed the legislative bases upon which the commercial agreements in question were predicted and there being no longer any legal authority vested in the President by Congress for the conclusion of commercial agreements reducing the duties on imports into the United States and not requiring the concurrence of the Senate of the United States, the department finds itself unable to suggest any means of prolonging the commercial agreements between the United States and France after October 31, 1909.

Accept, etc.,

ALVEY A. ADEE.

File No. 5869/239.

The French Ambassador to the Secretary of State.

[Translation.]

FRENCH EMBASSY,
Washington, October 27, 1909.

MR. SECRETARY OF STATE: My Government has just advised me that the last day on which the commercial arrangements recently de-

[1] Not printed.

nounced by the United States Government can be applied happening to be a Sunday, the necessary arrangements have been made to keep the French customhouse open on that day.

I have, in consequence, the honor to inform your excellency that American imports will enjoy the benefits of the present order for products arrived and entered in France on the 31st of this month.

Be pleased, etc.,

JUSSERAND.

File No. 5869/239.

The Secretary of State to the French Ambassador.

No. 758.] DEPARTMENT OF STATE,
Washington, November 5, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 27th ultimo, in which, by direction of your Government, you announced that as October 31, 1909, the last day whereon might be applied the terms of the commercial arrangements between the United States and France, recently denounced by this Government, would fall on a Sunday, the French Government had taken steps to keep open on that day the French customshouse, and that, in consequence American imports arriving and entered in France on October 31 would enjoy the benefit of the arrangements mentioned.

In reply I have the honor to advise you that the contents of your note were duly noted, and a translation thereof sent to the Secretary of the Treasury for his information.

As your excellency has knowledge, like action was taken by the United States customs authorities with respect to French imports.

Accept, etc.,

P. C. KNOX.

CONTINUED ENJOYMENT BY FRANCE OF ADMINISTRATIVE PROVISIONS OF COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND GERMANY.

File No. 18659/58.

The French Chargé to the Secretary of State.

[Translation.]

FRENCH EMBASSY,
Manchester, August 28, 1909.

MR. SECRETARY OF STATE: The minister of foreign affairs has just notified me that his colleague, the minister of commerce, wishes to obtain some accurate information as to how the new administrative provisions of the tariff law are to be applied from now on to French products.

Hitherto these products have been allowed, in practice, to enjoy the concessions granted to Germany by virtue of a note of the State Department of May 2, 1907, following the commercial convention concluded between that power and the United States.

These concessions are as follows:

I. The valuations such as defined by section 19 of the administrative act of the old law shall only be applicable when the goods imported have not, in the country from which they come, any well-defined market of origin enabling their value to be determined.

II. The declarations provided for by section 8 of the administrative act of the old law shall no longer be demanded by consular officers except on the requisition of experts after the entry of the goods in the customhouse.

III. Expert reexaminations shall be public, and shall be made in the presence of the importers or their representatives. When in exceptional cases they can not be made under these conditions, a statement of the result of the examinations, giving reasons, shall be furnished to the importers.

IV. Here follow other provisions which simplify the formalities to be fulfilled before the American consuls.

V. This article relates to the commissions which operate respectively in the two countries in order to furnish each other reciprocally information regarding customs matters.

VI. The American customhouses shall take into account the valuations furnished by the chambers of commerce of the country of origin, without, however, being bound by these valuations.

There is reason for hoping that the Federal Government, being desirous not to disturb the commercial customs of importers, will take every care to watch over the enforcement of the new provisions, and that it will deem preferable not to enforce those relating to the valuation of imported goods until the expiration of the reciprocity treaties.

Nevertheless, the minister of foreign affairs has deemed fit to ask me to remind your excellency how apt the immediate enforcement of the new provisions, which are considerably severer than those of the Dingley tariff, would be to perturb the commercial relations between our two countries.

He indulges the hope that in case Germany secures a continuance of the present rules in this respect until February 7, the Federal Government will be willing to grant it until that date also as regards French goods, which would be placed in a markedly inferior position by the immediate enforcement of the new provisions.

Please accept, etc.,

PIERRE LEFÈVRE-PONTALIS.

File No. 18659/58.

The Secretary of State to the French Ambassador.

No. 763.] DEPARTMENT OF STATE,
Washington, November 18, 1909.

EXCELLENCY: Referring to the embassy's note of August 28, 1909, containing the request that the Government of France be assured in the continuous enjoyment of the administrative provisions indicated in the diplomatic note which accompanied the American commercial agreement with Germany of June, 1907—which administrative provisions were gratuitously extended so far as applicable to

all other nations, including France, importing goods into the United States—the department, animated by a sincere desire to encourage to the utmost friendly commercial intercourse between the United States and other powers, so far as may be found proper and possible under the existing laws of the United States and be consistent with the traditional commercial policy of this Government, has given this question the most serious and painstaking consideration and has submitted the questions involved to the Treasury Department for investigation and determination, since that department is the particular division of the executive branch of this Government which, under our laws, is primarily charged with the administration of customs acts.

As the result of this careful consideration by both departments, this department is able to make the following assurances regarding the administrative interpretations to be applied for the present to certain provisions of the new tariff law. However, it should, at the same time, be observed that in giving to the Government of France the assurances hereinafter set forth—assurances which this Government is most happy to be able to extend—it must not be overlooked that such assurances are in their nature entirely voluntary and gratuitous, and that the privileges thereunder are extended not because of any feeling upon the part of this Government that it is under any obligation to make such assurances, but solely because of the deep desire of this Government to give to the Government of France and to every other Government concerned every courtesy, consideration, and advantage which a due and proper regard for its own policies and laws permits it to bestow; and, further, it should not pass without notice that this Government is not intending to confer, and does not confer, either by the making of these assurances or by the actual application of the administrative provisions themselves, any such right or interest in such provisions as may not, when and as soon as the exigencies of the situation may seem to this Government to demand it, be freely changed and altered or abolished without thereby giving to your Government or to other Governments, in whose favor naturally these provisions, being general, will also be extended, any just ground for objection or complaint.

Concerning these provisions of the diplomatic note which were not general in their nature, but specific—that is, points E and F of the note—and which, as to point F, the department was pleased, upon the special request of the French Government, to extend to France, the department begs to state that it is of opinion that the American customs officials may continue for the present to extend to France the privileges provided in those sections, and that for the present the certificates of value as issued by the French chambers of commerce will, pursuant to the understanding above referred to and as specified in point F, be received by American customs appraisers as competent evidence of the value of the imported goods wherever such evidence is relevant to the question under investigation.

Concerning the other provisions contained in the German note, it was, as Your Excellency is aware, made clear by this department, at the time the provisions were extended to France and other nations, that points A to D, inclusive, were general in their character; that is, that they were merely administrative statements as to modifications to be thereafter uniformly and generally applied in the administra-

tive interpretation of the customs laws of the United States at that time in force. Moreover, as Your Excellency is also doubtless aware, those provisions were, as a matter of fact, thereafter uniformly applied by American customs officials to imports from all nations, without reference to the existence or nonexistence of any specific conventional agreement to this effect between any of such nations and the United States, and, indeed, were actually applied to the imports of all countries without any such conventional agreement, except in the case of Germany and the Netherlands. In other words, these provisions were mere administrative rulings upon the meaning of an existing law, and, while they were made part of the commercial agreement with Germany, they were applied independently of it. It should also be recalled, as was fully understood at the time, that the extension of these privileges by this Government to other nations than Germany was not made because of any belief or feeling upon the part of this Government that such other nations could claim those privileges as matters of treaty or other right, but solely because this Government, considering that the privileges resulted from mere interpretations of an existing law and were not therefore necessarily a matter of treaty stipulation and bargain, was sincerely desirous of treating, so far as the law and our commercial policy would permit, all nations upon a basis of exact commercial equality.

But, inasmuch as these privileges were thus, in their essence, the result of mere interpretations of law, obviously they must, so far as a strict legal and logical aspect of the case is concerned, fall when the law to which they appertain ceases longer to have any force or effect. Therefore, the Dingley Tariff Law having been repealed, it is impossible for the Government of the United States to continue the administrative interpretations of that law.

However, this department, anxious to encourage a friendly commercial intercourse between itself and the Government of France, is of opinion that it will be possible for the Government of France still to receive for the present, as administrative interpretations of the new tariff law, the advantage of all those general provisions which were set forth in points B to D, inclusive, since there have been incorporated into the new tariff law provisions either identical with or substantially similar to those provisions of the old law to which these particular points relate.

In accordance with this view, it would seem that, inasmuch as section 8 of the old customs administrative act has been reenacted as subsection 8 of section 28 of the new tariff law, there would appear to be no reason why the interpretation placed upon the language of the old act, as provided in point B of the diplomatic note, should not be for the present continued as the interpretation of the provisions of the new law.

As to point C, which provides that in reappraisement cases the hearings shall be open and in the presence of the importer, it will be observed that the substance of this provision of the note has been incorporated in the new tariff law as part of subsection 13 of section 28, which in terms provides that in reappraisement cases "hearings may, in the discretion of the general appraiser or Board of General Appraisers, before whom the case is pending, be open and in the presence of the importer or his attorney." For this reason it would

seem that there could not be any serious difficulty concerning this point.

Finally, as to point B, there appears to be nothing in the new law which would prevent for the present the continued enforcement, as to matters involved therein, of the consular regulations provided for in that section as they have been heretofore administered.

It therefore appears that the substance of all the provisions of the diplomatic note above referred to, from B to F, inclusive, can for the present at least be continued in practically an unmodified form.

The new law does not, however, seem to permit the continuation of an unmodified and mandatory application of point A, since the law defines, so far as its own provisions are concerned, the meaning of "market value" in cases contemplated in that point in a way which may not at times be in harmony with the definition given to that term in point A of the diplomatic note.

You will understand in this connection, as has been already pointed out, that while the Executive authority of this Government may, and indeed must, interpret the meaning of the law relating to customs duties, yet this authority can but interpret; and therefore wherever the law itself specifically defines the meaning of a term it is not possible for the Executive to change or alter such definition. Since in this matter therefore the law has by its very terms and clear intention nullified at least in part the administrative provisions of section A of the German agreement, and while as to Germany and the Netherlands those provsions are nevertheless continued for a limited time under their specific agreements in accordance with the express provisions of the new tariff law as to the date of expiration of these and other agreements, the voluntary extension of similar benefits to other nations with whom no specific agreements have been negotiated must (where, as here, inconsistent with the terms of the new law) cease and determine from the moment the old law falls and the new law goes into effect; and however willing the Executive of this Government might be to continue to extend to all countries the full benefits of all portions of the administrative features of the German commercial agreement, and however much the department may regret its inability to give assurances to this effect as desired by the Government of France, the express provisions of the new law are of such a clear and direct character as to render such a course impossible.

It may, however, be observed that while subsection 11 of section 28 of the new tariff act provides that in no case shall the market value "as defined by law" with reference to goods imported into the United States under circumstances contemplated by the provisions of point A of the agreement be less than the American wholesale price, yet, as you are well aware, the same subsection also provides that in determining the dutiable value which shall be placed upon such goods there shall be deducted from the American wholesale price, when so applied, certain necessary expenditures and commissions incurred in connection with the importations of such goods, and it would appear that wherever the question of the real value of the goods and the amount to be deducted as provided in this section is under discussion and investigation "the market value" as defined by point A of the diplomatic note might still be pertinent and admissible evidence upon the question of the real value of the goods

and would receive consideration by the Treasury officials in their determination of the amount that should be deducted from the American wholesale price as an allowance for the necessary expenditures contemplated by the statute. Although, as is obvious, such evidence could not under any view be regarded as conclusive upon the questions involved in the determination of this dutiable value, it would certainly appear to be strongly persuasive now as formerly upon the point of the market value in the producing country. Concerning this point, it may be remarked that if the new law operates as did the old one it will doubtless be found that the certificates of the chambers of commerce contemplated in point F will be of particular value in connection with the determination of the foreign "market value" under this provision of the new law as just discussed, and in this connection I beg to suggest for your consideration the fact that as the old law and the administrative provisions applying thereto were administered these certificates were not considered decisive upon the question of the "market value" as defined by point A, and that they were not, as a general rule, introduced as evidence unless a reasonable doubt had arisen as to the correctness of stated values and upon the demand of consular or appraising officers, or at the request of shippers or importers who desired to verify invoice values and to corroborate their evidence. It would seem that this might, in considerable part, be the position and value of such certificates under the new law.

The department desires that in connection with this whole matter it should not be overlooked that questions regarding importations formerly affected by the provisions of point A of the German agreement and now and hereafter by the stipulations of subsection 11 of the new tariff law are relatively unimportant, since it would seem, from the records of the United States customs service, that heretofore such importations have been all but negligible, and, if this be true, it would appear that the questions now under discussion ought not to, and could not, under any fair and reasonable attitude, appreciably affect the commercial relations of the two Governments. It would therefore seem that all apprehension that the new law will inflict upon the commerce between the United States and France any substantial injury by reason of its effect upon importations falling within the purview of point A of the German agreement should be removed, and this view finds emphasis in a consideration of the fact that the general provisions regarding the determination of the market value of imports into the United States are, under the new law, substantially similar to those under the old law, as will be seen by reference to the provisions of subsection 18 of section 28 of the new law, which provides that under the circumstances named in that section the actual market value of an article shall be held to be the price at which such merchandise is freely offered for sale to all purchasers in the foreign markets in the usual wholesale quantities, such being the price which the manufacturer or owner would have received and was willing to receive for such merchandise when sold in the ordinary course of trade in the usual wholesale quantities.

Since these assurances as to the essential portion of the administrative provisions included in the German agreement appear to be of a character to meet substantially the requests made by Your Ex-

cellency's Government, it would seem that nothing remains but to express to Your Excellency the satisfaction it affords me to be able thus to comply with the desires of your Government.

Accept, etc.,

P. C. KNOX.

File No. 18659/122.

The French Ambassador to the Secretary of State.

[Translation.]

FRENCH EMBASSY,
Washington, December 1, 1909.

MR. SECRETARY OF STATE: Your Excellency was good enough to address me a letter under date of November 18 stating why and how far the provisions contained in the diplomatic note signed by the United States and Germany April 22, 1907, would continue to apply to French products.

I hasten to thank Your Excellency for that communication, which contained detailed statements as to the grounds for each of the decisions reached by the Federal Government in its desire to further the most friendly commercial relations between the United States, on the one side, and France and the other countries concerned, on the other.

This desire, as Your Excellency is aware, is in full harmony with the views of my own Government, to which I am reporting Your Excellency's communication with particular stress on the grounds upon which the abrogation of paragraph A would in practice be of but trifling consequence as regards French imports.

Be pleased, etc.,

JUSSERAND.

READMISSION OF FRENCH CITIZENS TO THE UNITED STATES ON RETURN FROM MILITARY SERVICE IN FRANCE.

PREVIOUS RESIDENCE NOT CONCLUSIVE AS TO RIGHT OF READMISSION.

File No. 22563/2.

The French Ambassador to the Secretary of State.

[Translation.]

FRENCH EMBASSY,
Washington, November 27, 1909.

MR. SECRETARY OF STATE: I have the honor to draw Your Excellency's kind attention to the situation of a young Frenchman, Mr. Charles Roussel, who arrived on the steamship *Caroline*, of the Compagnie Générale Transatlantique, on the 18th instant and was denied admission into the United States by the Immigration Service.

The young man formerly lived at Providence, R. I., with his parents. Having returned to France to perform his military service, as required by law, he was discharged from the ranks on account of

his weak constitution and came back to the United States, his traveling expenses being, under the regulation, paid both ways by the ministry of war of the Republic.

The consul general of France at New York, hearing that Roussel was detained at Ellis Island, wrote to Mr. Williams, commissioner of immigration, to tell him how the young man was situated and inform him that the consulate general was ready to pay his way to Providence. Mr. Lanel, who was then advised that Mr. Roussel was excluded on account of his weak constitution and was about to be sent back to France, immediately wrote again to the commissioner to ask that his deportation be deferred.

This young man's case is all the more interesting as he has no relations in France, and his parents reside in Providence. I venture to hope that, taking this situation into account, Your Excellency will kindly use your good offices with the proper department in behalf of my fellow countryman, who, if the decision of the Immigration Service were maintained, would find himself separated, resourceless, from his people, for performing his duty and obeying the laws of the Republic.

Be pleased, etc.,

JUSSERAND.

File No. 22587.

The French Ambassador to the Secretary of State.

[Translation.]

FRENCH EMBASSY,
Washington, November 29, 1909.

MR. SECRETARY OF STATE: Our consuls in the United States report to me that for some time past the Federal Immigration Service has been opposing difficulties to French soldiers who have been released from the military service after its completion and return to their homes in the United States. Unless provided with a sum of 250 francs, they are detained and threatened with deportation to France.

I venture to bring Your Excellency's notice to the fact that, in the first place, the persons concerned were residents of the United States before going to France to perform their military service and, in the second place, our consuls are required by law to pay the way of these young men to their residence in the United States, no matter how distant it may be.

I should be very thankful to Your Excellency if you would kindly draw to this situation the favorable attention of the proper Federal authorities, with the remark that it could hardly be consistent with law and logic to consider returning foreigners who resided in the United States before going to their country there to perform their military service out of a sense of duty, as immigrants, and treat them as though they had not already been admitted, once for all, to residence in this country.

Be pleased, etc.,

JUSSERAND.

File No. 22563/2.

The French Ambassador to the Secretary of State.

[Translation.]

FRENCH EMBASSY,
Washington, December 14, 1909.

MR. SECRETARY OF STATE: Your Excellency was so good as to advise me, in your letter of the 7th instant,[1] that you had forwarded to the Department of Commerce and Labor my request on behalf of a young Frenchman, Charles Roussel, whom the authorities of the Immigration Service will not allow to land in New York.

I have just been informed that the said authorities have sent the young man back to France without waiting for the outcome of my request. My Government will surely be extremely sorry to hear of this decision.

As I wrote to Your Excellency on November 27 last, this specific case was that, not of a young man coming to the United States for the first time, but of an alien who had his residence and family in this country which he had left temporarily to perform his duty under the French military law and who is now sent back to France where his family no longer is and he will find himself destitute of resources, as he was ordered back because he was deemed to be of weak constitution.

Your Excellency will surely consider these provisions which may work so much hardship, and to which I took the liberty of drawing your attention in a second letter, dated November 29, to be inconsistent with the true intent of the legislator. I should be very thankful to you if you would acquaint me with your views in this respect and let me know whether the law really is that an alien once admitted in the United States may thereafter be excluded if he leaves the country, even for the performance of a duty held to be sacred the world over and if his health becomes impaired.

Be pleased to accept, etc.,

JUSSERAND.

File No. 22563/2.

The Acting Secretary of State to the French Ambassador.

No. 767.] DEPARTMENT OF STATE,
Washington, December 21, 1909.

EXCELLENCY: In further reply to Your Excellency's note of the 27th ultimo, and with reference also to your note of the 14th instant, in regard to the case of one Charles Roussel, a French citizen, who recently returned to this country but was denied admission, notwithstanding the fact that he had certain interests here, I have now the honor to advise you of the result of this department's communication to the Department of Commerce and Labor of Your Excellency's note of November 27.

It appears that this case came before the Department of Commerce and Labor in connection with an application for admission under bond, on November 24, 1909. A medical certificate was rendered showing Mr. Roussel to be afflicted with " chronic inflamma-

[1] Not printed. Acknowledges note of Nov. 29.

tion connective tissue neck with suppurtation and sinus, which affects ability to earn a living." It further appears, from the statement made by the Acting Secretary of Commerce and Labor, that the passage of this alien was paid by the French Government pursuant to a statute calling for such payment when a native of France returns thither for military service. Mr. Roussel was totally destitute of money and, although his father appeared as a witness in his behalf, evidence was not submitted to overcome the presumption of his likelihood to become a public charge. Consequently, the application was denied and the applicant was deported.

I may add that the Third Assistant Secretary of State, in consultation with the Acting Secretary of Commerce and Labor, orally pointed out that this case seemed to be one involving particular hardship. The Acting Secretary of Commerce and Labor could, however, only reiterate the statement made in his correspondence with this department, that under the law an alien returning to this country must be subjected to the same treatment as that attending his initial immigration. The department regrets that, in view of the provisions of law applying in such cases, no other course was open to the Department of Commerce and Labor than to order the deportation of Roussel.

I have also the honor in this relation to refer to Your Excellency's note of November 29 last, wherein you discussed the general subject of French citizens who have emigrated to the United States and later returned to their homes in France for the purpose of performing military duty, upon the conclusion of which they again emigrated to the United States. Your Excellency is of opinion that, in such event, they should be admitted without question.

Your Excellency's note was communicated to the Secretary of Commerce and Labor, who, with reference to the comments made therein, advises me as follows:

A reference to the act of February 20, 1907, will indicate that the administrative officers of the Immigration Service have no authority to waive the examination of arriving aliens upon discovery of the existence of such a state of facts as set forth in Your Excellency's note of November 29.

With respect to your contention that the first admission of an alien to the United States is conclusive as to his right to remain in this country and to return hither after an absence abroad without being subject to the immigration laws, the Department of Commerce and Labor points out that this impression is an erroneous one, inasmuch as an alien regularly admitted may be arrested and deported at any time within three years subsequent, if found to have entered in violation of law or to be a public charge from causes existing prior to landing. Moreover, it is added, an alien resident of this country, who goes abroad for any purpose, is subject to the immigration laws upon his return. The fact of previous residence here, while it might be deemed a factor to assist in the determination of his right to land, is by no means conclusive as to the existence of such right. Indeed, it appears that the only persons exempt from the requirements of the immigration laws, are bona fide American citizens and the diplomatic and consular officers of foreign countries, their suites, families, and guests.

Accept, etc.,

HUNTINGTON WILSON.

GERMANY.

PATENTS CONVENTION BETWEEN THE UNITED STATES AND GERMANY.

Signed at Washington, February 23, 1909.
Ratification advised by the Senate, April 15, 1909.
Ratified by the President, April 20, 1909.
Ratified by Germany, June 15, 1909.
Ratifications exchanged at Washington July 14, 1909.
Proclaimed, August 1, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Patent Agreement between the United States of America and the German Empire was concluded and signed by their respective Plenipotentiaries at Washington on the twenty-third day of February, one thousand nine hundred and nine, the original of which Agreement being in the English and German languages is word for word as follows:

The President of the United States of America and His Majesty the German Emperor, King of Prussia, in the name of the German Empire, led by the wish to effect a full and more operative reciprocal protection of patents, designs, working patterns, and models in the two countries, have decided to conclude an agreement for that purpose and have appointed as their Plenipotentiaries:

The President of the United States of America, Mr. Robert Bacon, Secretary of State of the United States; and

His Majesty the German Emperor, King of Prussia, His Excellency Count von Bernstorff, His Ambassador Extraordinary and Plenipotentiary to the United States;

Who, after having communicated each to the other their respective full powers, found to be in good and due form, have agreed to the following articles:

ARTICLE I.

The provisions of the laws applicable, now existing or hereafter to be enacted of either of the Contracting Parties, under which the nonworking of the patent, working pattern (Gebrauchsmuster), design or model carries the invalidation or some other restriction of the right, shall only be applied to the patents, work patterns (Gebrauchsmuster), designs or models enjoyed by the citizens of the other Contracting Party within the limits of the restrictions imposed by the said Party upon its own citizens. The working of a patent, working pattern (Gebrauchsmuster), design or model in the territory of one of the Contracting Parties shall be considered as equivalent to its working in the territory of the other Party.

ARTICLE II.

This Agreement shall take effect from the date of its promulgation and remain in force until the expiration of 12 months following the notice of termination given by one of the Contracting Parties.

ARTICLE III.

The present Agreement shall be ratified and the ratifications shall be exchanged at Washington as soon as possible.

In witness whereof the respective Plenipotentiaries have executed the present Agreement and affixed their seals thereunto.

Done in duplicate in the English and German languages at Washington this 23rd day of February, 1909.

ROBERT BACON [SEAL]
J. BERNSTORFF [SEAL]

And whereas the said Agreement has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the fourteenth day of July, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Agreement to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this first day of August in the year of our Lord one thousand nine hundred and nine, and of the [SEAL] Independence of the United States of America the one hundred and thirty-fourth.

WM H TAFT

By the President:
ALVEY A. ADEE
Acting Secretary of State.

PROHIBITION AGAINST ACCEPTANCE OF FOREIGN APPOINTMENTS BY AMERICAN CONSULAR OFFICERS.

NO PRECEDENT FOR ASKING CONGRESS TO WAIVE.

File No. 8130/6.

The German Ambassador to the Secretary of State.

[Translation.]

No. 4413/07.] IMPERIAL GERMAN EMBASSY,
Washington, October 14, 1907.

MR. SECRETARY OF STATE: Dr. Harris, an American citizen and physician of the American Presbyterian Mission at Tripoli, Syria, who also holds the office of American consular agent at that place, was recently appointed vice consul of the German Empire there.

He has declared his readiness to accept, subject to the condition that he will be authorized thereto by the American Government.

By direction of my Government, I have the honor respectfully to beg that Your Excellency will grant to the consular representative of the United States at Tripoli permission to assume the office of German vice consul. A favorable communication would place me under special obligation to Your Excellency.

Accept, etc.,

STERNBURG.

File No. 8130/6.

The Acting Secretary of State to the German Ambassador.

No. 632.] DEPARTMENT OF STATE,
Washington, October 18, 1907.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 14th instant, by which you inform me that Dr. Harris, who holds the office of American consular agent at Tripoli, Syria, was recently appointed vice consul of the German Empire there, and that he has declared his readiness to accept, subject to the condition that he will be authorized thereto by this Government. You accordingly request, by direction of your Government, that this Government will grant to the consular representative of the United States at Tripoli permission to assume the office of German vice consul.

This department, desirous at all times of meeting the wishes of the Imperial German Government, regrets to state that it is inhibited by a provision of the Constitution of the United States from doing so in the present instance. Article I, section 9, of the Constitution of the United States forbids a person holding an office of profit or trust under the United States to accept an office from any foreign state without the consent of Congress. A consular agent is regarded as an officer of the United States within the constitutional inhibition.

Accept, etc.,

ALVEY A. ADEE.

File No. 8131/10.

The German Ambassador to the Secretary of State.

[Translation.]

THE IMPERIAL GERMAN EMBASSY,
Washington, February 16, 1909.

MR. SECRETARY: In its esteemed note of October 18, 1907, No. 8130/6, the State Department declined to empower Consular Agent Harris to take over the German vice consulship in Tripoli, Syria, because the authority to do so is reserved by the Constitution to Congress.

Inasmuch as my Government, despite many efforts, has been unable to find any other suitable person for the Tripoli post, it would appreciate very much if the authorization of Congress could be secured whenever convenient.

In accordance therefore with my instructions, I beg Your Excellency to be so kind as to take the necessary steps to obtain for Dr. Harris the permission of Congress to assume charge of the Imperial German vice consulate at Tripoli.

I take the liberty to add that my Government would especially appreciate the utmost promptness in the matter.

Accept, etc.,

J. BERNSTORFF.

File No. 8130/10.

The Secretary of State to the German Ambassador.

No. 28.] DEPARTMENT OF STATE,
Washington, February 27, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 16th instant, in which you ask that the requisite authority of Congress be obtained for Mr. Harris, the American consular agent at Tripoli, Syria, to act as German vice consul at that place, the occasion for your request being the constitutional provision which forbids a person holding an office of profit or trust under the United States to accept an office from any foreign state without the consent of Congress.

With every disposition to oblige the German Government the department has endeavored to find a precedent for asking the consent of Congress in such cases. It regrets that it has been unable to find one; and it would hesitate to set a precedent now, especially as the pressure of business upon Congress in the closing days of the session would probably defeat action on it.

The department will be pleased, however, if your Government so desires, to instruct the consular agent at Tripoli to take custody of the German consulate, and to use his good offices for German subjects until the vacancy in the German consulate can be regularly filled; but such authorization can not include the performance of consular acts for the German Government.

Accept, etc.,

ROBERT BACON.

No. 8130/11.

The Secretary of State to the German Ambassador.

No. 47.] DEPARTMENT OF STATE,
Washington, April 19, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 2nd instant,[1] wherein, with reference to the department's note of February 27 last, you state that the Imperial German Government accepts the offer of the department to permit the American consular agent at Tripoli, Syria, to take charge of German interests, pending the appointment of a new incumbent.

In reply I have the honor to say that, in compliance with your request, it has afforded the department pleasure to instruct the consular

[1] Not printed.

agent at Tripoli to take charge, with the consent of the Turkish Government, of the archives and property of the German consulate and of the interests of German subjects in that quarter, pending the appointment of a new consular representative by your Government.

Accept, etc.,

P. C. KNOX.

INFORMATION NECESSARY FOR PRESENTATION OF MILITARY-SERVICE CASES TO THE GERMAN GOVERNMENT.

File No. 18071/4–5.

Ambassador Hill to the Secretary of State.

No. 223.] AMERICAN EMBASSY,
Berlin, February 24, 1909.

SIR: I have the honor to acknowledge the receipt of your instruction No. 106,[1] of February 5, 1909, transmitting copies of correspondence with regard to the German military case of Mr. Gottlob Blickle, together with Mr. Blickle's duly authenticated naturalization papers, and instructing me to ascertain the status of the case and report the facts to the department.

It appears from the wording of Mr. Blickle's letter to the department that on his leaving Germany for the United States his father was required to deposit a certain sum of money with the authorities, and that this deposit had now been declared forfeited on account of the son's failure to appear for the performance of his military service in Germany. In order, therefore, that the case may be brought to the attention of the German Government, with a view to having Mr. Blickle's American citizenship recognized, his name stricken from the German military lists, and the forfeited money refunded to his father, the embassy should be placed in possession of certain information with regard to his birth and subsequent movements, the exact nature of which information is stated in the circular inclosed in duplicate herewith.

The embassy, while retaining Mr. Blickle's naturalization papers, will therefore await the department's further instructions in the matter.

I have, etc.,

DAVID J. HILL.

[Inclosure.]

FORMALITIES IN REGARD TO MILITARY CASES.

In view of the fact that many American citizens of German origin who desire to have their citizenship recognized by the German Government and their names struck from the German military lists, or who desire permission to visit or to remain temporarily in Germany, are unaware of the formalities which must be complied with before the embassy can take up their cases, the following information is given:

If the applicant is in Europe at the time of his request for intervention, he should forward, together with his application, his own or his father's certifi-

[1] Not printed.

cate of naturalization, according to which determines his American nationality. At the same time he should state clearly and precisely the following facts:

1. Place and date of birth.
2. Date of emigration to the United States.
3. Date of naturalization, and before what court naturalized.
4. Date of last leaving the United States and date of return to Germany.
5. If molested by the German authorities, in what manner, i. e., order of expulsion, fine, arrest, etc.
6. Desired length of stay in Germany.
7. Approximate date of intended return to the United States.
8. If in possession of a passport, number, date, and place of issue.
9. Previous visits to Germany.

On the receipt of such an application the embassy will consider whether, in view of the facts given, it is justified in intervening; and if so, will take up the applicant's case with the German foreign office. The applicant's certificate of naturalization will then be returned to him, when he should immediately forward it to America to be authenticated first by the secretary of state of the State in which it was issued, if it was issued by a State court, or by the Attorney General in Washington if issued by a Federal court, and then, in either case, by the Secretary of State of the United States at Washington, D. C., after which it should be returned to the embassy for transmission to the German Government.

If the applicant is in the United States at the time of his presentation of his case to the embassy, he should first have his certificate of naturalization authenticated according to the above instructions previous to forwarding it, together with his application and his answers to the above questions.

File No. 18071/6–9.

The Secretary of State to Ambassador Hill.

No. 166.] DEPARTMENT OF STATE,
Washington, May 10, 1909.

SIR: In reply to your No. 223, of February 24 last, and with reference to the department's No. 106, of the 5th of that month, relative to the military-service case of Mr. Gottlob Blickle, a naturalized citizen of the United States of German birth, I now inclose the form of statement forwarded by the embassy wherein Mr. Blickle furnishes the information required by the German authorities before consideration can be given his case.

Mr. Blickle's German passport is also inclosed for the use of the embassy.

I am, sir, etc.,

P. C. KNOX.

File No. 18071/10–14.

Ambassador Hill to the Secretary of State.

No. 427.] AMERICAN EMBASSY,
Berlin, September 4, 1909.

SIR: Referring to the department's instructions Nos. 106[1] and 166, of February 5 and May 10, respectively (latter instruction File No. 18071/6–9), relative to the military-service case of Mr. Gottlob Blickle, I have the honor to inform you that according to a note received to-day from the Imperial German foreign office, Blickle's American citizenship has been recognized, his name stricken from the German military lists, the fine of 400 marks or three months'

[1] Not printed.

imprisonment adjudged against him on April 27, 1901, for alleged evasion of military service, canceled, and the attachment on his property in Germany, which was ordered on February 22, 1901, removed.

Blickle's certificate of naturalization and German reise pass are returned herewith.

I have, etc.,

DAVID J. HILL.

TERMINATION OF COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND GERMANY.

File No. 5727/272b.

The Acting Secretary of State to the German Ambassador.

DEPARTMENT OF STATE,
Washington, April 30, 1909.

EXCELLENCY: The Congress of the United States has effectively declared its intention to supersede the present customs tariff law of the United States by a new law, which is now under discussion, and which will probably be enacted within a few weeks.

One of the necessary results of this change will be that the commercial agreements made by the President under the authority of the act of July 24, 1897, will no longer be applicable to the conditions which will exist under the new law. The Government of the United States accordingly finds it necessary to give notice of the intention to terminate all of these agreements.

By direction of the President, I have therefore the honor hereby to give, through Your Excellency, to the Imperial German Government formal notice on behalf of the United States of the intended termination of the commercial agreement signed at Washington on April 22, 1907, and at Levico on May 2, 1907. Further communication on this subject will be made after the passage of legislative measures affecting the bases on which these agreements were concluded.

Accept, etc.,

HUNTINGTON WILSON.

File No. 5727/272a.

The Acting Secretary of State to Ambassador Hill.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 30, 1909.

For your information and for immediate communication to the German Government, I quote the following letter of notification addressed to-day to the Imperial German ambassador here.[1]

WILSON.

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[1] Supra.

File No. 5727/281a.

The Secretary of State to the German Chargé.

DEPARTMENT OF STATE,
Washington, August 7, 1909.

SIR: Referring to the department's note to your embassy dated April 30, 1909, relative to the termination of the existing commercial agreement between the United States and Germany, and stating that a further communication on this subject would be made after the passage of legislative measures affecting the bases on which that agreement was concluded, I have now the honor to inform you that the new tariff law, approved August 5, 1909, contains the following provisions respecting the commercial agreements of the United States:

That the President shall have the power and it shall be his duty to give notice, within ten days after the passage of this act, to all foreign countries with which commercial agreements in conformity with the authority granted by section three of the act entitled "An act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, have been or shall have been entered into, of the intention of the United States to terminate such agreement at a time specified in such notice, which time shall in no case, except as hereinafter provided, be longer than the period of time specified in such agreements respectively for notice for their termination; and upon the expiration of the periods when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importations from said countries shall be subject to no other conditions or rates of duty than those prescribed by this act and such other acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the terms of said commercial agreements shall remain in force: *And provided further*, That in the case of those commercial agreements or arrangements made in accordance with the provisions of section three of the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, which contain no stipulations in regard to their termination by diplomatic action, the President is authorized to give to the Governments concerned a notice of termination of six months, which notice shall date from April thirtieth, nineteen hundred and nine.

By the President's direction, in pursuance of the foregoing provisions of law, I have now the honor hereby to give, through you, to the Imperial German Government formal notice on behalf of the United States of the intended termination of the commercial agreement signed at Washington on April 22, 1907, and at Levico on May 2, 1907, to take effect six months from the present date, namely February 7, 1910, when the said agreement shall cease to be in force.

Accept, etc.,

P. C. KNOX.

File No. 5727/284–285.

Ambassador Hill to the Secretary of State.

No. 415.] AMERICAN EMBASSY,
Berlin, August 20, 1909.

SIR: With reference to my dispatch No. 406, of the 7th instant,[1] relative to the termination of the commercial agreement between the

[1] Not printed.

United States and Germany, I have the honor to transmit herewith a copy, with translation, of a note which I have to-day received from His Excellency Herr Stemrich, imperial undersecretary of state for foreign affairs, under date of the 15th instant, wherein it is stated that the German Government understands that the present commercial agreement between the United States and Germany will terminate with the close of the 7th day of February, 1910, and requesting to be informed if this view is shared by our Government.

I have, etc.,

DAVID J. HILL.

[Inclosure.—Translation.]

Imperial Undersecretary of State for Foreign Affairs to Ambassador Hill.

IMPERIAL MINISTRY OF FOREIGN AFFAIRS,
Berlin, August 15, 1909.

The undersigned has the honor to acknowledge the receipt from His Excellency Mr. David Jayne Hill, ambassador of the United States of America, of the note of the 7th instant (F. O. No. 477), wherein notice is given of the termination on the 7th of February, 1910, of the commercial agreement between the German Empire and the United States of America of the 22d of April–2d of May, 1907. As the imperial embassy in Washington has reported by telegraph, a notice of termination has been communicated to it by the Department of State, under date of the 7th of August, 1909.

In accordance with Article VI, paragraph 3, of the agreement, it shall remain in force for six months from the date when notice of its termination is given. It will therefore terminate with the close of the 7th day of February, 1910.

The undersigned begs to be informed that this view is shared by the American Government, and avails, etc.

STEMRICH.

File No. 5727/286.

The Acting Secretary of State to Ambassador Hill.

No. 252.] DEPARTMENT OF STATE,
Washington, September 24, 1909.

SIR: The department is in receipt of your dispatch 415 of August 20, 1909, communicating a copy of a note which you had received from the imperial under secretary of state for foreign affairs, stating that the German Government understands that the present commercial agreement between the United States and Germany will terminate with the close of the 7th day of February, 1910, and requesting to be informed if this view is shared by the Government of the United States.

In reply I have to inform you that this matter was referred to the Department of the Treasury for its consideration, and the Acting Secretary of the Treasury has replied, under date of the 21st instant, that that department concurs in the opinion of the German Government that the agreement will terminate with the close of the 7th day of February, 1910.

I am, etc.,

ALVEY A. ADEE.

CITIZENSHIP OF MRS. I. MATHIAS.

File No. 13767/1.

The Secretary of State to Ambassador Hill.

No. 101.] DEPARTMENT OF STATE,
Washington, January 28, 1909.

SIR: In inclose herewith copy of a letter from the Hon. Murphy J. Foster, covering one from Dr. C. Joachim, of New Orleans, regarding the case of Mrs. Mathias, Dr. Joachim's sister, now in an insane asylum in Lorraine.

As will be noted from the inclosures, it appears to be desired that a native-born German woman who emigrated to this country, married an American citizen, from whom she was later separated (whether by absolute divorce or mere separation does not appear), and who after this returned to Germany, in which place she has since become insane, shall be received in a certain German sanitarium upon the same terms as a German subject. The department desires that you investigate this matter at once and report to it what can be done under the circumstances.

In connection with your investigation and action upon the case, it should be borne in mind that under the language of our statutes as well as under the department's rulings and instructions (see sec. 3, act of Mar. 2, 1907; the Executive orders of Apr. 2, 1907, and Apr. 19, 1907),[1] a woman, an American citizen, marrying an alien takes the nationality of her husband, and she does not become a reintegrated citizen of the United States except upon the death of her husband or upon the securing of an absolute divoce, a mere separation not having this effect.

I am, sir, etc.,

ROBERT BACON.

File No. 17367/2.

The Secretary of State to Ambassador Hill.

No. 117.] DEPARTMENT OF STATE,
Washington, March 2, 1909.

SIR: Referring to the department's No. 101 of January 28 last, I inclose a copy of a letter from Senator Murphy J. Foster, of Louisiana, stating that Mrs. I. Mathias, now confined in an insane asylum in Bavaria, was granted an absolute divorce from her husband by the courts of Pittsburgh, Pa.

This being true, it could not be contended that the nationality of the husband was any longer controling as to her nationality, and she would stand, therefore, in the position occupied by any naturalized citizen who had been naturalized under our regular naturalization laws.

From the papers already transmitted to you it will be seen that Mrs. Mathias took up her renewed residence in Europe in 1895, and

[1] See Foreign Relations, 1907, p. 3, et seq.

under the act of March 2, 1907, entitled "An act with reference to the expatriation of citizens and their protection abroad," and the departmental rules and orders issued thereunder, it would seem that Mrs. Mathias must now be presumed to have lost her American citizenship. Unless this presumption can be overcome by some such evidence as that called for in the rules and regulations already referred to, it must be definitely held that Mrs. Mathias is no longer an American citizen.

It would appear that this might remove the objection which the Bavarian authorities are said to have with reference to her removal from one sanitarium to another.

I am, etc.,

ROBERT BACON.

GREAT BRITAIN.

SPECIAL AGREEMENT BETWEEN THE UNITED STATES AND GREAT BRITAIN RELATING TO NORTH ATLANTIC COAST FISHERIES.

Signed at Washington, January 27, 1909.
Ratification advised by the Senate, February 18, 1909.
Confirmed by exchange of notes, March 4, 1909.

SPECIAL AGREEMENT FOR THE SUBMISSION OF QUESTIONS RELATING TO FISHERIES ON THE NORTH ATLANTIC COAST UNDER THE GENERAL TREATY OF ARBITRATION CONCLUDED BETWEEN THE UNITED STATES AND GREAT BRITAIN ON THE 4TH DAY OF APRIL, 1908.[1]

ARTICLE I.

Whereas, by Article I of the Convention signed at London on the 20th day of October, 1818, between the United States and Great Britain, it was agreed as follows:

Whereas differences have arisen respecting the Liberty claimed by the United States for the Inhabitants thereof, to take, dry and cure Fish on Certain Coasts, Bays, Harbours and Creeks of His Britannic Majesty's Dominions in America, it is agreed between the High Contracting Parties, that the Inhabitants of the said United States shall have forever, in common with the Subjects of His Britannic Majesty, the Liberty to take Fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands on the shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours, and Creeks from Mount Joly on the Southern Coast of Labrador, to and through the Straits of Belleisle and thence Nothwardly indefinitely along the Coast, without prejudice however, to any of the exclusive Rights of the Hudson Bay Company; and that the American Fishermen shall also have liberty forever, to dry and cure Fish in any of the unsettled Bays, Harbours, and Creeks of the Southern part of the Coast of Newfoundland hereabove described, and of the Coast of Labrador; but so soon as the same, or any Portion thereof, shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Portion so settled, without previous agreement for such purpose with the Inhabitants, Proprietors, or Possessors of the ground.—And the United States hereby renounce forever, any Liberty heretofore enjoyed or claimed by the Inhabitants thereof, to take, dry, or cure Fish on, or within three marine Miles of any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America not included within the above mentioned limits; provided, however, that the American Fishermen shall be admitted to enter such Bays or Harbours for the purpose of Shelter and of repairing Damages therein, of purchasing Wood, and of obtaining Water, and for no other purpose whatever. But they shall be under such Restrictions as may be necessary to prevent their taking, drying or curing Fish therein, or in any other manner whatever abusing the Privileges hereby reserved to them.

And, whereas, differences have arisen as to the scope and meaning of the said Article, and of the liberties therein referred to, and otherwise in respect of the rights and liberties which the inhabitants of the

[1] See Foreign Relations, 1908, p. 382.

United States have or claim to have in the waters or on the shores therein referred to:

It is agreed that the following questions shall be submitted for decision to a tribunal of arbitration constituted as hereinafter provided:

Question 1. To what extent are the following contentions or either of them justified?

It is contended on the part of Great Britain that the exercise of the liberty to take fish referred to in the said Article, which the inhabitants of the United States have forever in common with the subjects of His Britannic Majesty, is subject, without the consent of the United States, to reasonable regulation by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character relating to fishing; such regulations being reasonable, as being, for instance—

(*a*) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects;

(*b*) Desirable on grounds of public order and morals;

(*c*) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class.

It is contended on the part of the United States that the exercise of such liberty is not subject to limitations or restraints by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character—

(*a*) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(*b*) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(*c*) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

Question 2. Have the inhabitants of the United States, while exercising the liberties referred to in said Article, a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States?

Question 3. Can the exercise by the inhabitants of the United States of the liberties referred to in the said Article be subjected, without the consent of the United States, to the requirements of entry or report at custom-houses or the payment of light or harbor

or other dues, or to any other similar requirement or condition or exaction?

Question 4. Under the provision of the said Article that the American fishermen shall be admitted to enter certain bays or harbors for shelter, repairs, wood, or water, and for no other purpose whatever, but that they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein or in any other manner whatever abusing the privileges thereby reserved to them, is it permissible to impose restrictions making the exercise of such privileges conditional upon the payment of light or harbor or other dues, or entering or reporting at custom-houses or any similar conditions?

Question 5. From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbors" referred to in the said Article?

Question 6. Have the inhabitants of the United States the liberty under the said Article or otherwise, to take fish in the bays, harbors, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands, or on the Magdalen Islands?

Question 7. Are the inhabitants of the United States whose vessels resort to the treaty coasts for the purpose of exercising the liberties referred to in Article I of the treaty of 1818 entitled to have for those vessels, when duly authorized by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading vessels generally?

ARTICLE II.

Either Party may call the attention of the Tribunal to any legislative or executive act of the other Party, specified within three months of the exchange of notes enforcing this agreement, and which is claimed to be inconsistent with the true interpretation of the treaty of 1818; and may call upon the Tribunal to express in its award its opinion upon such acts, and to point out in what respects, if any, they are inconsistent with the principles laid down in the award in reply to the preceding questions; and each Party agrees to conform to such opinion.

ARTICLE III.

If any question arises in the arbitration regarding the reasonableness of any regulation or otherwise which requires an examination of the practical effect of any provisions in relation to the conditions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, or which requires expert information about the fisheries themselves, the Tribunal may, in that case, refer such question to a commission of three expert specialists in such matters; one to be designated by each of the Parties hereto, and the third, who shall not be a national of either Party, to be designated by the Tribunal. This Commission shall examine into and report their conclusions on any question or questions so referred to it by the Tribunal and such report shall be considered by the Tribunal and shall, if incorporated by them in the award, be accepted as a part thereof.

Pending the report of the Commission upon the question or questions so referred and without awaiting such report, the Tribunal may make a separate award upon all or any other questions before it, and such separate award, if made, shall become immediately effective, provided that the report aforesaid shall not be incorporated in the award until it has been considered by the Tribunal. The expenses of such Commission shall be borne in equal moieties by the Parties hereto.

ARTICLE IV.

The Tribunal shall recommend for the consideration of the High Contracting Parties rules and a method of procedure under which all questions which may arise in the future regarding the exercise of the liberties above referred to may be determined in accordance with the principles laid down in the award. If the High Contracting Parties shall not adopt the rules and method of procedure so recommended, or if they shall not, subsequently to the delivery of the award, agree upon such rules and methods, then any differences which may arise in the future between the High Contracting Parties relating to the interpretation of the treaty of 1818 or to the effect and application of the award of the Tribunal shall be referred informally to the Permanent Court at The Hague for decision by the summary procedure provided in Chapter IV of The Hague Convention of the 18th of October, 1907.

ARTICLE V.

The Tribunal of Arbitration provided for herein shall be chosen from the general list of members of the Permanent Court at The Hague, in accordance with the provisions of Article XLV of the Convention for the Settlement of International Disputes, concluded at the Second Peace Conference at The Hague on the 18th of October, 1907. The provisions of said Convention, so far as applicable and not inconsistent herewith, and excepting Articles LIII and LIV, shall govern the proceedings under the submission herein provided for.

The time allowed for the direct agreement of the President of the United States and His Britannic Majesty on the composition of such Tribunal shall be three months.

ARTICLE VI.

The pleadings shall be communicated in the order and within the time following:

As soon as may be and within a period not exceeding seven months from the date of the exchange of notes making this agreement binding the printed case of each of the Parties hereto, accompanied by printed copies of the documents, the official correspondence, and all other evidence on which each Party relies, shall be delivered in duplicate (with such additional copies as may be agreed upon) to the agent of the other Party. It shall be sufficient for this purpose if such case is delivered at the British Embassy at Washington or at the American Embassy at London, as the case may be, for transmission to the agent for its Government.

Within fifteen days thereafter such printed case and accompanying evidence of each of the Parties shall be delivered in duplicate to each member of the Tribunal, and such delivery may be made by depositing within the stated period the necessary number of copies with the International Bureau at The Hague for transmission to the Arbitrators.

After the delivery on both sides of such printed case, either Party may, in like manner, and within four months after the expiration of the period above fixed for the delivery to the agents of the case, deliver to the agent of the other Party (with such additional copies as may be agreed upon), a printed counter-case accompanied by printed copies of additional documents, correspondence, and other evidence in reply to the case, documents, correspondence, and other evidence so presented by the other Party, and within fifteen days thereafter such Party shall, in like manner as above provided, deliver in duplicate such counter-case and accompanying evidence to each of the Arbitrators.

The foregoing provisions shall not prevent the Tribunal from permitting either Party to rely at the hearing upon documentary or other evidence which is shown to have become open to its investigation or examination or available for use too late to be submitted within the period hereinabove fixed for the delivery of copies of evidence, but in case any such evidence is to be presented, printed copies of it, as soon as possible after it is secured, must be delivered, in like manner as provided for the delivery of copies of other evidence, to each of the Arbitrators and to the agent of the other Party. The admission of any such additional evidence, however, shall be subject to such conditions as the Tribunal may impose, and the other Party shall have a reasonable opportunity to offer additional evidence in rebuttal.

The Tribunal shall take into consideration all evidence which is offered by either Party.

ARTICLE VII.

If in the case or counter-case (exclusive of the accompanying evidence) either Party shall have specified or referred to any documents, correspondence, or other evidence in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party shall demand it within thirty days after the delivery of the case or counter-case respectively, to furnish to the Party applying for it a copy thereof; and either Party may, within the like time, demand that the other shall furnish certified copies or produce for inspection the originals of any documentary evidence adduced by the Party upon whom the demand is made. It shall be the duty of the Party upon whom any such demand is made to comply with it as soon as may be, and within a period not exceeding fifteen days after the demand has been received. The production for inspection or the furnishing to the other Party of official governmental publications, publishing, as authentic, copies of the documentary evidence referred to, shall be a sufficient compliance with such demand, if such governmental publications shall have been published prior to the 1st day of January, 1908. If the demand is not complied with, the reasons for the failure to comply must be stated to the Tribunal.

ARTICLE VIII.

The Tribunal shall meet within six months after the expiration of the period above fixed for the delivery to the agents of the case, and upon the assembling of the Tribunal at its first session each Party, through its agent or counsel, shall deliver in duplicate to each of the Arbitrators and to the agent and counsel of the other party (with such additional copies as may be agreed upon) a printed argument showing the points and referring to the evidence upon which it relies.

The time fixed by this Agreement for the delivery of the case, counter-case, or argument, and for the meeting of the Tribunal, may be extended by mutual consent of the Parties.

ARTICLE IX.

The decision of the Tribunal shall, if possible, be made within two months from the close of the arguments on both sides, unless on the request of the Tribunal the Parties shall agree to extend the period.

It shall be made in writing, and dated and signed by each member of the Tribunal, and shall be accompanied by a statement of reasons.

A member who may dissent from the decision may record his dissent when signing.

The language to be used throughout the proceedings shall be English.

ARTICLE X.

Each Party reserves to itself the right to demand a revision of the award. Such demand shall contain a statement of the grounds on which it is made and shall be made within five days of the promulgation of the award, and shall be heard by the Tribunal within ten days thereafter. The Party making the demands shall serve a copy of the same on the opposite Party, and both Parties shall be heard in argument by the Tribunal on said demand. The demand can only be made on the discovery of some new fact or circumstance calculated to exercise a decisive influence upon the award and which was unknown to the Tribunal and to the Party demanding the revision at the time the discussion was closed, or upon the ground that the said award does not fully and sufficiently, within the meaning of this Agreement, determine any question or questions submitted. If the Tribunal shall allow the demand for a revision, it shall afford such opportunity for further hearings and arguments as it shall deem necessary.

ARTICLE XI.

The present Agreement shall be deemed to be binding only when confirmed by the two Governments by an exchange of notes.

In witness whereof this Agreement has been signed and sealed by the Secretary of State of the United States, Elihu Root, on behalf of the United States, and by His Britannic Majesty's Ambassador at Washington, The Right Honorable James Bryce, O. M., on behalf of Great Britain.

Done at Washington on the 27th day of January, one thousand nine hundred and nine.

ELIHU ROOT [SEAL.]
JAMES BRYCE [SEAL.]

The Secretary of State to the British Ambassador.

DEPARTMENT OF STATE,
Washington, January 27, 1909.

EXCELLENCY: In order to place officially on record the understanding already arrived at by us in preparing the special agreement which we have signed today for the submission of questions relating to fisheries on the North Atlantic Coast under the general Treaty of Arbitration concluded between the United States and Great Britain on the fourth day of April, 1908, I have the honor to declare on behalf of the Government of the United States that Question 5 of the series submitted, namely, "From where must be measured the 'three marine miles of any of the coasts, bays, creeks, or harbors' referred to in the said Article" is submitted in its present form with the agreed understanding that no question as to the Bay of Fundy, considered as a whole apart from its bays or creeks, or as to innocent passage through the Gut of Canso is included in this question as one to be raised in the present Arbitration; it being the intention of the parties that their respective views or contentions on either subject shall be in no wise prejudiced by anything in the present Arbitration.

I have the honor to be, with the highest respect, Your Excellency's most obedient servant,

ELIHU ROOT

The British Ambassador to the Secretary of State.

BRITISH EMBASSY,
Washington, January 27, 1909.

SIR, I have the honour to acknowledge your note of to-day's date and in reply have to declare on behalf of His Majesty's Government, in order to place officially on record the understanding already arrived at by us in preparing the special Agreement which we have signed to-day for the submission of questions relating to fisheries on the North Atlantic Coast under the general Treaty of Arbitration concluded between Great Britain and the United States on the 4th day of April, 1908, that Question 5 of the series submitted, namely, "From where must be measured the 'three marine miles of any of the coasts, bays, creeks or harbours' referred to in the said Article" is submitted in its present form with the agreed understanding that no question as to the Bay of Fundy, considered as a whole apart from its bays and creeks, or as to innocent passage through the Gut of Canso is included in this question as one to be raised in the present arbitration; it being the intention of the parties that their respective views or contentions on either subject shall be in no wise prejudiced by anything in the present arbitration.

I have the honour to be, With the highest consideration, Sir, your most obedient, humble Servant,

JAMES BRYCE

The Secretary of State to the British Ambassador.

No. 541.] DEPARTMENT OF STATE,
Washington, February 21, 1909.

EXCELLENCY: I have the honor to inform you that the Senate, by its resolution of the 18th instant, gave its advice and consent to the ratification of the Special Agreement between the United States and Great Britain, signed on January 27, 1909, for the submission to the Permanent Court of Arbitration at The Hague of questions relating to fisheries on the north Atlantic Coast.

In giving this advice and consent to the ratification of the Special Agreement, and as a part of the act of ratification, the Senate states in the resolution its understanding—"that it is agreed by the United States and Great Britain that question 5 of the series submitted, namely, 'from where must be measured the three marine miles of any of the coasts, bays, creeks or harbors referred to in said Article?' does not include any question as to the Bay of Fundy, considered as a whole apart from its bays or creeks, or as to innocent passage through the Gut of Canso, and that the respective views or contentions of the United States and Great Britain on either subject shall be in no wise prejudiced by anything in the present arbitration, and that this agreement on the part of the United States will be mentioned in the ratification of the special agreement and will, in effect, form part of this special agreement."

In thus formally confirming what I stated to you orally, I have the honor to express the hope that you will in like manner formally confirm the assent of His Majesty's Government to this understanding which you heretofore stated to me orally, and that you will be prepared at an early day to exchange the notes confirming the Special Agreement as provided for therein and in the general arbitration convention of June 5, 1908.

I have the honor to be, with the highest consideration, Your Excellency's most obedient servant,

ROBERT BACON

The British Ambassador to the Secretary of State.

No. 55.] BRITISH EMBASSY,
Washington, March 4, 1909.

SIR, I have the honour to acknowledge the receipt of your note informing me that the Senate of the United States has approved the Special Agreement for the reference to arbitration of the questions relating to the fisheries on the North Atlantic Coast and of the terms of the Resolution in which that approval is given.

It is now my duty to inform you that the Government of His Britannic Majesty confirms the Special Agreement aforesaid and in so doing confirms also the understanding arrived at by us that Question V of the series of Questions submitted for arbitration, namely from where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said article, is submitted in its present form with the agreed understanding that no question as to the Bay of Fundy considered as a whole

apart from its bays or creeks, or as to innocent passage through the Gut of Canso, is included in this question as one to be raised in the present arbitration, it being the intention of the Parties that their respective views or contentions on either subject shall be in no wise prejudiced by anything in the present arbitration.

This understanding is that which was embodied in notes exchanged between your predecessor and myself on January 27th, and is that expressed in the abovementioned Resolution of the Senate of the United States.

I have the honour to be, with the highest respect, Sir, Your most obedient, humble Servant,

JAMES BRYCE

The Secretary of State to the British Ambassador.

No. 549.] DEPARTMENT OF STATE,
Washington, March 4, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 4th instant in which you confirm the understanding in the matter of the Special Agreement submitting to arbitration the differences between the Governments of the United States and Great Britain concerning the North Atlantic fisheries, as expressed in the Resolution of the Senate of February 18, 1909, and as previously agreed upon by the interchange of notes with my predecessor of January 27, 1909.

I therefore have the honor to inform you that this Government considers the Special Agreement as in full force and effect from and after the 4th day of March, 1909.

I have the honor to be, with the highest consideration, Your Excellency's most obedient servant,

ROBERT BACON

AGREEMENT EFFECTED BY EXCHANGE OF NOTES BETWEEN UNITED STATES AND GREAT BRITAIN—NEWFOUNDLAND FISHERIES.[1]

Signed at London, July 22–September 8, 1909.

The American Ambassador to the British Foreign Office.

AMERICAN EMBASSY,
London, July 22, 1909.

SIR: Inasmuch as under the provisions of the special agreement, dated January 27, 1909, between the United States and Great Britain for the submission to arbitration of certain questions arising with respect to the North Atlantic coast fisheries, the decision of the tribunal on such questions will not be rendered before the summer of 1910, and inasmuch as the modus vivendi entered into with Great Britain last July with respect to the Newfoundland fisheries does not in terms extend beyond the season of 1908, my Government thinks it desirable that the modus of last year should be renewed for

[1] See also Foreign Relations, 1907, p. 531, and Foreign Relations, 1908, p. 378.

the coming season, and, if possible, until the termination of the arbitration proceedings for the settlement of these questions.

I am therefore instructed to propose such a removal to His Majesty's Government, the understanding on both sides originally having been, as you may remember, that the modus was entered into pending arbitration.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

WHITELAW REID.

The British Foreign Office to Chargé Carter.

FOREIGN OFFICE, *September 8, 1909.*

SIR: In reply to Mr. Whitelaw Reid's note of July 22 last, I have the honor to state that His Majesty's Government agree to the renewal of the modus vivendi of 1908 for the regulation of the Newfoundland fisheries until the termination of the arbitration proceedings before The Hague tribunal for the settlement of the Atlantic fisheries questions.

His Majesty's Government suggest that Mr. Whitelaw Reid's note of July 22 and my present reply should be regarded as constituting a sufficient ratification of the above understanding without the necessity for embodying it in a more formal document.

I have the honor to be, with high consideration, sir, your most obedient, humble servant,

E. GREY.

PAYMENT OF INCOME TAXES BY AMERICAN CONSULAR OFFICERS IN GREAT BRITAIN.

File No. 16545/4.

The Secretary of State to Ambassador Reid.

No. 972.] DEPARTMENT OF STATE,
Washington April 21, 1909.

SIR: I inclose a copy of a memorandum drawn up by the law officer of the department with reference to the payment of income taxes by American consular officers in Great Britain.

In view of the statements contained therein, the department will be glad to have you present an informal request to the British Government that, upon the grounds of international comity and reciprocal favor, it extend the present exemption from the income tax of the official incomes of foreign consuls so as to include the private income of American consular officers derived from property located outside the United Kingdom.

I am, etc.,

P. C. KNOX.

[Inclosure.]

DEPARTMENT OF STATE, *March 1, 1909.*

MEMORANDUM ON THE PAYMENT OF INCOME TAXES BY AMERICAN CONSULAR OFFICERS IN GREAT BRITAIN.

Under date of November 2, 1909, Consul Halstead, at Birmingham, England, forwarded copies of correspondence had with the local surveyor of taxes showing that the consul had been called upon to make a return as to his private income, preparatory to paying the income tax.

It appears from the correspondence that the official incomes of foreign consuls residing in England are not subjected to payment of this tax, and that the income referred to by the consul is that derived from his investments in the United States. He protests vigorously against the prospective imposition of the tax, and states that if "the department, for reasons that seem valid to it, does not see its way to free American consuls in the United Kingdom from income-tax liability, or if the British Government refuse to grant exemption to American consuls under British income-tax laws, I shall be compelled, most regretfully, to retire from the Consular Service before becoming liable for further British income taxation."

The United States has treaty provisions with many foreign Governments, but not with Great Britain, as to consular exemption from taxation. Neither do our treaties with Great Britain contain a most-favored-nation clause applicable to our consular officers.

The records of the department show that the following cases have more or less bearing as precedents upon the question under consideration.

On March 3, 1859, the department wrote the consul at Bremen in relation to his claim for exemption from municipal taxation that—

> You are reminded that consular officers are not clothed with immunities and privileges of diplomatic agents and are therefore subject to local regulations of the place in which they respectively reside.
>
> If Bremen consuls are exempted from taxation in the United States, it is through the courtesy of the authorities of the several States in which these officers are situated, and not from any stipulation in the existing treaty between the United States and Bremen, of which only can this department take cognizance.

In reply to his communication forwarding correspondence had with the Government of Oldenburg regarding the imposition of an income tax upon consular officers, the vice consul at Oldenburg was instructed on May 29, 1861, that—

> If, as you intimate, the 12 consular officers of Oldenburg in the United States have hitherto been exempted from the payment of taxes, it must be due to the courtesy of the local authorities in the cities where they reside, and which can scarcely be expected, in view of the correspondence which you have transmitted to this department, to be extended to them hereafter.

Complaint having been made by the Russian consul general at New York that he had been called upon to pay the Federal income tax, the department wrote the Secretary of the Treasury that it was desirable that the law on the subject should receive such consideration as to exempt foreign consuls "from any such tax which may not be chargeable upon income derived from property in the United States, or from business other than that of an official character." The department added that it was not aware that the income of any American consul derived from official sources was taxed by the government of the country where he resided. (The department to Mr. Chase, Sept. 23, 1863, 62 Dom. Let., 9.)

On April 5, 1887, in reply to his communication of January 25, 1887, reporting the efforts of the Indian authorities to collect an income tax from him, the consul at Calcutta was advised as follows:

> Relative to the right of the British Government to levy a tax on your official income * * * I have to say that whatever we may say of the right of a government to tax the incomes of persons residing within its borders, as consuls from foreign governments, the practice of late years of our own Government, and it is believed of the British Government, has been not to insist on such a tax.
>
> Therefore, whatever may be said upon the abstract question of the right of the British Government to tax your income, you may, with good reason, claim exemption from such tax in the present case on the ground of international comity and reciprocal favor.

The consul general reported on May 17, 1887, that he had protested against the collection of the tax on the grounds of "international comity and reciprocal right," and that he believed that the Government of India would not insist on the collection of the tax. He added that if it should turn out otherwise, he would make further report. As the records of the department do not appear

to show any later communication from him on this subject, it is inferred that the tax was not collected.

The following instruction from the department is believed to set forth correctly the status of consuls according to international law:

> The law of nations does not of itself extend to consuls at all. They are not of the diplomatic class of characters to which alone that law extends of right. Convention, indeed, may give it to them, and sometimes has done so; but in that case the convention can be produced. * * * Independently of (the special) law, consuls are to be considered as distinguished foreigners, dignified by commission from their sovereign and specially recommended by him to the respect of the nation with whom they reside. They are subject to the laws of the land, indeed, precisely as other foreigners are, the convention, where there is one, making a part of the law of the land. (Department to Mr. Newton, Sept. 8, 1791, 4 MS. Am. Let., 283.)

In the absence, then, of a treaty provision with Great Britain, it is not seen that the Government of that country is under any legal obligation to exempt our consular officers from the payment of a tax upon their private incomes, even if derived from property situated in the United States.

The department was advised by the attorney general of Massachusetts, under date of February 15, 1909, that it is not the practice in that State (which, so far as is known to the department, is the only State imposing an income tax) "to assess a tax on the salary or income of a foreign consul, whether official salary, private income, or income derived from services outside the United States."

File No. 16545/8.

Ambassador Reid to the Secretary of State.

No. 945.] AMERICAN EMBASSY,
London, June 18, 1909.

SIR: With reference to the department's instruction No. 972, of the 21st of April last, relating to the private incomes of United States consular officers in Great Britain, I have the honor to inform you that I am advised by the secretary of state for foreign affairs that His Majesty's Government are unable to extend the concession already granted to foreign consular officers in respect of the exemption of their official salaries from the income tax so as to cover their private incomes from property abroad.

I have, etc.,

(For the Ambassador).
J. R. CARTER

EXTENSION OF PROVISIONS OF EXTRADITION TREATIES BETWEEN THE UNITED STATES AND GREAT BRITAIN TO BRITISH PROTECTORATES.

File No. 2624/15–16.

The British Ambassador to the Secretary of State.

No. 238.] BRITISH EMBASSY,
Northeast Harbor, Me., September 7, 1909.

SIR: Owing to British protectorates not being, strictly speaking, British dominions, and the British extradition acts consequently not being the municipal law of such territories, the absence of the necessary legal machinery has so far precluded the surrender of fugitive criminals between British protectorates and foreign states and their dependencies.

To remedy this state of affairs special legislative enactments have now been passed in the various British protectorates on the African Continent, of which a list is inclosed, and local notices have been issued that they will be applicable to the United States.

I have, however, to explain that the natives of these protectorates are not by the mere fact of birth within their limits British subjects, and consequently the provisions in the treaties which His Majesty's Government have concluded, and which in some cases altogether preclude and in others leave the surrender of nationals optional, would not, in the absence of some specific understanding, apply in strictness to natives.

His Majesty's Government, however, contemplate assimilating the position of natives to that of British subjects for the purposes of these treaties, and they apprehend that the United States Government will readily assent to this course.

I have accordingly the honor, under instructions from His Majesty's principal secretary of state for foreign affairs, to bring this information to your notice and to intimate that a reply to the effect that the United States Government have taken due note of its contents will be sufficient to give due effect to the understanding without any further formality.

The procedure for requesting the rendition of fugitive criminals would in that case thenceforward be regulated, as far as possible, by the provisions of the existing treaty between the two countries.

I have, etc.,

JAMES BRYCE.

[Inclosure.]

LIST OF BRITISH PROTECTORATES IN AFRICA.

Bechuanaland protectorate. East African protectorate, Gambia protectorate, Northeastern Rhodesia, Northwestern Rhodesia, Northern Nigeria, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone protectorate, Somaliland protectorate, Southern Nigeria protectorate, Southern Rhodesia, Swaziland, Uganda protectorate.

File No. 2624/15—16.

The Acting Secretary of State to the British Ambassador.

No. 732.] DEPARTMENT OF STATE,
Washington, September 23, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note No. 238, of the 7th instant, in which, with reference to the fact, as stated, that British protectorates are not, strictly speaking, British dominions, and that, consequently, the British extradition acts are not the municipal law of such territories, you advise the department that the absence of the necessary legal machinery has so far precluded the surrender of fugitive criminals between British protectorates and foreign States and their dependencies, and add that, to remedy this state of affairs, special legislative enactments have now been passed in the various British protectorates on the African Continent, of which a list is inclosed with your note, and that local notices have been issued that they will be applicable to the United States.

Your note explains, however, that the natives of these protectorates are not by the mere fact of birth within their limits British subjects, and that consequently the provisions in the treaties which His Majesty's Government has concluded, and which in some cases altogether preclude and in others leave the surrender of nationals optional, would not, in the absence of some specific understanding, apply in strictness to natives. It appears, however, that His Majesty's Government contemplates assimilating the position of natives to that of British subjects for the purposes of these treaties, and that they apprehend that the Government of the United States will readily assent to this course.

In reply I have the honor to say that the department has taken due note of the contents of your note and of the intimation therein contained that acknowledgment of the note is to be considered sufficient to give due effect to the understanding without any further formality.

With reference to the statements in your note regarding the surrender of native inhabitants under this arrangement, the department avails itself of this opportunity to observe that it would appear that the Government of the United States is in nowise concerned with that feature of the proposed arrangement, since the extradition treaties existing between the United States and Great Britain contain no limitations with respect to the surrender of nationals of either country, and since the uniform practice followed by both the United States and Great Britain has been to surrender each to the other all persons fugitive from the justice of the one or the other, found within the limits of the other.

I have, etc.,

ALVEY A. ADEE.

TERMINATION OF COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND GREAT BRITAIN.

File No. 11231/17A.

The Acting Secretary of State to the British Ambassador.

DEPARTMENT OF STATE,
Washington, April 30, 1909.

EXCELLENCY: The Congress of the United States has effectively declared its intention to supersede the present customs tariff law of the United States by a new law, which is now under discussion, and which will probably be enacted within a few weeks.

One of the necessary results of this change will be that the commercial agreements made by the President under the authority of the act of July 24, 1897, will no longer be applicable to the conditions which will exist under the new law. The Government of the United States accordingly finds it necessary to give notice of the intention to terminate all of these agreements.

By direction of the President, I have, therefore, the honor hereby to give, through your excellency, to the Government of Great Britain formal notice on behalf of the United States of the intended termination of the commercial agreement signed on November 19,

1907. Further communication on this subject will be made after the passage of legislative measures affecting the bases on which these agreements were concluded.

I have, etc.,

HUNTINGTON WILSON.

File No. 5727/272A.

The Acting Secretary of State to Ambassador Reid.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 30, 1909.

For your information and for immediate communication to the British Government, I quote the following letter of notification addressed to-day to the British ambassador here.[1]

WILSON.

File No. 611/4131A.

The Secretary of State to the British Ambassador.

DEPARTMENT OF STATE,
Washington, August 6, 1909.

EXCELLENCY: Referring to the department's note to your embassy dated April 30, 1909, relative to the termination of the existing commercial agreement between the United States and Great Britain and stating that a further communication on this subject would be made after the passage of legislative measures affecting the bases on which that agreement was concluded, I have now the honor to inform you that the new tariff law approved August 5, 1909, contains the following provisions respecting the commercial agreements of the United States:

That the President shall have power and it shall be his duty to give notice, within ten days after the passage of this act, to all foreign countries with which commercial agreements in conformity with the authority granted by section three of the act entitled "An act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, have been or shall have been entered into, of the intention of the United States to such agreement at a time specified in such notice, which time shall in no case, except as hereinafter provided, be longer than the period of time specified in such agreements respectively for notice for their termination; and upon the expiration of the periods when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importations from said countries shall be subject to no other duty than those prescribed by this act and such other acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the terms of said commercial agreements shall remain in force: *And provided further*, That in the case of these commercial agreements or arrangements made in accordance with the provisions of section three of the tariff act of the United States, approved July twenty-fourth, eighteen hundred and ninety-seven, which

[1] Supra.

contain no stipulations in regard to their termination by diplomatic action, the President is authorized to give to the Governments concerned a notice of termination of six months, which notice shall date from April thirtieth, nineteen hundred and nine.

By the President's direction, in pursuance of the foregoing provisions of law, I have now the honor hereby to give, through you, to the Government of Great Britain formal notice on behalf of the United States of the intended termination of the commercial agreement signed on November 19, 1907, to take effect six months from the present date, namely, on February 7, 1910, when the said agreement shall cease to be in force.

I have, etc.,

P. C. KNOX.

EXEMPTION OF COLOMBIAN WARSHIPS FROM PAYMENT OF TOLLS ON PANAMA CANAL.

File No. 1502/146A.

The Secretary of State to the British Ambassador.

No. 540.] DEPARTMENT OF STATE,
Washington, February 20, 1909.

EXCELLENCY: On the 8th of January, ultimo, Secretary Root communicated to you, confidentially, a memorandum regarding an arrangement then in progress of negotiation between Panama and Colombia and the United States which was deemed of considerable importance, especially to us, because enabling the United States to execute peaceably the purposes of the Hay-Pauncefote treaty concluded between the United States and Great Britain on November 18, 1901. That memorandum reads as follows:

In 1903, in settling with Colombia the terms upon which the United States might obtain the opportunity to construct the Panama Canal as contemplated in the Hay-Pauncefote treaty of November 18, 1901, Mr. Hay included in the Hay-Herrán treaty of January 22, 1903, a provision under which the war vessels of Colombia might pass through the canal free of duty. The United States has now, by the use of good offices and additional concessions on its own part, brought the Governments of the two sections which at that time constituted the Republic of Colombia, namely, Colombia and Panama, to the point of entering into an agreement under which Colombia will recognize the independence of Panama and confirm the title which Panama undertook to give to the United States to construct the canal by renouncing all Colombia's claims. The proposed agreement will adjust the relations of the two to the public debt of Colombia, arrange for the settlement of the boundary, and provide for the exercise of election as to citizenship, and will constitute in general a treaty of separation.

As a part of this same arrangement of separation and to help bring it about, the United States is about to agree to the continuance of the right of passage on the part of Colombia which was formerly stipulated in the Hay-Herrán treaty. The United States has not been unmindful of the provision of the Hay-Pauncefote treaty under which the Suez rules were adopted as bases for the neutrality of the canal, including the rule against discriminations between different nations; but we have assumed that that rule had no relation to the terms by means of which the title to the site of the canal and the opportunity to build might be obtained.

The Government of the United States will communicate a copy of the different treaties immediately upon the final settlement of their terms and hopes that the accomplishment of this very important step toward executing the purposes which the United States and Great Britain have shared for so many

years, and an expression of which is embodied in the Hay-Pauncefote treaty, will be received by Great Britain with special satisfaction.

DEPARTMENT OF STATE,
Washington, January 8, 1909.

The arrangement thus described took the shape of formal treaties, which were signed on the 9th ultimo, and are now before the Senate of the United States with a view to the advice and consent of that body being given to their ratification. They are still under the injunction of secrecy, but it seems necessary and proper to a full understanding of the foregoing memorandum and the subsequent comparison of views between the Governments of the United States and Great Britain that the provision thereof pertinent to the present communication should be cited herein:

Article II of the treaty between the United States and Colombia reads:

In consideration of the provisions and stipulations hereinafter contained it is agreed, as follows:

The Republic of Colombia shall have liberty at all times to convey through the ship canal now in course of construction by the United States across the Isthmus of Panama the troops, materials for war, and ships of war of the Republic of Colombia, without paying any duty to the United States, even in the case of an international war between Colombia and another country.

While the said interoceanic canal is in course of construction the troops and materials for war of the Republic of Colombia, even in the case of an international war between Colombia and any other country, shall be transported on the railway between Ancon and Cristobal, or on any other railway substituted therefor, upon the same conditions on which similar service is rendered to the United States.

The officers, agents, and employees of the Government of Colombia shall, during the same period, be entitled to free passage upon the said railway across the Isthmus of Panama upon due notification to the railway officials and the production of evidence of their official character.

The foregoing provisions of this article shall not, however, apply in case of war between Colombia and Panama.

After conference with you on the subject, Secretary Root amplified the ideas of the Government of the United States on the subject in a personal note to you, dated January 16, which so fully sets forth the policy and motives of the United States in the premises that I can not do better than cite it textually, as follows:

DEPARTMENT OF STATE,
Washington, January 16, 1909.

DEAR MR. AMBASSADOR: I think on reflection that I should follow your suggestion and put in writing the gist of the ideas which I conveyed to you orally in our interview last Thursday regarding the proposed concession to Colombia of the right to pass her war vessels through the Panama Canal, when completed, without the payment of any dues to the United States. The view of the United States upon this is, in substance, as follows:

The Hay-Pauncefote treaty of November 18, 1901, provided for the building of a canal in territory which was not under the jurisdiction of either of the contracting parties. The title to the land through which the canal was to be built, the authority to construct and operate, and jurisdiction and control over the canal when finished manifestly remained to be secured before the purposes of the treaty could be effected. The treaty said nothing about the way in which this should be accomplished. It follows by necessary implication that the agreements and arrangements to be made with the power or powers having right to grant or withhold the opportunity to construct and operate the canal must be quite different from the mere application of a scale of tolls to the nations of the world in general which had nothing whatever to do with the creation of the canal. Such agreements are ex necessitate outside of the rule of equality to all the world which was embodied in the Suez rules.

This view was recognized in the Hay-Herrán treaty of January 22, 1903, in which the United States of Colombia, while undertaking to grant the right

to the construction of the canal, reserved the right "to pass their vessels, troops, and munitions of war at all times without paying any dues whatever." This treaty was confirmed by the Senate of the United States, but failed of confirmation by the Congress of Colombia. Then followed the revolution inaugurated on the 3d of November, 1903, and the recognition of the independence of Panama by both the United States and Great Britain, and thereafter the grant by the Republic of Panama to the United States of various rights connected with the canal, including as well as the direct grant a consent by Panama to the purchase by the United States of the property and concessions of the New Panama Canal Co. which had been for a long time engaged in canal construction across the Isthmus, and which had rights the acquisition or removal of which was necessary to vest in the United States the right to construct the canal in accordance with the terms of the Hay-Pauncefote treaty.

Notwithstanding the grant by Panama in her treaty with the United States, there remained three subjects for serious consideration by the United States as affecting the peaceable and unquestioned title to the property and rights the acquisition of which was necessary to the execution of the canal project. One of these was that there still remained in force a treaty made in 1846 between the United States and Colombia, which was in existence at the time the Hay-Pauncefote treaty was made and under which the United States remained under special obligation to Colombia in respect of the very status of the canal. The second was that the only way to dispose of the prior and conclusive rights of the French Panama Canal Co., which stood in the way of the construction of the canal by the United States pursuant to the Hay-Pauncefote treaty, was by purchasing those rights and becoming the successor of the Panama Canal Co. under the concessionary contracts. In those contracts there were stipulations and reservations running to Colombia, including rights of forfeiture of property, and including an express stipulation for the right to pass her war vessels through the canal without the payment of dues. The third was the fact that Colombia had continuously refused to recognize the independence of Panama and stood ready to retake possession of the Isthmus and resume her control over it the moment that she was not prevented by the superior military and naval force of the United States; so that the only possession which was possible under the grant of Panama alone was the possession to be continuously maintained by force.

Under these circumstances the United States has deemed it to be its duty in the performance of the obligations which it assumed in the Hay-Pauncefote treaty with Great Britain, to fortify its title and assure its peaceable possession of the canal for the purposes of the Hay-Pauncefote treaty by securing the assent of Colombia to the separation of Panama, the renunciation of Colombia's claims, and the consent of Colombia to the necessary modification of the treaty engagements of 1846 between the United States and Colombia. In order to accomplish this the United States has found it necessary to renew the reservation of the specific right of Colombia to send its warships through the canal without the payment of dues, which has been insisted upon by that country in every concession and treaty she has made regarding it (for example, the Panama Canal concession of 1878, Article VI; the Hay-Concha accepted proposal for a treaty between the United States and Colombia of April 18, 1902, sent by Mr. Hay to the American Congress and printed as a public document; and the Hay-Herrán treaty of January 22, 1903, Articles XVI, XVII, and XVIII), and also to make the very substantial payment of a million and a quarter dollars, which the United States proposes to contribute toward the payment of Panama for the purpose of securing these rights.

The United States has considered not only that in prescribing the rule of equality in the Hay-Pauncefote treaty the parties must have contemplated the making of special arrangement by the United States with Colombia as the necessary source of title, but that the right to make such an exceptional arrangement still continues in view of Colombia's continued special relation to the title; and this view is supported by the provision of the fourth article of the Hay-Pauncefote treaty, which declares that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties under the present treaty.

Of course, in agreeing to accord to Colombia this reservation, the United States is not dealing with the general subject of canal tolls. It is treating Colombia for the reasons which I have described, as being in a wholly ex-

ceptional position, not subject to the rule of equality of the Hay-Pauncefote treaty, and not to come within any schedule of tolls which may hereafter be established, which must, of course, under the treaty, be equal for all nations to whom the rule of equality is properly applicable.

The United States is especially desirous that its course shall be understood by Great Britain, and that there shall be no thought on the part of that Government that the Government of the United States is unmindful of its obligations under the Hay-Pauncefote treaty, or is willing, in any degree whatever, to fail in strict compliance with those obligations, and for this reason I am making this explanation in the hope that the Government of Great Britain will agree with us regarding the situation of Colombia as to the title to the canal to be so exceptional as not to come within the rule of equality of the Hay-Pauncefote treaty, and will agree that the contemplated provision will constitute no precedent for the exception of any other nations from the payment of equal dues for the passage of war vessels in accordance with such schedules as shall be established in accordance with the Hay-Pauncefote treaty.

Faithfully, yours,

ELIHU ROOT.

In the meantime the ambassador of the United States at London had held similar conference with the foreign office and communicated our views in a memorandum dated January 20, in which the considerations above set forth were substantially reproduced.

I have now had the pleasure to receive from you, on the 3d instant, an aide mémoire confirming your oral communication of that day, to the effect that you had been instructed by the foreign office, in view of the special circumstances of the case and in view of the explanation that Mr. Root had offered, to inform me that His Majesty's Government, on the receipt of a formal assurance that a precedent for similar and other occasions shall not be constituted by the special treatment granted to Colombia with regard to free transit for her warships, are ready to forego the protest against the infringement of the Hay-Pauncefote treaty which they had intended to make. You added a proposal that this formal assurance and the acknowledgment thereof should be set forth in an exchange of notes.

Being thus in accord as to what is mutually understood to be an exceptional contingency growing out of the special circumstances of the case, and is, as explained by Mr. Root, a necessity toward the realization of the purpose for which the Hay-Pauncefote treaty was concluded, I have much pleasure in responding to your proposal by giving, on the part of the Government of the United States, through you, to His Majesty's Government, formal confirmation of the assurance heretofore given to you by Secretary Root, that should the contemplated provision in favor of Colombia for the passage of Colombian warships through the Panama Canal become effective through the consummation of the treaty by ratification and exchange it will constitute no precedent for the exception of any other nations from the payment of equal dues for the passage of war vessels in accordance with such schedules as shall be established in conformity with the Hay-Pauncefote treaty.

Your acknowledgment and acceptance of this formal assurance will make it clear by exchange of notes that the Government of Great Britain agrees with the Government of the United States in regarding the situation of Colombia as to the title to the canal to be so exceptional as not to come within the rule of equality of the Hay-Pauncefote treaty.

I have, etc.,

ROBERT BACON.

File No. 1502/145.

The British Ambassador to the Secretary of State.

No. 45.] BRITISH EMBASSY,
Washington, February 24, 1909.

SIR: I have the honor to acknowledge receipt of your note No. 540, of the 20th instant, on the subject of the treaty between the United States and the Republic of Colombia, and to say in reply that His Majesty's Government are glad to receive the full explanation given by you of the view which the Government of the United States take of the circumstances which appear to them to place the Republic of Colombia in a wholly different relation to the Panama Canal from that in which other countries stand, and which as they conceive distinguish the concession to that Republic of exceptional treatment from any case in which the question of making a similar concession to any other country could hereafter arise. Without entering on any discussion of the argument by which the view of your Government is supported and illustrated, His Majesty's Government are content to note that the United States Government hold that the right of the free passage for warships which the present treaty proposes to extend to Colombia is deemed by them to grow out of the entirely special and exceptional position of Colombia toward the canal and the title thereto, and accordingly does not constitute a precedent, and will not hereafter be drawn into a precedent, for the exception of any other nation from the payment of equal dues for the passage of war vessels in accordance with such schedules as shall be hereafter constituted in conformity with the Hay-Pauncefote treaty, or for any other concession of a special nature to Colombia or to any other power.

I have accordingly the honor of stating to you that His Majesty's Government consider that they can forego the making of such a protest as they had formerly contemplated and that they accept the assurance contained in your note.

I have, etc.,

JAMES BRYCE.

INTERNATIONAL NAVAL CONFERENCE.

LONDON, DECEMBER 4, 1908–FEBRUARY 26, 1909.

The British Ambassador to the Secretary of State.

BRITISH EMBASSY,
Washington, March 27, 1908.

SIR: The draft convention for the establishment of an international court of appeal in matters of prize which formed annex 12 to the final act of the second peace conference has been under the consideration of His Majesty's Government.

Article 7 of the convention provides that, in the absence of treaty stipulations applicable to the case, the court is to decide the appeals that come before it in accordance with the rules of international law,

or if no generally recognized rules exist, in accordance with the general principles of justice and equity.

The discussions which took place at The Hague during the recent conference showed that on various questions connected with maritime war divergent views and practices prevailed among the nations of the world. Upon some of these subjects an agreement was reached, but on others it was not found possible, within the period for which the conference assembled, to arrive at an understanding. The impression was gained that the establishment of the international prize court would not meet with general acceptance so long as vagueness and uncertainty exist as to the principles which the court, in dealing with appeals brought before it, would apply to questions of far-reaching importance affecting naval policy and practice.

His Majesty's Government therefore propose that another conference should assemble during the autumn of the present year, with the object of arriving at an agreement as to what are the generally recognized principles of international law, within the meaning of paragraph 2 of article 7 of the draft convention, as to those matters wherein the practice of nations has varied and of then formulating the rules which, in the absence of special treaty provisions applicable to a particular case, the court should observe in dealing with appeals brought before it for decision.

The rules by which appeals from national prize courts would be decided affect the rights of belligerents in a manner which is far more serious to the principal naval powers than to others, and His Majesty's Government are therefore communicating only with the Governments of Austria-Hungary, France, Germany, Italy, Japan, Russia, Spain, and the United States of America. They would propose that the conference should assemble in October and, if it is agreeable to the Governments of those countries, they would suggest that it should meet in London.

The questions upon which His Majesty's Government consider it to be of the greatest importance that an understanding should be reached are those as to which divergent rules and principles have been enforced in the prize courts of different nations. It is therefore suggested that the following questions should constitute the program of the conference:

(*a*) Contraband, including the circumstances under which particular articles can be considered as contraband; the penalties for their carriage; the immunity of a ship from search when under convoy; and the rules with regard to compensation where vessels have been seized, but have been found in fact only to be carrying innocent cargo;

(*b*) Blockade, including the questions as to the locality where seizure can be effected, and the notice that is necessary before a ship can be seized;

(*c*) The doctrine of continuous voyage in respect both of contraband and of blockade;

(*d*) The legality of the destruction of neutral vessels prior to their condemnation by a prize court;

(*e*) The rules as to neutral ships or persons rendering "unneutral service" ("assistance hostile");

(*f*) The legality of the conversion of a merchant vessel into a warship on the high seas;

(*g*) The rules as to the transfer of merchant vessels from a belligerent to a neutral flag during or in contemplation of hostilities;

(*h*) The question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property.

His Majesty's Government are deeply sensible of the great advantage which would arise from the establishment of an international prize court, but in view of the serious divergences that the discussion at The Hague brought to light as to many of the above topics after an agreement had practically been reached on the proposals for the creation of such a court, it would be difficult, if not impossible, for His Majesty's Government to carry the legislation necessary to give effect to the convention unless they could assure both Houses of the British Parliament that some more definite understanding had been reached as to the rules by which the new tribunal should be governed.

If the program outlined above is concurred in by the Governments to which it has been submitted, it would be convenient if, on some subsequent date, as for instance the 1st August, the Governments were to interchange memoranda setting out concisely what they regard as the correct rule of international law on each of the above points, together with the authorities on which that view is based. This course would greatly facilitate the work of the conference, and materially shorten its labors.

My Government instruct me to address a communication in this sense to the United States Government, expressing at the same time the hope that if that Government are favorable to the idea of the conference being held, they will send a delegate furnished with full powers to negotiate and conclude an agreement.

I have, etc.,

JAMES BRYCE.

File No. 12655/35.

The British Chargé to the Acting Secretary of State.

No. 168.] BRITISH EMBASSY,
Manchester, Mass., August 11, 1908.

SIR: With reference to Mr. Bryce's note, of the 27th March, in regard to the points prepared for discussion at the International Law Conference it is proposed to hold at London, I am now directed to submit to you for the consideration of the United States Government a memorandum [1] embodying the views of His Majesty's Government as to the rules of international law on these points.

I am further to explain that this memorandum represents merely a compilation of rules and dicta of British courts and British practice collected for convenience, but necessarily put compendiously, so that, if a question arose, it would have to be decided by reference to the full authorities, and that, therefore, it is not to be taken as an official code, since some of the rules and dicta are of ancient date, and their application may be difficult, in view of modern conditions.

I have, etc.,

ESME HOWARD.

[1] For British memorandum, as well as for those of other countries represented at the conference, see British Parliamentary Paper, Miscellaneous No. 5 (1909).

File No. 12655.

The Acting Secretary of State to the British Chargé.

No. 400.] DEPARTMENT OF STATE,
Washington, September 5, 1908.

SIR: Referring to the embassy's notes of March 27, August 11, and August 21,[1] last, concerning the international maritime conference to be held at London during the month of October of the current year, I have the honor to say that the department has given careful consideration to the suggestion that each Government invited to the conference prepare and exchange memoranda setting forth its practice in the matters specifically mentioned in the tentative program for the conference, submitted in the British embassy's note of March 27.

The attitude of the United States is well known to each of the participating powers, as is their maritime practice to the delegates appointed by the United States. The delegates to the Second Hague Peace Conference were thus instructed by the Secretary of State:[2]

> As to the framing of a convention relative to the customs of maritime warfare, you are referred to the Naval War Code promulgated in General Orders, No. 551, of the Navy Department of June 27, 1900, which has met with general commendation by naval authorities throughout the civilized world, and which, in general, expresses the views of the United States, subject to a few specific amendments suggested in the volume of International Law Discussions of the Naval War College of the year 1903, pages 91 to 97. The order putting this code into force was revoked by the Navy Department in 1904, not because of any change of views as to the rules which it contained, but because many of those rules, being imposed upon the forces of the United States by the order, would have put our naval forces at a disadvantage as against the forces of other powers upon whom the rules were not binding. The whole discussion of these rules, contained in the volume to which I have referred, is commended to your careful study.
>
> You will urge upon the peace conference the formulation of international rules for war at sea and will offer the Naval War Code of 1900, with the suggested changes, and such further changes as may be necessary by other agreements reached at the conference, as a tentative formulation of the rules which should be considered.

The attitude of the United States has not changed since the conference, but the relevant portion of the instructions copied for your information are as applicable to the maritime conference as they were to the Second Hague Peace Conference.

I have the honor, therefore, to transmit herewith copies of the Naval War Code of 1900 and of the volume of International Discussions of the Naval War College for the year 1903, containing the amendments to be made to the Naval War Code of 1900, to serve as a basis of discussion in the conference, subject, of course, to amendment, in lieu of the memoranda proposed to be prepared and exchanged by each power invited to the maritime conference.

I have, etc.,

ALVEY A. ADEE.

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[1] Not printed.
[2] See Foreign Relations, 1907, p. 1128 et seq., at p. 1137.

File No. 12655/35.

The British Ambassador to the Acting Secretary of State.

No. 195.] BRITISH EMBASSY,
Washington, September 25, 1908.

SIR: The invitations which were issued by His Majesty's Government for a conference in London during the coming autumn with the object of arriving at an agreement as to what are the generally recognized principles of international law on certain questions of maritime war have now been accepted by all the powers to whom they were sent. With the concurrence of all the Governments which were originally asked to take part in the conference, an invitation was subsequently issued to the Netherland Government in view of the peculiar position occupied by their country as the seat of the proposed international prize court and as the meeting place of the first and second peace conferences. This invitation has also been accepted.

2. The list of subjects enumerated in my official note of the 27th March has met with general approval, though two powers have stated that they assumed the specific mention of the subjects enumerated in the circular was not meant to exclude the discussion of other questions connected therewith if their consideration would be of help to carry into effect the work of the conference. While cordially acquiescing in the desire that no point or question should be excluded which is germane to the work of the conference, His Majesty's Government are anxious that the subjects for consideration should be limited to those whose elucidation is required in order to facilitate the general acceptance of the scheme for the creation of the international prize court.

3. Both the Russian and German Governments have expressed doubt as to the feasibility of limiting the work of the conference to formulating the existing rules of international law. The Russian Government stated that they considered the most useful form to give to the memorandum, which His Majesty's Government had suggested that each Government should prepare on the various subjects in the program, would be that of a draft agreement on the various points, embodying the rules to be laid down for the future, without reference to the divergent practices of the past. His Majesty's Government have replied that they see no reason why the Russian Government should not, in addition to stating the existing rules, formulate the amendments they desire. Such amendments, if agreed to, could be embodied in an additional instrument, and this would be ancillary to the chief work of the conference, which would consist in the formulation of the existing rules. To this proposal the Russian Government have assented.

4. The German Government have also preferred to state in their memorandum the existing rules, with such improvements as they consider desirable, urging that the work of the conference should not be limited to laying down the existing law of nations, but should be devoted to the determination of a treaty law which should be binding for the future and be based as far as possible on the existing law. His Majesty's Government in reply have intimated that while

the object of the conference must be first to ascertain the existing law on the heads suggested for discussion, and to reconcile, as far as possible the different views of that law, this need not exclude further discussion in the direction desired by the German Government, adding that they had no objection to the German Government preparing their memorandum in such a form as, having regard to the objects of the conference, they deem most suitable.

5. His Majesty's Government for their part still think that the form in which the results of the conference would be most usefully expressed would be that of a declaration setting out the rules which the powers regard as binding on themselves at the present time, and which their prize courts would apply in any cases that came before them, irrespectively of the nationality of the parties concerned. It has been suggested that such a declaration would not be binding on the international prize court, and that there would be no obligation upon that court to apply it even in the case of a subject of one of the signatory powers, still less in the case of a subject of another power represented on the court which was not a party to the declaration. His Majesty's Government can not believe that in actual practice the prize court could or would ignore a declaration which has received the unanimous recognition of all the chief naval powers, and is enforced in the national prize courts of the States who between them appoint the majority of the judges of the international court.

6. It is, however, essential, for the adoption of the plan, that the rules agreed upon should purport to be what the powers recognize as the existing law, even though it may be necessary to restate some of the old principles in terms more applicable to the altered conditions of modern commerce.

7. It appears to His Majesty's Government that the form to be given to the results of the labors of the conference is of less importance than that the plenipotentiaries should cooperate in a determined effort to arrive at some definite and unanimous agreement on the subjects for discussion, so as to facilitate the general acceptance of the convention for the creation of the international prize court. With this view His Majesty's Government will endeavor to prepare, and hope to lay before the conference on its assembly, as a suitable basis for its deliberations, a draft declaration in terms which shall harmonize as far as may be possible with the views and interpretations of the accepted law of nations as enunciated in the memoranda of the several Governments. They propose to invite the invaluable cooperation of the distinguished French jurist, M. Renault, in the preparation of such a document. The text of any paper drawn up on the lines contemplated may of course have to depart in some respects from the views held by particular Governments, although every effort will be made to reconcile such divergences, and it is necessary to point out, even at the present stage, that the provisions of the proposed draft declaration must not, in the circumstances explained, be taken to command on every point the assent of Great Britain, but will be submitted as a basis for discussion.

8. With reference to the date at which the conference should assemble, it will be remembered that His Majesty's Government originally suggested that the first meeting should take place early in October; but I have since learned that it would be convenient to some of the powers if a somewhat later date was fixed upon, in order

that the sittings should not clash with the copyright conference to be held at Berlin in October. Moreover, His Majesty's Government would experience much difficulty in carrying through the necessary preparatory work for the elaboration of the bases of discussion in the period originally contemplated. They had hoped to receive the memoranda embodying the views of the several Governments on the 1st August last. It was, however, not until some time after that date that the first memoranda were received, and even at the present time only four such memoranda have reached this department. His Majesty's Government would therefore now propose that the conference should assemble at the foreign office in London on Tuesday, the 1st December next.

9. In bringing the contents of this dispatch to the knowledge of the Government to which I am accredited, I am to take the opportunity of assuring them of the pleasure that it will give to His Majesty's Government to welcome their delegates to the conference, in the confident hope that the spirit of cooperation and good will which has led to its meeting will subsist throughout its deliberations and produce the results which it is the earnest desire of the Governments there represented to attain.

I have, etc.,

JAMES BRYCE.

File No. 12655/35.

The Acting Secretary of State to the British Ambassador.

DEPARTMENT OF STATE,
Washington, September 29, 1908.

EXCELLENCY: I have the honor to acknowledge the receipt of your note No. 195, of the 25th instant, with regard to the forthcoming international law conference in London, and to say in reply that the contents of your note will have the department's consideration.

I have, etc.,

ROBERT BACON.

The Secretary of State to Messrs. Charles H. Stockton and George G. Wilson.

GENTLEMEN: You have been appointed delegates plenipotentiaries to represent the United States at the conference to be held at London on December 1, 1908, to formulate rules to be observed by the international prize court.

Article 7 of the convention relative to the creation of an international prize court, signed at The Hague, October 18, 1907, provides that—

If a question of law to be decided is covered by a treaty in force between the belligerent captor and a power which is itself or whose subject or citizen is a

party to the proceedings, the court is governed by the provisions of the said treaty.

In the absence of such provisions, the court shall apply the rules of international law. If no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity.

The above provisions apply equally to questions relating to the order and mode of proof.

If, in accordance with articles 3, 2, *c*, the ground of appeal is the violation of an enactment issued by the belligerent captor, the court will enforce the enactment.

The court may disregard failure to comply with the procedure laid down in the enactments of the belligerent captor, when it is of opinion that the consequences of complying therewith are unjust and inequitable.

This article, proposed by the British delegation and adopted by the conference, has proved unsatisfactory to the British Government, which has called a conference of maritime powers in order to determine in advance of the establishment of the court the rules of law to govern its decisions in matters of prize submitted for its determination.

The first paragraph of article 7 is clear and explicit, providing, as it does, that the court is to be governed by the provisions of a treaty in force between the litigating nations covering the question of law involved.

The first sentence of the second paragraph of the seventh article provides that in the absence of treaties between litigating parties "the court shall apply the rules of international law." If the rules of international law relating to prize were codified and accepted as an authoritative statement of the law of prize, the questions presented to the court for its determination would be decided with reference to a code of laws equally binding upon the signatory powers. In as far as the law of prize has been codified the provision in question is clear and definite. The absence of a general agreement upon the rules of international law is recognized in the concluding sentence of the paragraph under consideration, which provides that "if no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity." This provision of the article has given rise to great discussion and dissatisfaction, because wide divergence of view exists as to the law properly applicable in such case. For example, in Anglo-American jurisprudence the laws of contraband and blockade constitute a system recognized generally as the Anglo-American system, whereas the laws of contraband and blockade definitely understood on the Continent are applied in the continental as distinguished from the Anglo-American sense. As, therefore, it can not be said that there is any general rule regulating the subject, as the partisans of each system judge and determine for themselves each case as it arises, it necessarily follows that the court would be obliged to determine which system is considered as more conformable "with the general principles of justice and equity."

In its note of March 27, 1908, inviting a conference, the British Government stated that—

The discussions which took place at The Hague during the recent conference showed that on various questions connected with maritime war divergent views and practices prevailed among the nations of the world. Upon some of these subjects an agreement was reached, but on others it was not found possible, within the period for which the conference assembled, to arrive at an under-

standing. The impression was gained that the establishment of the international prize court would not meet with general acceptance so long as vagueness and uncertainty exist as to the principles which the court, in dealing with appeals brought before it, would apply to questions of far-reaching importance affecting naval policy and practice.

The subjects upon which an agreement was considered indispensable by the British Government in order to enable the international prize court to perform the high services expected of this establishment were the following:

(*a*) Contraband, including the circumstances under which particular articles can be considered as contraband; the penalties for their carriage; the immunity of a ship from search when under convoy; and the rules with regard to compensation where vessels have been seized, but have been found in fact only to be carrying innocent cargo.

(*b*) Blockade, including the questions as to the locality where seizure can be effected, and the notice that is necessary before a ship can be seized.

(*c*) The doctrine of continuous voyage in respect both of contraband and of blockade.

(*d*) The legality of the destruction of neutral vessels prior to their condemnation by a prize court.

(*e*) The rules as to neutral ships or persons rendering "unneutral service" ("assistance hostile").

(*f*) The legality of the conversion of a merchant vessel into a warship on the high seas.

(*g*) The rules as to the transfer of merchant vessels from a belligerent to a neutral flag during or in contemplation of hostilities.

(*h*) The question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property.

The importance attached by the British Government to an agreement upon these various subjects enumerated in the program is evidenced by the fact that it is stated in the British note that "it would be difficult, if not impossible, for His Majesty's Government to carry the legislation necessary to give effect to the convention unless they could assure both Houses of the British Parliament that some more definite understanding had been reached as to the rules by which the new tribunal should be governed."

In order to facilitate this agreement the British Government suggested that the governments invited to the conference "interchange memoranda setting out concisely what they regarded as the correct rule of international law on each of the above points, together with the authorities on which that view is based."

In reply to the request of the British Government that memoranda be exchanged I stated that—

The department has given careful consideration to the suggestion that each government invited to the conference prepare and exchange memoranda setting forth its practice in the matters specifically mentioned in the tentative program for the conference submitted in the British embassy's note of March 27.

The attitude of the United States is well known to each of the participating powers, as is their maritime practice to the delegates appointed by the United States. The delegates to the Second Hague Peace Conference were thus instructed by the Secretary of State:

"As to the framing of a convention relative to the customs of maritime warfare, you are referred to the Naval War Code promulgated in General Orders 551 of the Navy Department of June 27, 1900, which has met with general commendation by naval authorities throughout the civilized world, and which in general expresses the views of the United States, subject to a few specific amendments suggested in the volume of international law discussions of the Naval War College of the year 1903, pages 91 to 97. The order putting this code into force was revoked by the Navy Department in 1904, not because of

any change of views as to the rules which it contained, but because many of those rules, being imposed upon the forces of the United States by the order, would have put our naval forces at a disadvantage as against the forces of other powers, upon whom the rules were not binding. The whole discussion of these rules contained in the volume to which I have referred is commended to your careful study.

"You will urge upon the peace conference the formation of international rules for war at sea and will offer the Naval War Code of 1900, with the suggested changes and such further changes as may be made necessary by other agreements reached at the conference, as a tentative formulation of the rules which should be considered."

The attitude of the United States has not changed since the conference, and the relevant portion of the instructions copied for your information are as applicable to the maritime conference as they were to the Second Hague Peace Conference.

I have the honor, therefore, to transmit herewith copies of the Naval War Code of 1900 and of the volume of International Discussions of the Naval War College of the year 1903, containing the amendments to be made to the Naval War Code of 1900, to serve as a basis of discussion in the conference, subject, of course, to amendment, in lieu of the memoranda proposed to be prepared and exchanged by each power invited to the maritime conference.

A like reply was sent in acknowledging the memoranda transmitted to the Department of State by Austria-Hungary, Germany, Japan, Netherlands, Russia, Spain, copies of which you have already received in due course.

As you are familiar with the law, practice, and policy of the United States concerning each of the matters mentioned in the tentative program of the British Government, it does not seem necessary to furnish you precise instructions on each of the points with which the conference will be called to deal. You are, however, provided with a copy of the instructions to the American delegation to The Hague Conference of 1907, and you are directed to guide yourselves in the consideration of any matter discussed at the conference by the general and specific provisions of the instructions relating to maritime warfare and the rights and duties of neutrals. You are accordingly authorized and instructed to present to the conference, as a basis for discussion, the Naval War Code promulgated in General Orders 551 of the Navy Department of June 27, 1900, as modified by the specific amendments suggested in the volume of International Law Discussions of the Naval War College for the year 1903, pages 91–97, and you will endeavor, in your discretion, to secure as far as possible the adoption in conventional form of their provisions.

As the United States has not yet ratified the convention for the establishment of the international prize court, signed at The Hague on October 18, 1907, and as the ratification of the instrument is rendered difficult by reason of objections of a constitutional and internal nature not obtaining in other countries, you will be careful not to assume an attitude or position in the discussions of the conference which may seem to commit the United States to the ratification of the convention for the establishment of the court, or to commit this Government, by an acceptance of the general rules of maritime warfare to be formulated by the conference, to create the international court of prize provided for in the convention signed at The Hague on October 18, 1907.

While taking an active part in the deliberations of the conference and cooperating with the various powers represented in order to render it a success by securing the adoption of a satisfactory code of maritime warfare, you will discuss the questions presented in the

light of general theory and practice, without specific reference or application to the proposed international prize court.

The department is, however, desirous that the international court of prize may be established in general accord with the provisions of the convention concluded at The Hague on October 18, 1907, and in order to facilitate its establishment you will propose to the conference an additional article or protocol for the consideration of and eventual acceptance by the conference, by which each signatory of the convention of October 18, 1907, shall possess the option, in accordance with local legislation, either to submit the general question of the rightfulness of any capture to the determination of the international prize court or to permit an appeal from the judgment of a national court in a specific case direct to the international court of prize, as contemplated by the convention of October 18, 1907.

In the view of the department the following draft would be not merely satisfactory, but calculated to remove the objections made to the establishment of the international court of prize:

Any signatory of the convention for the establishment of an international court of prize, signed at The Hague on October 18, 1907, may provide in the act of ratification thereof, that, in lieu of subjecting the judgments of the courts of such signatory powers to review upon appeal by the international court of prize, any prize case to which such signatory is a party shall be subject to examination de novo upon the question of the captor's liability for an alleged illegal capture, and, in the event that the international court of prize finds liability upon such examination de novo, it shall determine and assess the damages to be paid by the country of the captor to the injured party by reason of the illegal capture.

Following the precedents established by international conferences, all your reports and communications to this Government will be made to the Department of State for proper consideration and eventual preservation in the archives. Should you be in doubt at any time regarding the meaning or effect of these instructions, or should you consider at any time that there is occasion for special instructions, you will communicate freely with the Department of State by telegraph,

I am, etc.,

ELIHU ROOT.

DEPARTMENT OF STATE,
Washington, November 21, 1908.

The American delegates to the Secretary of State.

AMERICAN EMBASSY,
London, 2d March, 1909.

SIR: We have the honor to inform you that the international naval conference called at London in October, 1908, and later postponed until December, 1908, assembled at the foreign office in London on December 4, at noon. Sir Edward Grey, secretary of state for foreign affairs, extended welcome to the conference on behalf of Great

Britain. The conference then proceeded to organization, electing the Earl of Desart, British plenipotentiary, as president. The following powers were represented in accordance with the invitation given them: Germany, the United States, Austria-Hungary, Spain, France, Great Britain, Italy, Japan, Holland, and Russia.

The conference, after a few plenary meetings, resolved itself into a commission, in order that the topics before it might be considered in a less formal manner. After the topics had received considerable discussion a committee of examination was appointed with a view to reducing the material presented to a definite form for the consideration of the commission. After consideration by the commission the subjects would go to the conference in plenary session for final action. The distinguished French jurist, Monsieur L. Renault, head of the French delegation, was elected the chairman of the commission and of the committee of examination and finally rapporteur général. The call of the conference and the rules adopted for its procedure are appended to this report (Exhibits A and B).

The British Government, in order to facilitate the work of the conference, called for a memorandum of the views of each power as to their practice in matters covered by the subjects named in the call for the conference.

The memoranda thus sent was finally translated into French and arranged together in a Red Book in various ways and under several heads with convenient bases of discussion. This book, a copy of which has been duly forwarded to the department, proved to be of great value, especially in the earlier days of the conference, in crystallizing views and showing points of agreement and variance upon the subjects treated by the conference.

The rules, finally formulated by the conference into a declaration relative to the laws of maritime war, number 64 in all, and cover the subjects, arranged by chapters, of Blockade in Time of War, Contraband of War, Unneutral Service, Destruction of Neutral Prizes, Transfer of Flag, Enemy Character, Convoy, Resistance to Visit and Indemnity.

After the completion of the formulation of the rules above mentioned the conference, considering the difficulties that may arise on account of the constitutional requirements of certain states which might prevent them from becoming parties to The Hague convention for the establishment of the international prize court of appeal, drew up a protocol of closure in which a "voeu" (or wish) was expressed to their several Governments calling attention to the advantage that would arise from the conclusion of an arrangement by which the states affected by such constitutional difficulties could have recourse to the international prize court by presenting each case de novo, without affecting the rights guaranteed by the convention either to private persons or to their Governments. This protocol, with its included "voeu," was the result of continued efforts made by the American delegation at the instance of the Department of State. It was signed by all of the plenipotentiaries present, or by the delegates present who had temporarily taken their places.

The final signing of the declaration and protocol was effected on the 26th February, after which the conference adjourned sine die.

CHAPTER I.—BLOCKADE IN TIME OF WAR.

These rules are definitely understood to have no reference to what has been called "pacific blockade."

The general principles in regard to blockade set forth in the Declaration of Paris, April 16, 1856, which have been interpreted by courts, and are therefore fairly established, are reaffirmed.

The right of the commander of the blockading force to allow or to refuse admission to a blockaded port to neutral public ships, or neutral vessels in distress, is recognized.

The method of establishing and raising a blockade is made more clear. Certain States which had customarily maintained a position which required notification of the existence of blockade at the line of blockade made concessions to those which, like the United States, had stood for the principle of public notification to the Government whose flag the ship flies.

Some States, including the United States, had formerly maintained that the liability for the violation of the blockade continues until the vessel has reached her home port or completed her voyage. With the development of modern commerce there has arisen much difference of opinion as to what constitutes a home port or completion of voyage, and in fact the route of many vessels, such as tramp cargo steamers, is determined by the cargo available at the time, and such a vessel may not return to the port of departure for months. Under these circumstances and with a view to avoiding undue interference with neutral commerce, while at the same time retaining the freedom of action for the belligerent, a rule was drawn up and met with general favor, to the effect that the ship guilty of violation of blockade is liable to seizure so long as it is pursued by a ship of the blockading force within the area of blockading operations known as the "rayon d'action," or before entering a neutral port to complete her voyage.

Confiscation is the general penalty for violation of blockade.

The question receiving the most attention was that of "rayon d'action." Certain States were in favor of a limitation of the "rayon d'action" to a very small area. The American delegation regarded this limitation as opposed to the principles which it should support. The form of regulation finally adopted is as follows:

> Neutral vessels can not be captured for breach of blockade except within the area of operations of the war ships detailed to render the blockade effective.

Statements made by the United States upon the subjects of blockade and area of operations are herewith appended—Annex B and Annex C.

CHAPTER II.—CONTRABAND OF WAR.

The question of contraband involved many difficulties which can be readily understood when the various memoranda submitted by the powers on that subject are consulted. It is to the credit of the conference as a whole, and of its delegates singly, that an agreement, satisfactory from so many different points of view, was reached. These rules are more in harmony with modern conditions than those formerly existing, and lighten the burden of neutrals in war time without sacrificing belligerent rights.

The conference adheres to the old nomenclature of absolute and conditional contraband, adding, however, a free list of articles which can not be considered contraband of war.

The first list—that of absolute contraband—is the one virtually agreed upon at The Hague, which, to prevent prolonged discussion and in accordance with instructions from the department, was accepted as a whole by the American delegation. Item No. 7, concerning horses, etc., was found objectionable by one delegation, and if an amendment had been allowed to the list their objection would have been supported by the American delegation, as horses, mules, etc., in the United States could be considered as conditional contraband. In European countries, however, liable as their inhabitants are to forced requisitions for horses, etc., they may be logically considered as absolute contraband. The list as adopted omits many articles named in the various memoranda, such as canned provisions, sulphur, saltpeter, and other materials used in the fabrication of explosives, which, if included, would have been prejudicial to the United States, and also omits cotton, which under one memorandum might easily have been included.

The second list of contraband—that of conditional contraband—depends for determination of character upon the destination, whether for peaceful or warlike purposes.

If by changes in warfare other materials outside of the free list become adapted to the uses of war, they can be added to the lists of absolute or conditional contraband by means of a published notification to the other powers either before or after the opening of hostilities.

The free list consists of 17 groups of articles, as follows:

1. Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
2. Oil seeds and nuts; copra.
3. Rubber, resins, gums, and lacs; hops.
4. Rawhides and horns, bones, and ivory.
5. Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
6. Metallic ores.
7. Earth, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
8. Chinaware and glass.
9. Paper and paper-making materials.
10. Soap, paint, including articles exclusively used in their manufacture, and varnish.
11. Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
12. Agricultural, mining, textile, and printing machinery.
13. Precious and semiprecious stones, pearls, mother-of-pearl, and corals.
14. Clocks and watches, other than chronometers.
15. Fashion and fancy goods.
16. Feathers of all kinds, hairs, and bristles.
17. Household furniture; office furniture and requirements.

The establishment of this list is of great benefit to the sea-borne foreign trade of all countries, and especially to that of the United States, whose exports and imports would be greatly affected by any uncertainty regarding cotton, wool, silk, jute, flax, cotton seed, rubber, hides, fertilizers, metallic ores, paper and paper-making materials, chemicals, agricultural and other machinery, clocks and watches, furniture, etc. Drugs and medicines and material for the sick and wounded, are included among those not contraband of war,

but can be requisitioned with compensation for the needs of the sick and wounded of the captor.

The doctrine of continuous voyage is retained with respect to absolute contraband and well defined in article 30. The doctrine of continuous voyage in any form has heretofore been considered as nonexistent by several European powers, and it was a very considerable concession upon their part to accept it as applied to absolute contraband. On our part, in giving up continuous voyage as applied to conditional contraband and blockade we gave up a belligerent right now regarded as of little value. The articles of conditional contraband carried by neutral carriers would be bulky and difficult to trace when bound for the common stock of a neutral country. Not being earmarked, they would be most difficult of seizure when afloat. They would be, as a rule, matters of export by us as neutrals, and would be such materials as foodstuffs, oats, hay, railway materials, coal, oil, barbed wire, horseshoes, etc. It is unnecessary to say that to free such articles from the fetters of the continuous-voyage doctrine would be of great service to our trade during war in which the United States is a neutral.

Much relief is afforded to neutrals in respect to the penalty of carrying contraband. In the first place, the ship is not subject to confiscation unless more than half of the cargo is contraband, to be determined either by weight, volume, value, or freight value.

A rule was adopted that a ship seized for carrying contraband, although not itself liable to confiscation because the proportion of contraband was below one-half, could be authorized to proceed according to circumstances if the captain was ready to deliver the contraband articles to the belligerent man-of-war. The captor in such a case has the option of destroying the contraband which is thus delivered to him. This procedure is one of value, as it saves from capture and detention a neutral liner filled with passengers, mails, and valuable freight, which might have a small amount of contraband known or unknown to its captain and owner. This procedure is also in conformity with many treaties made by the United States, dating from 1783 to 1864. It avoids vexatious seizure of neutral vessels—bad enough in the times of small vessels, but intolerable with the great liners of to-day.

Chapter III.—Unneutral Service.

Certain acts, to which, by forced interpretation, the doctrines of contraband or of blockade had at times been extended, are recognized as differing both in nature and in penalty from contraband and blockade. Thus much confusion is avoided in time of war upon the sea. Penalty of confiscation of ship for transport of troops and dispatches for the belligerent, and for cooperation in assisting the enemy, is provided, and in general, penalties are as for carriage of contraband. The penalty of confiscation and treatment as an enemy ship is provided for a ship taking direct part in hostilities, under orders of the belligerent, wholly loaded by the enemy government or when exclusively used in transport service of the enemy.

The aim of article 48 is to justify the taking of an officer incorporated in the armed forces from a ship without bringing the ship, if it be a large vessel, into port for adjudication, and also to allow the

arrest of an officer or officers of high rank who, in disguise or incognito and unknown to the captain of the vessel, are on board of a neutral liner. In this case a want of knowledge on the part of the proper authorities of the vessel might readily clear the vessel from any taint and show there was no proper reason for sending in the ship, but the right to take the prisoner seems important. The least objectionable action would be to take the enemy officer, but allow the ship to proceed.

Chapter IV.—Destruction of Neutral Prizes.

This question was considered very fully and frankly by the comference. Views at first thought to be widely divergent were found to be similar in many respects. While some proclaimed the right to destroy neutral prizes, no one admitted that this could be done except for grave reasons. While some denied the right to destroy, all were inclined to admit that there might be exceptional circumstances under which destruction must be permitted.

All admitted that in general a neutral prize ought not to be destroyed, but should be taken to a prize court; but under exceptional circumstances a vessel otherwise liable to confiscation might be destroyed, though it would be necessary to care for persons and papers on board.

Necessity for destruction must be first established, and the further fact that the vessel would in any case be liable to confiscation must also be established, though if the necessity for destruction is not established, the liability of the state of the destroying vessel to pay indemnity is recognized whether or not the neutral vessel is guilty. The owner of neutral merchandise on board which is not liable to confiscation is also entitled to indemnity. Thus restraint commensurate with the gravity of the act is provided. A belligerent commander destroying a neutral vessel puts his government under grave responsibilities, which are here recognized. The conclusion set forth in these rules seems to be in accord with the doctrine of the United States.

Chapter V.—Transfer of Flag.

The subject of transfer of flag of a ship in consequence of sale in anticipation of or during war was the subject of frequent and prolonged discussion. A private ship of the enemy would be liable to capture in time of war, while the ship of a neutral would be free. It is natural, therefore, that the owners of ships which would be liable to capture in time of war should desire to avoid this liability by selling the ships to a neutral and placing them under a free flag. At the same time a belligerent does not wish to be deprived of the opportunity to attack ships which are really enemy ships, though they may be for the time flying a neutral flag. Thus there arises in time of war the conflict between the right of the neutral to trade with one belligerent and the right of the other belligerent to interfere with belligerent commerce.

It has been decided that commerce in ships in time of war is, in general, not legitimate unless it is bona fide commerce and not undertaken to evade the consequences to which the ship would be liable if

it retained the enemy flag. The burden of proof of validity of the transfer is placed on the vendor. In all such cases commerce would be regarded as illegitimate when the transfer is made (1) in transitu or in a blockaded port, (2) with the right of repurchase or return, or (3) contrary to the laws of the flag which it bears.

It would also be possible, and to some extent has been the practice, for shipowners anticipating war to make transfers just before the outbreak of war. Such transfers, when made with the view to evading the consequences of the war and not as commercial transactions, are not regarded as legitimate, but the burden of proof rests upon the captor, except when the papers in regard to the transfer, which has been made within 60 days before the outbreak of war, are not on board. In this exceptional case the burden of proof of the validity of the transfer is placed on the vessel, as there is not sufficient evidence at hand in the ship's papers to enable the captor to release the ship.

It would, however, be an undue interference with commerce if all sales or sales made a long time before the war were liable to be regarded as invalid. It is therefore decided that sales made more than 30 days before the war, even though made with the idea of evading the consequences of a war which might subsequently break out, would be valid unless there is some irregularity in the transfer itself, or unless it is not an actual transfer, evidence of which might be in the fact that the profits and control remain in the same hands as before the sale.

There are thus established three periods under which transfer of flag is considered, (1) during war, when burden of proof of the validity of the transfer rests upon the vender; (2) a period of 30 days before the war, during which it is necessary for the captor to prove that the transfer is made to evade the consequences of war; and (3) the period prior to 30 days, when, regardless of whether or not the transfer is made to escape the consequences of war, it is necessary for the captor to establish that the transfer itself is irregular, or not in fact a transfer. It is also necessary that in order to have advantages of these provisions a vessel transferred within 60 days before the war shall have the papers relating to the sale on board.

These provisions establish much more definite rules, where formerly there had been great diversity of practice among States, or even diversity in the same State at different periods. Commerce in ships is recognized as legitimate under such restrictions as seem necessary in order to safeguard belligerent rights.

The attitude of the American delegation is shown in the "Exposé" (Annex 00) appended. The American delegation advocated the adoption of a rule to the following effect:

> A transfer effected before the outbreak of war is valid if it is absolute, complete, bona fide, and conforms to the legislation of the States interested, and if it has for its effect that neither the control of the ship, nor the profits arising from its use, remain longer in the same hands as before the transfer.
>
> If the captor can establish that the above conditions have not been fulfilled, the transfer is presumed to have intervened with the intention to evade the consequences of war, and is null.

This rule, practically as above, was adopted.

The American delegation also advocated the placing of a definite limit to the period during which transfers made before the war could

be questioned, and such a provision was finally adopted by the conference.

Thus the rights of belligerents and of neutrals are defined and safeguarded.

Chapter VI.—Enemy Character.

The consideration of this topic was intrusted to a "comité juridique" consisting of one member from each delegation. The States represented at the conference were found to be equally divided, five favoring the principle of domicile of the proprietor as the criterion of character of goods found on an enemy vessel and five favoring nationality. After many meetings, it was found impossible to reach an agreement, and this question was left open, the rule stating that—

> The neutral or enemy character of merchandise found on board an enemy ship is determined by the neutral or enemy character of its proprietor.

What principle should decide the neutral or enemy character of the proprietor is not determined.

The other rules in regard to enemy character in the main formulate existing practice.

Chapter VII.—Convoy.

Great Britain formerly refused to admit the right of convoy of neutral merchant vessels by neutral ships of war. In a spirit of conciliation that Government receded from its former position and admitted the right of convoy. There remained then only the determination of the method of its exercise. The American delegation steadily maintained that as the effect of convoy was in the main to remove the vessels under escort from the belligerent right of visit and search, the convoying officer should assume the responsibility for the vessels under his control. Naturally a war vessel of a belligerent approaching a convoy would be entitled to obtain the information in regard to the vessels under convoy that it would obtain from an actual visit to the vessels if they were not under convoy. The officer in command of the public vessel convoying the merchant vessels should be prepared to furnish this information. The commander of the vessel of the belligerent may have reason to believe that the convoying officer has been deceived, and in such case may properly request that his suspicions be considered. The convoying officer should investigate, and may if he desires allow an officer from the belligerent vessel to share the investigation, and should inform the commander of the belligerent of the results of his investigation.

If the commander of the convoy finds that a vessel to which he has given escort is, in his opinion, violating his good faith, he ought to withdraw his protection. Such a vessel has forfeited its right to protection, and, in justice both to other neutrals and the belligerent, ought to be liable for the consequences.

This rule was drawn with view to affording the greatest convenience and service to neutrals, without depriving belligerents of proper war rights. In spirit it accords with both American doctrine and treaties.

CHAPTER VIII.—RESISTANCE TO VISIT AND SEARCH.

A general accord was found in the opinion upon this subject, and the following rule was adopted:

Resistance by force to the legitimate exercise of the right of visit, search, or seizure renders the vessel in all cases liable to confiscation. The cargo is liable to the same treatment as the cargo of an enemy ship. The merchandise belonging to the captain or to the owners of the ship is regarded as enemy merchandise.

CHAPTER IX.—INDEMNITY FOR SEIZURE.

It has been recognized by prize courts that in cases of unjust seizure the vessel seized should receive indemnity for the loss, inconvenience, and delay which it has suffered. It is also recognized that the vessel while innocent may appear to be guilty, and that the captor has a right to demand that the vessel be clearly innocent. This would not be the case if the papers were irregular, if the vessel were far out of its course and near a blockaded port, or otherwise evidently open to suspicion. Such grounds might justify the belligerent in taking the vessel to a prize court, but might not justify condemnation by the court.

That the rights of both belligerents and neutrals might be secured a rule in accord with general practice was formulated to the effect that when the seizure of a ship or merchandise is declared null by the prize court, or if, without being brought to judgment, the seizure of the vessel is not sustained, the persons interested have a right to indemnity unless there have been sufficient reasons for the seizure of ship or merchandise.

CONCLUSION.

In closing this report, the American delegation to the International Naval Conference desires to state that the declaration adopted by the conference, defining the relations between belligerents and belligerents, and between belligerents and neutrals, will, without interfering with legitimate belligerent or neutral action, remove many of the reasons for international friction and misunderstanding, which until the present time have frequently existed. Ten powers have reached an agreement upon matters which, if left to divergent practice, and solely to national prejudice, would have made some of the earnest hopes of the conferences at The Hague and the desires often expressed by the United States Government impossible of realization.

We desire to recognize the uniform courtesy and hospitality of the British Government, and we specially desire to express our appreciation of the great assistance rendered to us in many ways by the American ambassador in London, and by the various members of the embassy staff.

We have the honor to be, sir,

Your obedient servants,

C. H. STOCKTON,
GEORGE GRAFTON WILSON,
Delegates Plenipotentiary to the International Naval Conference.
ELLERY C. STOWELL,
Secretary of the Delegation.

EXHIBIT A.—*Call of conference by Great Britain.*

[See p. 294.]

EXHIBIT B.—*Rules of procedure.*

1. Plenipotentiary and nonplenipotentiary delegates have equally the right of speaking in the discussions of the conference.
2. Secretaries of the delegations may accompany the members of their delegation at all the sessions of the conference.
3. The sessions of the conference are not public. Its deliberations remain strictly confidential.
4. The French language is recognized as the official language for the deliberations and acts of the conference. Speeches delivered in another language are given orally in outline in French.

EXHIBIT C.—*Statement of the delegation of the United States of America regarding the "radius of action."*

The American delegation accepts in principle basis No. 24 with the reservation that the belligerent or the officer in command of the blockading force shall have the right to fix the length of the radius of action which, according to our desire, should not exceed 1,000 miles. The radius of action or zone of operation should be defined, immediately upon the declaration of blockade, by the officer in command of the blockading force, in conformity with article 18. The American delegation does not wish to impose upon belligerents set rules as to the length of radius of action, but simply to ask the right to fix a maximum of 1,000 miles when circumstances so demand. The delegation concurs in the remarks of Rear Admiral Le Bris regarding the nature of the radius of action to vary with geographical conditions, the propinquity of neutral ports and interests of neutral commerce, as well as with the force employed.

By determining the area of the zone of operation the delegation intends to ask that the force employed be proportionate to the zone. No country has been more steadfast than the United States in its opposition to paper blockades, and it holds that the force charged with the duty of enforcing the blockade must be proportionate to the zone affected thereby.

The delegation adds, in explanation of the wide expanse of the desired radius of action, that the demand rests on the ground that blockade running is becoming more and more a night operation and that it is difficult to capture a vessel before daybreak after it has put to sea. The final chase and capture take place where, properly speaking, the outer line of the blockading force is stationed. The distance of that line varies with the length of night darkness, which may reach 16 hours, and the speed of the vessels, which may reach 30 knots. The distance may thus represent a zone of 480 miles, and even more if the inner line be very far from the entrance of the port.

EXHIBIT D.—*Statement of the delegation of the United States regarding the pursuit of ships in cases of blockade running.*

As regards article 25, the delegation, while believing that the article could advantageously be combined with article 24 so as to deal with the question of blockade as a whole, accepts the article under the reservation that pursuit is considered as continuous and not abandoned, in the meaning of the article, even though it should be abandoned by one line of the blockading force to be resumed after a while by a ship of the second line until the limit of the radius of action shall have been reached. Under certain conditions there may even be several lines, each one with its respective pursuit zones.

EXHIBIT E.

The American delegation regrets that it finds it necessary to make a reservation on article 1 of the rules relative to the transfer of the flag. It holds that a rule which reads—

> The transfer of a hostile vessel to a neutral flag, effected before the opening of hostilities, is valid unless it should be established that the transfer was effected with a view to eluding the consequences that go with the character of a hostile vessel—

does not agree with the spirit of the modern rules concerning war, adopted at The Hague, whose object is—

to guarantee the safety of international commerce from the fortunes of war and wishing, in accordance with modern practice, to protect as far as possible transactions entered into in good faith and in progress before the opening of hostilities.

Neither does it agree with the principle which would restrict the effects of war to the duration of hostilities.

The rule as proposed seems to aim at depriving business men of the legitimate advantages of their foresight. It does not say how long the vessel shall be held in possession before the opening of hostilities whereby ocean commerce, lawful per se, would be protected against the disadvantages of a seizure.

It must be granted that a merchant may in time of peace endeavor by a sale of his property of whatever nature to protect himself from certain consequences flowing from the opening of hostilities. This may apply to a ship as well as to any other form of property.

The proposed rule would have a boundless retroactive effect.

The main object of a rule concerning a transfer of the flag before the opening of hostilities is to preclude transfers that are not bona fide commercial transactions.

It seems to the American delegation that this object could be achieved by adopting some rule, as the following:

A transfer effected before the beginning of the war is valid if absolute, complete, in good faith, and in accordance with the law of the countries concerned, and if its effect is that neither the disposal of the ship nor the profit derived from its use remains in the same hands as before the transfer.

If the captor can prove that the above-mentioned conditions have not been fulfilled, the transfer shall be presumed to have been interposed with the intent of eluding the consequences of war and shall be void.

File No. 12655/315.

The British Chargé to the Secretary of State.

No. 76.] BRITISH EMBASSY,
Washington, March 25, 1909.

SIR: I have the honor to inform you that the naval conference closed its proceedings on the 26th ultimo. It was able to arrive at a unanimous conclusion on most of the subjects of its program, and has elaborated a declaration dealing comprehensively with a large number of the most important questions of international law in the domain of naval warfare. It is for His Majesty's Government a matter of sincere gratification that so large a measure of agreement has been attained. They recognize that this is largely due to the existence of a very real community of ideas and conceptions of law, which, although to some extent obscured hitherto by an undue prominence given to conflicting doctrines and practices on certain points, does, in fact, dominate the international relations of the civilized world. They are conscious, however, that it required the good will and loyal cooperation of the powers most directly concerned to give practical expression to such community of principles and to waive minor points of difference, in the interest of a general settlement, on the basis of rules uniformly accepted and applied.

His Majesty's Government acknowledge with genuine satisfaction and gratitude the conciliatory and helpful disposition displayed by the delegates of all the powers represented at the naval conference, and the spirit of mutual concession which alone made possible the successful issue of its labors, and I have the honor, under instructions from my Government, to convey to the Government

of the United States the expression of their warm appreciation of this desire to unite in furthering the common object for which the conference was assembled.

I have, etc.,

A. MITCHELL INNES.

File No. 12655/315.

The Secretary of State to the British Ambassador.

No. 577.] DEPARTMENT OF STATE,
Washington, March 31, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note No. 76, of the 25th instant, announcing that, on the 26th ultimo, the International Naval Conference at London closed its proceedings being able to arrive at a unanimous conclusion on most of the subjects of its program, and that it has elaborated a declaration dealing comprehensively with a large number of the most important questions of international law in the domain of naval warfare.

The department notes, with great pleasure, the appreciation expressed by His Majesty's Government with reference to the attitude maintained by the United States toward the conference.

I have, etc.,

P. C. KNOX.

File No. 12655/369.

The British Ambassador to the Secretary of State.

No. 178.] BRITISH EMBASSY.
Northeast Harbor, Me., July 13, 1909.

SIR: I have the honor to inform you, under instructions from His Majesty's principal secretary of state for foreign affairs, that the declaration of London of February 26, 1909, was signed at the foreign office, London, on the 29th ultimo on behalf of Russia by Baron de Taube. The declaration has now been signed on behalf of all the powers who took part in the London conference.

I have, etc.,

JAMES BRYCE.

File No. 12655/369.

The Acting Secretary of State to the British Ambassador.

DEPARTMENT OF STATE,
Washington, July 21, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note No. 178, of the 13th instant, wherein, under instructions from His Majesty's principal secretary of state for foreign affairs, you advise the department that the declaration of London of February 26, 1909, was signed at the foreign office on the 29th ultimo on behalf of Russia by Baron de Taube; and that the declaration has now been signed on behalf of all the powers which took part in the London naval conference.

Thanking you for this information,

I have, etc.,

ALVEY A. ADEE.

File No. 12655/376-377.

Ambassador Bryce to the Secretary of State.

No. 250.] BRITISH EMBASSY,
Northeast Harbor, Me., September 20, 1909.

SIR: With reference to previous correspondence I have the honor under instructions from His Majesty's principal secretary of state for foreign affairs to transmit herewith a duly certified copy of the declaration attached to the final protocol of the London naval conference, which received the signature of the plenipotentiaries of all the powers represented at the conference before the 30th of June last.

In forwarding this document I am to express Sir Edward Grey's regrets that this communication has by inadvertence been delayed until now.

I have, etc.,

JAMES BRYCE.

FINAL PROTOCOL OF THE LONDON NAVAL CONFERENCE.[1]

[Translation.]

[The final protocol was signed in the French language only.]

The London Naval Conference, called together by His Britannic Majesty's Government, assembled at the foreign office on the 4th December, 1908, with the object of laying down the generally recognized principles of international law in accordance with Article 7 of the convention signed at The Hague on the 18th October, 1907, for the establishment of an international prize court.

The powers enumerated below took part in this conference, at which they appointed as their representatives the following delegates:

Germany: M. Kriege, privy councillor of legation and legal adviser to the department of foreign affairs, member of the permanent court of arbitration, plenipotentiary delegate; Captain Starke, naval attaché to the imperial embassy at Paris, naval delegate; M. Göppert, councillor of legation and assistant councillor to the department for foreign affairs, legal delegate; Commander von Bülow, second naval delegate.

The United States of America: Rear-Admiral Charles H. Stockton, plenipotentiary delegate; Mr. George Grafton Wilson, professor at Brown University, lecturer on international law at the Naval War College and at Harvard University, plenipotentiary delegate.

Austria-Hungary: His Excellency M. Constantin Théodore Dumba, privy councillor of His Imperial and Royal Apostolic Majesty, envoy extraordinary and minister plenipotentiary, plenipotentiary delegate; Rear-Admiral Baron Léopold de Jedina-Palombini, naval delegate; Baron Alexandre Hold de Ferneck, attaché to the ministry of the imperial and royal household and of foreign affairs, professor on the staff of the University of Vienna, assistant delegate.

[1] For general report presented to the conference on behalf of its drafting committee, see Treaties of the United States and Other Powers, 1910–1913, vol. 3, p. 282.

Spain: M. Gabriel Maura y Gamazo, Count de la Mortera, member of Parliament, plenipotentiary delegate; Capt. R. Estrada, naval delegate.

France: M. Louis Renault, minister plenipotentiary, professor at the Faculty of Law at Paris, legal adviser to the ministry of foreign affairs, member of the Institute of France, member of the permanent court of arbitration, plenipotentiary delegate; Rear-Admiral Le Bris, technical delegate; M. H. Fromageot, barrister at the court of appeal in Paris, technical delegate; Count de Manneville, secretary of embassy of the first class, delegate.

Great Britain: The Earl of Desart, K. C. B., king's proctor, plenipotentiary delegate; Rear-Admiral Sir Charles Ottley, K. C. M. G., M. V. O., R. N., delegate; Rear-Admiral Edmond J. W. Slade, M. V. O., R. N., delegate; Mr. Eyre Crowe, C. B., delegate; Mr. Cecil Hurst, C. B., delegate.

Italy; M. Guido Fusinato, councillor of state, member of Parliament, ex-minister of public instruction, member of the permanent court of arbitration, plenipotentiary delegate; Capt. Count Giovanni Lovatelli, naval delegate; M. Arturo Ricci-Busatti, councillor of legation, head of the legal department of the ministry for foreign affairs, assistant delegate.

Japan: Vice-Admiral Baron Toshiatsu Sakamoto, head of the naval education department, plenipotentiary delegate; M. Enjiro Yamaza, councillor of the imperial embassy in London, plenipotentiary delegate; Capt. Sojiro Tochinai, naval attaché at the imperial embassy in London, naval delegate; M. Tadao Yamakawa, councillor to the imperial ministry of marine, technical delegate; M. Sakutaro Tachi, professor at the Imperial University of Tokyo, technical delegate; M. Michikazu Matsuda, second secretary at the imperial legation at Brussels, technical delegate.

Netherlands: Vice-Admiral Jonkheer J. A. Roëll, A. D. C., on special service to Her Majesty the Queen, ex-minister of marine, plenipotentiary delegate; Jonkheer L. H. Ruyssenaers, envoy extraordinary and minister plenipotentiary, ex-secretary-general of the permanent court of arbitration, plenipotentiary delegate; First Lieut. H. G. Surie, naval delegate.

Russia: Baron Taube, doctor of laws, councillor to the imperial ministry of foreign affairs, professor of international law at the University of St. Petersburg, plenipotentiary delegate; Captain Behr, naval attaché in London, naval delegate; Colonel of the Admiralty Ovtchinnikow, professor of international law at the naval academy, naval delegate; Baron Nolde, official of the sixth class for special missions attached to the minister for foreign affairs, professor of international law at the Polytechnic Institute of St. Petersburg, technical delegate; M. Linden, head of department at the imperial ministry of trade and commerce, technical delegate.

In a series of sittings held from the 4th December, 1908, to the 26th February, signature by the plenipotentiaries the declaration concerning the laws of naval war, the text of which is annexed to the present protocol.

Furthermore, the following wish has been recorded by the delegates of those powers which have signed or expressed the intention of signing the convention 1909, the conference has drawn up for of

The Hague of the 18th October, 1907, for the establishment of an international prize court:

The delegates of the powers represented at the naval conference which have signed or expressed the intention of signing the convention of The Hague of the 18th October, 1907, for the establishment of an international prize court, having regard to the difficulties of a constitutional nature which, in some States, stand in the way of the ratification of that convention in its present form, agree to call the attention of their respective Governments to the advantage of concluding an arrangement under which such States would have the power, at the time of depositing their ratifications, to add thereto a reservation to the effect that resort to the international prize court in respect of decisions of their national tribunals shall take the form of a direct claim for compensation, provided always that the effect of this reservation shall not be such as to impair the rights secured under the said convention either to individuals or to their governments, and that the terms of the reservation shall form the subject of a subsequent understanding between the powers signatory of that convention.

In faith whereof the plenipotentiaries and the delegates representing those plenipotentiaries who have already left London have signed the present protocol.

Done at London the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall be deposited in the archives of the British Government and of which duly certified copies shall be sent through the diplomatic channel to the powers represented at the naval conference.

For Germany:

KRIEGE.

For the United States of America:

C. H. STOCKTON.
GEORGE GRAFTON WILSON.

For Austria-Hungary:

C. DUMBA.

For Spain:

RAMON ESTRADA.

For France:

L. RENAULT.

For Great Britain:

DESART.

For Italy:

GIOVANNI LOVATELLI.

For Japan:

T. SAKAMOTO.
E. YAMAZA.

For the Netherlands:

J. A. ROELL.
L. H. RUYSSENAERS.

For Russia:

F. BEHR.

DECLARATION CONCERNING THE LAWS OF NAVAL WARFARE.

[Translation.]

[The Declaration was signed in the French Language only.]

His Majesty the German Emperor, King of Prussia; the President of the United States of America; His Majesty the Emperor of Aus-

tria, King of Bohemia, &c., and Apostolic King of Hungary; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of Italy; His Majesty the Emperor of Japan; Her Majesty the Queen of the Netherlands; His Majesty the Emperor of All the Russias.

Having regard to the terms in which the British Government invited various Powers to meet in conference in order to arrive at an agreement as to what are the generally recognized rules of international law within the meaning of Article 7 of the Convention of 18th October, 1907, relative to the establishment of an International Prize Court;

Recognizing all the advantages which an agreement as to the said rules would, in the unfortunate event of a naval war, present, both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral Governments;

Having regard to the divergence often found in the methods by which it is sought to apply in practice the general principles of international law;

Animated by the desire to insure henceforward a greater measure of uniformity in this respect;

Hoping that a work so important to the common welfare will meet with general approval;

Have appointed as their Plenipotentiaries, that is to say:

His Majesty the German Emperor, King of Prussia:

M. Kriege, Privy Councillor of Legation and Legal Adviser to the Department for Foreign Affairs, Member of the Permanent Court of Arbitration.

The President of the United States of America:

Rear-Admiral Charles H. Stockton, retired;

Mr. George Grafton Wilson, Professor at Brown University and Lecturer on International Law at the Naval War College and at Harvard University.

His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary:

His Excellency M. Constantin Thoédore Dumba, Privy Councillor of His Imperial and Royal Apostolic Majesty, Envoy Extraordinary and Minister Plenipotentiary.

His Majesty the King of Spain:

M. Gabriel Maura y Gamazo, Count de la Mortera, Member of Parliament.

The President of the French Republic:

M. Louis Renault, Professor of the Faculty of Law at Paris, Honorary Minister Plenipotentiary, Legal Adviser to the Ministry of Foreign Affairs, Member of the Institute of France, Member of the Permanent Court of Arbitration.

His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India:

The Earl of Desart, K. C. B., King's Proctor.

His Majesty the King of Italy:

M. Guido Fusinato, Councillor of State, Member of Parliament, ex-Minister of Public Instruction, Member of the Permanent Court of Arbitration.

His Majesty the Emperor of Japan:

Baron Toshiatsu Sakamoto, Vice-Admiral, Head of the Department of Naval Instruction.

M. Enjiro Yamaza, Councillor of the Imperial Embassy at London.

Her Majesty the Queen of the Netherlands:

His Excellency Jonkheer J. A. Roell, Aide-de-Camp to Her Majesty the Queen in Extraordinary Service, Vice-Admiral retired, ex-Minister of Marine.

Jonkheer L. H. Ruyssenaers, Envoy Extraordinary and Minister Plenipotentiary, ex-Secretary-General of the Permanent Court of Arbitration.

His Majesty the Emperor of all the Russias:

Baron Taube, Doctor of Laws, Councillor to the Imperial Ministry of Foreign Affairs, Professor of International Law at the University of St. Petersburgh.

Who, after having communicated their full powers, found to be in good and due form, have agreed to make the present Declaration:—

Preliminary Provision.

The Signatory Powers are agreed that the rules contained in the following Chapters correspond in substance with the generally recognized principles of international law.

Chapter I. Blockade in time of war.

Article 1.

A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

Article 2.

In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding must be effective,—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.

Article 3.

The question whether a blockade is effective is a question of fact.

Article 4.

A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

Article 5.

A blockade must be applied impartially to the ships of all nations.

ARTICLE 6.

The Commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

ARTICLE 7.

In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

ARTICLE 8.

A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

ARTICLE 9.

A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies—

(1) The date when the blockade begins;

(2) The geographical limits of the coastline under blockade;

(3) The period within which neutral vessels may come out.

ARTICLE 10.

If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with Article 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

ARTICLE 11.

A declaration of blockade is notified—

(1) To neutral Powers, by the blockading Power by means of a communication addressed to the Governments direct, or to their representatives accredited to it;

(2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

ARTICLE 12.

The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

ARTICLE 13.

The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

ARTICLE 14.

The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

ARTICLE 15.

Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

ARTICLE 16.

If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time.

If, through the negligence of the officer commanding the blockading force, no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

ARTICLE 17.

Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

ARTICLE 18.

The blockading forces must not bar access to neutral ports or coasts.

ARTICLE 19.

Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

ARTICLE 20.

A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

ARTICLE 21.

A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

CHAPTER II.—CONTRABAND OF WAR.

ARTICLE 22.

The following articles may, without notice,[1] be treated as contraband of war, under the name of absolute contraband:—

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

(3) Powder and explosives specially prepared for use in war.

(4) Gun-mountings, limber boxes, limbers, military waggons, field forges, and their distinctive component parts.

(5) Clothing and equipment of a distinctively military character.

(6) All kinds of harness of a distinctively military character.

(7) Saddle, draught, and pack animals suitable for use in war.

(8) Articles of camp equipment, and their distinctive component parts.

(9) Armour plates.

(10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

ARTICLE 23.

Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

ARTICLE 24.

The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband:—

(1) Foodstuffs.

(2) Forage and grain, suitable for feeding animals.

(3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.

(4) Gold and silver in coin or bullion; paper money.

(5) Vehicles of all kinds available for use in war, and their component parts.

(6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.

(7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.

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[1] In view of the difficulty of finding an exact equivalent in English for the expression "de plein druit," it has been decided to translate it by the words "without notice," which represent the meaning attached to it by the draftsman.

(8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
(9) Fuel; lubricants.
(10) Powder and explosives not specially prepared for use in war.
(11) Barbed wire and implements for fixing and cutting the same.
(12) Horseshoes and shoeing materials.
(13) Harness and saddlery.
(14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

ARTICLE 25.

Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

ARTICLE 26.

If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

ARTICLE 27.

Articles which are not susceptible of use in war may not be declared contraband of war.

ARTICLE 28.

The following may not be declared contraband of war:—
(1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
(2) Oil seeds and nuts; copra.
(3) Rubber, resins, gums, and lacs; hops.
(4) Raw hides and horns, bones and ivory.
(5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
(6) Metallic ores.
(7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
(8) Chinaware and glass.
(9) Paper and paper-making materials.
(10) Soap, paint, and colours, including articles exclusively used in their manufacture, and varnish.
(11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
(12) Agricultural, mining, textile, and printing machinery.
(13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
(14) Clocks and watches, other than chronometers.
(15) Fashion and fancy goods.

(16) Feathers of all kinds, hairs, and bristles.
(17) Articles of household furniture and decoration; office furniture and requisites.

ARTICLE 29.

Likewise the following may not be treated as contraband of war:
(1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.
(2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

ARTICLE 30.

Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transhipment or a subsequent transport by land.

ARTICLE 31.

Proof of the destination specified in Article 30 is complete in the following cases:—
(1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.
(2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

ARTICLE 32.

Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

ARTICLE 33.

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

ARTICLE 34.

The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor es-

tablished in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.

ARTICLE 35.

Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

ARTICLE 36.

Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

ARTICLE 37.

A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

ARTICLE 38.

A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

ARTICLE 39.

Contraband goods are liable to condemnation.

ARTICLE 40.

A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

ARTICLE 41.

If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

ARTICLE 42.

Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

ARTICLE 43.

If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

ARTICLE 44.

A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

CHAPTER III.—UNNEUTRAL SERVICE.

ARTICLE 45.

A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband:—

(1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.

(2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

ARTICLE 46.

A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel:

(1) If she takes a direct part in the hostilities;

(2) If she is under the orders or control of an agent placed on board by the enemy Government;

(3) If she is in the exclusive employment of the enemy Government;

(4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation.

ARTICLE 47.

Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

CHAPTER IV.—DESTRUCTION OF NEUTRAL PRIZES.

ARTICLE 48.

A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

ARTICLE 49.

As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

ARTICLE 50.

Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

ARTICLE 51.

A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

ARTICLE 52.

If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

ARTICLE 53.

If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

ARTICLE 54.

The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the log-book of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

CHAPTER V.—TRANSFER TO A NEUTRAL FLAG.

ARTICLE 55.

The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however,

the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

ARTICLE 56.

The transfer of an enemy vessel to a neutral flag effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There, however, is an absolute presumption that a transfer is void:

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If a right to repurchase or recover the vessel is reserved to the vendor.

(3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled.

CHAPTER VI.—ENEMY CHARACTER.

ARTICLE 57.

Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

ARTICLE 58.

The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

ARTICLE 59.

In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

ARTICLE 60.

Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

CHAPTER VII.—CONVOY.

ARTICLE 61.

Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as toe character of the vessels and their cargoes, which could be obtained by search.

ARTICLE 62.

If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

CHAPTER VIII.—RESISTANCE TO SEARCH.

ARTICLE 63.

Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

CHAPTER IX.—COMPENSATION.

ARTICLE 64.

If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

FINAL PROVISIONS.

ARTICLE 65.

The provisions of the present Declaration must be treated as a whole, and cannot be separated.

ARTICLE 66.

The Signatory Powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

ARTICLE 67.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers taking part therein, and

by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the Signatory Powers. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

ARTICLE 68.

The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

ARTICLE 69.

In the event of one of the Signatory Powers wishing to denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers.

It will only operate in respect of the denouncing Power.

ARTICLE 70.

The Powers represented at the London Naval Conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the Powers which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, acceding Powers shall be on the same footing as the Signatory Powers.

ARTICLE 71.

The present Declaration, which bears the date of the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the Plenipotentiaries of the Powers represented at the Naval Conference.

In faith whereof the Plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

Done at London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

(Here follow the signatures.)

List of signatures appended to the Declaration of February 26, 1909, up to June 30, 1909.

For Germany:	KRIEGE.
For the United States of America:	C. H. STOCKTON.
	GEORGE GRAFTON WILSON.
For Austria-Hungary:	C. DUMBA.
For Spain:	GABRIEL MAURA.
For France:	L. RENAULT.
For Italy:	G. FUSINATO.
For Japan:	E. YAMAZA.
For Great Britain:	DESART.
For the Netherlands:	J. A. ROELL.
	L. H. RUYSSENAERS.
For Russia:	TAUBE.

[Ratification advised by the Senate of the United States Apr. 24, 1912. See Treaties and Conventions, 1910–1913, vol. 3.]

File No. 12655/383–384.

The British Ambassador to the Acting Secretary of State.

No. 264.] BRITISH EMBASSY,
Washington, October 14, 1909.

SIR: I have the honor, under instructions from His Majesty's principal secretary of state for foreign affairs, to submit to you herewith for the information of the United States Government copies of a circular dispatch inviting the accession to the declaration of London of the 22d of February, 1909, of all the nonsignatory powers, excepting those which were not invited to the Second Peace Conference at The Hague. This communication is made in compliance with the provisions of article 70 of the declaration, and I am instructed to inform you at the same time that the object of His Majesty's Government in offering the observations contained in section 6 of the circular is to make it clear to the powers not represented at the London conference that the fact of their acceding to

the declaration will be no bar to their proposing at some future peace conference to introduce by way of a new convention any modification in the existing rules of international law as now defined which they may wish to see adopted; and that it is hoped that this assurance may help to remove any hesitation which the powers may feel in accepting as they stand the rules embodied in the declaration.

I have, etc.,

A. MITCHELL INNES
(For the Ambassador).

[Inclosure.]

Circular.] FOREIGN OFFICE, *September 22, 1909.*

SIR: 1. The failure of the Second Peace Conference to arrive at an understanding respecting the questions of contraband and blockade and other important subjects connected with naval warfare has constituted a serious obstacle in the way of securing general submission to the jurisdiction of the International Prize Court which was to be established under the convention negotiated to this effect at The Hague in 1907. It is provided in article 7 of that convention that, in the absence of treaty stipulations applicable to the case, the court shall apply the rules of international law, and, if no generally recognized rule exists, give judgment in accordance with the principles of justice and equity. It seems hardly necessary to enlarge upon the importance of the point that if, in the unhappy event of a naval war, the International Prize Court is to fulfill to general satisfaction the great duties imposed upon it, there must be substantial agreement as to the rules which are to govern the decisions in the cases brought before it. It was not until the phraseology of article 7 had been accepted at the Second Peace Conference that the serious divergences between the powers on many of the questions on which the court would have to adjudicate made themselves felt, and it therefore became a matter of great concern to all who were interested in its creation that an agreement should, if possible, be arrived at on those questions.

2. The protracted and unfruitful discussions which ensued at The Hague made it apparent that there was little prospect of such an agreement being realized by any attempts—such as were unsuccessfully made in the committees and subcommittees of the peace conference—to secure general acceptance for a series of propositions or stipulations to be arrived at by way of deductions from abstract theories of international law and advocated largely for reasons of policy or particular national interests. A renewed and detailed examination of the question convinced His Majesty's Government that the only practicable means of at present bringing about an agreement would be to endeavor to formulate the rules actually applied by belligerents and generally accepted in the past. These considerations prompted His Majesty's Government to invite to a conference in London the principal naval powers in whose prize courts the decisions have been given which constitute the main source of our knowledge and guidance in these matters, and whose rights as belligerents would, moreover, be most seriously affected by the contemplated appeals from national tribunals to the international court. The invitation was also extended to the Netherlands, in due recognition of the exceptional position occupied by the country whose capital has been the meeting place of the two peace conferences, and is to become the seat of the International Prize Court.

3. With the object of facilitating the task of preparing a set of rules respecting naval warfare which should embody the common principles of international law as hitherto observed in practice, the several Governments were invited before the conference met to exchange memoranda setting out concisely what each held to be the existing law on the subject. The information so obtained revealed an extent of common ground which enabled the British Government to prepare, as a basis for the discussions of the conference, a draft declaration, in which they endeavored to harmonize as far as possible the views and interpretations of the accepted law of nations to which the several Governments had given expression. In the process of settling the terms of this document it was

found—as had been anticipated—that certain divergences apparent in the theories and doctrines upheld in various countries had in many cases not been maintained in the practice actually followed at least in more recent times. It also became manifest that the fresh interpretation which must inevitably be placed on many old rules under the altered conditions of modern navigation and warfare had the effect of still further diminishing differences which formerly had been acute, but which, under the influence of changed circumstances, seemed no longer incapable of reconciliation. Most of the existing rules dated from a time when the operations of naval war, as well as all over-sea commerce, were carried on in sailing vessels of comparatively modest dimensions, and when transport by rail and communication by electric telegram were unknown. Opposing sets of rules evolved under such conditions and tenaciously upheld and developed by rival schools of national jurisprudence during long periods happily marked by an absence of any occasion to put them afresh to the real and only effective test of war could be shown in not a few instances to have become practically meaningless and inapplicable. In many such cases it sufficed to go back to first principles in order to see that the opposition of doctrines had become unreal and that the apparent discord readily dissolved to give way to a harmony of conception which naturally and logically involved a close approach to unity of practice.

4. The draft prepared by His Majesty's Government having met with a favorable reception on the part of the powers consulted, the conference met in London on the 4th December last. Its labors culminated in the unanimous adoption, and the signature by all the powers represented of an instrument known as the "Declaration of London," containing the rules which the signatory powers agree henceforth to observe and to regard as in substance corresponding with the general recognized principles of international law applicable to the questions of blockage, contraband, unneutral service, the destruction of neutral prizes, transfers to a neutral flag, and various minor matters. On two questions only did the conference fail to reach an agreement, namely, the question of the legality of the conversion of merchantmen into warships on the high seas, and the question whether the nationality or the domicile of the owner should be regarded as the dominant factor in deciding whether property has a neutral or enemy character.

5. In article 70 of the declaration the signatory powers have formally recorded the particular importance which they attach to the general recognition of the rules as now formulated, and the Government of His Britannic Majesty is charged with the duty of inviting the powers not represented at the conference to accede to the declaration. In pursuance of this provision, I request you to communicate the accompanying copies of the records of proceedings of the conference, together with the text of the declaration, to the government to which you are accredited and to express the earnest hope that, recognizing the correctness, justice, and impartiality of the conclusions therein embodied, and mindful of the value of investing the rules of naval warfare with the supreme authority of the general assent of all nations, they will be ready to cooperate to this end by acceding to the declaration in due time. I shall not fail to notify at the earliest possible moment the date of the first deposit of ratifications, which must, of course, precede any formal acts of accession.

6. It will no doubt be observed that the provisions now submitted for the acceptance of the nonsignatory powers differ in many respects from the proposals on the same subjects which were laid before the Second Peace Conference in 1907. Speaking for themselves, His Majesty's Government desires to explain that in making this apparent departure from their previous attitude they have been actuated by the considerations above explained in favor of seeking a definite and immediate agreement on the basis of the existing law. But they hold that assent to the declaration of London in no way precludes the signatory or acceding powers from entering at a future date into fresh agreements introducing, as between the contracting parties, such changes or developments of the rules now acknowledged to be in force, as further deliberations and a renewed study of the issues involved may convince them to be desirable and practicable.

7. You are authorized to communicate a copy of this dispatch to the minister for foreign affairs.

I am, etc.

E. GREY.

File No. 12655/383–384.

The Acting Secretary of State to the British Ambassador.

No. 750.] DEPARTMENT OF STATE,
Washington, October 26, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note No. 264, of the 14th instant, wherein, under instructions from your Government, there are submitted for the information of the Government of the United States copies of a circular dispatch inviting the accession to the declaration of London of February 22, 1909, of all the nonsignatory powers, excepting those which were not invited to the Second Peace Conference at The Hague.

It is added that the object of His Majesty's Government in offering the observations contained in section 6 of the circular is to make it clear to the powers not represented at the London conference that the fact of their acceding to the declaration will be no bar to their proposing at some future peace conference to introduce by way of a new convention any modification in the existing rules of international law as now defined which they wish to see adopted, and that it is hoped that this assurance may help to remove any hesitation which the powers may feel in accepting as they stand the rules embodied in the declaration.

The Government of the United States is thoroughly in accord with the principle that the declaration of London is merely binding upon the powers participating in the conference and that its extension to nonparticipating powers must depend upon their consent freely given. In any event the matter of regulating naval warfare is a proper subject for a future peace conference at The Hague. The ratification of the declaration of London can not be considered in any way as preventing a reexamination of the entire question at a future conference at The Hague to which all the nations will be invited.

I have, etc.,

HUNTINGTON WILSON.

GREECE.

USE OF THE AMERICAN FLAG FOR ADVERTISING PURPOSES.

File No. 697/43.

The Acting Secretary of State to Minister Moses.

No. 4.] DEPARTMENT OF STATE,
Washington, June 18, 1909.

SIR: The department is advised that in Piraeus the American flag is extensively used by Greeks who have returned from a sojourn in America in advertisement of saloons and cigar stores. It seems probable that this custom also prevails in other parts of Greece. You will, therefore, bring this matter to the attention of the foreign office, and say that the department is desirous of the cooperation of the Greek Government in preventing this abuse and disgrace of the national emblem of the United States, and confidently trusts that measures looking toward this end will be taken or sanctioned by the Greek Government.

In this connection you will call to the attention of the foreign office a similar case which arose in Brazil in the year 1864, wherein the American minister, with the consent and approval of the Brazilian Government, issued a circular, directed to the United States consuls under his jurisdiction, prohibiting the flying of the American flag in Brazil except by those in official capacities or by other persons who should have previously received the permission of the United States minister for so doing. Reference to this case will be found in Moore's Digest of International Law, volume 2, at page 135.

The department expects that, in conjunction with the foreign office, you will devise means to put a stop to this abuse of the flag of the United States.

I am, etc.,

HUNTINGTON WILSON.

File No. 697/54–55.

Minister Moses to the Secretary of State.

No. 37—Greek series.] AMERICAN LEGATION,
Athens, October 18, 1909.

SIR: Referring to your instruction No. 4, of June 18 ultimo (file No. 697/43), I have the honor to report that, having called the matter to the attention of the Greek Government, I have received from the minister for foreign affairs a communication upon the subject, a copy of which, with translation, is inclosed herewith.

The assurances of the Greek Government on this subject have been promptly forthcoming and are seemingly complete and satisfactory. It is to be hoped that this will serve to put an end to the complaints which have hitherto arisen in this connection.

I have, etc.,

GEO. H. MOSES.

[Inclosure—Translation.]

The Minister for Foreign Affairs to Minister Moses.

THE FOREIGN OFFICE,
Athens, September 28, 1909.

MR. MINISTER: Taking note of the steps which you have taken with me toward the suppression of the abuse of the American flag by its display over the saloons and wineshops at the Piraeus, I hasten to bring to your knowledge that the director of police of the neighboring city has received orders to exercise strict watch and prevent the abuse in question.

K. B. MAVROMICHALIS.

POLITICAL AFFAIRS IN CRETE.

File No. 871/20–23.

Minister Moses to the Secretary of State.

[Extract.]

No. 6—Greek Series.] AMERICAN LEGATION,
Athens, July 16, 1909.

SIR: I have the honor to report that the note of the four protecting powers, in re the Cretan situation, was delivered at the Greek ministry for foreign affairs on Tuesday, the 13th instant, and to inclose a copy of the document, with an English translation.

I have, etc.,

GEO. H. MOSES.

[Inclosure 1—Translation.]

COMMUNICATION MADE UNOFFICIALLY AND VERBALLY TO THE GREEK MINISTRY FOR FOREIGN AFFAIRS BY THE REPRESENTATIVES OF GREAT BRITAIN, FRANCE, ITALY, AND RUSSIA, JULY 13, 1909.

The Governments of France, Great Britain, Italy, and Russia, appreciating the correct atitude maintained by the Hellenic Government during the course of the serious events that have just taken place in the Orient, have charged their representatives at Athens to communicate to the latter in a semiofficial manner a declaration which is made by the former to the Ottoman Government on the subject of Crete.

In making this communication the four powers trust that the spirit of prudence which has up to this time governed the counsels of the Hellenic Government will lead it to undertake loyally to accept the situation sanctioned by the decision of the powers and to recognize that any modification which might be interpreted as a provocation to Turkey would certainly be less favorable to Crete, as well as to Greece, than the present state of things.

[Inclosure 2—Translation.]

IDENTIC NOTES PRESENTED JUNE 30–JULY 13, 1909, TO THE OTTOMAN GOVERNMENT BY THE REPRESENTATIVES AT CONSTANTINOPLE OF THE PROTECTING POWERS IN CRETE.

The Governments of the protecting powers of the island of Crete have, by common agreement, settled upon the following arrangements:

The detachments of international troops shall be withdrawn on the 13th–26th July. Before this withdrawal is effected the four powers will send each a station ship to Suda Bay, to be maintained there for the purpose of keeping watch over the Imperial Ottoman flag and the flags of the four powers, as well as to guarantee the security of the Cretan Mussulmans.

A proclamation, of which the text is hereto annexed, is addressed, under date of this day, to the population of the island by the consul general of the four protecting powers at Canea.

The presence of the station ships at Suda Bay will be an evidence of the maintenance of the sovereign rights of His Majesty the Sultan over the island and of the protection of the four powers.

Since the present statu quo can not be considered as a final solution, the Governments of the four powers will not relax their active concern for Crete, while awaiting a moment more favorable for negotiating with the Sublime Porte upon the subject of the future administration of the island.

By order of his Government, the undersigned has the honor to bring the above to the attention of the Imperial Ottoman Government.

[Inclosure 3—Translation.]

DECLARATION OF THE CONSULS GENERAL OF THE PROTECTING POWERS IN CRETE, MADE JUNE 30–JULY 13, 1909.

The consuls general of France, Great Britain, Italy, and Russia, in the name of their Governments, declare that, in pursuance of the exercution of measures settled upon in principle by the collective note of the protecting powers of the 10th–23d July, 1906, and summarized in that addressed to Mr. Zaimis on April 28–May 11, 1908, the powers will effect on the 13th–26th of this month the complete withdrawal of their troops, reposing confidence in the discretion of the Cretan people; and that they reckon upon the energy and loyalty of the constituted authorities for the maintenance of public order and the security of the Mussulman population; that they will not relax their active concern for the Cretan question, but that they consider it indispensable that their duty of watching over the maintenance of order and the security of the Mussulmans in Crete shall not be forgotten; and that to this end they reserve to themselves the privilege of taking whatever measures they may consider proper for the reestablishment of order in case there should arise disturbances which the local authorities might be unable to repress.

File No. 871/28–29.

Chargé Einstein to the Secretary of State.

[Extract.]

No. 1059.] AMERICAN EMBASSY,
Constantinople, July 26, 1909.

SIR: I have the honor to inclose copy, with translation, the note of the Ottoman Government to the four powers concerning Crete, dated July 22, 1909.

I have, etc.,

LEWIS EINSTEIN.

[Inclosure.—Translation.]

JULY 22, 1909.

The undersigned, minister for foreign affairs, had the honor to receive with its inclosure the note which his excellency the ambassador of ——— kindly

sent him on July 13, 1909, to inform him of certain decisions made by his Government in agreement with the cabinets of London, Paris, Rome, and St. Petersburg on the subject of Crête.

The Sublime Porte sincerely thanks the four powers for the assurances which they are kind enough to give, not only confirming once more the rights of His Majesty the Sultan on the island but also guaranteeing the protection of the goods and lives of the Mohammendan population, and it hastens to accept the same. It feels sure that this protection will be extended also to their civic rights.

The Sublime Porte nevertheless considers it its duty to make certain reservations concerning the expression "supreme rights" used in this note, which it considers equivalent to that of "sovereign rights."

Furthermore, the Imperial Government feels compelled to observe that the proposal previously made by it for opening negotiations with the cabinets of the four powers to regulate henceforth the form and conditions of autonomy which it would be best to grant to the island remains the sole and natural solution of the present difficulties.

In fact, the actual condition of affairs on the island is not only a grave infringement on the sovereign rights of His Imperial Majesty the Sultan, rights which the four powers in all their declarations, and especially in the collective note of October 4, 1898, formally promised to cause to be respected, but it constitutes at the same time an attack on the elementary principles of public law. A third State, which has no claim and no right to authority over Crete, has been brought into the administration of the island in a way distinctly threatening to the rights of the Sublime Porte, creating thus a situation the continuation of which the Imperial Government can by no means allow.

Consequently it hopes that the four powers, from their feelings of high equity and their ancient friendship for the Ottoman State, will not fail to recognize the reasonableness of these considerations and will endeavor with firmness to cause to disappear all trace of the interference of the third State in question from the affairs of the island, which will enable the Sublime Porte to consider the fixing of an early date for pourparlers with a view to the establishment of an autonomous administration in the island on the basis of Ottoman sovereignty.

The undersigned would thank his excellency to kindly inform his Government of the preceding, and seizes this occasion, etc.,

RIFAAT.

File No. 871/44–48.

Minister Moses to the Secretary of State.

[Extract.]

No. 16—Greek series.] AMERICAN LEGATION,
Athens, August 11, 1909.

SIR: The Turkish Government, on Friday, August 6, sent its formulated demands (copy inclosed) to its minister here, who at once laid them before the Greek minister for foreign affairs.

I inclose herewith copy of the Greek reply.

I have, etc.,

GEORGE H. MOSES.

[Inclosure 1.—Translation.]

Turkish demands upon Greece.

You will see the president of the council and read to him the following communication:

For some time past, and especially since the coming into power of Mr. Rhallys, the Royal Government has been assuring us of its keen desire to keep up the best relations with us. We ascertain, however, that these sentiments are not translated into action.

In observing this deceptive state of affairs we can not help regretting that the Hellenic cabinet does not take into sufficient consideration this fact, to wit, that it depends on them to repair the harm done by the Theotoky ministry,

which has left nothing undone to create the most lamentable animosity between the two neighboring countries. Must we recall the intrigues of Hellenic agents in the three villayets with the object of fomenting disturbances there, the clandestine dispatch of officers disguised as civil officials, to the number of 200, according to the admission of Mr. Rhallys; the interference of the royal consuls in the internal affairs of the country, their rôle of disturbers, their mischievous action upon the Greek element in Turkey, against whom the said agents have done their best to make her own subjects rise? Recently, besides, the Hellenic officers who happen to be in Crete have taken an active part in the affair of the raising of the Greek flag at Canea.

All this has resulted in producing in Turkey a trend of opinion that our wishes and our efforts have been unable to divert. It follows that action alone can repair a mischief caused by acts. Consequently, in taking note of the previous friendly declarations of Mr. Rhallys, we reckon that the opportunity has come for the Hellenic Government to give us the tangible proof of its sentiments toward Turkey. This opportunity is precisely the Cretan matter, which, after the affair of the flag, assumes a character particularly serious and offensive to Turkey.

If Greece, as she protests, cherishes no territorial ambitions in Crete, she must make this known to us in order that to the equivocal situation of the moment there may succeed an era of frank and loyal relations between the Empire and the Kingdom for the greatest good of the two States. Such is, I maintain, our sincere desire. We have up to this time manifested every effort toward its realization. It is now the part of Greece to second us in this common talk.

Confident alike in the sagacity and the sense of Mr. Rhallys, we ask the Hellenic Government to address to us a written communication by which it shall declare its disapproval of the agitation of the Cretan Christians in favor of the annexation of the island to the Kingdom, and shall add that it cherishes no ambition in this direction.

After having communicated what precedes to the president of the council you will add that in case the Hellenic Government does not consider itself bound to respond to your request within a reasonable time you will take a long leave of absence.

[Inclosure 2.—Translation.]

Reply of Greece to Turkish Demands.

The communication that your excellency has been good enough to make to me on behalf of the Imperial Ottoman Government has occasioned to the Hellenic Government the very greatest surprise. The great powers and the Imperial Government itself have so often declared the frankness and correctness of the Hellenic Government's attitude that we consider ourselves to have gained the full confidence and sincere friendship of Turkey. Nor can we in truth understand how, against the evidence even, designs hostile or mischievous to the Empire can be attributed to Greece. According to the statement of the Imperial Ottoman Government, Hellenic agents have been fomenting disturbances in the three villayets; Greek officers to the number of 200, according to my own admission, as it is claimed, have been plotting in Macedonia; the royal consuls have been stirring up the Greek element against the imperial authorities.

We must protest in the most formal manner against these assertions. Greece has always been guided by the fixed purpose to maintain the frankest and most friendly relations with Turkey and to draw closer the bonds which can and should unite the two countries. The Imperial Government has assuredly been led into error; the facts themselves bear witness to this. Must we recall the enthusiasm with which the Greek element in Turkey, whose loyalty our agents are now accussed of corrupting, contributed to the success of the Ottoman Constitution? Must we recall the delight with which the whole of Greece hailed the advent of the new régime? No one can overlook the fact that the great result which has been brought about in Turkey tends to strengthen and regenerate the Empire. If Greece cherishes the designs which are attributed to her, would she have acclaimed and assisted to the limit of her power such an outcome? Would she not, on the contrary, rather have sought to take advantage of the trials and the difficulties with which the new régime had to contend? What facts are more convincing, what evidence more tangible could Greece give of her sentiments toward the Empire? Moreover, it is with the liveliest regret that

we to-day behold our sentiments and our friendship under suspicion. In fidelity to our policy of harmony, we have done and shall do everything demanded of us in the interest of pacification and of peace. Likewise in the Cretan affair, of which the communication speaks, the Imperial Government for more than a year past has many times had occasion to declare that the conduct of Greece has been frank and loyal, and that Turkey has no reproach for the Hellenic Government. Moreover, Crete being confided to the hands of the protecting powers, the Royal Government can but leave to them the solution and submit to their decision. We repeat, therefore, the assurance that, since we are in no sense concerned in any movement for annexation, Greece will observe in the future the same correct and loyal attitude that has been hers in the past.

We venture to hope that these frank explanations will dissipate every misunderstanding and will assist in bringing about an era of cordial and loyal relations between the Kingdom and the Empire for the greatest good of the two States.

File No. 871/52–54.

Minister Moses to the Secretary of State.

[Extract.]

No. 20—Greek Series.] AMERICAN LEGATION,
Athens, August 24, 1909.

SIR: I have the honor to transmit herewith copy, with translation, of the second communication to Greece, delivered August 13, copy of the reply of Greece thereto, delivered August 18, and copy of the communication of the Greek Government to the ministers of the protecting powers at Athens, dated August 18, 1909.

In Crete turbulence appears to have subsided. A force of sailors from the powers' fleet prevented the raising of the Greek flag on the fortress at Canea on Wednesday morning, August 18, and cut down the staff from which the flag had flown. This disposition of the flag episode seems to have been satisfactory on all hands. The provisional Government is preparing for the election of a new Chamber; and the status quo recognized by the joint note of the powers prior to the withdrawal of their troops is maintained.

I have, etc.,

GEO. H. MOSES.

[Inclosure 1.—Translation.]

Second note of the Turkish Government to Greece, delivered August 13, 1909.

Telegram received. We learn with regret that the president of the council wishes to demonstrate the correctness of the policy pursued by Greece toward the Empire. His excellency endeavors proof of this in the admission attributed to the Imperial Government. The repeated steps we have taken, through the medium of our minister at Athens as well as through that of the royal legation at Constantinople, in protest to the Royal Government against the behavior of Hellenic agents, the established presence in Roumelia of Greek officers in disguise, and the dispatch of a large quantity of contraband arms, are all proofs in support of our just complaints. As for the Cretan question, that is the concern, in fact of the Sublime Porte and the protecting powers alone. Greece has nothing to do with it. Since the attitude of the Hellenic Government has not hitherto been above reproach our only desire has been to induce it to make a clear and frank declaration along the lines laid down in my preceding com-

munication, with a view to the removal of all occasion for misunderstanding between the two countries. The reply of the honorable the president of the council has been entirely unsatisfactory on this point. We have full confidence in his conciliatory disposition, and are desirous of having a reply in consonance with our first communication.

[Inclosure 2.—Translation.]

Reply of Greece, delivered August 18, 1909.

We observe with the liveliest regret that even after our reply to the communication which has been made by your excellency in the name of the Imperial Government, Turkey presses her complaints regarding the attitude of the Royal Government in both Roumelia and Crete.

There can be no doubt that the anarchy which has for so long a time afflicted one of the Roumelian Provinces in particular has given rise to many misunderstandings; and no one can lament more than we the disturbance which has decimated and ruined those peoples without regard to race or religion. Accordingly when a new state of affairs gives hope of reestablishing order we are making every effort to facilitate, as far as in us lies, the task which the Imperial Government has to face. The measures taken by the Royal Government prove its resolute decision not to diverge in the smallest degree from this line of conduct.

Touching Crete, the Imperial Government must surely admit that, in its preceding declarations, far from considering our former attitude as not above reproach, it has again and again declared the strict correctness thereof. Nevertheless, we take advantage of the opportunity given us by the Imperial Government's new communication to declare that the Royal Government will shape its conduct in all respects in conformity with the decisions of the protecting powers, refraining from encouragement of all agitation which might hereafter occur in the island.

We hope that after these explanations the Imperial Government will acknowledge the honest purposes of Greece toward the Empire, and that it will have no cause for the continuance of misunderstandings so disastrous for the interests of the two countries.

[Inclosure 3.—Translation.]

The Greek Government to the four protecting powers.

AUGUST 18, 1909.

In response to the proposition of the great protecting powers the Royal Government hastens to submit for their high appreciation the following considerations in reply to the communication which the Imperial Ottoman Government has addressed to it on the subject of the attitude of Greece in both Macedonia and Crete.

(Here follows text of the Greek note of this date to the Turkish Government.)

GUATEMALA.

APPLICATION TO AMERICAN CITIZENS OF GUATEMALAN DECREE PROVIDING FOR IMPRISONMENT, IN CASE OF FIRE, OF BENEFICIARY OF INSURANCE POLICY.

File No. 21267/1.

Vice and Deputy Consul General Owen to the Third Assistant Secretary of State.

[Extract.]

No. 321.] AMERICAN CONSULATE GENERAL,
Guatemala City, August 9, 1909.

SIR: I have the honor to attach herewith a copy of the Guatemala official newspaper of July 26, 1909, containing the text of Government decree No. 699, and a translation thereof.

Under this statute an American business man, of ordinary prudence, residing in Guatemala, seeking to protect his property by insurance, in the event of its destruction by fire, is held in prison until he can prove innocence.

I have, etc.,

WILLIAM OWEN.

[Inclosure.—Translation.]

Decree No. 699.

Manuel Estrada Cabrera, constitutional President of the Republic of Guatemala—Considering:

That the majority of fires occurring in the country have originated in houses or establishments insured by the respective fire insurance companies, which gives room to believe in the culpability of those interested in the value of the insurance policy;

That the primordial duty of the Government is to emit ordinances which will tend to stop unfortunate accidents, which, like those we treat, frequently leave innocent persons in misery and terminate in serious public evils;

That, although the penal laws now in force clearly define the culpability of the incendiaries and the presumptions natural and legal which are sufficient to condemn the perpetrators of the crime, it is desirable to emit a statute more explicit, yet that will cover the interests of the public and protect them against the frequent attempts that have lately occurred, to the great alarm of the country;

That, on the other hand, it is necessary to protect the interests of the insurance companies so that they may not be defrauded, and that the caution with which incendiaries proceed frequently prevents the authorities from immediately clearing up the criminal facts; that in such cases it is absolutely necessary to apply the natural presumption, to which the law alludes, with all its force;

Wherefore, using the extraordinary faculties with which the National Assembly has invested me, I decree:

ARTICLE 1. The burning of insured houses and establishments is presumed to be intentional, and in consequence, the persons interested in receiving the value of the insurance shall be put in prison and shall not leave it until they can prove their innocence.

ART. 2. No bail shall be admitted to enable the said persons to remain out of prison until the final verdict shall have been given.

ART. 3. The insurance companies are relieved from the obligation of an immediate payment while the case is on trial, but should it be to their interest to show proof that they are ready to verify it, they may deposit the amount of the policy in a bank which the judge of the trial court may name. Said sum to be given to whom it may belong when verdict is rendered, to which the preceding article refers.

ART 4. The present decree will commence to have force of law from the date of its promulgation, and it will be referred to the Legislative Assembly at its next session.

Given in the Executive Palace, in Guatemala, the 19th day of July, 1909.

MANUEL ESTRADA C.

The secretary of state in the department of interior and justice,

J. M. REINA ANDRADE.

File No. 21267/1.

The Acting Secretary of State to Minister Sands.

No. 5.] DEPARTMENT OF STATE,
Washington, October 7, 1909.

SIR: With his dispatch No. 321, of August 9 last, Mr. Owen, the acting consul general at Guatemala City, inclosed a copy of Guatemalan executive decree No. 699, of July 19, 1909, providing that in the case of the burning of insured premises the beneficiaries of the insurance policy "shall be put in prison and shall not leave it until they can prove their innocence."

You will bring this decree to the attention of the Guatemalan Government and say that the department deems the decree to be such a wide departure from correct juridical principles and so pregnant with possibilities of injustice that this Government could not view with indifference any attempt to apply its provisions to an American citizen.

I am, etc.,

ALVEY A. ADEE.

File No. 21267/2–3.

Minister Sands to the Secretary of State.

AMERICAN LEGATION,
Guatemala, November 1, 1909.

SIR: I have the honor to acknowledge receipt of the department's No. 5, dated October 7 last.

I have communicated the department's view of the Guatemalan executive decree 699, on the presumption of guilt in case of the burning of insured premises, in a note to the foreign office.

I have, etc.,

W. F. SANDS.

[Inclosure.]

Minister Sands to the Minister for Foreign Affairs.

No. 4.] AMERICAN LEGATION,
Guatemala, November 1, 1909.

MR. MINISTER: I am instructed to bring to the attention of your excellency's Government decree No. 699, of July 19, 1909, providing that in case of the burning of insured premises the beneficiaries of the insurance policy "shall be placed in prison and shall not leave it until their innocence has been proved."

My Government deems this decree to be such a wide departure from correct juridical principles and so pregnant with possibilities of injustice that it could not view with indifference any attempt to apply its provisions to an American citizen.

I take, etc.,

W. F. SANDS.

File No. 21267/4.

Minister Sands to the Secretary of State.

No. 17.] AMERICAN LEGATION,
Guatemala, November 24, 1909.

SIR: I have the honor to inclose copy and translation of the acknowledgment of the foreign office of my note of November 1, communicating the department's view of decree 699, on the presumption of guilt in case of the burning of insured premises.

I have, etc.,

W. F. SANDS.

[Inclosure.]

The Undersecretary of State to Minister Sands.

DEPARTMENT OF FOREIGN AFFAIRS,
REPUBLIC OF GUATEMALA,
Guatemala, November 19, 1909.

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's attentive note No. 4, of the 1st instant, relative to decree No. 699 issued by this Government.

I renew, etc.,

FELIPE ESTRADA PANIAGUA.

JURISDICTION OF AMERICAN CONSULAR OFFICERS OVER ESTATES OF AMERICAN CITIZENS DYING ABROAD.

File No. 20718/16–22.

The Acting Secretary of State to Minister Sands.

No. 6.] DEPARTMENT OF STATE,
Washington, October 12, 1909.

SIR: The department is in receipt of Mr. Heimké's dispatches Nos. 227[1] and 234,[1] dated, respectively, July 26 and August 16, 1909, inclosing copies of correspondence between him and the Guatemalan foreign office, concerning the settlement of the estate of Henry Baxton May, an American citizen, who died intestate at Esquintla, Guatemala, on June 9 last.

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[1] Not printed.

May appears to have left two wives, with children by each, one in the United States and one in Guatemala, and Mr. Heimké brought the case to the attention of the Guatemalan Government, with the view to safeguarding the property left by May in Guatemala and to protecting the right of May's heirs in the United States.

The department desires that you should keep clearly before you, in connection with your handling of this case, the fact that it would appear that under Guatemalan law the children of May's Guatemalan wife were his heirs. You will also bear in mind the principle, with which you are already familiar, that American consuls can demand in foreign countries only such rights and powers as have been expressly conferred upon them by treaty, and can exercise only these treaty powers and such other powers, if any, as may have been extended by the local municipal statutes of the countries from which they hold their exequaturs. The only right which our treaty appears to give to American consuls in Guatemala, so far as it relates to their powers and jurisdiction over the estates of Americans dying in Guatemala, is that conferred by article 3 of the treaty of 1901, which provides that—

> In case of the death of any citizen of the United States of America in Guatemala, or any citizen of Guatemala in the United States, without having in the country of his decease any known heirs or testamentary executors by him appointed, the competent local authorities shall at once inform the nearest consular officer of the nation to which the deceased person belonged of the circumstance, in order that the necessary information may be immediately forwarded to persons interested.
>
> The said consular officer shall have the right to appear personally or by delegate in all proceedings on behalf of the absent heirs or creditors, until they are otherwise represented.

You will observe that this gives to the consul no right whatsoever to take charge of an estate, his powers being confined to the right to appear "personally or by delegate in all proceedings on behalf of the absent heirs or creditors, until they are otherwise represented." It would thus seem that Consular Agent Thompson, by assuming personal charge and custody of the effects of Mr. May, exceeded the powers conferred upon him by the treaty, and, therefore, in all probability made himself liable for any mismanagement of the estate, unless it should be that the Guatemalan statutes have given the consul enlarged rights and powers in this matter, as to which latter point the department is not advised.

In connection with the power conferred by the treaty only, it should be observed that not only would it appear that May's children by his Guatemalan wife, as well as the wife herself, were present in Guatemala and had legal capacity to appear in the appropriate proceedings before the Guatemalan courts, but that one of Mr. May's children by his American wife was also present. The department does not perceive, therefore, upon what ground Consular Agent Thompson could have defended his action in this case, so far as his treaty rights are concerned.

You will therefore caution consular officers generally in Guatemala regarding the extent of their consular jurisdiction in the matter of winding up estates so far as their treaty rights go, and instruct them to exercise the greatest care not to exceed the powers that have been granted to them by treaty or by local statute.

I am, etc.,

ALVEY A. ADEE.

MURDER OF WILLIAM WRIGHT, AN AMERICAN CITIZEN, IN GUATEMALA.

File No. 18942/1.

The Acting Secretary of State to Minister Heimké.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 17, 1909.

Kent, in dispatch No. 280, dated March 26, reports brutal beating and wounding and subsequent lynching African American citizen, William Wright, near Livingston on December 18. Consular Agent Reed, reporting to Kent, narrates circumstances in detail and states that owing to corruption and connivance local officials his continued and vigorous efforts failed thus far to secure punishment of murderers.

Investigate facts fully, and if as reported bring matter to attention of Guatemalan Government, requesting prompt and vigorous punishment of murderers and the removal of corrupt officials responsible for delay and failure of justice.

WILSON.

File No. 18942/8–9.

Minister Heimké to the Secretary of State.

No. 185.] AMERICAN LEGATION,
Guatemala, April 19, 1909.

SIR: I have the honor to acknowledge the receipt of the department's telegram of the 17th instant (which came yesterday), directing me to make a full investigation into the matter of the murder of the African-American citizen William Wright near Livingston on or about December 18 last, and directing, further, that if I find the facts to be as reported, I should bring the matter to the attention of the Guatemalan Government and request the prompt and vigorous punishment of the murderers and the removal of the corrupt officials responsible for the delay and failure of justice.

In compliance with the requirements of the above-named telegraphic instruction I have taken the first steps in making the investigation in question in a communication that I have this day addressed to Consul General William P. Kent, in which, after informing him of what the department had directed in these premises, I requested him to draw up an interrogatory for transmission to Mr. Reed, our consular agent at Livingston, with an instruction to that officer to call before him anyone whose sworn testimony might serve in fixing the responsibility for the murder of William Wright, and adding that after the receipt by me of such testimony I would take up the matter with the Government of Guatemala, as instructed by the department. I am sure that in this way we will be able to obtain sufficient evidence to make it quite necessary for me to request the Government of Guatemala to remove the corrupt Col. García from his post at Livingston, and that we will also bring to light the names

of the assassins of William Wright. In a prior consultation with Consul General Kent, that officer expressed his accord with my views in that the manner outlined above is the most effectual that could be adopted in obtaining the evidence we desire.

I shall keep the department advised of the progress made in this investigation and of my action when the time has arrived for me to bring the matter to the attention of the Government of Guatemala.

I have, etc.,

WILLIAM HEIMKÉ.

File No. 18942/2–5.

The Acting Secretary of State to Minister Heimké.

No. 71.] DEPARTMENT OF STATE,
Washington, May 4, 1909.

SIR: I have the honor to acknowledge the receipt of your No. 175,[1] of March 30 last, inclosing a copy of a dispatch to the department from the consul general at Guatemala City, in which he reports the brutal beating and wounding and subsequent lynching of William Wright, a colored American citizen, at Cayuga, Department of Izabal, Guatemala, on December 15, 1908, by a mob of Guatemalans.

The department awaits the result of the investigation and representations which you were directed in the telegraphic instructions of the 17th ultimo to make. That instruction is intended to authorize you to make a demand at the proper stage for the dismissal and disciplining of Col. García, should the facts concerning him be found as represented by Consul General Kent.

I am, etc.,

HUNTINGTON WILSON.

File No. 18942/8–9.

The Acting Secretary of State to Minister Heimké.

No. 74.] DEPARTMENT OF STATE,
Washington, May 13, 1909.

SIR: I have to acknowledge the receipt of your No. 185 of the 19th ultimo, reporting the steps you have taken to have investigation made of the lynching of William Wright, a colored American citizen, by a mob of Guatemalans last December; and that after you receive the report of the investigation you will take the matter up with the Guatemalan Government.

Your course in the case is approved by the department, which awaits the results of the investigation.

I am, etc.,

HUNTINGTON WILSON.

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[1] Not printed.

File No. 18942/13–24.

Minister Heimké to the Secretary of State.

No. 207.] AMERICAN LEGATION,
Guatemala, May 31, 1909.

SIR: Referring to my dispatch No. 185 of the 19th ultimo, acknowledging the receipt of the department's telegram dated the 17th of that month, directing me to make full investigation into the murder of the African-American citizen William Wright, on December 15 last, at Cayuga, Department of Izabal, Guatemala, by a mob of natives of this country, and reporting in my above-named dispatch that I had taken the first steps toward making the investigation in question by requesting Mr. Kent, the American consul general at this capital, to draw up an interrogatory for transmission to Mr. Reed, our consular agent at Livingston, with an instruction requiring that officer to call before him anyone whose sworn testimony might serve to fix the responsibility for the murder of Wright, I have the honor now to transmit herewith a copy of a communication [1] addressed to me by Consul General Kent, dated the 13th instant, transmitting to me an affidavit from the following-named persons, who had testified before Consular Agent Reed as to their knowledge of the murder of William Wright and to the corrupt connivance of Sr. Alberto García, the jefe político at Livingston, at the escape from punishment of the parties guilty of the before-mentioned crime, copies of which affidavits I inclose for the information and consideration of the department, to wit:

Inclosure 2 is the affidavit of Reginald Austin, a British subject, who declared that Juan Fonnegra, formerly superintendent of the United Fruit Co.'s banana plantation, Cayuga, where Wright was murdered, had admitted to him (Austin) that he (Fonnegra) had paid Sr. Alberto García, the jefe político at Livingston, $100 gold for his (Fonnegra's) release from prison after he had been arrested at Livingston in connection with the murder of Wright.

In the affidavit of Susana Rodriguez (inclosures 3 and 4, copy and translation) she declared that she was an eyewitness to the murder of William Wright, in which affidavit, however, she gives only the name of Raimundo de la Cruz as one of the parties whom she recognized among the murderous mob.

Inclosure 5 is the affidavit of Charlie Davis, an American citizen, who declared that he also had been an eyewitness to the murder of William Wright on the night of December 15 last by a mob of from 15 to 18 natives, who had clubbed Wright until he had fallen to the ground, among whom he recognized one Raimundo (presumably Raimundo García) and the before-mentioned Juan Fonnegra.

Inclosure 6 is the affidavit of George Walton, an American citizen, who testified to the fact that from an investigation made by him and by other employees of the before-mentioned banana plantation to ascertain whether Wright had met an accidental death or whether he had been murdered, Wright had been clubbed to death and did not die in the manner stated by Fonnegra, to the effect that Wright had met his death by falling into a railway cut.

[1] Not printed.

Inclosure 7 is the affidavit of Milledge Russell, an American citizen, who testified that he was present when, on the night of December 15 last, there had been some trouble between the murdered Wright and a native named Peña, whom Wright had assaulted with his lantern in a gambling dispute, and that after Wright had left the shack where he had thrown dice with Peña, one Raimundo García appeared and asked him (Russell) for the whereabouts of Wright, shortly after which Russell had heard a row in a crowd of from 15 to 20 natives, and that on his way home, in passing the tool house of the plantation, he saw the dead body of Wright; that afterwards, in company with George Walton, he returned to the tool house to look again at the dead body of Wright.

Inclosure 8 is the affidavit of Beverly Dennis, an American citizen, who testified that he saw the dead body of Wright on the morning after the murder; that he had heard a number of the dead man's friends ask how Wright had met his death; and that Juan Fonnegra replied by saying that Wright had had a row with a native who had chased him (Wright) with a machete; and that, becoming frightened, Wright had run over a cliff and killed himself; and that when he (Dennis) remarked that anyone who would say that Wright had met his death by falling over a cliff lied, and that he was clubbed to death, Juan Fonnegra told the comandante that he (Dennis) did not know what he was talking about, and requested the comandante to arrest him; that he was then arrested and confined in the tool house for several hours.

Inclosure 9 is the affidavit of Philip Bowen, a native of Jamaica, Bahama Islands, who testified that he was present at the banana plantation Cayuga on the night of December 15 last, when he saw Wright pursued by a crowd headed by Raimundo García and Juan Fonnegra; that he saw Raimundo García strike Wright with a pistol; that he had seen Salvador Campos, alias Pajaríto, strike Wright on the chest with a club while the latter was running, and that the mob pursued him and continued to strike him until he fell to the ground, and that later, when he saw Wright again, he was on the ground, dead. Bowen concluded his testimony by saying that, later, one Septimus Murrey, a native of Jamaica, had remarked in the presence of Juan Fonnegra, that he (Murrey) knew all the circumstances surrounding Wright's death, whereupon Juan Fonnegra had told Murrey, "You are discharged; pack up your things and get out of here," which he did.

In the affidavit of James A. Wilkinson (inclosure 10) he testified that he was awakened from sleep on the night of the 15th of December last by the sound of lashes and poundings, and arising and dressing quickly, he went out to see what was taking place, and, approaching a crowd that seemed to be beating an individual, he arrived just as one of a mob had struck Wright the last blow, after which he saw Wright on the ground, dead. Wilkinson concludes by testifying that he knows two of the ringleaders in the attack on Wright, one of whom is named Raimundo, the foreman of Juan Fonnegra, and the other, whose name he does not state, he describes as a person who had four fingers missing from his left hand.

Inclosure 11 is a letter addressed to Consular Agent Reed by Mr. V. M. Cutter, manager of the Guatemala division of the United Fruit

Co., dated Puerto Barrios, May 11, 1909, in response to an inquiry regarding the character of the murdered William Wright, in which letter Mr. Cutter informed Mr. Reed that Wright had been in the employ of the United Fruit Co. for about a year and a half; that he seemed fairly steady and industrious, of a rather quiet nature; and that he had never known Wright to drink to excess or of making any disturbance when he had been drinking, up to the time of his death.

Now, as Consul General Kent has properly said that while the foregoing affidavits are inartistically or crudely drawn, they point in the indisputable fact that Wright was deliberately and cruelly murdered by a mob of natives; and this testimony, taken in connection with the repeated, though futile, efforts of Consular Agent Reed to bring the parties guilty of Wright's murder to trial, has convinced me that the investigation which I was instructed to make into this affair is as complete as it has been possible to make it, and that I have found the facts surrounding the murder of William Wright to be as reported to the department by Consul General Kent in his dispatch No. 280, of March 26 last. And while there is but one affidavit which charges Sr. Alberto García, the jefe político at Livingston, with connivance at a frustration of the administration of justice by his acceptance of a sum of money from Fonnegra to procure his exoneration from the charge of murder that had been lodged against him, and I am morally certain that Sr. García's guilt, when coupled with the notoriously bad character of that official, although bribery, as a rule and under ordinary circumstances, is one of the most difficult charges to prove.

Therefore, acting under the instruction contained in the department's serial No. 71, of the 4th instant, I have this day addressed a note to the minister for foreign affairs (copy inclosed), in which I have brought to the attention of the Government of Guatemala the matter of the murder of William Wright; the unceasing efforts of Consular Agent Reed to induce the authorities to have the criminals brought to justice, personally calling the attention of the jefe político, Alberto García, to positive and well-supported testimony to prove that a man named Raimundo García had organized the mob which murdered Wright, who had himself struck Wright on the head with a revolver; that Juan Fonnegra, superintendent of the Cayuga banana plantation, who had sent the mob to Wright's house, had endeavored to cover up the crime by falsely declaring that Wright had met his death by falling into a railway cut; that these two men had been arrested, but were immediately released, the judge of the first instance, Licentiate Ramírez, stating that there was no evidence against them; that Consular Agent Reed had at once given Judge Ramírez the names of two eyewitnesses of the murder, but that they were not called upon to testify, nor could Mr. Reed ever succeed in having them summoned; that evidence had been given by John Wallace and others implicating Juan Fonnegra in the affair; that when, on the 15th of January last, Judge Ramírez ceased to be judge of first instance at Livingston, the dossier in the case had disappeared; that Consular Agent Reed had since then repeatedly called on the jefe político at Livingston to have Fonnegra cited and cross-examined as to the circumstances of the before-mentioned murder and his connection with the same, but that in spite of the repeated promises

of that jefe político to comply with Mr. Reed's request Sr. Alberto García had never done so; and I stated that, in addition to these facts, it had come to my knowledge that the release of Fonnegra from prison and the failure of the jefe político at Livingston to have him brought up for examination when requested by Consular Agent Reed to do so was because the said jefe político had received a sum of money from Fonnegra to procure his exoneration from the charge against him, adding that I should hesitate to give credit to an accusation of this nature against so high an official were it not for the many well-founded complaints which have been made against this jefe político, both in Livingston and at Champerico, for arbitrary, illegal, and dishonest acts and for his well-known hatred of foreigners, which he takes no pains to conceal; and I concluded by saying that, acting under instructions from my Government, I demanded the immediate dismissal of Sr. Alberto García from the post of jefe político at Livingston, as well as the arrest, trial, and punishment of the persons guilty of the before-mentioned crime and of all the officials to whose want of action it is due that the ends of justice have been frustrated in the present case.

I will advise the department of the action of the Government of Guatemala on the subject matter of my note to the minister for foreign affairs, the tenor of which I trust will meet the approval of the department.

I have, etc.,

WILLIAM HEIMKE.

[Inclosure.]

Minister Heimké to the Minister for Foreign Affairs.

AMERICAN LEGATION,
Guatemala, May 31, 1909.

MR. MINISTER: On December 15, 1908, William Wright, an American citizen, employed on the banana plantation Cayuga, Department of Izabal, belonging to the United Fruit Co., having struck a Guatemalan with whom he had had a dispute, was set upon by a party of ruffians sent by the superintendent, Fonnegra, to capture him and was cruelly beaten to death, though there is nothing whatever to show that he had made the slightest resistance.

Since this occurrence the United States consular agent at Livingston, Mr. Edward Reed, has been unceasing in his efforts to have the criminal brought to justice, personally calling the attention of the jefe político, Sr. Alberto García, to positive and well-supported testimony to prove that a man named Raimundo García organized the mob which murdered Wright, and himself struck him on the head with a heavy pistol, and that Juan Fonnegra, superintendent of the said plantation, who had sent the mob to Wright's house, had endeavored to cover up the crime by falsely declaring that Wright had met his death by accidentally falling into a railway cut. These two men were arrested, but were almost immediately released, the judge of first instance, Licenciado Ramírez, stating that there was no evidence against them. Mr. Reed at once gave Judge Ramírez the names of two eyewitnesses of the murder, but they were not called upon to testify, nor could Mr. Reed ever succeed in having them summoned. Evidence was given by John Wallace and others implicating Fonnegra in the affair, but on the 15th of January of the current year, Licenciado Ramírez ceased to be judge of first instance, since when the "dossier," or expendiente has disappeared. Mr. Reed has since then repeatedly called on the jefe político at Livingston to have Fonnegra cited and cross-examined as to the circum-

stances of the killing and his connection with it, but in spite of the repeated promises of that jefe político to comply with Mr. Reed's request Sr. García has never done so.

The fact then remains that an American citizen has been brutally murdered by a gang of ruffians; that no real effort has been made by the authorities to investigate the matter, though there was no lack of testimony, as the occurrence was witnessed by several persons; that the American consular agent furnished Judge Ramírez with the names of two of these witnesses without his taking any steps to call them; and, finally, that in spite of the consular agent's repeated applications to the jefe político to cause Fonnegra, the employer of the assassins, to be brought up for examination, he has failed to do so.

The authority of a jefe político in his own district, Mr. Minister, is well known to be subordinate only to that of the Central Government, and he must therefore be held directly responsible for dereliction of duty on the part of other officials, even though, technically speaking, they may not immediately depend on the Executive power. But in addition to this it has come to my knowledge that the release of Fonnegra from prison and the failure of the jefe político at Livingston to have him brought up for examination when requested by Consular Agent Reed to do so was because the said jefe político had received a sum of money from Fonnegra to procure his exoneration from the charge against him.

I should hesitate to give credit to an accusation of this nature against so high an official were it not for the many well-founded complaints which have been made against this jefe político, both in Livingston and at Champerico, for arbitrary, illegal, and dishonest acts, and for his well-known hatred of foreigners, which he takes no pains to conceal.

The facts of the before-mentioned case have already been for some time under consideration by the Department of State, and I am now instructed by my Government to demand the immediate dismissal of Sr. Alberto García from the post of jefe político at Livingston, as well as the arrest, trial, and punishment of the persons guilty of the before-mentioned crime, and of all the officials to whose want of action it is due that the ends of justice have been frustrated in the present case.

I reiterate, etc.,

WILLIAM HEIMKÉ.

File No. 18942/13–24.

The Secretary of State to Minister Heimké.

No. 82.] DEPARTMENT OF STATE,
Washington, June 30, 1909.

SIR: I have to acknowledge the receipt of your No. 207 of the 31st ultimo containing a report of your investigation of the murder of William Wright, an American citizen of African descent, at the United Fruit Co.'s banana plantation at Cayuga, on December 15, 1908, by a mob of natives of Guatemala.

You also report that you have formally demanded of the Guatemalan Government the immediate dismissal of Sr. Alberto García from the post of jefe político at Livingston, as well as the arrest, trial, and punishment of the persons guilty of murdering Wright, and of all the officials through whose failure to act the ends of justice have been thus far frustrated in the present case.

The department approves your course in the matter. You will keep the department advised of the result of your representations to the Guatemalan Government.

I am, etc.,

P. C. KNOX.

File No. 18942/29–31.

Minister Heimké to the Secretary of State.

No. 220.] AMERICAN LEGATION,
Guatemala, July 6, 1909.

SIR: Referring to my No. 214, of the 17th ultimo,[1] and to previous correspondence relative to my demand of the 31st of May last on the Government of Guatemala for the summary removal of Col. Alberto García from the post of jefe político at Livingston, on account of his corrupt connivance at the suppression of an investigation into the murder of the African-American citizen, William Wright, etc., I have the honor to transmit herewith a copy and translation of an official note, as well as a copy and translation of an unofficial note, addressed to me to-day by Sr. Don Guillermo Aguirre, minister for foreign affairs, saying that, with reference to my note of the 31st of May last, the above-named Col. García had been replaced by Sr. Don Luis Estrada Monzón as jefe político and comandante de armas at Livingston for the Department of Izabal.

Mr. Estrada Monzón, whom I know personally, has the reputation of being an honest man and a considerate and conscientious official, and I have been informed through our consulate general here that the removal of Col. García and the appointment in his place of Sr. Estrada Monzón has been received by natives as well as by foreigners in Livingston with expressions of satisfaction and delight.

I have addressed a note to the minister for foreign affairs thanking him for his two notes of to-day upon the subject of the substitution of Col. García by Mr. Estrada Monzón.

I have, etc.,

WILLIAM HEIMKÉ.

[Inclosure 1.—Translation.]

The Minister for Foreign Affairs to Minister Heimké.

DEPARTMENT OF FOREIGN AFFAIRS,
REPUBLIC OF GUATEMALA,
Guatemala, July 6, 1909.

MR. MINISTER: Referring to your attentive official communication of May 31 last, I have the honor to advise your excellency that Mr. Luis Estrada Monzón has recently taken charge of the jefatura politica and comandancia de armas of the Department of Izabal in substitution of Col. Alberto García.

I avail, etc.,

G. AGUIRRE.

[Inclosure 2.—Translation.]

The Minister for Foreign Affairs to Minister Heimké.

DEPARTMENT OF FOREIGN AFFAIRS,
Guatemala, July 6, 1909.

MY DEAR MR. HEIMKÉ: In reply to your last courteous letter relative to Col. García, who for some time acted as jefe político and comandante de armas of the Department of Izabal I take pleasure in advising you that the substitute, Mr. Luis Estrada Monzón, appointed for the government of that department, has already assumed the duties of his office.

With my respectful greetings, I remain, etc.,

G. AGUIRRE.

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[1] Not printed.

File No. 18942/32.

Minister Heimké to the Secretary of State.

No. 222.] AMERICAN LEGATION,
Guatemala, July 7, 1909.

SIR: Referring to my dispatch No. 220, of yesterday, transmitting a copy and translation of two notes addressed to me by the minister for foreign affairs saying that, with reference to my note of the 31st of May last, Col. Alberto García had been replaced by Sr. Don Luis Estrada Monzón as jefe politico and comandante de armas at Livingston for the Department of Izabal, I have the honor to confirm my telegram of to-day, reporting to the department that the removal of Col. García as political préfect at Livingston had been effected.

It gives me pleasure to state that the removal of Col. García from the above-named post, as demanded in my note to the minister for foreign affairs of the 31st of May last, and reported to the department on that date in my dispatch No. 207, was conducted by me with the Government without causing the slightest friction; and during an interview which I had to-day with President Estrada Cabrera he took occasion to refer to this incident, when he told me that it had given him pleasure to comply with the wishes of the Government of the United States, and added that he hoped he might be able hereafter to maintain in positions such as the one vacated by Col. García men of tried probity and known civility and fairness toward foreigners.

I shall continue to give my attention to the arrest and punishment of the parties who may be found guilty of the murder of the American citizen, William Wright, and keep the department advised of any action on the part of the Government of Guatemala which may come to my knowledge.

I have, etc.,

WILLIAM HEIMKÉ.

File No. 18942/29–31.

The Acting Secretary of State to Minister Heimké.

No. 88.] DEPARTMENT OF STATE,
Washington, July 24, 1909.

SIR: I have to acknowledge the receipt of your No. 220, of the 6th instant, inclosing copies of two notes to you from the Guatemalan minister for foreign affairs, informing you that Col. Alberto García has been removed from the office of jefe político and comandante de armas at Livingston, for the Department of Izabal, and that Mr. Luis Estrada Monzón has entered on the duties of that office in succession to Col. García.

The department approves your conduct in the matter, and notes with pleasure the compliance with your request for the removal of Col. García.

I am, etc.,

ALVEY A. ADEE.

File No. 18942/28–32.

The Secretary of State to Minister Heimké.

No. 95.] DEPARTMENT OF STATE,
Washington, August 6, 1909.

SIR: Referring to your telegram of the 7th ultimo,[1] to your dispatch No. 220, of the 6th ultimo, and to the department's No. 88, in reply, of the 24th ultimo, approving your conduct in the matter of the removal of Col. García from the office of jefe político and comandante de armas at Livingston, and referring also to your No. 222, of the 7th ultimo, in which you report that the removal of García was made without friction, and that you will continue to give your attention to the arrest and punishment of the murderers of William Wright, I have now to say that in case the new prefect should not take steps at once to secure the apprehension and punishment of the parties responsible for the death of Wright, you will again bring that matter to the attention of the proper Guatemalan authorities, and you will insist that appropriate action be taken looking toward the arrest and adequate punishment of the murderers.

I am, etc.,

HUNTINGTON WILSON.

File No. 18942/33.

Minister Heimké to the Secretary of State.

No. 244.] AMERICAN LEGATION,
Guatemala, September 21, 1909.

SIR: Referring to instruction No. 95 of the 6th ultimo (file No. 18942/28–32), relative to the matter of the removal of Col. García from the office of jefe político and comandante de armas at Livingston, and referring also to my No. 222 of the 7th ultimo, in which I reported that the removal of García had been effected without friction and that I would continue to give my attention to the arrest and punishment of the murderers of William Wright, the department saying in its above-named instruction that in case the new prefect should not take steps at once to secure the apprehension and punishment of the parties responsible for the death of Wright, I should again bring the matter to the attention of the proper Guatemalan authorities, and that I shall insist that appropriate action be taken looking toward the arrest and adequate punishment of the murderers, I have the honor to report that Mr. Aguirre, the minister for foreign affairs, informed me to-day, in a discussion of this matter with him, that Fonnegra, the principal aggressor in the murderous assault upon William Wright, has just been arrested and imprisoned in the penitentiary at this capital, where he will be kept in close confinement until the time of his trial for his participation in the crime with which he is charged, of which arrest the minister for foreign affairs will formally notify this legation as soon as the ministry of justice has officially advised the ministry of foreign affairs. Mr.

[1] Not printed.

Aguirre added that the new jefe político at Livingston had long since received instructions to use all diligence in causing the arrest of every man connected with the murder of Wright, and he pointed to the arrest of Fonnegra as an evidence of the intention of the Government to bring the murderers of Wright to punishment; and now, as the alleged principal in this crime has been apprehended, Mr. Aguirre thought the arrest of the others guilty of participation in that crime would soon follow.

I have, etc.,

WILLIAM HEIMKÉ.

File No. 18942/33.

The Acting Secretary of State to Minister Sands.

DEPARTMENT OF STATE,
Washington, October 22, 1909.

SIR: The department is in receipt of Mr. Heimké's dispatch No. 244 of the 21st ultimo, in which he reports that the Guatemalan minister for foreign affairs has informed him that Fonnegra, the principal aggressor in the murderous assault on William Wright, has been arrested and is imprisoned in the penitentiary, where he will be confined awaiting his trial, and that it is believed that the arrest of the other assailants will soon follow.

The department awaits your report of further proceedings in the case.

I am, etc., ALVEY A. ADEE.

HAITI.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND HAITI.

Signed at Washington, January 7, 1909.
Ratification advised by the Senate, February 13, 1909.
Ratified by the President, March 1, 1909.
Ratified by Haiti, March 22, 1909.
Ratifications exchanged at Washington, November 15, 1909.
Proclaimed, November 16, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Arbitration Convention between the United States of America and the Republic of Haiti was concluded and signed by their respective Plenipotentiaries at Washington on the seventh day of January, one thousand nine hundred and nine, the original of which Convention, being in the English and French languages, is word for word as follows:

The Government of the United States of America, signatory of the two conventions for the Pacific Settlement of International Disputes, concluded at The Hague, respectively, on July 29, 1899, and October 18, 1907, and the Government of the Republic of Haiti, adherent to the said convention of July 29, 1899, and signatory of the said convention of October 18, 1907;

Taking into consideration that by Article XIX of the convention of July 29, 1899, and by Article XL of the convention of October 18, 1907, the High Contracting Parties have reserved to themselves the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment;

Have authorized the Undersigned to conclude the following Convention:

ARTICLE I.

Differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall, if not submitted to some other arbitral jurisdiction, be referred to the Permanent Court of Arbitration established at The Hague by the convention of July 29, 1899, for the pacific settlement of international disputes, and maintained by The Hague Convention of the 18th October, 1907; provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two Contracting States, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement, defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States, by and with the advice and consent of the Senate thereof, and on the part of Haiti shall be subject to the procedure required by the Constitution and laws thereof.

ARTICLE III.

The present Convention is concluded for a period of five years and shall remain in force thereafter until one year's notice of termination shall be given by either party.

ARTICLE IV.

The present Convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of Haiti in accordance with the Constitution and laws thereof. The ratifications shall be exchanged at Washington as soon as possible, and the Convention shall take effect on the date of the exchange of its ratifications.

Done in duplicate in the English and French languages at Washington, this 7th day of January, in the year one thousand nine hundred and nine.

ELIHU ROOT [SEAL]
J. N. LÉGER [SEAL]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the City of Washington, on the fifteenth day of November, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this sixteenth day of November in the year of our Lord one thousand nine hundred and [SEAL] nine, and of the Independence of the United States of America the one hundred and thirty-fourth.

WM H TAFT

By the President:
P C KNOX
Secretary of State.

HONDURAS.

HONDURANEAN LAW RESPECTING REGISTRATION OF FOREIGNERS.

File No. 21481/12.

Minister Brown to the Secretary of State.

No. 109.] AMERICAN LEGATION,
Tegucigalpa, August 24, 1909.

SIR: I have the honor to submit herewith copies of recent correspondence on the subject of the requirements of the Honduranean laws for the registration of foreigners in connection with the arrest and detention of Mr. John Hulse, an American citizen, at La Ceiba.

As will be observed, the alien law (ley de extranjería), an extract of which is inclosed, provides that all foreigners must register with the competent authorities and be provided with a certificate of registration; that article 25 states:

> No authority or public functionary may recognize anyone as an individual of a determined foreign nationality who does not present his certificate of registration.

Inasmuch as the foregoing law implies that foreigners who are not registered may not appeal to the protection of their nationality, I took occasion in my note to the foreign office of the 14th instant (inclosure No. 1) to state that—

> While it is to be expected that foreigners in Honduras shall conform to its municipal regulations, the failure of an American citizen to be registered as an American with the local authorities in no way can work forfeiture to his claims for protection as such, and consequently to the good offices of the American consul, whenever it may be deemed necessary.

While the reply of the minister for foreign affairs (inclosure No. 2) is as unsatisfactory as it is awkward and ambiguous, yet I do not apprehend it is the intention of the Honduranean Government to deny the right of any American to appeal to his own representatives in case of need.

I submit, however, this most important matter for such instructions as the department may desire to give in the premises.

I have, etc.,

PHILIP BROWN.

[Inclosure 1.]

Minister Brown to the Minister for Foreign Affairs.

No. 48.] AMERICAN LEGATION,
Tegucigalpa, August 14, 1909.

MR. MINISTER: I have the honor to submit for such action as Your Excellency may deem proper the following communication which was addressed by

the commandante at La Ceiba to the acting American consul on July 12 last, in reference to the arrest and detention of Mr. John Hulse, an American citizen, late officer of the United States Navy and at present manager of the Lala-Ferreras-Cangelosi Steamship Co.:

"In order to be able to attend to the repeated claims (or complaints) which you are pleased to make respecting American citizens who are prosecuted with justice, I beg you will have them present the certificate of their citizenship indorsed by the respective authority, as there is no record of same here.

"Etc.,

"M. RIVAS G."

I will not further comment on this extraordinary communication than to state that while it is to be expected that foreigners in Honduras shall conform to its municipal regulations, the failure of an American citizen to be registered as an American with the local authorities in no way can work forfeiture to his claims for protection as such and consequently to the good offices of the American consul whenever it may be deemed necessary.

I avail, etc.,

PHILIP BROWN.

[Inclosure 2.—Translation.]

The Minister for Foreign Affairs to Minister Brown.

MINISTRY FOR FOREIGN AFFAIRS,
Tegucigalpa, August 20, 1909.

MR. MINISTER: I have the honor to refer to Your Excellency's attentive note dated the 14th instant, in which you are good enough to transcribe the communication which the American consul at La Ceiba received from the comandante de armas of the Department of Atlantida, in reference to the presentation by American citizens of their proofs of American citizenship.

I have duly considered the matter, and it is gratifying to be in accord with Your Excellency, as provided by our laws, in so far as foreign consular officials may loan all the good offices which the legitimate interests of their compatriots may demand, especially those relating to commerce, but I should indicate to you that inasmuch as our fundamental law prescribes for foreigners the enjoyment of the same civil rights and guaranties as natives under the obligation of respecting the authorities and observing the laws of the country, it is fair that American citizens, for the full asserton of their rights, should be inscribed in this ministry, which will extend to them the respective certificate without the presentation of which, as our alien law declares, no authority or public functionary may recognize anyone as an individual of a determined foreign nationality; and I believe that this was why the comandante of La Ceiba, relying on this legal requirement, directed his communication to the American consul, believing, for my part, this action justifiable, with the one exception that it should have been a simple request that the American citizens should register.

Furthermore, Your Excellency knows the upright and just spirit with which my Government is animated for the arrangement of all matters and always to make more effective, in accordance with its desires, the rights and guaranties which our laws concede to foreigners, as it is well understood that by this attitude it will notably favor the immigration of the honorable and industrious class which, dedicated entirely to work, contributes effectively to the progress and prosperity of the nation.

I am communicating this day with the comandante, giving him instructions in regard to the interpretation and application of the law concerning the matter in question.

I avail, etc.,

JOSE MA. OCHOA V.

[Subinclosure.—Translation.]

ALIEN LAW, OF FEBRUARY 8, 1906.

SECTION IV: ART. 21. The registration of foreigners consists in the inscription of their names and nationalities in a book reserved for that purpose in the ministry for foreign affairs of the Republic.

ART. 22. The foreigner who desires to register and who may be in the capital of the Republic should present himself at the ministry for foreign affairs; but if he is elsewhere, to the governor of the respective department, with some of the documents hereinafter designated:

1. The certificate of the respective diplomatic or consular agent accredited in the Republic, provided that in this certificate it is stated the interested party is a citizen of the country in whose name the agent signs.

2. The passport with which the petitioner may have entered the Republic, legalized in due form.

3. The naturalization papers, similarly legalized; and only if he can offer sufficient proof of their destruction or loss, or if these documents are not necessary according to the law of the country from which he may have come, other proofs of equal value may be accepted to the effect that the party interested succeeded in acquiring the nationality under which he is registered, without causing him any further expense than that of the necessary stamped paper.

ART. 23. The registration shall constitute merely a legal presumption that the foreigner is of the nationality therein attributed to him, contrary proofs being therefore admitted.

ART. 24. The registration is proved by the corresponding certificate, issued and signed by the minister for foreign affairs, who alone is competent in this matter.

ART. 25. No authority or public functionary may recognize anyone as an individual of a determined foreign nationality who does not present his certificate of registration.

File No. 21481/12.

The Acting Secretary of State to Minister Brown.

No. 64.] DEPARTMENT OF STATE,
Washington, September 29, 1909.

SIR: The department is in receipt of your dispatch, No. 109, of the 24th ultimo, inclosing copies of correspondence between you and the acting consul at Ceiba, and between you and the Honduranean minister for foreign affairs, concerning the Honduranean law respecting the registration of foreigners in connection with the arrest and detention of Mr. John Hulse, an American citizen, at Ceiba.

The department approves your note to the minister for foreign affairs, in which you informed him that the failure of an American citizen to be registered as an American citizen with the local authorities in no way can work a forfeiture of his claim to protection as such and, consequently, to the good offices of the American consul, whenever it may be deemed necessary.

The question of matriculation of foreigners as a condition precedent to the recognition of their nationality has not infrequently been the subject of diplomatic correspondence between this Government and that of certain Central and South American Republics. This Government has upon this question always adhered to the principle that no foreign power could by municipal law disturb or affect the relationship which exists between an American citizen and his Government. The consistent attitude of this department upon the question has been well stated in two instructions from Secretary Frelinghuysen to Mr. Morgan, minister to Mexico. In the first, dated July 24, 1882, Mr. Frelinghuysen expressed himself as follows:

We hold, under the general principles of international law, that the right of an American citizen to claim the protection of his own Government while in a foreign land and the duty of this Government to exercise such protection are reciprocal and are inherent in the allegiance of the citizen under the Constitution of his own land, and that, inasmuch as this reciprocal right on the part of the citizen and duty on the part of his Government is not created by the laws of any foreign country, it can not, on the other hand, be denied by the munici-

pal law of a foreign State. Holding thus, it is impossible for this Government to accept the proposition that its right to intervene for the protection of one of its citizens in Mexico can only begin with and be created by the matriculation of such a citizen as a foreign sojourner in Mexico and can only exist and be exercised with respect to the redress of wrongs which such a citizen may suffer there after his name shall have been inscribed on the books of the foreign office in the City of Mexico. * * *

I repeat, the status of a foreigner is, under international law, inherent, and neither created nor destroyed by Mexican law. The evidence of the foreign status of an individual consists in the facts as they exist or by the authentic certification of his own Government, as in the form of a passport; it does not originate in compliance with a Mexican municipal statute. (Foreign Relations, 1882, pp. 395–396.)

In a later dispatch, dated February 17, 1885, Mr. Frelinghuysen again set forth the doctrine in the following language:

The Mexican Government contends that the national character of the foreigner is proved by this matriculation, which entitles him to special privileges and obligations called the rights of foreigners. These are (1) the right to invoke the treaties and conventions existing between his country and Mexico; (2) the right to seek the protection of his own Government.

They further contend that the want of a certificate of matriculation will be considered sufficient to deny to this Government the right of diplomatic intervention in any case.

Against this contention this Government protests as an interference in its relations to its citizens. The Government of the United States recognizes the right of Mexico to prescribe the reasonable conditions upon which foreigners may reside within her territory and the duty of American citizens there to obey the municipal laws; but those laws can not disturb or affect the relationship existing at all times between this Government and one of its citizens. The duty is always incumbent upon a Government to exercise a just and proper guardianship over its citizens, whether at home or abroad. A municipal act of another State can not abridge this duty, nor is such an act countenanced by the law or usage of nations. No country is exempted from the necessity of examining into the correctness of its own acts. A sovereign who departs from the principles of public law can not find excuse therefor in his own municipal code. This Government, being firmly convinced that the position of the Mexican Government is untenable, can not assent to it. (Foreign Relations, 1885; 6 Moore, 312.)

If it appears that it is the intention of the Honduranean authorities to insist upon the enforcement of laws falling within the principle thus so fully stated by Secretary Frelinghuysen you will bring to the attention of the Honduranean foreign office the views of this Government as they are set forth above.

I am, etc.,

ALVEY A. ADEE.

Feb 19

NATURALIZATION CONVENTION BETWEEN THE UNITED STATES AND HONDURAS.

Signed at Tegucigalpa, June 23, 1908.
Ratification advised by the Senate, December 10, 1908.
Ratified by the President, December 26, 1908.
Ratified by Honduras, April 7, 1909.
Ratifications exchanged at Tegucigalpa, April 16, 1909.
Proclaimed, June 8, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Naturalization Convention between the United States of America and the Republic of Honduras was concluded and signed

by their respective Plenipotentiaries at Tegucigalpa, on the twenty-third day of June, one thousand nine hundred and eight, the original of which Convention, being in the English and Spanish languages, is word for word as follows:

The President of the United States of America and the President of the Republic of Honduras, desiring to regulate the citizenship of those persons who emigrate from the United States of America to Honduras, and from Honduras to the United States of America, have resolved to conclude a Convention on this subject; and for that purpose have appointed their Plenipotentiaries, to conclude a Convention, that is to say:

The President of the United States of America, H. Percival Dodge, Envoy Extraordinary and Minister Plenipotentiary of the United States of America near the Government of Honduras; and

The President of Honduras, Señor Licenciado Marcos Lopez Ponce, Sub-Secretary of Foreign Affairs of the Republic of Honduras;

Who, having examined one another's full powers and having found them in due form, have agreed to and signed the following Articles:

ARTICLE I.

Citizens of the United States who may or shall have been naturalized in Honduras, upon their own application or by their own consent, will be considered by the United States as citizens of the Republic of Honduras. Reciprocally, Honduraneans who may or shall have been naturalized in the United States upon their own application or with their own consent, will be considered by the Republic of Honduras as citizens of the United States.

ARTICLE II.

If a Honduranean, naturalized in the United States of America, renews his residence in Honduras, without intent to return to the United States, he may be held to have renounced his naturalization in the United States. Reciprocally, if a citizen of the United States, naturalized in Honduras, renews his residence in the United States, without intent to return to Honduras, he may be presumed to have renounced his naturalization in Honduras.

The intent not to return may be held to exist when the person naturalized in the one country, resides more than two years in the other country, but this presumption may be destroyed by evidence to the contrary.

ARTICLE III.

It is mutually agreed that the definition of the word "citizen," as used in this convention, shall be held to mean a person to whom the nationality of the United States or of Honduras attaches.

ARTICLE IV.

A recognized citizen of the one party, returning to the territory of the other, remains liable to trial and legal punishment for an action punishable by the laws of his original country and committed before his emigration, but not for the emigration itself, saving always the limitation established by the laws of his original country, and any other remission of liability to punishment.

ARTICLE V.

The declaration of intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE VI.

The present Convention shall go into effect immediately on the exchange of ratifications, and in the event of either party giving the other notice of its intention to terminate the Convention it shall continue to be in effect for one year more, to count from the date of such notice.

The present Convention shall be submitted to the approval and ratification of the respective appropriate authorities of each of the Contracting Parties, and the ratifications shall be exchanged at Washington or at Tegucigalpa within twenty-four months of the date hereof.

In witness whereof, the Plenipotentiaries of the United States of America and of Honduras have signed this Convention in duplicate and have affixed hereunto their respective official Seals in the City of Tegucigalpa, on the twenty-third day of June, in the year of Our Lord one thousand nine hundred and eight.

[SEAL.] H. PERCIVAL DODGE.
[SEAL.] M. LÓPEZ PONCE.

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the City of Tegucigalpa, on the sixteenth day of April, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this eighth day of June in the year of our Lord one thousand nine hundred and nine, and of the [SEAL] Independence of the United States of America the one hundred and thirty-third.

WM H TAFT

By the President:
P C KNOX
Secretary of State.

APPLICATION OF HONDURANEAN NAVIGATION LAWS, RE REGISTRATION, TO FOREIGN VESSELS.

File No. 21274/3.

Minister Brown to the Secretary of State.

No. 101.] AMERICAN LEGATION,
Tegucigalpa, August 12, 1909.

SIR: I have the honor to submit herewith copies of correspondence relating to the proposed nationalization of vessels owned by foreign-

ers residing in Honduras in accordance with the Honduranean laws of navigation, which have been recently enacted and copies of which, I understand, were duly transmitted to the department by Consul Alger.

The present difficulty centers about Article I of decree No. 112, which reads as follows:

All vessels built in the shipyards of the Republic, or of foreign construction, for the service of individuals residing in the Republic, natives or foreigners, will be considered as Honduranean, and, therefore, can not fly any other flag.

This legation is in possession of very limited references on this subject of the nature of precedents, but I have been unable to find, either in international law or in a common-sense interpretation of the treaty between Honduras and the United States, which provides for complete liberty of commerce, any justification for the requirements of the law above quoted. I felt compelled, therefore, in order to fully safeguard American rights in this respect, to address to the Honduranean Government a note on the 11th instant, as per inclosure No. 2, and also to send a telegram to the consular agent at Trujillo on the same day (inclosure No. 3), and trust that my action in this regard will meet with your approval.

I am inclined to believe that the Honduranean Government is now beginning to realize the extreme and perhaps insuperable difficulties in the way of enforcing strictly the laws in question, and it is more than likely that the offensive provisions of the law under consideration will remain a dead letter.

In the meantime I will keep the department fully informed as to any further developments in this matter, and trust there will be no disagreeable incidents in connection with any attempted application of the law in the extreme sense above indicated.

I have, etc.,

PHILIP BROWN.

[Inclosure 1.]

Minister Brown to the Minister for Foreign Affairs.

No. 44.] AMERICAN LEGATION,
Tegucigalpa, August 11, 1909.

MR. MINISTER: I have the honor to inform your excellency that this legation is in receipt of a communication from the American consular agent at Trujillo, stating that the collector of customs at that port has notified him that in view of the new "navigation laws" (decree No. 50), which go into effect on the 12th instant, after that date he will neither enter nor clear vessels under a foreign flag owned by persons resident in this Republic nor vessels registered under 100 tons net. The consular agent furthermore reports that the authorities at Iriona have given notice that the American tugboat *La Crosse*, owned in New Orleans and employed in the service of loading and unloading of vessels, will have to be placed under the Honduranean flag.

It is to be assumed that the local authorities have misinterpreted the laws referred to, but in order to avoid any misunderstanding, I would state that while the right of Honduras to regulate its coastwise trade as it pleases is fully recognized, on the other hand it can in no way be admitted that foreign-owned vessels, engaged in commerce between Honduras and other countries, should be compelled to conform to the requirements of the laws, as interpreted by the local authorities, referred to. Such action would clearly be in contravention of international law and the provisions of the treaty of amity and commerce between Honduras and the United States.

I am this day telegraphing in the sense above indicated to the consular agent at Trujillo, but in order that there may be no serious regretable incidents in this connection, I would request your excellency's Government to kindly

confirm this understanding of the laws in question and to send telegraphic orders immediately, not only to Trujillo, but to all other ports of Honduras, for the instruction and guidance of the authorities whose duty it will be to enforce the new laws of navigation.

Accept, etc.,

PHILIP BROWN.

[Inclosure 2.]

Minister Brown to Consular Agent Glynn.

[Telegram.]

AMERICAN LEGATION,
Tegucigalpa, August 11, 1909.

Referring to your communication of July 27, would state that if the local authorities should attempt to interfere in any way with vessels of any size owned in the United States and engaged in commerce between Honduras and any other foreign country it would be considered as a breach of international law and in contravention of the treaty of amity and commerce between Honduras and the United States, and such action could only be considered as an insult to the American flag, which you will indignantly protest against and take all means in your power to secure protection for American rights. For your personal information I would state that the laws concerned refer evidently to foreigners domiciled in Honduras, and consequently that as all American citizens constructively retain their domicile in the United States, the law for no other reason could have no application to them. Moreover, as regards the tugboat *La Crosse*, article 24 of decree No. 112 expressly exempts boats employed in loading and unloading vessels from the requirements of this law.

File No. 21273/3.

The Acting Secretary of State to Minister Brown.

No. 59.] DEPARTMENT OF STATE,
Washington, September 7, 1909.

SIR: I have to acknowledge the receipt of your dispatch, No. 101, of the 12th ultimo, relative to the law recently enacted by the Government of Honduras declaring all vessels constructed in that Republic or owned by residents, either native or foreign, as Honduranean.

In reply I have to state that if the rather obscure provisions of the Honduranean decree be given the sweeping scope which the words, taken literally, might seem prima facie to indicate, the decree would appear to cover vessels holding an American or other foreign registry. If so interpreted, the decree would be clearly violative of the principles of international law and in derogation of the respect due American registry.

In the treaty with Honduras there are such explicit references to "their ships and cargoes," referring to "the subjects and citizens of the two countries, respectively," and to the reciprocal liberty of trading and to "vessels of the United States" and of Honduras, respectively, as are inconsistent with the view that Honduras can mean to place any such compulsion on our registered vessels trading there if not engaged in her coastwise trade. If, however, the decree be interpreted in the light of principles of international law and treaty referred to and its scope be so limited by construction as to make it apply only to vessels owned by Americans or other foreigners domiciled in Honduras which have no American or other foreign registry, it would seem to be within the international competence of Honduras to enact.

In your future communications with the Government of Honduras you will make your representations along the lines of the distinction above pointed out.

It may be added in passing that as regards the American tug *La Crosse*, referred to in the consul's dispatch to you of July 27, it is not only exempted from the provisions of the decree, as you point out in your telegram of August 11, inasmuch as it is employed in loading and unloading vessels, but it would appear to be likewise withdrawn from the scope of the decree, inasmuch as, as stated by the consul, it is "owned by parties in New Orleans" and would therefore appear not to be "for the service of individuals residing in the Republic." Finally, the *La Crosse* has an American registry, being registered as No 157363, with its home port at New Orleans, La., and is therefore withdrawn from the scope of the decree by the principles of international law already referred to.

I am, etc.,

ALVEY A. ADEE.

File No. 21274/19–24.

Minister Brown to the Secretary of State.

[Extract.]

No. 144.] AMERICAN LEGATION,
Tegucigalpa, October 6, 1909.

SIR: Referring to previous correspondence on the subject, I have the honor to submit herewith copies of further correspondence concerning the apparent intention of the Honduranean Government to enfarce to the letter its laws of navigation in the case of the schooner *George A. Lawry*, of New York, owned by Consular Agent Glynn at Trujillo.

I have, etc.,

PHILIP BROWN.

[Inclosure 1.]

Minister Brown to the Acting Minister for Foreign Affairs.

No. 53.] AMERICAN LEGATION,
Tegucigalpa, October 2, 1909.

SIR: Referring to the interview which I had the honor to have yesterday morning with His Excellency the President and to the discussion which arose concerning the interpretation and application of the navigation laws enacted by the last National Congress, I desire to point out in a friednly spirit certain phases of this subject which I believe were overlooked in the study of the matter.

In my note to the ministry for foreign affairs, dated August 11 last, I stated that—

> It is to be assumed that the local authorities have misinterpreted the laws referred to, but in order to avoid any misunderstanding I would state that while the right of Honduras to regulate its coastwise trade as it pleases is fully recognized, on the other hand, it can in no way be admitted that foreign-owned vessels engaged in commerce between Honduras and other countries should be compelled to conform to the requirements of the laws as interpreted by the local authorities referred to. Such action would be clearly in contravention of international law and the provisions of the treaty of amity and commerce between Honduras and the United States.

I am this day telegraphing in the above sense to the consular agent in Trujillo, but in order that there may be no serious, regrettable incidents in this connection, I would request your excellency's Government to kindly confirm this understanding of the laws in question and to send telegraphic orders immediately not only to Trujillo but to all other ports of Honduras for the instruction and guidance of the authorities whose duty it will be to enforce the new laws of navigation.

The minister for foreign affairs, his excellency Sr. Dr. done José Maria Ochoa V., in his courteous reply to the foregoing note, dated August 14, stated:

Complying with your excellency's wishes, my Government will issue the instructions directing the port authorities in regard to the application of the legislative decree before cited (No. 50), instructions which shall contain the interpretation given to the said law by the Executive.

In view of the friendly deference shown to my representations in this matter I felt confident that all possible danger of any misunderstanding concerning the application of the laws in question had been definitely removed. On the 7th of September, however, I received a telegram from the American consular agent at Trujillo stating that the commander of that port insisted that the American schooner *George A. Lawry*, of New York, should be nationalized in Honduras. I at once brought this incident to the attention of the minister for foreign affairs, who immediately assured me that orders had been sent to the authorities at Trujillo to in no way molest the ship in question, and furthermore on September 14 his excellency the minister again assured me that the incident complained of would not be permitted to occur again.

I must confess that it was with painful surprise that I subsequently learned that on the same date referred to, namely, September 14, His Excellency the President telegraphed to the commandante de armas at Trujillo as follows:

You may grant clearance to the American schooner *Lawry*, owned by Consul Glynn, but with a proviso inserted in the same instrument that the permission is given for this time only and that the said schooner shall not be allowed to navigate in Honduranean waters unless it be registered and nationalized in Honduras, for the reason that it belongs to a foreigner habitually residing in Trujillo, a Honduranean port, and in accordance with article 1 of the legislative decree No. 112, which you will communicate in writing to Mr. Glynn in order that he may have due notice thereof, advising him at the same time that the same information has been sent to the American minister.

For the information of the Honduranean Government, I would state that I am in receipt of instructions from my Government in this matter, stating that—

If the rather obscure provisions of the Honduranean decree be given the sweeping scope which the words, taken literally, might seem prima facie to indicate, the decree would appear to cover vessels holding an American or other foreign registry. If so interpreted, the decree would be clearly violative of the principles of international law and in derogation of the respect due American registry.

In the treaty with Honduras there are such explicit references to "their ships and cargoes," referring to the "subjects and citizens of the two countries, respectively," and to the reciprocal liberty of trading and to "the vessels of the United States and Honduras, respectively," as are inconsistent with the view that Honduras can mean to place any such compulsions on our registered vessels trading there, if not engaged in her coastwise trade. If, however, the decree be interpreted in the light of the principles of international law and treaty referred to and its scope so limited by construction as to make it apply only to vessels owned by Americans or other foreigners domiciled in Honduras which have no American or other foreign registry, it would seems to be within the international competence of Honduras to enact.

In view of all the facts and antecedents in this case, and in the belief that the Government of Honduras would not wittingly adopt any measures incompatible with the friendly relations existing with my Government, or would fail to comply with the assurances previously given in this connection, I venture to express the earnest hope that the proper orders will be issued without delay to the commandantes of the various ports to the effect that no obstacles shall be placed in the way of American vessels registered in the United States and engaged in commerce between ports of Honduras and other foreign ports.

Referring to the difficulties which President Davila stated the Government was encountering in suppressing contraband trade on the north coast of Honduras, I would state that it would give this legation great pleasure to receive suggestions as to any way in which it might be of possible assistance in this regard.

I avail, etc.,

PHILIP BROWN.

[Inclosure 2.—Translation.]

The Acting Minister for Foreign Affairs to Minister Brown.

MINISTRY FOR FOREIGN AFFAIRS,
Tegucigalpa, October 6, 1909.

MR. MINISTER: I have the honor to acknowledge to your excellency the receipt of your courteous note, dated the 2d instant, concerning the interpretation and application of the laws of navigation enacted by the National Congress in its last session.

Informing your excellency that as soon as I have duly studied the points to which it refers, I will reply thereto,

I have the pleasure of renewing, etc.,

JESUS BENDANA.

File No. 21274/25–31.

Minister Brown to the Secretary of State.

No. 151.] AMERICAN LEGATION,
Tegucigalpa, October 14, 1909.

SIR: In continuation of my No. 144, of the 6th instant, I have the honor to transmit herewith copies of further correspondence on the subject of the interpretation and application of the Honduranean laws of navigation in the specific instance of the schooner *George A. Lawry*, of New York, owned by Consular Agent Glynn, at Trujillo.

As set forth in the notes from the ministry for foreign affairs, dated the 9th and 14th instant, respectively, replying to the legation's notes on this subject, the question at issue would now seem to be satisfactorily and definitely settled, and that there will be no further difficulties encountered by American vessels owned by American citizens temporarily residing in Honduras.

I have, etc.,

PHILIP BROWN.

[Inclosure 1.—Translation.]

The Acting Minister for Foreign Affairs to Minister Brown.

MINISTRY FOR FOREIGN AFFAIRS,
Tegucigalpa, October 9, 1909.

MR. MINISTER: I have had the honor to receive, as I advised your excellency on the 6th ultimo, your courteous communication, dated the 2d instant, relative to the difficulties which have arisen concerning the new navigation laws contained in decrees Nos. 50 and 112, to which note, and with instructions from the President of the Republic, I have the honor to reply as follows:

Your excellency begins by alluding to the interview which you had on the 1st instant with the President of the Republic concerning the interpretation and application which should be given to the navigation laws enacted by the last National Congress in its last session, and reproducing a part of your excellency's note of August 11 last, addressed to this chancellery, in which you state that it is to be presumed that the local authorities have misinterpreted the laws referred to, and, in order to avoid any misunderstanding, you state that it can not be admitted that foreign-owned vessels engaged in commerce between Honduras and other countries should be obliged to conform to the requirements of the laws as interpreted by the said authorities; and your excellency adds that on the same date you telegraphed in this sense to the consular agent at Trujillo, and in order that there may be no serious painful incidents in this matter you request my Government to confirm this comprehension of the laws in question, and to send immediate telegraphic orders, not only to Trujillo but to all the ports

of Honduras, for the instruction and guidance of the authorities whose duty it will be to enforce the new laws of navigation. Further, your excellency states that the minister for foreign affairs, Sr. Dr. don José Maria Ochoa V., in his reply, dated August 14, to the note referred to, stated:

In deference to the wishes of your excellency my Government will give appropriate instructions to the authorities of the ports concerning the application of the above-mentioned legislative decree; instructions will contain the interpretation of the said law.

You further stated that in view of the friendly deference shown to your representations in this matter you felt confident that all danger of possible misunderstanding concerning the application of the laws in question had been definitely removed; that, however, on the 7th of September you received a telegram from the American consular agent at Trujillo stating that the comandante of that port insisted that the schooner *George A. Lawry*, of New York, should be nationalized in Honduras; that you immediately brought this incident to the attention of the minister for foreign affairs, who at once assured your excellency that he had ordered the authorities at Trujillo to in no way molest the ship in question, and furthermore, on September 14, the minister again assured your excellency that the incident complained of would not be permitted to occur again; that your excellency subsequently learned with surprise that on September 15 the President of the Republic telegraphed to the comandante de armas at Trujillo that he might grant clearance to the schooner *Lawry*, belonging to Consul Glynn, but that he should state in the same clearance papers that the permission was granted for this time only, and that the said schooner could not navigate Honduranean waters until she should be nationalized or matriculated as Honduranean, in accordance with legislative decree No. 112; and that, for the instruction of my Government, your excellency had received from your Government instructions which state. (Supra; instruction No. 59, Sept. 7, 1909.)

Your excellency concludes by stating that in view of the facts and antecedents in this case and in the belief that my Government will not wittingly adopt measures incompatible with the friendly relations which exist with the Government of your excellency, or would fail to comply with the assurances given, you have the hope that orders will be sent without delay to the comandantes of the ports to the effect that no obstacles shall be placed in the way of American vessels registered in the United States and engaged in commerce between ports of Honduras and other foreign ports; and referring to the difficulties which President Davila stated the Government was encountering in suppressing the contraband trade on the north coast of Honduras, that it would afford the American legation much pleasure if your excellency were to receive suggestions as to how it might aid in the suppression of this illicit commerce.

In reply I have the great honor to inform your excellency that Honduras has always been distinguished by its faithful observance of the treaties which it has signed with other countries; that it has succeeded and is now successful in maintaining the best of international relations, particularly in what concerns the United States of America, which form the principal market for the imports and exports of Honduras, and, which is still more important, has always used and continues to use their good offices in favor of the peace and welfare of these countries of the Isthmus.

The Government of Honduras has not had, either before or after the promulgation of decree No. 112, the intention of failing, in the slightest degree, to comply with the treaty of July 4, 1864, signed with the United States. Since the time of the conclusion of that international instrument, American vessels registered in the United States have touched periodically at ports of Honduras on the Atlantic, and my Government has never denied them free entry and exit in its waters.

However, the National Congress, in view of evasion of the customs duties which individuals of various nationalities commit upon our coasts with the aid of small vessels capable of escaping from the action of the marine police, issued decree No. 112, of which carticle 1 states in a clear, natural manner, without leaving room for doubts or interpretations, that—

All vessels constructed in the shipyards of the Republic or of foreign construction, for the service of individuals resident in the Republic, natives or foreigners, will be considered as Honduranean, and, therefore, can not fly any other flag.

In the only concrete case which has thus far arisen concerning "the ships and cargoes," the reciprocal liberty of commerce and "the ships of the United

States and of Honduras, respectively," it is first necessary to establish whether my Government failed, through this decree, in its fulfillment of the treaty, or whether it was Mr. Glynn who, acting in full knowledge, sought a means for evading the observance of a written law.

The National Congress had, of course, no intention to give to this decree an absolute effect, and if we examine one by one the articles which constitute it, neither in its essence nor in a literal reading can we deduce that congress sought to prevent the arrival and departure of registered vessels of any nationality whatever. The only thing which is observed in its provisions in the indication of the cases which may arise concerning the vessels which residents in the Republic, natives or foreigners, may have built for their own use in the shipyards of any nationality.

On the other hand, and in conformity with the provisions of international law, Mr. Glynn, from the moment of his arrival in this country, contracted the tacit duty of submitting to its laws, and had, from that time, to conform to the privileges and restrictions which they indicate. Thus it appears from article 1 of decree No. 112 that it is he who has failed to comply with the restrictive provisions of a law in force.

If my Government granted clearance to the schooner *George A. Lawry*, it was an act of pure courtesy, in deference to the friendly representations of your excellency, and not because it has, of itself, the right to derogate a law which emanates from a constitutional power of the State. The Executive finds itself in the presence of a law which it must respect in conformity with the political constitution of the Republic.

My Government laments the misunderstanding which has arisen through the case of the schooner *Lawry*, and I venture to express the hope that your excellency, in view of the laws of the Republic and of the good intentions of the Government of Honduras, may be convinced that this is not a failure to comply with an agreement or with international law; on the contrary, upon the assembling of the National Congress, I can assure your excellency that my Government will present for its consideration the difficulties which have been encountered in the application of the law referred to, in order that it may be modified if such action be deemed advisable. However, in the meantime, as my Government desires to give further proof of its deference to the friendly representations of your excellency, it is disposed to grant clearance to the schooner referred to each time that it may be requested in order to trade with foreign ports, but under no circumstances when it desires to engage in cabotage or comercio de escala in the minor ports.

Before concluding I will inform your excellency that my Government appreciates sincerely the courteous offer made by your legation to aid in the suppression of smuggling upon the coasts of Honduras, and will bear it well in mind, in order to avail itself of your valuable assistance in case of necessity.

I avail, etc.,

JESUS BENDANA.

[Inclosure 2.]

Minister Brown to the Acting Minister for Foreign Affairs.

No. 54.] AMERICAN LEGATION,
Tegucigalpa, October 12, 1909.

SIR: Referring to your courteous note of the 9th instant in reply to my note of the 6th, regarding the interpretation and application of the laws of navigation to American vessels, I would greatly appreciate the favor of an elucidation of the meaning of the expression used in the penultimate paragraph of your note, namely, "comercio de cabotage o ascala en puertos monores," referring to the permission which should be given to the schooner *Lawry* and to other boats of the same category.

If, by the term escala is conveyed the idea that the *Lawry* and other vessels of the same class would not be allowed to take on cargo at various Honduranean ports and, vice versa, to bring cargo from foreign ports for various Honduranean ports, I am sure you will appreciate that such a restriction, apart from the question of its legality, would have the practical result of driving the vessels in question out of business, a lamentable consequence which it would naturally be to the interest of the Honduranean Government to avoid.

Cabotage, or coastwise trade, would appear to refer definitely to commerce in merchandise, products of the country, etc., taken on at one home port and disembarked at another, and in no way impedes a foreign vessel from touching at various ports for the purpose of discharging cargo from foreign ports, and, in turn, from taking on cargoes at various home ports destined for foreign ports.

I therefore conclude that it could not be the intention of the Honduranean Government to seek to restrict American vessels from touching at more than one Honduranean port, but in order that there may be no possible misunderstanding on the subject I would ask you to be good enough to indicate if I have rightly understood the attitude of your Government in this respect.

I avail, etc.,

PHILIP BROWN.

[Inclosure 3.—Translation.]

The Minister for Foreign Affairs to Minister Brown.

MINISTRY FOR FOREIGN AFFAIRS,
Tegucigalpa, October 14, 1909.

Mr. MINISTER: Replying to your excellency's courteous note of yesterday's date, in which you were pleased to request an elucidation of the phrase employed in the penultimate paragraph of the note from this chancery dated the 9th instant, relative to the case of the schooner *Lawry*, "comercio de cabotage o escala puertos menores," it is a pleasure to inform you that in using the phrase above quoted it was not the intention of my Government to restrict the right which is conceded to foreign ships to take cargo on board in Honduranean ports or, vice versa, to bring cargo from foreign ports to those of Honduras, seeing that such an act would be prejudicial to the interests of the country; consequently your excellency's interpretation of this point is exact.

I avail, etc.,

JOSE MARIA OCHOA V.

File No. 21274/9–14.

The Acting Secretary of State to Minister Brown.

DEPARTMENT OF STATE,
Washington, October 16, 1909.

SIR: The department has received your dispatch No. 126, of the 15th ultimo, in which, referring to previous correspondence concerning the application of the Honduranean laws of navigation,[1] enacted by the last National Congress, you inclose copies of telegraphic correspondence between you and the consular agent at Trujillo in relation to the detention of the American schooner *George A. Lawry*, by the comandante of that port.

The schooner *George A. Lawry* is regularly registered as an American vessel, under the number 85944, signal letters KDNG.

While the vessel might, under general practice, take on cargo at two or more ports of a foreign country, that would not give a right to carry cargo between such ports if, as in the present case the law of Honduras (like that of the United States) prohibits foreign vessels from engaging in the coasting trade.

I am, etc.,

ALVEY A. ADEE.

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[1] Not printed.

File No. 21274/25–31.

The Secretary of State to Minister Brown.

No. 78.] DEPARTMENT OF STATE,
Washington, November 5, 1909.

SIR: The department is in receipt of your dispatch No. 151, of the 14th ultimo, inclosing, in continuation of your No. 144, of the 6th ultimo, a copy of further correspondence on the subject of the interpretation and application of the Honduranean law of navigation in the specific instance of the schooner *George A. Lawry*, of New York, owned by Mr. Glynn, the consular agent at Trujillo.

You express your belief that the question at issue would now seem to be satisfactorily and definitely settled, and that there will be no further difficulty encountered by American vessels owned by American citizens temporarily residing in Honduras.

Your treatment of the question is approved by the department. The unqualified acceptance by Minister Ochoa of your contention in regard to the right of "escala" should effectively dispose of the question and prevent its recurrence.

I am, etc.,

P. C. KNOX.

File No. 21274/34.

Minister Brown to the Secretary of State.

No. 186.] AMERICAN LEGATION,
Tegucigalpa, December 14, 1909.

SIR: Referring to my Nos. 144 and 151, of October 6 and 14 last, respectively, on the subject of the interpretation and application of the Honduranean laws of navigation in the specific instance of the schooner *George A. Lawry*, of New York, owned by Consular Agent Glynn, at Trujillo, I have the honor to state that President Davila, taking advantage of his extraordinary powers in the time of martial law, abrogated on the 7th instant the laws above mentioned, including those relating to coastwise trade, which now would appear to be under no restrictions whatever.

I have, etc.,

PHILIP BROWN.

DETENTION OF THE AMERICAN TUG PUERTO PERLAS BY HONDURAS.

File No. 22113/3–4.

The Acting Secretary of State to Minister Brown.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 1, 1909.

Mr. Wilson informs Minister Brown that the Perlas Banana Co. report that their tugboat was impressed by the revolutionists of Bluefields to carry a passenger to Puerto Barrios; that the tug had

to put into Puerto Cortes and was held by the Honduranean authorities there. Instructs him to investigate and take steps to restore vessel to its owners.

File No. 22113/7.

Minister Brown to the Secretary of State.

[Telegram.—Paraphrase.—Extract.]

AMERICAN LEGATION,
Tegucigalpa, November 1, 1909.

Minister Brown reports regarding a protest received at the legation from the representative of the Perlas Fruit Co., complaining against the detention by the Honduranean Government of the company's launch, which left Bluefields for Livingston flying the Nicaraguan flag and which was compelled to put into Puerto Cortes for coal. The Government of Honduras says the launch was sent for Nicaraguan revolutionists, although the ship's papers were regular. Mr. Brown adds that while it is true that a Nicaraguan revolutionist was a passenger on the launch, it would not appear that the Government could base its action on lawful grounds, especially as such action would be a violation of article 2 of the additional convention to the treaty of Washington. Asks instructions.

File No. 22113/6.

Minister Brown to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Tegucigalpa, November 4, 1909.

Says the Honduranean minister for foreign affairs informed him that the Perlas Co.'s launch would be released upon the written request of the legation, but later he was informed that it would be impossible for the Government of Honduras to release the launch, as it was being held at the request of the Government of Nicaragua. States that the only reason given for the refusal to release the vessel is that its possible use by revolutionists would be a violation of the treaty of Washington. Asks instructions.

File N. 22113/6.

The Secretary of State to Minister Brown.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 5, 1909.

Mr. Knox instructs Mr. Brown to insist upon the return of the Perlas Co.'s launch held by Honduras. Says the company has also protested to the Nicaraguan Government against the impressment of the launch by insurgents, and that the department has instructed

the consul at Bluefields to protest against any renewed interference with the business of the company, and such interference by Honduras is quite unjustifiable. Adds that he need not conceal from the Honduranean Government the fact that the attention of this Government has been called to reports from more than one quarter that Honduras is giving aid to the existing Government of Nicaragua against the revolutionists in violation of article 2 of the additional convention and in derogation of article 3 of the convention of Washington.

File No. 22113/6.

The Secretary of State to Minister Brown.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 6, 1909.

In re the detention by Honduras of the Perlas Co.'s launch, Mr. Knox instructs Mr. Brown to remind the minister for foreign affairs that the Government of the United States has upon occasion asserted and exercised the right to restore to the legitimate use of American owners vessels that had been impressed by revolutionists, even going so far, in the Colombian revolution of 1885, as the retaking by a warship of such a vessel on the seas. Mr. Knox expresses the hope, however, that this aspect of the question will not be presented for discussion.

File No. 22113/14A.

The Secretary of State to the Honduranean Minister.

DEPARTMENT OF STATE,
Washington, November 9, 1909.

MY DEAR MR. MINISTER: Referring to your interview of yesterday afternoon in which you requested that the controversy between this Government and that of Honduras be taken up in Washington instead of in Tegucigalpa, I beg to inform you that this Government regrets that it can not accede to the wishes of your Government in this matter.

The gasoline vessel *Perlas* is American built and was recently sent to Nicaragua, there to engage in ordinary and legitimate business. The vessel is the property of citizens of the United States.

It is reported to this department that she was recently pressed into service by the revolutionary forces at Bluefields and dispatched with a passenger for Puerto Barrios. On the way she was obliged to put into Puerto Cortes for fuel, where she has been detained by the authorities of the Honduranean Government.

The Government of the United States does not raise the question as to the right of Honduras to hold the passenger that this vessel was carrying at the time it put into Puerto Cortes, but insists that the detention of the vessel is without warrant or authority, and has demanded and will continue to demand its immediate release from the Honduranean authorities. The right to arrest the passenger does not carry with it the right to detain the vessel.

I am, etc.,

P. C. KNOX.

File No. 22113/15.

The Honduranean Minister to the Secretary of State.

[Translation.]

LEGATION OF HONDURAS,
Washington, November 11, 1909.

MY DEAR MR. SECRETARY: It affords me genuine pleasure to have the honor to inform your excellency that upon my forwarding to my Government the contents of your memorandum of the 9th instant in which you declared that in asking that the Government of Honduras turn the vessel *Perlas* over to the American consul the department had no other object than to avoid loss to its owners, who are American citizens, and in no way intended to look into the motives which may have led the Government of Honduras to hold as a prisoner the passenger who was on the said vessel, the minister of foreign relations replied under date of yesterday as follows:

In compliance with department's wishes the release of the small steamer has been ordered. Make it known.

OCHOA.

I gladly avail myself, etc.,

LUIS LAZO A.

File No. 22113/15.

The Acting Secretary of State to Minister Brown.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 11, 1909.

Mr. Wilson informs Mr. Brown that the department has been informed by the minister of Honduras at Washington that the launch of the Perlas Co., held by Honduras, has been ordered released.

File No. 22112/15.

The Secretary of State to the Honduranean Minister.

DEPARTMENT OF STATE,
Washington, November 12, 1909.

MY DEAR MR. MINISTER: I have received with gratification your personal note of the 11th instant, in which you quote a telegram to you from your Government informing you that in compliance with the department's wishes it had ordered the release of the tugboat *Perlas*.

In view of the fact that the Government of Honduras has so scrupulously observed the convention in the case of one of the Nicaraguan revolutionists found within its territory, the Government of the United States can not but join with the Governments signatory to the Washington conventions, which support those conventions, in looking to the Government of Honduras to be equally

scrupulous in preserving an absolute neutrality with respect to both the parties now contending for supremacy in Nicaragua.

I am, etc.,

P. C. KNOX.

FIRST CENTRAL AMERICAN CONFERENCE.

TEGUCIGALPA, JANUARY 1–20, 1909.[1]

File No. 6775/622.

The Secretary of the First Central American Conference to the Secretary of State.

[Telegram—Translation.]

TEGUCIGALPA, *January 1, 1909.*

I have the high honor to inform your excellency that on this day, at 10 a. m., there was opened in this capital the First Central American Conference, in accordance with the provisions of the treaties of Washington, and that there were present thereat Messrs. General Don Enrique Ariz, delegate of Guatemala; Dr. Don Santiago I. Barberena, delegate of Salvador; Dr. Alberto A. Rodriguez, delegate of Honduras; Dr. Don Diego Robles, acting delegate of Costa Rica; and Don Horacio Aguirre Munoz, delegate of Nicaragua; and elections for president and secretary were instantly proceeded with, resulting in the choice of Sr. Dr. Don Santiago I. Berberena for the first office, and for the second of the undersigned, who, with assurances of distinguished consideration, has the pleasure of subscribing himself,

Your respectful servant,

H. AGUIRRE MUNOZ.

File No. 6775/619.

The Honduranean Minister for Foreign Affairs to the Secretary of State.

[Telegram—Translation.]

TEGUCIGALPA, *January 2, 1909.*

Respectfully greeting your excellency on this day, I have the honor to inform you of opening First Central American Conference this day.

E. CONSTANTINO FIALLOS.

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[1] See Foreign Relations, 1907, p. 708.

File No. 6775/619.

The Acting Secretary of State to the Honduranean Minister for Foreign Affairs.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 2, 1909.

Cordial greetings to your excellency and to the Central American Conference in opening session.

BACON.

File No. 6775/622.

The Secretary of State to the Secretary of the First Central American Conference.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 4, 1909.

Accept my greetings and good wishes for yourself and members of the conference.

ELIHU ROOT.

File No. 6775/626.

The Secretary of the First Central American Conference to the Secretary of State.

[Telegram—Translation.]

TEGUCIGALPA, *January 13, 1909.*

Delegates Tegucigalpa Conference thankfully acknowedge your excellency's good offices and take pleasure in announcing to you that they are continuing their labors.

AGUIRRE MUNOZ.

File No. 6775/625.

Minister Dodge to the Secretary of State.

[Telegram.]

AMERICAN LEGATION,
San Salvador, January 13, 1909.

First business meeting Central American Conference held 11th. Nicaraguan unable at present attend. Costa Rican secured a rule authorizing deliberative sessions of four members requiring five only for a vote. Discussions planned to last two weeks.

DODGE.

File No. 6775/636–637.

Chargé Gibson to the Secretary of State.

No. 11.] AMERICAN LEGATION,
Tegucigalpa, January 20, 1909.

SIR: I have the honor to report that the First Central American Conference adjourned this afternoon at 3 o'clock. Until this morning it was the intention of the delegates not to sign the convention until the 24th of this month. However, the Guatemalan delegate, supported by the Salvadorean delegate, urged the termination of the conference at an earlier date. Under these circumstances the convention was prepared rather hurriedly and signed this morning at 11 o'clock.

I inclose a copy of the convention.[1]

The entire work of this conference was preparatory and none of the projected arrangements will enter into operation until further action is taken by the five Republics and the Second Central American Conference, which is to meet in the city of San Salvador on January 1, 1910.

The delegates were not sufficiently informed concerning their laws and resources to discuss intelligently the questions of monetary union and customs union, and therefore the dispositions of the convention on these points are merely indicative of preparatory legislation, etc.

The convention establishes the metric system of weights and measures as the official system for the five Republics and indicates the steps to be taken to put it into operation.

The Costa Rican delegate presented a plan, embodied in Section VI of the convention, for the unification of the consular services of the Republics of Central America.

I have, etc.,

HUGH S. GIBSON.

File No. 6775/627.

Minister Dodge to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
San Salvador, January 20, 1909.

Mr. Dodge reports the closing of the Central American Conference on the afternoon of the 20th.

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[1] Not printed.

File No. 6775/628.

The Secretary of the First Central American Conference to the Secretary of State.

[Telegram—Translation.]

TEGUCIGALPA, *January 21, 1909.*

The First Central American Conference closed its session to-day after signing a convention which embodies decisions and recommendations relative to monetary system, weights and measures, customs, Central American international commerce by sea and by land, fiscal laws and unification of the consular service of Central America.

H. AGUIRRE MUNOZ.

File No. 6775/628.

The Secretary of State to the Secretary of the First Central American Conference.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 21, 1909.

I receive with much pleasure your telegram announcing the results reached by the First Central American Conference during the sessions which closed to-day. This evidence of the agreement of the representatives of the five Republics on measures of mutual benefit and common advantage is of happy augury for harmony and good will in Central America.

ELIHU ROOT.

ITALY.

SUPPLEMENTARY COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND ITALY.

Signed at Washington, March 2, 1909.
Proclaimed, April 24, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas His Majesty the King of Italy has entered into a supplementary reciprocal Commercial Agreement with the United States of America pursuant to and in accordance with the provisions of Section 3 of the Tariff Act of the United States approved July 24, 1897, which supplementary Commercial Agreement is, in the English and Italian texts, in the words and figures following, to wit:

The President of the United States of America and His Majesty the King of Italy, considering it appropriate to supplement by an Additional Agreement the Commercial Agreement signed between the two Governments at Washington, on February 8, 1900, have appointed as their plenipotentiaries, to wit:

The President of the United States of America, the Honorable Robert Bacon, Secretary of State of the United States; and

His Majesty the King of Italy, His Excellency the Baron Mayor des Planches, His Ambassador Extraordinary and Plenipotentiary at Washington,

Who, after an exchange of their respective full powers, found to be in due and proper form, have agreed upon the following Articles:

ARTICLE I.

It is agreed on the part of the United States, in accordance with the provisions of section 3 of the Tariff Act of the United States approved July 24, 1897, that the rates of duty heretofore imposed and collected, under the said Act, on Italian sparkling wines upon entering the United States, including the island of Porto Rico, shall be suspended during the continuance in force of this agreement, and, instead, the following duties shall be imposed and collected, to wit:

On all sparkling wines, in bottles containing not more than one quart and more than one pint, six dollars per dozen; containing not more than one pint each and more than one-half pint; three dollars per dozen; containing one-half pint each or less, one dollar and fifty cents per dozen; in bottles or other vessels containing more than one quart each, in addition to six dollars per dozen bottles on the quantities in excess of one quart, at the rate of one dollar and ninety cents per gallon.

ARTICLE II.

It is reciprocally agreed on the part of Italy, in consideration of the provisions of the foregoing Article, that during the term of this Additional Agreement the duty to be assessed and collected on mowers and tedders, included in item No. 240, paragraph "f," of the Customs Tariff of Italy, products of the industry of the United States, imported into Italy, shall not exceed the rate of four lire per one hundred kilograms.

ARTICLE III.

When official notification of His Majesty's ratification shall have been given to the Government of the United States, the President of the United States shall publish his proclamation, giving full effect to the provisions contained in Article I of this Agreement. From and after the date of such proclamation this Agreement shall be in full force and effect, and shall continue in force until the expiration of one year from the time when either of the High Contracting Parties shall have given notice to the other of its intention to terminate the same.

In witness whereof we, the respective Plenipotentiaries, have signed this Agreement, in duplicate, in the English and Italian texts, and have affixed hereunto our respective seals.

Done at Washington, this second day of March, A. D. one thousand nine hundred and nine.

ROBERT BACON [SEAL]
E. MAYOR DES PLANCHES. [SEAL]

And whereas the said Supplementary Commercial Agreement was duly ratified on the part of His Majesty the King of Italy on April 15, 1909, official notice whereof has been received by the President,

Now, Therefore, be it known that I, William Howard Taft, President of the United States of America, acting under the authority conferred by said Act of Congress, do hereby suspend during the continuance in force of said Supplementary Commercial Agreement the imposition and collection of the duties mentioned in the first section of said Act and heretofore collected upon the specified articles of Italian origin as described in said Supplementary Commercial Agreement, and do declare in place thereof the rates of duty provided in the third section of said Act as recited in said Supplementary Commercial Agreement to be in full force and effect from and after the date of this Proclamation, of which the officers and citizens of the United States will take due notice.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-fourth day of April in the year of our Lord one thousand nine hundred and [SEAL] nine, and of the Independence of the United States of America the one hundred and thirty-third.

WM H TAFT

By the President:
HUNTINGTON WILSON
Acting Secretary of State.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND ITALY.

Signed at Washington, March 28, 1908.
Ratification advised by the Senate, April 2, 1908.
Ratified by the President, June 19, 1908.
Ratified by Italy, June 19, 1908.
Ratifications exchanged at Washington, January 22, 1909.
Proclaimed, January 25, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention between the United States of America and the Kingdom of Italy, providing for the submission to arbitration of all questions of a legal nature, or relating to the interpretation of treaties, which may arise between the two countries and which it may not have been possible to settle by diplomacy, was concluded and signed by their respective Plenipotentiaries at Washington, on the twenty-eighth day of March, one thousand nine hundred and eight, the original of which Convention, being in the English and Italian languages, is word for word as follows:

The Government of the United States of America and the Government of His Majesty the King of Italy, signatories of the Convention for the pacific settlement of international disputes, concluded at The Hague on the 29th July, 1899;

Taking into consideration that by Article XIX of that Convention the High Contracting Parties have reserved to themselves the right of concluding agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment;

Have authorized the Undersigned to conclude the following Convention:

ARTICLE I.

Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of either of the two Contracting States, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States, by and with the advice and consent of the Senate thereof.

ARTICLE III.

The present Convention is concluded for a period of five years, dating from the day of the exchange of its ratifications.

ARTICLE IV.

The present Convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the Government of His Majesty the King of Italy in accordance with its constitution and laws. The ratifications shall be exchanged at Washington as soon as possible, and the Convention shall take effect on the date of the exchange of its ratifications.

Done in duplicate at the City of Washington in the English and Italian languages, this twenty-eighth day of March, in the year 1908.

ELIHU ROOT [SEAL]
MAYOR [SEAL]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington on the twenty-second day of January, one thousand nine hundred and nine;

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-fifth day of January in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States of America the one hundred and thirty-third.

[SEAL] THEODORE ROOSEVELT

By the President:
ELIHU ROOT
Secretary of State.

ALLEGED DISCRIMINATION AGAINST ITALIAN SUBJECTS BY CITY COUNCIL OF RICHMOND, VA.

File No. 14654.

The Italian Ambassador to the Secretary of State.

[Translation.]

No. 2291.] ITALIAN EMBASSY,
Manchester, Mass., July 14, 1908.

MR. SECRETARY OF STATE: An ordinance of the city council of Richmond, dated December 12, 1907, and which went into effect on February 1 following, prohibits, in articles 2 and 5, Italian subjects residing there, and not naturalized Americans, and therefore not

legal voters of the State of Virginia, from selling or dispensing alcoholic liquors in said city, under penalty of a fine from $100 to $500 for every violation, as well as forfeiture of their license. Practically the ordinance in question forbids Italians engaging in the occupation of bartender and, perhaps, bar waiter.

As this prohibition appears to be contrary to the provisions of Articles II and III of the treaty of February 26, 1871, I take the liberty of calling the attention of the Federal Government to the matter. And since this ordinance is the subject of a protest on the part of the industrious and prosperous Italian colony of Richmond, I beg of Your Excellency to enable me to assure my countrymen there that the rights accruing to them from the treaty in question, as well as from the American Constitution, which makes this matter a supreme law of the country, are and will be duly respected.

I avail, etc.,

MAYOR.

File No. 14654.

The Acting Secretary of State to the Italian Ambassador.

No. 668.] DEPARTMENT OF STATE,
Washington, August 18, 1908.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 14th ultimo in regard to an ordinance said to have been enacted by the city council of Richmond, Va., prohibiting Italian subjects from selling or dispensing alcoholic liquors in Richmond. You add that the ordinance appears to be contrary to the provisions of Articles II and III of the treaty of February 26, 1871, between the United States and Italy.

In reply I beg to say that the matter is receiving the attentive consideration of the department, though, in any event, the questions involved are susceptible of judicial determination.

Accept, etc.,

ALVEY A. ADEE.

File No. 14654/1–4.

The Secretary of State to the Italian Ambassador.

No. 815.] DEPARTMENT OF STATE,
Washington, December 7, 1909.

EXCELLENCY: Referring to your note of July 14, 1908, and department's reply of August 18 of the same year, I have the honor to say that the important questions of treaty right raised by your note have received the very careful consideration of the department.

The governor of Virginia has furnished the department with a copy of the legislation of the State of Virginia and the city of Richmond in question, from which it appears that an ordinance of the council of the city of Richmond (Virginia), approved December 12, 1907, "to prescribe the number and location of the places where the sale of ardent spirits may be licensed, and to control and regulate the granting of licenses for the conducting of such business," which ordinance is thought by you to contravene the provisions of articles

2 and 3 of the treaty of February 26, 1871, between the United States and Italy, provides that—

> 2. No person so licensed [to sell liquor in the city of Richmond] shall allow any woman or minor or any other person who is not a legal voter of the State of Virginia to sell or otherwise dispense ardent spirits or malt liquors at their place of business.
>
> 3. No person shall be granted a license to conduct a place where ardent spirits and malt liquors, or either of them, are sold, unless it shall be affirmatively shown to the judge of the court hearing the application that the applicant is a registered voter in the city of Richmond and is a person of good moral character and of good reputation in the community in which he resides.

Furthermore, article 8 of the act of the General Assembly of Virginia, approved March 12, 1908, "to define and regulate the sale, distribution, rectifying, manufacture, and distilling of intoxicating liquors and malt beverages" in the State of Virginia, provides that—

> No license for sale of ardent spirits shall be granted for such sale in any territory wherein such license is prohibited by law, nor shall such license for such sale be granted except as follows:
>
> * * * No license to retail ardent spirits shall be granted to any person except such person is a qualified voter of the county or city in which the business is to be conducted, * * * and nothing in this section shall be construed to prohibit the granting of license to manufacturers of ardent spirits who mash 20 bushels or more per day. Nor to the manufacturers of alcoholic liquors by direct fermentation who distill as much as 200 gallons of pomace or cider per day when in operation and licensed for the period of one year.

After a careful examination of the provisions of this legislation, the department is not convinced that the act or ordinance in question is violative of the treaty provisions referred to, inasmuch as they appear to be mere police regulations requiring, in the interest of public order, that persons engaged in the business of selling or dispensing alcoholic liquors in the State of Virginia and the city of Richmond should possess certain qualifications. It will be observed that the ordinance and act are not aimed expressly at Italian subjects in particular nor at aliens in general, but that their provisions exclude from the calling in question not only all persons not citizens of the United States, but all citizens of the United States not citizens of the State of Virginia, and also all citizens of the State of Virginia who are not qualified voters in the county or city in which the business is to be conducted, as provided in the act of the Virginia Legislature, or qualified voters of the city of Richmond, as provided by the ordinance of the city of Richmond.

It would appear, therefore, that while an incidental effect of the act and ordinance in question is to exclude Italian subjects from the occupation in question, they are excluded not as such but as persons who, in common with citizens of the United States in general, including the majority of the citizens of Virginia, are not qualified voters of the State of Virginia or of the city of Richmond.

In this connection reference is made to the case of Cantini et al. *v.* Tillman et al., 1893 (54 Fed. Rep., 969), in which the circuit court of the United States for the fourth circuit upheld the validity of an act of the Legislature of South Carolina which provided that intoxicating liquors should be sold in South Carolina only by county dispensers, who were required to be citizens of the United States and of South Carolina. In this case the complainants appear to have been Italian subjects and to have drawn the attention of the court

to the provisions of the treaty of 1871. The important question of treaty construction involved, however, does not appear ever to have been passed upon by the Supreme Court of the United States. If the Italian Government or any of its subjects are dissatisfied with the construction which the United States circuit court for the fourth circuit has placed upon the treaty provision in question, appropriate proceedings might be begun and taken by appeal to the Supreme Court of the United States, in order to secure the opinion of the court of last resort upon the important questions involved.

Accept, Excellency, renewed assurances of my highest consideration.

For Mr. Knox: HUNTINGTON WILSON,
Assistant Secretary of State.

TERMINATION OF COMMERCIAL AGREEMENTS BETWEEN THE UNITED STATES AND ITALY.

File No. 17404/9A.

The Acting Secretary of State to the Italian Ambassador.

DEPARTMENT OF STATE,
Washington, April 30, 1909.

EXCELLENCY: The Congress of the United States has effectively declared its intention to supersede the present customs tariff law of the United States by a new law, which is now under discussion, and which will probably be enacted within a few weeks.

One of the necessary results of this change will be that the commercial agreements made by the President under the authority of the act of July 24, 1897, will no longer be applicable to the conditions which will exist under the new law. The Government of the United States accordingly finds it necessary to give notice of the intention to terminate all of these agreements.

By direction of the President, I have therefore the honor to give, through your excellency, to the Government of Italy formal notice on behalf of the United States of the intended termination of the two commercial agreements signed, respectively, on February 8, 1900, and March 2, 1909. Further communication on this subject will be made after the passage of legislative measures affecting the bases on which these agreements were concluded.

Accept, etc.,

HUNTINGTON WILSON.

File No. 5727/272A.

The Acting Secretary of State to Ambassador Leishman.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 30, 1909.

For your information and for immediate communication to the Italian Government, I quote following letter of notification addressed to-day to the Italian ambassador here.[1]

WILSON.

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[1] Supra.

File No. 17404/15b.

The Secretary of State to the Italian Chargé.

DEPARTMENT OF STATE,
Washington, August 7, 1909.

SIR: Referring to the department's note to your embassy, dated April 30, 1909, relative to the termination of the existing commercial agreements between the United States and Italy, and stating that a further communication on this subject would be made after the passage of legislative measures affecting the bases on which those agreements were concluded, I have now the honor to inform you that the new tariff law, approved August 5, 1909, contains the following provisions respecting the commercial agreements of the United States:

That the President shall have power and it shall be his duty to give notice, within ten days after the passage of this act, to all foreign countries with which commercial agreements in conformity with the authority granted by section three of the act entitled "An act to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, have been or shall have been entered into, of the intentions of the United States to terminate such agreements at a time specified in such notice, which time shall in no case, except as hereinafter provided, be longer than the period of time specified in such agreements, respectively, for notice for their termination; and upon the expiration of the periods when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importations from said countries shall be subject to no other conditions or rates of duty than those prescribed by this act and such other acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall have become effective, or until such date prior thereto as the high contracting parties by mutual consent select, the terms of said commercial agreements shall remain in force: *And provided further*, That in the case of those commercial agreements or arrangements made in accordance with the provisions of section three of the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, which contain no stipulations in regard to their termination by diplomatic action, the President is authorized to give to the Governments concerned a notice of termination of six months, which notice shall date from April thirtieth, nineteen hundred and nine.

By the President's direction, in pursuance of the above-quoted provisions of law, I have the honor hereby to give through you to the Government of Italy formal notice on behalf of the United States of the intended termination of the commercial agreements signed at Washington on February 8, 1901, and on March 2, 1909, respectively, to take effect one year from the present date, namely, August 7, 1910, when the said agreements shall cease to be in force.

Accept, etc.,

P. C. KNOX.

ALLEGED DISCRIMINATION AGAINST ITALIAN SUBJECTS BY COURTS OF PENNSYLVANIA.

File No. 18253/13.

Memorandum from the Italian Embassy.

ITALIAN EMBASSY,
Washington, October 25, 1909.

Carmine Maiorano, an Italian subject, was killed on the night of December 23, 1903, in a railway collision at Laurel Run, near Connellsville, Pa.

The widow, Maria Giuseppa Raffaella Maiorano, in her own name and in that of her two young children, brought suit for damages against the responsible Baltimore & Ohio Railroad Co.

The court dismissed the case on the strength of the "Pennsylvania fatal-accident act," on the ground that the plaintiff was a "nonresident alien." The supreme court of the said State of Pennsylvania, to which appeal was taken, affirmed the judgment of the lower court.

The United States Supreme Court, to which the widow Maiorano had recourse as "plaintiff in error," handed down a concurrent opinion.

It would result from this that in the State of Pennsylvania (and two other States, whose legislation is similar, Wisconsin and Washington) nonresident Italians are deprived of the right which, under like circumstances, would be held by Americans to institute proceedings for the recovery of damages on account of violence or negligence resulting in the death of spouse, parent, or child.

Now, that is a right which is expressly conferred upon them by the treaty of commerce and navigation of February 26, 1871, in article 23, reading as follows:

> The citizens of either party shall have free access to the courts of justice in order to maintain and defend their own rights, *without any other conditions, restrictions, or* taxes *than such as are imposed upon the natives.* They shall therefore be free to employ and support, etc.

Nothing can be more explicit than this text. Yet the judgments of the Pennsylvania courts, which the opinion of Justice Moody, of the United States Supreme Court, did not modify owing, perhaps, to his looking at only one side of the question, would create the following condition of fact: While an American may, in that State, sue for damages on account of death, that right is denied to Italians in contradiction of the equality between Italians and natives, which the treaty, in its letter as well as its spirit, establishes.

There is more. This condition of fact is contrary to the rules of reciprocity that are supreme in international law, since an American may, in the case under consideration, sue in Italy without any restriction whatsoever.

This, then, is a condition of things contrary to the express provision of article 23 of the treaty, contrary to the letter and spirit of the treaty itself, which, in articles 2 and 3, as well as in article 23, consecrates the principle of equal rights for Italians and Americans in the United States and in Italy; contrary to the principle of reciprocity which prevails in international intercourse. Nor is this all. It creates a condition of things which is repugnant to the very Con-

stitution of the United States; for while the Constitution, in Article VI, places treaties above the State laws and declares them to be the "supreme law of the land," adding that "the judges of every State shall be bound thereby," the law of the State of Pennsylvania would in the present case nullify one of the clauses of the treaty of February 26, 1871. In establishing a discrimination between resident and nonresident Italians, a discrimination which the treaty does not contemplate, establish, or, in its general spirit, allow.

For the foregoing reasons, drawn solely from the treaty in force and the principles of public law, and without bringing forth the other reasons of equity, logic, humanity, and practically universal civil consensus which might be advanced, the Italian embassy calls the best attention of the Department of State to a condition of affairs which, in the opinion of the King's Government, constitutes a violation of a treaty in force, and proposes an immediate exchange of views to the end of remedying, if possible, the injury done by the present violation, and, particularly and mainly, with a view to preventing by a modification of or addition to the terms of the treaty, clear and explicit as they are, the possibility of affirming a jurisprudence contrary thereto and of maintaining in the future a continuous and permanent denial of justice to the detriment of the Italians living in the United States.

File No. 18253.

Memorandum to the Italian Embassy.

DEPARTMENT OF STATE,
Washington, November 4, 1909.

The Department of State has the honor to acknowledge the memorandum regarding the death of Carmine Maiorano, handed by the Italian ambassador to the Assistant Secretary of State on October 26, 1909, and in reply calls attention to the fact that the decision of the Supreme Court of the United States violated neither the express wording nor the spirit of article 3 of the treaty of commerce and navigation of February 26, 1871, nor of article 23 of the same treaty, quoted by His Excellency. Articles 3 and 23 of the treaty are as follows:

ARTICLE 3. The citizens of each of the High Contracting parties shall receive, in the States and Territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives, on their submitting themselves to the conditions imposed upon the natives.

ARTICLE 23. The citizens of either party shall have free access to the Courts of Justice, in order to maintain and defend their own rights, without any other conditions, restrictions, or taxes than such as are imposed upon the natives; they shall, therefore, be free to employ, in defense of their rights, such advocates, solicitors, notaries, agents and factors, as they may judge proper, in all their trials at law, and such citizens or agents shall have free opportunity to be present at the decisions and sentences of the Tribunals in all cases which may concern them; and likewise at the taking of all examinations and evidences which may be exhibited in the said trials.

It will be noted that article 3 grants to the contracting parties "the same rights and privileges as are or shall be granted to the natives, *on their submitting themselves to the conditions imposed upon the*

natives." Article 23 likewise assimilates the Italian subject to native citizens of the United States "without any other conditions, restrictions, or taxes than *such as are imposed upon the natives.*" These passages seem to grant to Italian subjects the same rights as citizens of the United States, while subjecting them, as a necessary condition, to the limitations upon the exercise of rights which citizens of the United States enjoy. The law of Pennsylvania as interpreted by the Supreme Court of Pennsylvania, and as affirmed by the Supreme Court of the United States, draws a distinction between citizens of the United States actually residing within Pennsylvania and citizens of the United States not residing in Pennsylvania, permitting citizens of the United States actually residing within Pennsylvania to bring suits for damages resulting in the death of a relative, but denying to citizens of the United States not residing in Pennsylvania the right of recovery in such a case. As, therefore, citizens of the United States are subjected to residence for the enforcement of certain rights, it does not seem that Italian subjects can claim any greater rights than citizens of the United States, unless greater rights and privileges are expressly granted to them by treaty, and the wording of the treaty shows that Italian subjects are to enjoy no greater rights.

There seems to be no discrimination shown between citizens of the United States and Italian subjects, because the enjoyment of rights specifically granted by the treaty is made to depend upon compliance with the "conditions imposed upon the natives" (art. 3), and the "conditions, restrictions, or taxes, * * * imposed upon the natives." The most that international law requires in the absence of special treaty is equality of treatment.

The requirement of residence as a condition precedent to the enjoyment of rights and privileges is well recognized in American jurisprudence. (Corfield *v.* Coryele, 1825, Washington's Cir. C. Reps., p. 371.) The department, therefore, fails to note either discrimination or inequality in the recent decision of the Supreme Court of the United States, to which exception is taken by His Excellency the Italian Ambassador.

USE OF THE AMERICAN FLAG FOR ADVERTISING PURPOSES.

File No. 697/48.

The Acting Secretary of State to Chargé Garrett.

No. 10.] DEPARTMENT OF STATE,
Washington, August 18, 1909.

SIR: I inclose a copy of a dispatch from the American consul at Catania, reporting the use of the flag of the United States as a sign for saloons and bars in Messina, Catania, and other Italian cities.

You will inquire whether the Italian law controls the display of foreign flags, or whether there are any other means which could be employed to prevent this abuse of our national emblem.

I am, etc.,

ALVEY A. ADEE.

Consul Lupton to the Assistant Secretary of State.

No. 37.] AMERICAN CONSULATE,
Catania, Italy, July 19, 1909.

SIR: I have the honor to report that I have seen, both in Messina and Catania, as well as in other cities outside this consular district, the American flag used as a sign for saloons and bars, and should be glad if the department would authorize me to use such measures as may be possible to put a stop to this practice. I have tried in one instance to stop it, merely as a citizen of the United States, but without avail, but am certain that it could be done with the help of the Italian authorities.

I have, etc.,

STUART K. LUPTON.

File No. 697/60.

Chargé Garrett to the Secretary of State.

No. 70.] AMERICAN EMBASSY,
Rome, November 1, 1909.

SIR: With reference to Mr. Adee's instruction No. 10 (file No. 697/48) of August 18 last, in regard to the display of American flags in front of various saloons and bars in Messina, Catania, and other Italian cities, I have the honor to inform you that I immediately addressed a note to the foreign office calling its attention to this matter and asking if the Italian law controlled the display of foreign flags or if there were any other means which could be employed to prevent this abuse of the American national emblem.

I am now in receipt of a note from the foreign office, a copy of which, together with a translation thereof is herewith inclosed, in reply to my note, stating that the Italian law has no control over the hoisting of foreign flags in Italy, but that the several shopkeepers at Messina who have flown American flags in front of their respective places of business have been requested to withdraw them, and this is expected to be the desired remedy.

I have, etc.,

JOHN W. GARRETT.

[Inclosure.—Translation.]

Promemoria.

No. 3.] MINISTRY FOR FOREIGN AFFAIRS,
Rome, October 28, 1909.

With reference to the memorandum handed by the chargé d'affaires of the United States on the 8th September, the royal ministry for foreign affairs has the honor to inform that no internal provision exists in reference with the use and the exposition of foreign flags by private citizens.

From the investigation made by the competent authorities, it appears that at Messina three shopkeepers have hoisted the American flag outside of their shops, and that at Catania, in a shop situated just opposite the residence of the vice consul of the United States, the American flag, together with the national flag, has been hoisted on the occasion of solemn festivities.

However, in view of the unfavorable impression which the authorities of the United States have received from these facts, the above-mentioned shopkeepers have been invited not to expose in the future the American flag, so that the inconvenience may be considered as having been removed.

JAPAN.

EXTRATERRITORIALITY IN THE LEASED TERRITORY OF KWANGTUNG PROVINCE.

File No. 560/48.

Ambassador O'Brien to the Secretary of State.

No. 872.] AMERICAN EMBASSY,
Tokyo, November 22, 1909.

SIR: I have the honor to inclose herewith a copy of a letter from Mr. Williamson, vice consul in charge at Dalny, in which he requests to be informed as to whether the United States enjoys extraterritorial rights in the leased territory of Kwangtung. I inclose for the information of the department and for any comment that it may care to make, a copy of my reply to Mr. Williamson, in which I inform him that the United States no longer exercises such jurisdiction in his district.

I have, etc.,

T. J. O'BRIEN.

[Inclosure.]

Ambassador O'Brien to Vice Consul Williamson.

No. 1209.] AMERICAN EMBASSY,
Tokyo, November 22, 1909.

SIR: I have the honor to acknowledge the receipt of your dispatch No. 1070 of November 16, 1909,[1] in which you request to be informed as to whether the United States enjoys extraterritorial jurisdiction over its citizens in the leased district of Kwangtung, and, further, you desire to know the circumstances under which it was lost, if it is no longer exercised.

During the years 1897 and 1898 China leased portions of her territory to Russia, England, and Germany.

You will find in the United States Foreign Relations, 1900, pages 382 to 390, that the Department of State, after investigation and correspondence with the legation at Peking, took the attitude in common with all the foreign powers represented at Peking, with the exception of Japan, that the leased territories had passed absolutely out of the control of China during the tenure of the lease.

American consuls in China in whose districts the leased areas had formerly been were therefore informed by the legation, by direction of the Secretary of State, that they should not exercise extraterritorial consular jurisdiction or perform any ordinary nonjudicial consular acts within the leased territory until exequaturs recognizing their official character had been obtained for them from the respective foreign Governments. It was not expected that these exequaturs would recognize the right to extraterritorial jurisdiction.

The Japanese Government, as stated above, refused to admit this principle in the territory leased by Russia. However, when Japan, in 1905, took over from Russia the leased territory it was especially provided by article 10 of the treaty of Portsmouth that Russian subjects in the territory should come under exclusive Japanese jurisdiction.

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[1] Not printed.

As the exequatur you now hold has been issued to you by the Japanese Government in accordance with the provisions of our treaty with Japan it would seem evident that it gives you no authority to extraterritorial jurisdiction over American citizens, the leased territory being to all intents and practical purposes a part of Japan proper. You will realize that the exequatur issued by the Japanese Government to our consul general in Korea is of a different nature, being issued by the Japanese Government on behalf of the Korean Government, of whose foreign affairs Japan has taken charge.

I am informed by the British and German embassies that they are also of the opinion that foreigners in the Kwantung Peninsula are exclusively under Japanese jurisdiction. I am further informed that this question having lately been brought to the attention of Sir Edward Grey in connection with a proposed trade-mark treaty, the British ambassador was informed that England did not exercise extraterritorial jurisdiction in the leased territory, and that your colleague at Dalny was so advised.

I am, etc.,

T. J. O'BRIEN.

File No. 560/48.

The Secretary of State to Ambassador O'Brien.

DEPARTMENT OF STATE,
Washington, December 29, 1909.

SIR: I have to acknowledge the receipt of your No. 872, of the 22d ultimo, inclosing a copy of the correspondence had between the embassy and the consulate at Dalny on the subject of extraterritoriality in the leased territory of Kwangtung Province.

The department has informed the consulate at Dalny that it approves your instruction on the subject.

I am, etc.,

P. C. KNOX.

ADMINISTRATION OF AFFAIRS IN KOREA.

Memorandum.[1]

IMPERIAL JAPANESE EMBASSY,
Washington.

(Dated the 12th July, 1909, signed by Viscount Sone, resident general in Korea, and Li Kwan Yo, Korean minister president.)

The Governments of Japan and Korea with a view to improve the administration of justice and prison in Korea, thereby assuring protection for persons and property of Korean subjects, as well as the subjects and citizens of foreign powers in Korea, and also to consolidate the basis of the Korean finance, have agreed upon the following stipulations:

ARTICLE 1.

Until the system of justice and prison in Korea shall have been recognized as complete, the Government of Korea delegates to the Government of Japan the administration of justice and prison.

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[1] Left at the department by the Japanese Ambassador on July 17, 1909.

ARTICLE 2.

The Government of Japan shall appoint the officers of the Japanese courts and prison in Korea from among Japanese and Korean subjects having the necessary qualifications for the posts.

ARTICLE 3.

Japanese courts in Korea shall apply Korean laws to Korean subjects except in cases specifically provided for in agreements or in laws and ordinances.

ARTICLE 4.

Korean local authorities and public functionaries shall according to their respective functions submit to control and direction of Japanese competent authorities in Korea and render assistance to those authorities in respect of administration of justice and prison.

ARTICLE 5.

The Government of Japan shall bear all expense connected with administration of justice and prison in Korea.

In witness whereof the undersigned, duly authorized by their respective Governments, have signed and sealed and exchanged the present memorandum drawn up in duplicate both in Japanese and Korean languages.

File No. 1166/452.

The Japanese Chargé to the Secretary of State.

No. 68.] IMPERIAL JAPANESE EMBASSY,
Washington, October 18, 1909.

SIR: Acting upon instructions of my Government I have the honor to make the following announcement in regard to the memorandum which was signed by the Japanese resident general in Korea and the Korean minister president on the 12th of July last, and a copy of which was communicated to you by Baron Takahira on the 17th of the same month.

The necessary arrangements having been completed for putting into force the order of things provided for in the memorandum between Japan and Korea, dated the 12th of July, 1909, the Imperial Japanese Government from and after the 1st of November next will undertake for and in place of the Korean Government the administration of justice and prisons in Korea. The new arrangement will not affect the jurisdiction reserved to the powers having treaties with Korea, but the Imperial Government hope and confidently believe that those powers will find in the reforms about to be inaugurated all the essential guaranties of good judicial administration.

Accept, etc.,

K. MATSUI.

File No. 1166/452.

The Acting Secretary of State to the Japanese Chargé.

DEPARTMENT OF STATE,
Washington, October 28, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 18th instant in which you convey the information that the arrangements provided for in the agreement between Japan and Korea, signed on July 12, last, by which Japanese courts are to administer justice in Korea to Korean subjects will become operative on November 1, next.

It is noted that the new arrangement will in nowise affect the jurisdiction reserved to the Powers having treaties with Korea.

Accept, etc.,

HUNTINGTON WILSON.

File No. 1166/455.

Ambassador O'Brien to the Secretary of State.

No. 858.] AMERICAN EMBASSY,
Tokyo, November 12, 1909.

SIR: Supplementing the embassy's dispatch No. 776 of July 27, 1909,[1] regarding the Japanese-Korean agreement of July 12 last, providing for the delegation of the administration of justice and prisons in Korea to the Government of Japan, I have the honor to transmit translations of imperial ordinances Nos. 235 to 244[1] promulgated in pursuance of that agreement on October 18, 1909, relating to the organization of the new judicature of the residency general. A summarized statement of the important features of the ordinances[1] is also inclosed for the department's reference.

The new judicial system of Korea went into force on the 1st instant. It superseded not only the native courts subject to the late Korean ministry of justice, but also the residents' tribunals established in June, 1906. (See embassy's dispatch No. 23, July 6, 1906.)[2]

The functions belonging to the minister of justice in Japan with reference to judicial and prison affairs are assumed under the reorganized system in Korea by the resident general. The administrative business of the new judicature is in charge of a department of justice, whose director acts subject to the control of the resident general. The constitution of the residency general courts appears to be identical with that of the courts in Japan, with one exception, namely, that appeals may be taken from a district court directly to the supreme court without going through a court of appeals.

The director of the department of justice, as probably also the other principal officials thereof, are to be Japanese subjects. The judges and public procurators are to consist of both Japanese and Korean subjects, but the latter discharge their functions only when, in a civil case, both the plaintiff and defendant are Korean subjects,

[1] Not printed.
[2] See Foreign Relations, 1906, p. 1036.

or, in a criminal case, when the accused is a Korean subject. The judicial police are to be composed entirely of Japanese subjects.

The residency general courts have jurisdiction over both Korean and Japanese subjects in both civil and criminal cases. Korean laws are applied to Korean subjects, unless specially provided to the contrary by law or ordinance, and Japanese laws to Japanese subjects. In civil cases between Korean subjects and "those who are not Korean subjects," however, Japanese laws are with certain exceptions applicable.

It is recalled in this connection that cases of infringement by American citizens of inventions, trade-marks, etc., in Korea, which since the conclusion of the treaty relating thereto have been under the jurisdiction of the residents' tribunals, commencing with the 1st instant become subject to trial by the new courts.

It is reported that the reorganized judiciary in Korea will involve the erection of new buildings for 1 supreme court, 3 appeal courts, 8 district courts, 103 local courts, and 1 prison, and will necessitate an outlay by the Japanese treasury of 3,500,000 yen.

I have, etc.,

T. J. O'BRIEN.

KONGO.

INVESTIGATION OF AFFAIRS IN THE KONGO.

[Continued from Foreign Relations, 1908, p. 537.]

The Secretary of State to the Belgian Minister.

DEPARTMENT OF STATE,
Washington, January 11, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 4th of November last,[1] transmitting a copy of the Moniteur Belge in which is published the law approving the treaty by which Belgium takes over the sovereignty of the Independent State of the Kongo, and stating the Belgian authorities in the colony will hereafter transact business with consular officers, to whom new exequaturs will be issued if their Governments so desire.

The Government of the United States has observed with much interest the progress of the negotiations looking to such a transfer, in the expectation that under the control of Belgium the condition of the natives might be beneficially improved and the engagements of the treaties to which the United States is a party, as well as the high aims set forth in the American memoranda of April 7 and 16, 1908, and declared in the Belgian replies thereto, might be fully realized.

The United States would also be gratified by the assurance that the Belgian Government will consider itself specifically bound to discharge the obligations assumed by the Independent State of the Kongo in the Brussels convention of July 2, 1890, an assurance which the expressions already made by the Government of Belgium in regard to its own course as a party to that convention leave no doubt is in entire accordance with the sentiments of that Government. Among the particular clauses of the Brussels convention which seem to the United States to be specially relevant to existing conditions in the Kongo region are the clauses of Article II, which include among the objects of the convention—

> To diminish intestine wars between tribes by means of arbitration; to initiate them in agricultural labor and in the industrial arts so as to increase their welfare; to raise them to civilization and bring about the extinction of barbarous customs, * * *
>
> To give aid and protection to commercial enterprises; to watch over their legality by especially controlling contracts for service with natives, and to prepare the way for the foundation of permanent centers of cultivation and of commercial settlements.

The United States has been forced to the conclusion that in several respects the system inaugurated by the Independent State of the

[1] See Foreign Relations, 1908, p. 587.

Kongo has in its practical operation worked out results inconsistent with these conventional obligations and calling for very substantial and even radical changes in order to attain conformity therewith. The operation of laws requiring the natives who have little or no money to pay taxes in labor appears to have resulted in reducing the natives in certain large portions of the territory of the Independent State of the Kongo to a condition closely approximating actual slavery. The granting of concessions to various private corporations and associations, giving to them exclusive rights of exploitation of very large tracts of territory, and the inclusion of a very great part of the remaining territory of the country in the domain declared to be owned in severalty, and described in various official acts as domaine privé, domaine public, domaine national, and domaine de la couronne, has the practical effect of excluding the greater part of the territory of the State from the possibility of purchase and of rendering nugatory the provisions of the declaration of 1884, under which the International Association of the Kongo granted "to foreigners settling in their territories the right to purchase, sell, or lease lands and buildings situated therein, establish commercial houses, and to there carry trade upon the sole condition that they shall obey the laws," and the similar provisions of the treaty of January 24, 1891, between the Independent State of the Kongo and the United States of America assuring to the citizens of the United States the right to freely exercise their industry or their business in the whole extent of the territories of the Independent State, and the right to erect there religious edifices and to organize and maintain missions and the provisions of the Brussels convention of July 2, 1890, imposing upon the Independent State of the Kongo the duty to prepare the way for the foundation of permanent stations of cultivation and of commercial settlements, and to protect the missions which were then or might thereafter be established. The effect of these dispositions of territory has been to withdraw from sale, and therefore from occupancy for the purposes described, the greater part of the area of the Independent State and prevent the exercise of the rights conferred by the conventional stipulations referred to.

The effect of the same preemption of territory has also been to withdraw from the natives in a great degree the enjoyment of those benefits which they formerly derived from their customary tribal rights over large tracts. In a country where there has been no ownership of land in severalty by the natives, but only communal ownership of rights over extensive tracts, to allot to the Government and its concessionnaires ownership in severalty to all the lands not already owned and held in severalty is in effect to deprive the natives of their rights to the soil, and this has been in a great measure the effect of the system which has been followed in the Independent State of the Kongo.

The Government of the United States is much gratified to know that since the American memoranda of April 7 and April 16, 1908, the Government of Belgium has expressed its purpose to extend the area of the lands to be assigned to the natives for their cultivation and traffic pursuant to the royal decree of June 3, 1906, and it confidently expects that the restoration of land to the natives will be

commensurate with the value of the communal rights of which they have been deprived hitherto, and will put the natives in a position by means of adequate provision out of their own territory to realize the benefits which were contemplated by the arrangement under which the title and control over the territory of the Independent State of the Kongo was vested in that State for the humanitarian purpose of improving the condition of the natives and securing to them the blessings of civilization.

It should always be remembered that the basis of the sovereignty of the Independent State of the Kongo over all its territory was in the treaties made by the native sovereigns who ceded the territory for the use and benefit of free states established and being established there under the care and supervision of the International Association, so that the very nature of the title forbids the destruction of the tribal rights upon which it rests without securing to the natives an enjoyment of their land which shall be a full and adequate equivalent for the tribal rights destroyed.

It may be timely to revert in this relation to the hope expressed in the American memorandum of April 16, 1908, that the Belgium Government may see its way clear to accept frankly and promptly the proposition to refer to arbitration all purely commercial and economic questions, as being a procedure entirely in accordance with the rapidly growing practice of civilized nations; and to the statement in the Belgian memorandum in reply, dated July 24, 1908, that the Belgian Government finds no difficulty in declaring that if, after annexation, it were invited to refer to the tribunal of The Hague, as a last resort, a difference arising from a divergence of appreciation in the interpretation of the treaties which bind the States of the Kongo, it would examine the proposition with special benevolence and be inspired by the broad views which guided it in the drafting of the arbitration treaties concluded by Belgium.

The scope of this declaration would, however, seem to be abridged by the considerations which follow it in the Belgian memorandum reply. These seem to limit the applicability of such eventual arbitration to questions under the collective act of Berlin; to require the joining in the arbitration of other powers holding possessions in the Kongo basin; and to advocate, in place of a recourse to arbitration, the attainment of a direct understanding for the settlement of disputes "in the commercial basin of the Kongo among all the powers holding territories in that region." It is not to be lost sight of that the United States has a direct commercial interest in the particular territory of the Independent State of the Kongo by reason of its treaty with that State of January 21, 1891, which, besides pledging specified rights of commerce and intercourse, gives to the United States, as well as to its citizens, the right to the treatment of the most-favored nation. This consideration may seem to have been overlooked in the Belgian memorandum reply, which, in conclusion, answers the expectation of the United States that, in virtue of its existing treaties, it will obtain all the privileges, commercial and otherwise, accorded in the Kongo to other nations by the statement that "when it annexes the possessions of the Independent State, Belgium will inherit its obligations as well as its rights; it will be able to fulfill all the engagements made with the United States by the declara-

tions of April 22, 1884." It would be gratifying to the United States to know that the last clause of the statement just quoted is not intended to confine the rights of the United States in the Independent State to the declarations of the Commercial Association which preceded the creation of the Kongo State as a sovereign power, but includes the conventional rights conferred upon the United States by the treaty concluded with the Independent State immediately after its recognition.

In the absence of a fuller understanding on all these points, I confine myself for the present to acknowledging your note of the 4th of November last and taking note of the announcement therein made.

Be pleased to accept, sir, the assurance of my high consideration.

ELIHU ROOT.

Ambassador Reid to the Secretary of State.

[Extract.]

No. 943.] AMERICAN EMBASSY,
London, June 16, 1909.

SIR: I have the honor to inclose herewith copy of a note from Sir Edward Grey to the Count de Lalaing, the Belgian minister in London, dated the 11th instant, and also copy of the reply of His Majesty's Government to the Belgium minister's memorandum of the 15th of March to which the same refers.

I also inclose copy of the Belgian minister's memorandum of the 15th of March.

I have, etc.,

WHITELAW REID.

[Inclosure 1.—Translation.]

Memorandum from the Belgian Minister, March 15, 1909.

In the memorandum which His Britannic Majesty's secretary of state for foreign affairs transmitted to the Count de Lalaing on the 14th November, 1908,[1] relative to the annexation of the Independent State of the Kongo by Belgium, the attention of the Belgian Government was called in the first place to a point upon which His Britannic Majesty's Government lay stress as one of the motives of their intervention in this question, viz, the proximity of the British possessions in Africa to the territory of the Independent State of the Kongo. In view of that proximity, His Britannic Majesty's Government appear anxious lest the manner in which the Independent State has been governed, and which in their eyes differs from that obtaining in neighboring countries, should injuriously affect the kindred tribes lving in British territory. They desire, therefore, to receive precise information as to the views and intentions of the new administration.

With a view to allaying the anxieties of His Majesty's Government, the Belgian Government can not do better than remind them that, during the past twenty-five years, no frontier incident has occurred between the Independent State and British possessions which could be ascribed to the administration of the territories bordering on those possessions. The danger apprehended by His Majesty's Government has not arisen during the whole existence of the Independent State and there is no reason to suppose that it will now arise under Belgian administration.

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[1] See "Africa No. 5 (1908):" [Cd. 4396], p. 170.

In addition to their right to secure the peace of their own borders, His Majesty's Government in their memorandum recall the declarations exchanged with the international association of the Kongo on the 16th December, 1884, in order to justify their demand that the transfer of sovereignty shall be accompanied by the introduction into the Kongo of a system of government which will correspond more nearly with the intentions of the signatories of those declarations; it is expressly stated that the international association was created for the purpose of promoting the civilization and commerce of Africa, and for other humane and benevolent purposes.

Is it not now really superfluous to prove how little foundation there is for the fears of His Majesty's Government? Is it necessary to repeat again that in taking the place in Africa of the Independent State, itself the outcome of the international association, Belgium has adopted all the declarations exchanged by the association with Great Britain, and that she will continue to carry out the civilizing and humane objects which the signatories of the 1884 arrangement had in view? Ample proof of this is forthcoming from the formal assurances given in the Belgium Parliament by members of the Government during the debates on the subject of the annexation of the Kongo State.

In statements made in public, as well as in former communications addressed to the British Government, the Belgian Government in the full exercise of their rights have confirmed their determination to insure the promotion of civilization in Africa while giving their attention at the same time to ameliorating the lot of the native population, and to safeguarding the interests bound up in the colony.

"Belgium," said the minister of the interior on the 2d July, 1908, in the Chamber, "will carry out without wavering and in a spirit of generosity her obligations under the Berlin act. She will be happy and proud to add this mission of civilization and this economic task to those other undertakings which for seventy-seven years past have gained for her the commendation of the powers. She will, however, act spontaneously, depending on her rights and determined to maintain her independence and her sovereignty."

These declarations were hopefully received by public opinion in Belgium; Parliament, on their side, clearly manifested a determination to uphold and support the cabinet in carrying out this great self-imposed undertaking. The value of obligations entered into by the Belgian Government with the nation at the time of the annexation can not be discussed or called in question. The British Government can surely be under no misapprehension as to this; their last memorandum, however, evinces some disappointment because no indication has, up to the present, been afforded as to the details of the changes which will be made, in order to improve existing conditions, nor as to the moment when such changes will be introduced.

To persist in putting forward such a request can scarcely be explained by a desire to be informed of the actual text of the amendments to be introduced into the laws and decrees in force at the present time, before such proposed amendments have been brought to the knowledge of the authorities in Belgium who will be called upon to consider them. How is it possible, in short, to ascribe to the British Government an intention to make the adoption of laws, which concern the colony and its internal administration, dependent upon a kind of preliminary approval of a foreign government?

On the other hand, scarcely four months have passed since the transfer of the Kongo administration to Belgium took place. The British Government, with their long colonial experience, will appreciate better than anybody else the inadequacy of such a short period for drawing up in their final form weighty resolutions on colonial matters, which can only be put forward after careful preparation, and with a due regard for the necessary intermediate stages.

The Belgian Chamber, during the discussion of the first colonial budget, realized that such a work could not be hastily completed, and that a government, conscious of its responsibilities, could not permit existing arrangements to be changed without having some alternatives ready to put in their place; anxiety, which would be reflected throughout the entire colony, would otherwise be aroused.

The unanimity with which on every occasion since the annexation of the Kongo the Belgian cabinet, Parliament, and all organs of public opinion have expressed themselves on the colonial question, is a proof of the lofty conception which Belgium has formed of the mission conferred upon her in Africa, as well as of her fixed determination to develop her colonial enterprise in

harmony with the interests of civilization and in conformity with her international obligations.

The Belgian Government will not fail to give effect to their intentions in the measures which, in the full enjoyment of their independence, they intend to draw up. The new administration have devoted their first efforts to the preparation of this work, and their activity has already been revealed in several practical measures.

The British memorandum goes on to examine three points which have already been dealt with in previous memoranda:

(*a*) The extension of the lands to be assigned to the natives for the purposes of trade and cultivation;

(*b*) The respect of the freedom of labor, as also of the right of the natives to dispose of the produce of the lands assigned to them;

(*c*) The question of arbitration as to the interpretation of the treaties which bind the Kongo State in matters of commerce.

As regards the first two points, the British Government take note with satisfaction of the intention expressed by the Belgian Government to give effect to the decree of the King-Sovereign of the 3d June, 1906, under which inquiries are to be instituted in the native villages with a view to determining the extent of land to be allotted to them. The British Government, however, do not consider such a measure adequate to help the natives in their traffic in the natural products of the soil, a point which, in their opinion, is essential.

They point out that the landmarks, which are said to be still in existence throughout the whole of the Kongo State, were formerly set up by the natives with the object of marking the area within which each tribe was at liberty to search for rubber, and they suggest that these landmarks might at once be utilized to determine the boundaries of the lands on which the natives would be free to trade in all natural products, and which they could cultivate for their own uses.

The Belgian Government are, it is true, aware that the presence of landmarks alluded to in the British memorandum has been noted in some few parts of the Kongo, but it is beyond question that the erection of such landmarks by the natives had no other object than to fix the political territorial limits of the tribes, and to put an end to the disputes which arose amongst natives owing allegiance to different chiefs.

In this way these landmarks may have provided useful indications when, in conformity with the decree of the 3d June, 1906, on the subject of native districts it was a question of fixing the extent of the territory over which the chiefs of the tribe should exercise authority; but their existence is of no interest from the point of view of a delimination of native lands.

While not desirous of insisting further on the objections to a measure, the practical realization of which would be impossible, owing to the fact that the existence of such marks has only been established in a very limited area of Kongolese territory, the Belgian Government feel compelled to observe that as the political territory of each tribe is coterminous with the territory of the neighboring tribe, the adoption of such a measure would have the effect of converting into common native property the whole extent of the Belgian Kongo.

Such a solution would not only be opposed to every principle of law—it would be in opposition to the actual state of affairs existing throughout the whole of equatorial Africa, and confirmed, notably in the British possessions in the conventional basin, by legislation applied to populations of the same race and in the same state of civilization as those of the Belgian Kongo.

The British Government has been good enough to indicate the methods employed by British colonial administrations for dealing with similar questions in British possessions. The Belgian Government, on their part, desire to recall the fact that in the Uganda Protectorate the division of territory into native lands and vacant lands is carried out by methods of delimitation analogous to those laid down in the Kongolese decree of 1906. They desire further to point out that in British East Africa, far from recognizing as common property all the political territory of the tribes, the administration has not granted to the native any right to real property for the reason that the native possesses no notion what the right to property means. As indicated in the report of the land commission which conducted operations in this coloney in 1904, the Government proclaimed themselves proprietors of all lands unprovided with a proprietary title, whether occupied or not. By the application of this principle the Government has been enabled to deal with certain tribes in the manner set forth in the memorandum.

The Belgian Government have held that the grant of lands to native communities should be governed by a consideration of existing circumstances, as well as of future requirements; that is to say, that in fixing the extent of lands granted to each tribe account should be taken of the number of individuals comprising the tribe, the methods of cultivation peculiar to primitive populations, and of the necessity of insuring as widely as possible the future development of the native communities. In carrying out the provisions of the decree of the 3d of June, 1906, the Belgian Government are acting in conformity with this principle, both in those parts which are being developed by private parties as well as in the national domain.

They are convinced that such principles applied in a manner identical with that adopted in other possessions in the conventional basin of the Kongo will provide a solution of the question of native lands in the Belgian Kongo more favorable to the interests of the natives than in the generality of colonies in equatorial Africa.

Other measures forming part of the system which is being studied by the colonial administration will result in the natives benefiting to a still greater extent from the development of the colony.

The latter portion of the British memorandum reverts to a request, already made by the cabinet of London to the Belgian Government, to be furnished with a formal assurance that the latter will not, if invited, refuse to submit to arbitration any divergence of views as to the meaning of articles of treaties which bind the Kongo State in regard to commercial questions. In view of the reasons advanced to justify a repetition of this request, the Belgian Government fear that they have not explained with sufficient clearness the conditions attached by them to their ultimate acceptance of this proposal.

The sympathy with which the Belgian Government regard a recourse to arbitration as a solution of international disputes is well known, but it appears to them impossible to admit that, amongst all the powers having possessions in the conventional basin of the Kongo, Belgium alone should enter into an engagement of such a general nature as to submit compulsorily to arbitration, whilst, for the other powers signatories of the Berlin act, arbitration, according to article 12 of that act, remains optional.

The Belgian Government find, however, no difficulty in repeating that if they were invited to refer in the last resort to The Hague tribunal a dispute arising from a divergence of views as to the interpretation of treaties binding the Kongo State they would examine any such proposal with the utmost good will, animated by the liberal views displayed in the preparation of the arbitration conventions concluded by Belgium, and reserving, as was explained in the memorandum of the 12th of July last, the sanction of Parliament as required by article 68 of the constitution.

In that event, however, they would be obliged to insure that the arbitration procedure should be in harmony with the application of article 84 of the convention drawn up at The Hague conference, of which they are one of the signatories. That article imposes on the parties to the dispute the obligation, when there is a question as to the interpretation of a treaty of which other powers are signatories, of informing in good time all powers who have signed such treaty. Each of these powers is entitled to intervene in the proceedings; if one or more avail themselves of the right, the interpretation given by the award is equally binding on them. Now, the Berlin act is a collective treaty. In order to avoid all the difficulties which might result from a different application of the clauses of this treaty in the various territories which go to make up the conventional basin of the Kongo, a result which, contrary to the spirit of the Berlin act, would set up differential treatment to the disadvantage of one of these territories, it follows that recourse to arbitration could only take place if the other powers having possessions in the conventional basin had consented beforehand to intervene in the proceedings or to accept for their possessions the interpretation given by the award.

The British memorandum makes no mention of this essential condition.

As regards the question of arbitration, the Belgian Government, on their side, must abide by their former reply, their attitude, and the reasons advanced in explanation of it, having been approved by Parliament at the time when the annexation of the Kongo was discussed. Even amongst speakers of the opposition the contention of the Government as regards the conditional acceptance of arbitration found many supporters who would not understand any departure from it now.

The Belgian Government in their memorandum of the 12th July [1] said that, in their opinion, there was a better method than arbitration for solving questions and disputes in the conventional basin of the Kongo, and that was a direct understanding between the powers having possessions in this region. The Belgian Government adhere to their belief that such a procedure would, despite the difficulty foreseen by England of obtaining the adhesion of the different States interested, have the immense advantage of insuring the general observance of the clauses of the Berlin act and their uniform interpretation.

The British memorandum expresses in conclusion the desire that equal facilities should be given in all parts of the Kongo territory to Christian missionaries of all denominations, and to their converts, for the prosecution of their work and the free exercise of their religion.

The putting up for sale of the domain lands was duly announced in the memorandum of the 12th July. The Belgian Government intend, however, to give facilities to religious missions for the acquisition of the land necessary for the prosecution of their missionary work, whilst not submitting such land to public adjudication, as provided by the present laws for the sale and lease of the domain lands.

Favorable consideration has therefore now been given to a series of demands formulated by Protestant missions. The decisions arrived at will be brought to the knowledge of those interested as soon as the necessary alterations entailed by them in the decree of the 3d June, 1906, have been made.

As regards the choice of sites thus granted, the colonial administration will endeavor to suit the convenience of the missions, reserving to themselves, of course, the right to decide in each case, according to the right of all governments, which lands can best be alienated so as to coincide with the general interests represented by the administration.

Whilst proclaiming by one of their first acts their desire to protect all religious undertakings without distinction of nationality or creed, the Belgian Government rely upon the missionaries of all Christian denominations considering it their duty to respect the laws and public authorities of the country, the hospitality of which they enjoy.

The Belgian Government are not insensible to the reference in the British memorandum to the traditional friendship which exists between the two nations. This friendship, to which they on their side attach as much importance as His Majesty's Government, encourages them to cherish the hope that the cabinet of London will understand that the explanations offered could not be more exact nor more detailed.

They also hope that it will be understood in England how painful it is for the Belgian people to see their intentions called in question after the innumerable proofs which have been given of their love of civilization and after the great progress which they have made and which has won for them a position of such respect. The Belgians are resolved to develop and to advance the great work accomplished by the founder of the Independent State, despite the slender means at his disposal. Neither in Africa nor in Europe will they fail in their duty, nor will they fall short of that which the civilized world expects of them.

To succeed in her colonial enterprise Belgium has need of an atmosphere of calm, of sympathy, and of confidence. At a time when she has assumed responsibilities, the gravity of which she fully realizes, she would welcome as an especially valuable encouragement an assurance that in the mind of the British Government her past history is a guaranty of her present loyal intentions.

BRUSSELS, *March 12, 1909.*

[Inclosure 2.]

Sir Edward Grey to Count de Lalaing.

FOREIGN OFFICE, *June 11, 1909.*

SIR: I have the honor to transmit to you herewith the reply of His Majesty's Government to the memorandum regarding the Kongo question which you were good enough to leave with me on the 15th March.

I have, etc.,

E. GREY.

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[1] See "Africa No. 4 (1908)," p. 152.

[Subinclosure.]

Aide mémoire.

His Majesty's Government have given their earnest consideration to the memorandum communicated to the secretary of state for foreign affairs by the Belgian minister on the 15th March, and especially to the observations there made on three of the principal points raised in their memorandum of the 4th November last. Those points were briefly (1) the extension of the territory reserved for the natives; (2) free labor and the right of the native to dispose of the produce of the soil; (3) arbitration.

With regard to the first point, His Majesty's Government feel bound to state that, in their opinion, the Belgian Government have been misinformed as to the nature and extent of the native boundary division; equally, they feel bound to state that they can admit no analogy between the method of assigning territory to the natives which has been adopted in the British protectorates and that adopted in the Kongo Free State.

Writer after writer of published works on this region has given copious evidence regarding the native boundaries, and His Majesty's present vice consul in the Katanga district, who has traveled across the whole country, states that they are "known and recognized to within a foot's breadth by the natives themselves," a fact which "is abundantly clear to anyone traveling through the country, and it is corroborated by older residents." In their memorandum of the 4th November His Majesty's Government referred, it is true, to landmarks erected at a comparatively recent date to prevent disputes as to the collection of rubber, but they did not thereby commit themselves to the opinion that this was the only evidence of the rights of the various tribes in particular districts. On the contrary, they are satisfied that the country is divided up to a much greater degree than the description in the Belgian note—"exceptionnellement en quelques endroits"—would imply, by perfectly well-defined boundaries indicating the extent of the tribal possessions. These boundaries sometimes follow natural features of the country and sometimes arbitrary lines, but they can always be ascertained.

His Majesty's Government do not suggest that in all cases these boundaries are still binding on the Belgian authorities. Tribes have in many cases shifted their quarters and emigrated to new districts, and the ravages of sickness and the results of the system of administration pursued by the authorities during the last 20 years have swept away altogether the population of some districts and greatly reduced that of others.

His Majesty's Government feel, however, that it would be undesirable to delay their recognition of the annexation of the Kongo by Belgium till an exact agreement has been reached on this question.

With regard to the second point, His Majesty's Government consider that the restriction or destruction of native rights has prevented those opportunities for trade in the produce of the soil which were expected to be available for British subjects under treaty, but they are much more concerned to see an end put to the system of forced labor and taxation in kind which accompanied the destruction of native rights. This question is one not of argument, but of fact. Under the previous government of the Kongo in large districts, if not in the greater part of the whole Kongo State, the forced labor exacted from men, and in many cases from women, amounted to nearly, if not quite, the whole time of an adult year after year. In the Kasai district, under the guise of trade, taxation in rubber was exacted in open defiance of the laws of the Kongo State. It was by such means that the greater part of the rubber exported from the Kongo was obtained. The export of rubber has not fallen off, and no reports have reached His Majesty's Government to show that the amount of forced labor and illegal or excessive taxation exacted from the natives have diminished.

In the Leopoldville district, for instance, the taxation has quite recently been increased, in the case of men, from 9 to 12 francs, which amounts to 40 per cent of the earnings of a government laborer, and in the case of women from 6 to 12 francs, and this although the poverty of the country is very marked and the people have barely sufficient food for their own needs. The Belgian Government officials discourage in every possible way payments in cash, and take the chikwangue which is offered as payment in kind at 6 centimes' worth of trade goods for a kilogram, while 25 centimes is being paid in the native market.

Again, a letter of the 10th December last described the visit of a Belgian official to the village of Mibenga, where, on the ground that the full tax had not been paid by the villagers, 26 men and boys, all of whom had paid their own share, were arrested, sent in chains carrying burdens a distance of 20 days' journey to a state station, and there kept in penal servitude for six weeks.

To this state of things, so amply described in the published reports of His Majesty's consuls, His Majesty's Government can not give recognition and they are sure that the Belgian Government desire to put an end to it; for it is, in fact, indistinguishable from slavery. They are anxious to recognize the Belgian Government of the Kongo, but they can not do so until it is clear that the abuses of taxation and forced labor, including the system carried out by the Kasai company, have ceased, and that the treatment of the natives in these respects has been assimilated to that which is found in other European colonies. Meanwhile British subjects are unable to enter the Kongo and to trade in the natural produce of the soil, and His Majesty's Government feel that they can not withhold their support should complaints reach them from British subjects who may be prevented from trading, owing to the fact that the natives are deprived of the rights to sell the natural produce of the soil.

Whether the application of the decree of the 3d June, 1906, will restore the freedom of trade, which His Majesty's Government believed to have been secured by the act of Berlin and the convention of 1884 between Great Britain and the Kongo, His Majesty's Government can not foresee. They have already had the honor to point out in the memorandum of the 4th November that a delimitation of the land to be assigned to a native village in accordance with the decree of 1906 will not by itself provide a sufficient remedy for existing conditions if it is based solely upon the extent of land required for purposes of cultivation, and takes no account of the extent of land to which the natives, unless they are to be deprived of all right to trade in the produce of the soil, are clearly entitled.

Any differences of opinion with regard to commercial rights under treaties His Majesty's Government would desire to refer to arbitration, but it is obvious that arbitration can not take place so long as one of the parties has not recognized the annexation of the Kongo State by Belgium.

His Majesty's Government anxiously await reports from the Kongo which will show that the Belgian Government have succeeded in stopping the system of forced labor which has hitherto prevailed, for His Majesty's Government are sure that the Belgian Government will agree that a system such as that described in British and American consular reports is indefensible.

Memorandum handed to the Secretary of State, June 26, 1909.

[Translation.]

BRUSSELS, *June 12, 1909.*

The Secretary of State of the United States addressed to the King's minister at Washington, on January 11 last, a note in which, on the occasion of the annexation of the Independent State by Belgium he reverts to the desiderata contained in the American memoranda of April 7 and 16, 1908.

The note transmitted by Baron Moncheur particularly expresses the Washington Cabinet's desire to receive the renewed assurance that Belgium will discharge the obligations assumed by the Independent State of the Kongo in the Brussels convention of July 2, 1890. It immediately adds that this assurance is, moreover, in perfect accord with the views of the Belgian Government, the expressions already made by it in regard to its own purpose as a power signatory to the Brussels convention leaving no doubt in that respect. The very conclusion drawn by the American Government from the previous clear and formal declarations of the Belgian Cabinet as to the fulfillment of the duties placed upon it by the aforesaid convention, seems

to make a repetition of those assurances unnecessary. Furthermore, the King's Government would not understand how they could be questioned.

Turning to the colonization system of the Kongo, the American note criticizes the rules governing the granting of concessions. It expresses the opinion that the granting of concessions to various private corporations and the inclusion of a part of the remaining territory into the domain of the State had the practical effect of excluding the greater part of the Kongo territory from the possibility of purchase and of hampering the execution of the provisions of the declaration of 1884 of the treaty of January 24, 1891, between the United States and the Kongo State and of the Brussels convention of July 2, 1890.

In reply to this assertion the King's Government confines itself to saying that it is about to offer for sale or lease on July 2 next, a certain number of state land tracts in the Kongo, intended for agricultural establishments or for Belgian and foreign commercial houses. These tenders, announced as early as February 16 last in the official bulletin of the colony, afford adequate evidence that there will be no scarcity of land for foreigners to purchase in the Kongo. This likewise applies to missionaries. Applications for land filed by six Protestant associations, viz, the Wescott brothers, the Kongo Babolo Mission, the Baptist Missionary Society, the Swedish Missionary Society, the American Baptist Missionary Union, and the Christian Foreign Missionary Society, have been admitted by the minister of colonies.

Moreover, the Belgian Government formally disputes the allegations that the existing land grants preclude its selling vacant lands within the granted regions to third parties. The right of the Government to sell within said regions tracts of land for the use of colonists, traders, or missionaries was asserted by the chief of the cabinet at the session of the Chamber of Representatives of July 2 last, the Government being at liberty to exercise that right as it sees fit.

The Washington Cabinet next sets forth its personal ideas concerning the property rights of the Kongo people. "In a country," says the American note, "where there has been no ownership of land in severalty by the natives, but only communal ownership of rights over extensive tracts, to allot to the Government and its concessionaires ownership in severalty to all the lands not already owned and held in severalty by the natives is in effect to deprive them of their rights to the soil."

The question of native ownership is not so simple as it appears to the American Government. It seems to confound the political territory of the tribes, that region over which their chiefs exercised their authority, with the land which is really owned by the members of the tribe jointly.

If it were claimed that the whole area of their political territory formed the communal property of the tribes, the whole of the Belgian Kongo would be turned into native property, since the political territory of each tribe adjoins that of its neighbor, and the colonial government would be denied the right to dispose of vacant lands, no matter how small in area. Such a claim would run counter to all legal principles, as well as to the actual conditions existing in equatorial Africa.

A few lines further on the American note ascribes the basis of the former Independent State and the foundation for the authority it exercised to the treaties made by the International African Association with the natives Those very treaties recognize the association's right to dispose of unoccupied land.

But it is necessary to revert to the above-quoted passage and note the sentence which reflects the opinion of the Government of the United States respecting the ownership rights of the natives. "To allot to the Government and its concessionaires ownership in severalty to all the lands not already owned and held in severalty by the natives is in effect to deprive them of their rights to the soil." In expressing this sentiment the American note takes no account whatever of the constituent legislation governing the land system of the Kongo.

This legislation, antecedent to annexation, lays down certain principles by virtue of which the natives' rights to the soil are respected. One of those principles, as formulated in the ordinance of July 1, 1885, is that "no one has the right to dispossess natives of the lands occupied by them." Another principle established by the decree of September 14, 1886, is that lands occupied by natives under the authority of their chiefs continue under the local customs and usage.

The effect of these principles, which have not been modified by the subsequent legislation of the State of Kongo, is to secure the natives in the enjoyment of the lands they occupy, whatever be the form of such occupancy, whether in severalty or in common.

Under their ruling the Independent State did make over or grant certain areas of its domain. As a result the transfers or concessions did not and could not affect any but vacant lands, the only ones of which the state could dispose, and the third parties, purchasers of concessionaires, were, like the state itself, bound to respect the rights, both joint and several, of the natives to the soil. Any encroachment on those rights would be considered as void by the Belgian Government, because effected in violation of the principles sanctioned by legislation prior to such concessions or transfers.

The American note further says that the Government of the United States was glad to know that since the American memoranda of April 7 and 16, 1908, the Government of Belgium had expressed its purpose to extend the area of the lands to be reserved to the natives for their cultivation and traffic pursuant to the royal decree of June 3, 1906.

The decree, in fact, does not set any limit to the area of lands that the executive power may assign to native communities outside of those over which they exercise effective rights of occupation. This is what enabled the Belgian Government to carry it out in the most liberal spirit.

It held that the assignment of lands to native communities should be guided by both the actual circumstances of the present and the requirements of the future—that is to say, that in determining the area of land to be allotted to each tribe, the number of constituent members, the processes of cultivation suited to a primitive people, and the necessity of insuring to the utmost the future development of native communities should all be taken into consideration. Under the guidance of this rule the King's Government is now carrying out the decree of June 3, 1906, in the regions under private exploitation as well as in the national domain.

It has had occasion to satisfy itself that these principles, applied in accordance with a method identical with that adopted in the other European possessions in the conventional basin of the Kongo, will bring about a solution of the question of native lands in the Belgian Kongo more favorable to the interests of the natives than in the generality of colonies in equatorial Africa.

But the King's Government proposes to reserve to itself the absolute exercise of the right to determine, in accordance with these principles, the area of native lands as has been done by its neighbors in Africa, England, France, and Germany, and as has been done by all the sovereign states in other parts of the world where the aborigines of races different from the black likewise held certain rights to the soil on which they dwelt.

Six months have elapsed since the transfer of the possessions of the Independent State to Belgium became an accomplished fact. The American Government, which has also had heavy colonial tasks to perform, especially since receiving the Philippines from the hands of Spain, will doubtless find that such a period of time is insufficient to put into final shape decisions that can only be reached after long preparation and meditation.

The Parliament at Brussels, with which the King's Government on assuming charge of the colony made the most formal engagements, showed itself firmly resolved to encourage and aid it; but, on the other hand, it fully realized at the time when the first colonial budget was under consideration that an undertaking of such magnitude as that assumed by Belgium could not be accomplished offhand and that its realization would involve transitions requiring cautious treatment. It is indeed impossible for a government, conscious of its duties and responsibilities, to consent to the alteration of established conditions without being in position to replace them with new conditions, as it would thus take the risk of causing serious perturbations from which the whole colony would suffer. Any precipitate or ill-digested measure could but compromise the success of the mission of civilization inherited in Africa by the people of Belgium.

Complete harmony prevails between the cabinet and Parliament, both being upheld by every organ of public opinion in the aim to develop colonization in the Kongo in accordance with the interests of civilization and with international obligations. The Government of the King will evidence its intentions by acts which it shall perform in its untrammeled independence. The new administration has resolutely applied itself to the task and its activity has already been manifested in practical measures. For instance, the minister of colonies unhesitatingly concurred in a resolution adopted by a unanimous vote of the Chamber of Representatives which declares that it is expedient to substitute in the nearest possible future the free enlistment of laborers for their impressment on the score of public utility in the construction of the Great Lakes Railway, and that the chamber is convinced of the necessity of bringing about, without delay, tangible ameliorations in the condition of the laborers on the force, looking notably to a reduction in the term of service, a limitation of the zone of enlistment and of the local quota of the force, a guaranty to the the men so enlisted of compensation equal to that of free labor in the region, and the payment of such compensation in money.

In the last part of its note the American Government expresses a wish to know whether the King's Government, by the statement that Belgium is prepared to fulfill all the engagements made with the United States by the declarations of April 22, 1884, intended to confine the rights of the United States to the declarations of the International Association which preceded the sovereign Kongo State or equally recognizes the conventional rights conferred upon them by the treaty concluded with the Independent State in 1891.

It has never been intended by the King's Government, since the cession of the Kongo to Belgium, to deny to the United States the benefit of the contractual arrangements which it had secured by the international acts of 1884 and 1891. The King's Government has already once declared in the pro memoria note of January 29, 1908, and it has since repeated in its subsequent communications to the American Government, that it did not lose sight of the international obligations of the Kongo State.

However, as stated by the minister for foreign affairs at the session of the Chamber of Representatives of April 15, 1908, all the obligations assumed by the Independent State can not survive the annexation. This is invariably the case after the cession of one State to another. The principles and practice of international law leave no room for doubt on this point, as Secretary of State Sherman so clearly stated in his letter to the minister of Japan after the annexation of the Hawaiian Islands. As regards the provisions of the convention of January 24, 1891, new arrangements, which the Brussels cabinet stands ready to negotiate with the American Government, are imperative, notably concerning the recourse to arbitration regulated by a special article. Since the convention was signed arbitration has been made the subject of new international engagements on the part of both Belgium and the United States. The memorandum of July 12, 1908, took that standpoint in considering the conditions under which Belgium would eventually accept the resort to arbitration.

Indeed, the Belgian Government had given its attention to averting the difficulties which might, after resorting to arbitration, flow from divergent interpretations, in the several territories which constitute the conventional basin of the Kongo, of the general principles laid down in the Berlin act and reproduced in certain conventions concluded by the Independent State, whereby a differential treatment, antagonistic to the said acts, would be created to the detriment of one of the territories.

For that reason it said to the American Government in its memorandum of July 12 "that it should be understood that recourse to arbitration would not be had unless the other powers holding possessions in the Kongo basin agreed to become parties to the case or to accept the interpretation given by the award of the arbitrator." It is still of opinion that such an adhesion of the powers concerned is highly desirable, that it is absolutely necessary, and that it should precede the resort to arbitral proceedings.

It is self-evident that a proposal of arbitration could only relate to acts of the new colonial arbitration in order to be accepted by the Belgian Government. The interpretation given by that Government in commercial matters to the conventions concluded with the United States could alone afford occasion, after the failure of ordinary diplo-

matic means, for recourse to that mode of procedure with the previous authority of the legislative bodies and all the usual reservations inserted in all the treaties relative to arbitration.

The Cabinet of Washington appears to believe that instead of resorting to arbitration the Government of the King would reserve to itself the right to arrive at a direct understanding among all the powers holding territory in the conventional basin of the Kongo with a view to a settlement of all points in dispute. The Brussels cabinet merely said in its memorandum of July 12 that there is, in its opinion, a better means than arbitration to solve contentious questions which might arise in that part of Africa, namely, a direct understanding of the powers possessing colonies therein. This course would offer the immense advantage of insuring the general observation and a uniform interpretation of the clauses of the act of Berlin. But the King's Government confines itself to suggesting and commending this course; it does not assume to impose it.

The convention of January 24, 1891, secures to American citizens the right to erect religious edifices, to organize and to maintain missions in the Kongo, and they have largely availed themselves of that right. The Belgian Government has afforded to religious missions facilities for the purchase of land required for the development of the work of evangelization, by refraining from subjecting them to the public auction prescribed by the present law in cases of sale or lease of domanial land. But while it thus displays toward them the most confiding disposition, it expects that, for their part, the missionaries of all creeds will hold it their paramount duty to observe the laws and respect the public authorities of the country whose hospitality they enjoy. It would be highly gratified to receive the assurance of the friendly cooperation of the Government of the United States toward inducing the American citizens residing in the missions of the Kongo fully to meet this expectation.

MEXICO.

EXTRADITION OF JUAN DE DIOS RODRIGUEZ FROM MEXICO.

ARREST OF FUGITIVE AFTER EXPIRATION OF 40 DAYS' PROVISIONAL DETENTION PERIOD.

File No. 16948.

The Secretary of State to Ambassador Thompson.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 12, 1908.

Mr. Root directs Mr. Thompson to request the provisional arrest and detention of Juan de Dios Rodriguez, charged with murder in Texas, where warrant has been issued. Gives description and probable location of fugitive.

File No. 16948/2.

Ambassador Thompson to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Mexico, February 13, 1909.

Mr. Thompson reports that the foreign office has advised him of the arrest of Rodriguez and asks that papers be forwarded as soon as possible.

File No. 16948/21.

Ambassador Thompson to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Mexico City, April 6, 1909.

Mr. Thompson says that he has been informed by the Mexican foreign office that Rodriguez is still in custody, but that amparo proceedings have been begun for his release; that it was hoped that the man might be held without question and extradited even though the papers arrived out of time; that they were received to-day, 27 days late. Mr. Thompson says the foreign office further stated that it had subjected itself to serious criticism by its violation of the law in not ordering the man's release at the expiration of the 40 days and that

the enforcement of the law which must necessarily follow amparo proceedings will release him, and that the only way he can be held is under rearrest on a new complaint giving other reasons for request.

File No. 16948/21.

The Secretary of State to Ambassador Thompson.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, April 7, 1909.

Replying to Ambassador Thompson's telegram of the 9th instant, Mr. Knox says that the United States regularly rearrests fugitives on same charge as that first preferred in cases where papers are not presented within detention period. Says this is not extension of 40-day period, but rearrest on same charge and beginning of new period. States that this was done for Mexico in case of an American citizen, George Dearing Reed, and in the case of Matus Bros., and that Mexican Government had taken equivalent action in the past. Calls attention to cases of Gabriel Morales and Alberto Cabrera and especially to embassy's telegram of August 24, 1907,[1] regarding latter. Mr. Knox says unless in such cases as that of Rodriguez, it is possible either to rearrest or take some equivalent action, the extradition of criminals will be seriously hampered, and adds that the matter is one of grave concern.

File No. 16948/23.

Ambassador Thompson to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Mexico, April 9, 1909.

Mr. Thompson reports that the foreign office always has contended that it should not hold a man beyond the 40-day period stipulated in the treaty, and that a fugitive should not be rearrested on the same charge, but that it has always before held prisoners, under one pretext or another, until papers have been presented.

Mr. Thompson says that while Rodriguez has so far been held without protest, the present subsecretary, now that amparo has commenced, has not seemed willing to do anything.

Mr. Thompson adds that he has made formal request for the surrender of the fugitive after usual examination of papers, which puts the question beyond the 40-days provisional detention, and that while the subsecretary says he can not act, he expects to submit the case within a few days to the foreign minister, who has been absent.

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[1] Not printed.

Mr. Thompson asks that the department give him its reasons for contending that a fugitive should be rearrested after the period of 40-days detention.

File No. 16948/23.

The Acting Secretary of State to Ambassador Thompson.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, April 10, 1909.

Referring to the embassy's telegram of the 9th, Mr. Adee informs Mr. Thompson that the department is to-day forwarding by mail a memorandum discussing the Rodriguez case, and directs him to make formal request for provisional detention under treaty in usual way, if and when Rodriguez is released on amparo.

File No. 16948/23.

The Acting Secretary of State to Ambassador Thompson.

No. 666.] DEPARTMENT OF STATE,
Washington, April 10, 1909.

SIR: I have to acknowledge the receipt of your telegram of the 9th instant in regard to the detention of Juan de Dios Rodriguez, whose extradition from Mexico is desired.

Pursuant to your request that the department give you its reason for contending that a fugitive should be rearrested after the expiration of the period of 40 days' detention, there is inclosed herewith a memorandum by the law officer of the department, in which this question is discussed.

As the department has already indicated to you in its telegram of April 7, it regards this matter as one of grave concern. Unless some provision can be made by which fugitives can be rearrested in cases such as the present, the department is apprehensive that owing to the great distances in the United States and in Mexico, it will in many cases be impossible for the United States to secure the extradition of criminals who have taken refuge in Mexico.

You will present the questions involved to the Mexican Government and urge that they be given serious consideration. In this connection you will also direct attention to the liberal practice governing this matter in the United States, a practice the advantage of which has not infrequently been extended to the Government of Mexico, and you will endeavor to secure from that Government such an adjustment of this matter as will permanently remove the difficulty which thus threatens the efficacy of our extradition treaty.

I am, etc.,

ALVEY A. ADEE.

[Inclosure.]

MEMORANDUM REGARDING THE ARREST OF A FUGITIVE AFTER THE EXPIRATION OF THE PERIOD OF PROVISIONAL DETENTION.

DEPARTMENT OF STATE,
Washington, April 10, 1909.

In his telegram of April 9, 1909, concerning the case of Juan de Dios Rodriguez, Minister Thompson makes the following request:

> May I have reasoning of the department the question of rearrest after 40 days' detention, that I may present it to foreign minister, or President if minister continues sick?

The inquiry has reference to the case of Rodriguez, who was provisionally arrested on or about December 14, 1908. Under the treaty the provisional period of detention expired on or about January 23, 1909. The formal papers, owing to the delay of the officials in Texas, did not reach the department until March 29. They were forwarded to our ambassador at Mexico on March 30, 1909. The period of preliminary detention had therefore expired even before the papers left the department.

Concerning this question of rearrest after the expiration of the first period of provisional detention, Ambassador Thompson states, in the telegram already quoted from, that:

> The foreign office has always contended that it should not hold a man beyond the 40-day period stipulated in treaty, and that he could not be rearrested on same charge; but, under one pretext or another, they have always before held prisoners until papers have been presented. The present Sub-Secretary has not, in the Rodriguez case, seemed willing to do anything since amparo was commenced, the men being held without protest before.

The position of the Mexican Government in refusing to rearrest the fugitive upon the same charge after the expiration of the first period of provisional detention, seems to be not only unwarranted so far as the stipulations of the treaty are concerned, but is also not in accord with the uniform practice of this Government, a practice of which Mexico has often availed herself. That the treaty provisions do not authorize the attitude which the Government of Mexico assumes in this matter would seem to be apparent from a consideration of the articles which contain the stipulations that control the procedure.

Article X of the treaty between the United States and Mexico provides:

> On being informed by telegraph or otherwise, through the diplomatic channel, that a warrant has been issued by competent authority for the arrest of a fugitive criminal charged with any of the crimes enumerated in the foregoing articles of this treaty, and on being assured from the same source that a requisition for the surrender of such criminal is about to be made, accompanied by such warrant and duly authenticated depositions or copies thereof in support of the charge, each Government shall endeavor to procure the provisional arrest of such criminal and to keep him in safe custody for such time as may be practicable, not exceeding 40 days, to await the production of the documents upon which the claim for extradition is founded.

This period of 40 days' detention is computed from the time the fugitive is apprehended as a result of the request of the diplomatic representative.

As has been already indicated, the question in the present case is whether or not, under the treaty, the United States is entitled to have a fugitive from justice rearrested in Mexico upon the same charge as that first preferred, where the period of provisional detention, as prescribed in Article X, has expired.

In this connection the following articles of the treaty should be borne in mind:

In Article III it is provided that—

> Extradition shall not take place in any of the following cases:
> 1. When the evidence of criminality presented by the demanding party would not justify, according to the laws of the place where the fugitve or person so charged shall be found, his or her apprehension and commitment for trial, if the crime or offense had been there committed.

Under this provision it is entirely clear that either of the contracting Governments would not be justified in refusing to take the steps necessary to secure the extradition of a fugitive unless and until it had been determined that the evidence submitted by the demanding party "would not justify, according to the laws of the place where the fugitive or person so charged shall be found, his or her apprehension and commitment for trial, if the crime or offense had been there committed." These are the express stipulations of the treaty itself. Anything less, therefore, than a determination that the evidence is, under this

stipulation, insufficient, would not satisfy the obligations of the treaty, and therefore would not relieve the fugitive from liability to extradition under the treaty provisions.

It is provided in Article VIII that—

> The formalities being fulfilled, the proper executive authority of the United States of America, or of the United Mexican States, as the case may be, shall then cause the apprehension of the fugitive, *in order that he or she may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the terms of this convention, the fugitive may be given up according to the forms of law prescribed in such cases.*

These are the provisions governing extradition between other than border States.

Article IX provides for the procedure as between border States. The language used is, however, essentially the same, and is as follows:

> * * * such respective competent authority shall thereupon cause the apprehension of the fugitive, *in order that he may be brought before the proper judicial authority for examination.*

These stipulations are sufficiently clear to show that the determination regarding the sufficiency of the evidence as required by Article III is to be made by the "proper *judicial* authority," at a formal hearing which shall be given to the prisoner. It would therefore seem, from these provisions, to be entirely clear that the extradition rights guaranteed by the treaty to the respective parties are not in any case exhausted until the competent judicial authority of either Government has passed upon the evidence of a particular case and has pronounced it such as would "not justify, according to the laws of the place where the fugitive or person so charged shall be found, his or her apprehension and committent for trial, if the crime or offense had been there committed." In other words, the treaty contemplates and provides that in every extradition proceeding the fugitive shall first be apprehended, and that he shall then have a hearing before the proper judicial authorities of the Government within whose borders he is found. Now, the mere arrest of a fugitive is in no sense a hearing upon the *evidence* of his criminality, as submitted by the demanding Government. It is but a preliminary thereto, and obviously is only and merely for the purpose of securing the fugitive in order that he may not escape and that he may be present at the hearing. This is clearly shown by the facts that in the first instance the fugitive is arrested and detained without the submission of any evidence whatever but upon the statement of the representative of the demanding Government that he is wanted for a crime specified, and that formal requisition, accompanied by proper papers, will in due time be made. It is, of course, obvious that the arrest is not and can not be an adjudication concerning the guilt or innocence of the party charged. Indeed, it is first made in entire disregard of the party's actual guilt or innocence and upon mere suspicion, and, as just stated, is made in order that he may be present at a hearing held for the purpose of determining whether or not there is probable ground to believe that he has been guilty of the offense which is charged against him.

Inasmuch, therefore, as the extradition process is not exhausted until there has been a hearing and formal determination upon the question of the probable guilt or innocence of the accused, there seems to be nothing to justify the position that a fugitive may not, upon the expiration of the first period of detention, be rearrested on the same charge and held pending the production of the formal requisition and the accompanying documents. Such indeed is the rule uniformly followed in the United States.

It is the well-established practice in the United States to cause the rearrest of a fugitive on the same charge, not only where the first period of provisional detention has expired without the production of the requisition accompanied by the necessary formal documents, but also even where the fugitive has been arrested, had his hearing, and has been discharged by the commissioner.

As pointed out in the department's telegram of April 7 to Ambassador Thompson, the officers of this Government have recently rearrested fugitives from the justice of Mexico where the period of provisional detention had expired before the proofs had been received from the Government of Mexico, and the cases of George Deering Reed, an American citizen, and of the Matus brothers were pointed out as illustrating this fact. In the case of George Deering Reed the impropriety and illegality of the rearrest was specially argued before the commissioner by attorneys for the defense, and the commissioner squarely held that

such a rearrest was proper. Attached hereto as Appendix A[1] is an extract of the record of the proceedings in which this question is discussed.

Moreover, as stated by Mr. Van Dyne in his little booklet on Extradition (see Cyc., vol. 19, p. 50 et seq.):

Where an alleged fugitive has been discharged, a new complaint may be made and a new warrant issued for his arrest, with a view to a reexamination of the case. (10 Op. Atty. Gen., 501; 6 Op. Atty. Gen., 91. See Miller's case, 5 Phila. (Pa.), 289; in re Kelly, 26 Fed., 852; In re Macdonnell, 16 Fed., Cas. No. 8, 772, 11 Blatch., 170.) In Canada the same doctrine obtains. (Reg. *v.* Morton, 19 U. C. C. P., 9; In re Parker, 10 Can. L. T., 373.) Where an extradition commissioner has committed the accused for extradition and the commitment has been set aside on habeas corpus for errors on the examination, the accused is not necessarily released, but may be held under the warrant of arrest with a view to a new examination before the commissioner. (In re Farez, 8 Fed. Cas. No. 4645, 2 Abb., 346; 7 Blatch., 345; 40 How., Pr. N. Y., 107.) Where the first warrant of arrest is of questionable regularity, and no order is entered upon the first complaint and warrant under the statute (U. S. Rev. St., 1876, §5270, U. S. Comp. St., 1901, p. 3591), a second warrant may be issued. (Fergus, Petitioner, 30 Fed., 607.) In Canada a prisoner who has been discharged upon habeas corpus because the extradition commissioner had no jurisdiction to act judicially on the complaint laid before him may be rearrested and tried before a commissioner having jurisdiction over the complaint. (Ex. p. Seitz, 3 Can. Cr. Cas. 127, 8 Quebec, Q. B., 392.)

The following extracts from the cases cited by Mr. Van Dyne would indicate the general attitude which our courts have taken regarding this matter.

In an opinion regarding the Calder case, dated August 31, 1853, Attorney General Cushing used the following language:

One thing only, it seems to me, can be done in behalf of the British Government. Mr. Crampton may, undoubtedly, cause a new complaint to be entered against Calder, and apply for a new warrant of arrest either with or without a new mandate from the President. *Calder has not been tried.* He has been examined by a magistrate, and the evidence is adjudged to be insufficient to justify his extradition. But, on a new complaint, he may be examined anew by the same or by another magistrate, and the exhibition of additional evidence may lead to the conclusion of his criminality and the certificate thereof to the President. (6 Op. At. Gen., 91–97.)

The same principle is expressed by Attorney General ad interim Coffey in connection with the extradition of Trangott Muller, July 6, 1863 (10 Op., 501–596).

In the case of Macdonnell, 1873 (11 Blatch., 170–179), Judge Woodruff discussed the matter as follows:

It is, however, insisted that the discharge from arrest under the first warrant was such an acquittal as precluded another arrest under the second warrant. The reasons which we have given for our view of the other points, in the order in which they were presented by the counsel, lead necessarily to the answer which we give, decidedly, that it has no such legal effect. Not only so; we purposely refrain from even affirming, or admitting, that, if the offense charged had been identical in both complaints, the prior discharge would have operated as a necessary legal bar to a subsequent arrest, commitment, and surrender, when the demanding Government was able to produce proper evidence to sustain it. Be that as it may, we do hold that such discharge has no legal operation or effect upon proceedings for the surrender of a fugitive, based upon complaint of a distinct offense. The Executive may be called upon to guard against abuse, or against oppressive proceedings. The Executive may, perhaps, be justified in saying to the demanding Government: "You have had your day. You have had your opportunity. We have, in good faith, given you the benefit of the instrumentalities pointed out in the treaty, in order to effect the surrender of the alleged fugitive whom you demand; but we will see to it that needless or vexatious prosecution be not indulged in." On the other hand, we unhesitatingly say that if the Government be satisfied that a failure to procure a surrender in the first instance was due to circumstances explainable, consistently with good faith, and consistently with proper respect to our Government, and the case be such as properly appeals to the sense of justice which this Government always entertains, a further mandate may be issued on a second requisition, and the proceedings that will follow, conducted by the judicial officers of the Government, will be legal. Indeed, on that subject, we apprehend that the magistrate before whom the prisoner is brought has no right to entertain the question. And, in reference to this point, we add that there is no necessary legal obligation on the part of the demanding Government to place in its original requisition all the offenses of which it may suppose that the fugitive has been guilty. What may, in fairness and candor, be due between the two Governments, and whether the President would grant further and successive mandates, where the proceedings were rendered unnecessarily vexatious, by withholding the information which the demanding Government possesses, and so instituting several successive prosecutions, when one is sufficient, is, we think, a question for the Executive, and not for the court or the commissioner.

In the case of In re Kelly, 1886 (26 Fed., 852), Judge Brewer recognized the principle that a fugitive may be rearrested after having been once discharged by the committing magistrate, but laid down the following limitations thereupon:

We do not assent, however, to the proposition that was suggested that these preliminary examinations for local offenses may be continued indefinitely. We do not believe it is

[1] Not printed.

true that a man can be subjected time after time to the annoyance, vexation, and harass of repeated examinations. And while it may be technically true that one examination is no bar to another, yet whenever it becomes apparent that the examinations are instituted and carried on, not with a view to the furtherance of public justice, but with a view of enforcing personal spite and private malice, no doubt it is in the power of the court at any time to interfere and stop them. It is unnecessary to wait until the close of an examination, and then, if the accused is bound over, to interfere; but whenever, in a case of a preliminary examination for a local offense, it is apparent that the same is carried on with the purpose of gratifying personal spite, or for the annoyance and vexation of the party arrested, we think a court has power to take hold of it with a strong hand; and so in cases where proceedings are instituted under and by virtue of treaty stipulations, and it is apparent that the arrest is simply to gratify the personal malice of an individual or of the authorities of a foreign nation, I have no question as to the power and duty of the court to lay strong hands upon those proceedings, and to stop them altogether.. But the mere fact that one examination has failed by reason of a lack of sufficient testimony is no bar in law to a second, and the court ought not to interfere until it appears that the second is instituted for the purpose of private malice. We all know how often the administration of justice, it happens that a preliminary examination fails. The testimony first presented is insufficient; the officer is found not to have jurisdiction; the complaint is technically defective; and the proceedings fail. It would be an outrage upon justice if for any such reason as that there could be no further prosecution of one charged with crime, and equally, in extradition cases, a violation of the spirit, if not of the letter, of the treaty. It seems to us as if it is that this Government should say to a foreign nation: "True, we have agreed by solemn compact to return to you a man who is charged by a person duly authorized with having committed a crime, if the evidence of his crime is satisfactory, but in this instance we will not surrender him simply because on the first presentation of your case you have failed to make out a sufficient showing."

(See also the case of Fergus, Petitioner, 1887, 30 Fed., 607.)

It will be entirely clear from the above that the right to rearrest a fugitive, either at the expiration of the period of provisional detention, or after a discharge by the committing magistrate upon a formal hearing, seems well established in the United States. The limitation upon the exercise of this right so far as has been suggested or expressed is only that it shall not be permitted where it is evident that the demanding Government is attempting to harass or oppress the fugitive.

It is clear that, unless fugitives are to be permitted to escape upon the merest technicalities, there must be some arrangement or provision by which the fugitive may be rearrested, either upon the expiration of the period of provisional detention or after his discharge upon insufficient evidence submitted in the first instance to the commissioner. Where distances are so great as in the United States and in Mexico, it is oftentimes absolutely impossible for the demanding Government to present the papers within the 40-day period. Unless, therefore, it is possible to rearrest a fugitive upon the expiration of this period, it is clear that in many cases fugitives will be able to escape just punishment for crimes which they have committed.

File No. 16948/31–33.

Ambassador Thompson to the Secretary of State.

No. 1633.] AMERICAN EMBASSY,
Mexico, April 19, 1909.

SIR: With reference to my telegram of the 8th instant,[1] on the subject of the extradition of Juan de Dios Rodriguez, I acknowledge the receipt of the department's instruction No. 666, of the 10th, inclosing a memorandum discussing the question of the rearrest of a fugitive on the same charge after the expiration of the 40-day period of provisional detention provided for by treaty.

In reply I inclose copy of my informal note of the 17th instant to the foreign office, transmitting the memorandum in question, and inviting the concurrence of the Mexican Government with the views expressed therein.

The reply of the foreign office will be transmitted to the department so soon as received.

I have, etc.,

D. E. THOMPSON.

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[1] Not printed.

[Inclosure.]

Ambassador Thompson to the Minister for Foreign Affairs.

F. O. No. 670. Informal.] AMERICAN EMBASSY,
Mexico, April 17, 1909.

MY DEAR MR. MINISTER: At various times the question of holding prisoners under request for provisional arrest and detention has been the subject of no little concern, both to my Government and yours.

The most recent case in point is that of Juan de Dios Rodriguez, whose arrest was asked by my Government, because of a murder committed in Texas. The correspondence in this case commences with my note [1] of December 14 last (F. O. No. 55).

In view of the fact that the two Governments have a different opinion as to whether or not under the treaty a prisoner should be detained after the expiration of the period of 40 days following the arrest, providing the extradition papers do not arrive within this time, I wired my Government at the time the Rodriguez case was up, asking that they send me their reasoning in the matter, in order that I might present it to your Government, with the hope that an understanding which would be the same in Washington and Mexico could be reached.

The answer to my request I herewith inclose, in the form of a lengthy review of my Government's opinion on the subject, and the authorities on which they base these opinions.

In view of the fact, as is said in the despatch from Washington transmitting this memorandum, that the distances in both the United States and Mexico are so great, and the difficulties entailed in getting extradition papers together so numerous, that at times it is next to impossible to get them into the hands of the Government holding the fugitive before the expiration of the 40-day period, it would be very advantageous to both my Government and, I should think, the Mexican Government, if the views of the American Government could be considered as reasonable and agreed to by the Mexican Government.

My Government says in the dispatch above referred to that the matter is regarded with grave concern, and the Department of State is apprehensive of an occasional serious result if your Government should hold to its opinion that a man should be released without rearrest at the expiration of the 40-day provisional detention period.

The American Government holds that a man may be rearrested and held until the case may be acted upon by the proper judicial authorities, and my attention has been called to the fact that rearrests have been made in cases where the Mexican Government has failed to get the papers into the hands of the Washington Government within the limit of the 40-day period.

Believe me, etc.,

D. E. THOMPSON.

File No. 16948/28-30.

The Acting Secretary of State to Ambassador Thompson.

[Extract.]

No. 681.] DEPARTMENT OF STATE,
Washington, April 24, 1909.

SIR: I have the honor to acknowledge the receipt of your No. 1625,[1] of the 13th instant, in which you acknowledge the receipt of instructions No. 655,[2] of the 30th ultimo, and, referring to your telegram of the 12th instant[1] and to previous correspondence, you inclose a copy

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[1] Not printed.
[2] Not printed. Incloses authenticated papers and directs formal request for extradition be made.

of your note of the 8th instant to the foreign office relative to the extradition of Juan de Dios Rodriguez.

You state that you were assured by the foreign office that the case of Rodriguez would go ahead in the usual manner, with no condition other than that the Government of the United States should reciprocate in the event that there should be occasion for so doing. You also state that upon the receipt of the instruction referred to in the department's telegram of the 10th instant you will take the question up with the foreign office, with a view to reaching an understanding that will be the same in the department and in the foreign office.

Regarding the question of reciprocal action by this Government in the matter of the rearrest of fugitives after the expiration of the first period of preliminary detention you will understand and will so inform the Mexican authorities that, as has been pointed out in the memoranda which have been sent you regarding the matter, it appears to be the uniform practice in the courts of this country to authorize the rearrest of a fugitive upon a new warrant at the expiration of the first period of preliminary detention. Indeed, as was indicated to you in the department's telegram of April 7, this has been done in the cases of two fugitives from the justice of Mexico, specifically in the extradition of the Matus brothers and in the extradition of George Deering Reed, the latter being an American citizen. It should be understood, however, that the Department of State can not absolutely guarantee that the courts will, in all cases, issue a warrant for such rearrest and can only say that such rearrest is permitted by the laws governing extradition procedure in this country; that heretofore the courts have uniformly followed the law; that there is no reason to think that the practice indicated will not continue to be followed; and that the department, in cases of extradition from this country to Mexico would, should any difficulty or delay arise, have the proper officials instructed to present the matter to the courts in order that a rearrest might be obtained. Should, however, in any given case a commissioner or judge refuse to issue a warrant for the rearrest of a fugitive you will understand that there would be no way in which the department could compel such action.

I am, etc.,

HUNTINGTON WILSON.

File No. 16948/34–35.

Ambassador Thompson to the Secretary of State.

No. 1657.] AMERICAN EMBASSY,
Mexico, May 7, 1909.

SIR: I acknowledge the receipt of the department's instruction. No. 681, of the 24th ultimo, regarding the question of reciprocal action by the American Government in the matter of the rearrest of fugitives after the expiration of the first period of preliminary detention; and enclose herewith a copy of my note of May 4th to the minister for foreign affairs, written in accordance with the department's instructions.

I have, etc.,

D. E. THOMPSON.

[Inclosure.]

Ambassador Thompson to the Minister for Foreign Affairs.

F. O. No. 685.] AMERICAN EMBASSY,
Mexico, May 4, 1909.

MY DEAR MR. MINISTER: With reference to your kind note of the 12th ultimo, and to my reply thereto of the 14th (F. O. No. 665), on the subject of the extradition of Juan de Dios Rodriguez, I beg to bring to your attention certain observations upon the question of reciprocal action in the matter of the rearrest of fugitives after the expiration of the first period of preliminary detention, which I have just received from my Government.

I am directed to say that, as has been pointed out in the extensive memorandum regarding this matter which I sent you in my informal note of April 17, 1909 (F. O. No. 670), it appears to be the uniform practice in the courts of the United States to authorize the rearrest of a fugitive upon a warrant at the expiration of the first period of preliminary detention; that this was done specifically in the cases of the Matus brothers and George Dearing Reed, the latter being an American citizen, in both of which cases extradition was granted to Mexico upon rearrest after the expiration of the preliminary period; but that it should be understood that the Department of State can not absolutely guarantee that the American courts will, in all cases, issue a warrant for such rearrest and can only say that such rearrest is permitted by the laws governing extradition procedure in the United States.

Heretofore the courts of my country have uniformly followed the law in this respect, and I do not believe there need be the slightest apprehension that the practice indicated will not continue to be followed, and I am assured by the State Department that in future cases of extradition from the United States to Mexico it would have the proper officials instructed to present the matter to the courts in order that a rearrest might be obtained, should any difficulty or delay arise. At the same time, however, it is compelled to say that should in any given case a commissioner or judge refuse to issue a warrant for the arrest of a fugitive, there would be no way in which the department could compel such action.

Believe me, etc.,

D. E. THOMPSON.

File No. 16948/38–39.

Ambassador Thompson to the Secretary of State.

No. 1772.] AMERICAN EMBASSY,
Mexico, July 10, 1909.

SIR: Referring to the embassy's No. 1657 and to previous correspondence on the subject of the extradition of Juan de Dios Rodriguez, I inclose herewith copy and translation of a note received to-day from the foreign office, stating that the extradition of the above has been granted, and that the accused has the right to resort to amparo within three days.

I advised the department of the above in my telegram of to-day.

In accordance with the department's instruction No. 655, of March 30th, Sheriff J. M. Riggan, at Pearsall, Tex., will be advised when the prisoner is ready for delivery to him.

I have, etc.,

D. E. THOMPSON.

[Inclosure.—Translation.]

The Minister for Foreign Affairs to Ambassador Thompson.

No. 820.] DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, July 8, 1909.

MR. AMBASSADOR: Referring to various notes of the embassy relative to the case of Juan Rodriguez, I have the honor to advise your excellency that the President of the Republic has seen fit to decide that the extradition of the above-mentioned Juan Rodriguez be granted to the Government of the United States on a charge of murder.

I have transmitted the proper decision to the first district judge of this capital for the respective action; but I believe it convenient to inform your excellency that the accused has the right to resort to amparo within three peremptory days from the date on which he may be notified of the decision.

I renew, etc.,

IGNO. MARISCAL.

File No. 16948/37.

Ambassador Thompson to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Mexico, July 14, 1909.

Mr. Thompson says that all legal process in the Juan de Dios Rodriguez case having ended he has informed sheriff that the prisoner can be had.

File No. 20292/2–4.

MEETING OF PRESIDENT TAFT AND PRESIDENT DIAZ ON BORDER BETWEEN THE UNITED STATES AND MEXICO.

The President of the United States to the President of Mexico.

THE WHITE HOUSE,
Washington, June 25, 1909.

MY DEAR MR. PRESIDENT: I have your courteous note of June 16th,[1] sent me through Judge Wilfley and thank you sincerely for your kindly attitude.

I sincerely hope that in the course of a trip I hope to take in September and October in the Southwest I may have the pleasure of meeting you at El Paso or some convenient station at the border. It would gratify me very much to meet one in the flesh who has done so much to establish order and create prosperity in his own country and in so doing has won the admiration of the entire world.

Sincerely yours,

WM. H. TAFT.

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[1] Not printed.

File No. 20992/2–4.

The President of Mexico to the President of the United States.

[Translation.]

MEXICO, *July 6, 1909.*

MY ESTEEMED MR. PRESIDENT: I have received your courteous letter of the 25th of last month, in which you have been pleased to very graciously and amicably invite me to meet you at El Paso or other station of our frontier, during the trip which you propose to make in the Southwest of your country in the months of September and October.

I shall be most pleased to know personally the illustrious citizen who has deserved the votes of his compatriots for first magistrate of the great nation, neighbor, and friend of Mexico. I accept by this your courteous invitation, provided that our meeting can be arranged for some days after the opening of the Mexican Congress, which takes place on the 16th of September.

With most cordial expressions of friendship, I remain, etc.,

PORFIRIO DIAZ.

File No. 20292/63–65.

Ambassador Thompson to the Secretary of State.

No. 1895.] AMERICAN EMBASSY,
Mexico, September 30, 1909.

SIR: Referring to the department's telegram of the 22d instant, and to later ones on the same subject, I herewith inclose the original copy of the Mexican protocol for the meeting of President Taft and President Diaz at Juarez on the 16th proximo, as I also do copy of the toast which President Diaz proposes to offer at the banquet to be given by him at Juarez on the evening of the above-named day.

I have, etc.,

D. E. THOMPSON.

[Inclosure 1.—Translation.]

MEXICAN PROTOCOL FOR THE INTERVIEW OF PRESIDENTS DIAZ AND TAFT, WHICH WILL TAKE PLACE OCTOBER 16, 1909.

A little before 11 a. m. the President of Mexico will proceed toward the street railway bridge, which he will cross, accompanied by an adequate escort as well as the members of his general staff, and with them reach the house in which Mr. Taft may wait for him.

The Mexican forces will accompany the President of Mexico only so far as the northern border of El Chamizal, where they will await the return of the presidential party.

The American troop of Cavalry which is to accompany the President of Mexico will wait for him at the north end of the said street railway bridge to escort him or stand in line, as Gen. Myer may see fit, from that point to First Street in El Paso, Tex., where President Diaz will be welcomed by the American Secretary of War and the other personages enumerated in the protocol sent from Washington.

This being done, all will proceed to the place appointed in the said protocol for the interview of the two Presidents.

The President of Mexico's return will be made in the same manner.

The President of the United States will start at noon for Ciudad Juarez, and will be waited on at the south end of the electric railway bridge, where Juarez Avenue ends, by the secretary of war of Mexico, accompanied by Brig. Gen. Gregorio Ruiz with his staff, a regiment with its band, and a battery of field artillery.

The secretary of finance will go in a presidential carriage to receive President Taft, as President Diaz's personal representative, on his arrival at the bridge end. The governor of Chihuahua and the jefe politico of the Bravos district, together with the presidential guard, will accompany the above-named secretary.

The ministry of foreign relations of Mexico and the Department of State of Washington are agreed on the proposition made by the Mexican and accepted by the American chancellery in regard to the neutrality of the Chamizal tract, so that that zone shall remain in its present statu quo.

As soon as the secretary of finance and the governor of Chihuahua shall have greeted President Taft the former will extend to him a welcome in the name of the President of the Mexican Republic, then the governor of Chihuahua will greet him in the name of the State, and the jefe politico of Bravos will do so in the name of Ciudad Juarez. The band will then play the American anthem, Star-Spangled Banner.

The secretary of finance and the governor of Chihuahua will see President Taft to the carriage that will be waiting for him. As soon as President Taft shall have entered the carriage he will be given a 21-gun salute, fired by the Mexican battery. The secretary of finance will go in the same carriage with President Taft, sitting on his left in the back seat. President Taft's aide will take his seat in front of both.

The American troops that shall have accompanied President Taft will wait on the other side of the bridge the return of the presidential party, except Mr. Taft's personal escort which will proceed to Juarez.

The Mexican troops, with the American party will escort the President of the United States until he meets the President of Mexico in the following order:

Brig. Gen. Ruiz and his staff; President Taft's carriage; carriages of President Taft's personal escort; the governor of Chihuahua and his aides; the regiment of cavalry; the field artillery.

The infantrymen will be stationed close to the house in which President Diaz will receive and greet President Taft.

The chief of staff of the President of Mexico will visit the carriage bringing the President of the United States on its arrival at the customhouse, where the interview and banquet are to take place, and will join the party that is to lead Mr. Taft in the presence of Gen. Diaz.

The President of Mexico will be attended by the secretary of foreign relations, finance, and war, who will place themselves immediately behind President Diaz during the meeting.

President Diaz will welcome President Taft in a simple manner and few words, and President Taft will reply in the same manner.

President Diaz will retire, at his convenience and with the same company, and receive the same salute as was given on his crossing the frontier.

The President of the United States will start at about 5.30 p. m. from El Paso for Ciudad Juarez to attend the banquet offered to him by the President of Mexico; his reception and leaving will be the same as on his previous visit.

Two toasts only shall be given at the banquet, one by the President of Mexico, tendering the entertainment, and the other by the President of the United States in reply.

[Inclosure 2.—Translation.]

TOAST OF MEXICAN PRESIDENT.

MR. PRESIDENT, GENTLEMEN: The visit His Excellency, President Taft, to-day makes to the Mexican territory will mark an epoch in the history of Mexico. We have had in our midst very illustrious American visitors, such as Gen. Ulysses S. Grant and the Hon. Messrs. Seward and Root, but never before have we seen in our land the Chief Magistrate of the great American Union. This striking trait of international courtesy, which Mexico acknowledges and appreciates to its full value and significance, will henceforward establish a happy

precedent for the Latin-American Republics to cultivate unbroken and cordial relations among themselves with us and with every nation of the continent.

Actuated by these sentiments, which are also those of my compatriots, I raise my glass to the everlasting enjoyment by the country of the immortal Washington of all the happiness and prosperity which justly belong to the intelligent industry and eminent civism that are the characteristics of the manly and cultured American people and to the enduring glory of its heroic founders. I raise my glass to the personal happiness of its illustrious President who has come to honor us with his presence and friendship, whose display will make for the cultivation of the common interests which bind the two neighbor nations whose respective elements of life and progress find in their union reciprocal completion and enhancement.

File No. 20292/44.

The Acting Secretary of State to Ambassador Thompson.

No. 787.] DEPARTMENT OF STATE,
Washington, October 2, 1909.

SIR: Referring to the department's telegram of the 30th ultimo I inclose herewith, for your information, a revised copy of the toast which President Taft will offer to the health of the President of Mexico at the banquet in Juarez.

I am, etc.,

ALVEY A. ADEE.

TOAST OF THE PRESIDENT OF THE UNITED STATES.

Responding as befits the cordiality of this auspicious occasion, I rise to express, in the name and on behalf of the people of the United States, their profound admiration and high esteem for the great, illustrious, and patriotic President of the Republic of Mexico. I also take this occasion to pronounce the hearty sentiments of friendship and accord with which my countrymen regard the Mexican people.

Your excellency, I have left the United States and set foot in your great and prosperous country to emphasize the more these high sentiments and to evidence the feeling of brotherly neighborhood which exists between our two great nations.

The people of the United States respect and honor the Mexicans for their patriotic devotion, their will, energy, and for their steady advance in industrial development and moral happiness.

The aims and ideals of our two nations are identical, their sympathy mutual and lasting, and the world has become assured of a vast neutral zone of peace, in which the controlling aspiration of either nation is individual human happiness.

I drink to my friend, the President of this great Republic, to his continued long life and happiness, and to the never-ending bond of mutual sympathy between Mexico and the United States.

File No. 20292/82D.

The Acting Secretary of State to the Mexican Chargé.

Informal.

DEPARTMENT OF STATE,
Washington, October 15, 1909.

DEAR MR. DÁVALOS: Responding to your request by telephone that a copy of the American protocol of arrangements for the meeting of the two Presidents at El Paso and Juarez, on the 16th instant, as it stands after the various alterations, be sent you, I inclose you herewith a program copied from the original, with the changes in question, as I understand them, inserted.

Faithfully, yours, ALVEY A. ADEE.

[Inclosure.]

Protocol of arrangements for October 16, 1909.

The escort for the President of the United States on the occasion of his meeting with the President of Mexico at El Paso, Tex., on October 16th next, shall consist of the headquarters' band and two squadrons of the Third Cavalry; Batteries A, B, and C, of the Third Field Artillery; and the Ninth Infantry from Fort Sam Houston, Tex.; all under the command of Brig. Gen. Albert L. Myer, commanding the Department of Texas, who will be accompanied by his staff.

The following program is suggested for the meeting of the two Presidents at El Paso at 11 o'clock a. m., on October 16th.

Shortly before 11 a. m. the Secretary of War, accompanied by Brig. Gen. Myer, with his staff, two squadrons of Cavalry with the band, and the three Batteries of Field Artillery shall proceed to the point where the President of Mexico, attended by his personal suite and an escort of 20 Mexican cavalrymen, will enter the territory of the United States. The Secretary of War will act as the personal representative of the President of the United States to receive President Diaz on the boundary as he descends from his carriage to enter the carriage which will convey him to President Taft. The governor of Texas and his military staff and the mayor of El Paso will likewise accompany the Secretary of War to the boundary.

It is understood between the Mexican foreign office and the Department of State that for the sake of convenience the El Chamizal region, which lies between the cities of El Paso and Juarez, shall be considered for this occasion neutral territory, and that there shall be no flags of either nationality displayed therein. The President of Mexico will be welcomed in the name of President Taft at the entrance of the city of El Paso, outside of the El Chamizal zone. The President of the United States will be welcomed in the name of the President of Mexico on his arrival at the entrance of Juarez city. In this manner the Chamizal zone, the sovereignty over which is at present under dispute, will be left in statu quo.

Upon the arrival of President Diaz at the place indicated the Secretary of War and the governor of Texas will proceed to President Diaz's carriage. The Secretary of War will shake hands with President Diaz, and in the President's name will extend an appropriate welcome. Thereupon the governor of Texas will extend a welcome in the name of the State of Texas, and the mayor will welcome the President in the name of the city of El Paso. The band will then play the Mexican national air. The Secretary of War and the governor of Texas will escort President Diaz to the carriage awaiting his reception on the American side. As President Diaz steps into the carriage the appropriate salute of 21 guns will be fired by the American batteries. The Secretary of War will ride with President Diaz, sitting at his left; the personal aide to President Diaz will sit on the opposite side of the carriage.

The Mexican troops which have escorted the President of Mexico as far as the northern border of El Chamizal will there await the return of the presidential party, with the exception of an escort of 20 Mexican cavalrymen, who

will continue with the President of Mexico into the territory of the United States to the house where he will be received by President Taft.

The escort will then proceed to conduct the President of Mexico to the President of the United States, in the following order:

Brig. Gen. Myer and staff.
One squadron of Cavalry.
President Diaz's carriage.
Carriage containing Secret Service agents, two of each country.
Carriages and personal escort of President Diaz.
The governor of Texas and staff.
One squadron of Cavalry.
The Field Artillery.

The Infantry shall be drawn up in proper positions near the house where the two Presidents will meet and will salute upon the arrival of the President of Mexico.

The aide to the President of the United States will meet the carriage containing the President of Mexico upon its arrival at the house and will assist in conducting President Diaz to the presence of the President of the United States.

The President will be attired in frock coat; the President of Mexico in uniform.

The Secretary of War and the Secretary of Commerce and Labor will stand immediately behind the President of the United States.

President Taft will then welcome President Diaz informally in a few words, and the President of Mexico will reply briefly. The whole character of the meeting and its keynote is to be the conspicuous yet informal celebration of the cordial relations existing between the two countries. The persons composing the respective suites will then be introduced. Light refreshments will be served, champagne and sandwiches.

After having received the welcome of the President of the United States the President of Mexico will withdraw in the same manner in which he arrived, receiving the same salutes as he received when he first crossed the border.

At 12 o'clock noon the President of the United States will go over to Juarez city, where he will be received, in a building to be named, by the President of Mexico. On the occasion of this call the President of the United States will be escorted to the southern border of El Chamizal by the same American troops that escorted the President of Mexico to President Taft and in the same manner. The American troops which have escorted the President of the United States as far as the southern border of El Chamizal will there await the return of the presidential party, with the exception of an escort of 20 American cavalrymen, who will continue with the President of the United States into the territory of Mexico to the house where he will be received by President Diaz. The governor of Texas and the President's aide will ride in the President's carriage as far as the border. The President's carriage will be immediately followed by a carriage containing the Secret Service agents of both Governments. The Secretary of War and the Secretary of Commerce and Labor will follow in carriages immediately behind that of the Secret Service agents, and other carriages in appropriate order will contain the other invited guests.

Upon arriving at the border the President will be welcomed by a personal representative of the President of Mexico. The President will descend from his carriage and, accompanied by his aide and the personal representative of the President of Mexico, will proceed, surrounded by the Mexican escort, to the building set aside for the reception. The governor of Texas will ride from the border to Juarez city in one of the carriages of the invited guests and will leave his military staff on the American side.

Having also descended from their carriages the invited guests will enter the Mexican carriages allotted to them and will follow the carriage of the President of the United States.

The ceremonies and procedure of the meeting of the two Presidents will be the same as during the previous meeting at El Paso.

The President of the United States will leave El Paso at about 5.30 p. m., for Juarez city to attend the banquet of the President of Mexico. The President will be escorted to the point where he will cross the border by the two squadrons of Cavalry, arranged one in front of his carriage and entourage and the other in the rear thereof. As on the previous occasion the governor of Texas will drive with the President as far as the border. At the border the President will change carriages and will proceed to Juarez city accompanied by the personal repre-

sentative of the President of Mexico, and the governor of Texas will proceed in one of the carriages allotted to the guests.

The President of the United States will be attired in a dress suit. There will be two toasts only at the banquet, namely, those of the two Presidents. The President of the United States will be accompanied to the banquet by the Secretary of War, the Secretary of Commerce and Labor, the governor of Texas, the Senator from Texas, Mr. Bailey; Brig. Gen. Myer and staff, the mayor of El Paso, and Capt. Butt, the aide to the President.

EXTRADITION OF TEODOSIO JIMENEZ, A MEXICAN CITIZEN, FROM MEXICO.

RENDITION BY A COUNTRY OF ITS OWN CITIZENS.

File No. 15660/3–5.

Ambassador Thompson to the Secretary of State.

[Extract.]

No. 1596.] AMERICAN EMBASSY,
Mexico, March 16, 1909.

SIR: I inclose copy and translation of a note from the foreign office under date of the 11th instant, in which is transmitted the Presidential decision granting the extradition of the Mexican Teodosio Jiminez.

The foreign office requests that this decision be communicated to my Government, as a precedent for the rendition by a country of its own citizens, in accordance with Article IV of the extradition treaty between Mexico and the United States.

I have, etc.,

D. E. THOMPSON.

[Inclosure 1.—Translation.]

The Minister for Foreign Affairs to Ambassador Thompson.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, March 11, 1909.

Mr. AMBASSADOR: I have the honor to transmit to your excellency herewith a copy of the decision of the President of the Republic granting the extradition of Teodosio Jimenez, requested to the governor of Neuvo Leon by the governor of Texas, on a charge of murder.

As the case refers to the delivery of a Mexican citizen, I beg your excellency to bring to the attention of your Government the inclosed decision, as a precedent of reciprocity according to Article IV of the extradition treaty between Mexico and the United States.

I renew, etc.,

IGNO. MARISCAL.

[Inclosure 2.—Translation.]

DECISION OF THE PRESIDENT OF MEXICO IN THE CASE OF TEODOSIO JIMENEZ.

Having taken cognizance of the record of the District Court of Nuevo Leon relative to the surrender of Teodosio Jimenez, requested by the governor of Texas on a charge of murder:

It appears that the request was made directly by the governor of Texas, United States of America, on the governor of Nuevo Leon, Republic of Mexico, in accordance with Article X of the extradition treaty.

It also appears that the governor of Nuevo Leon has made his declaration in favor of the surrender of the fugitive, but with the reservation that the Federal Executive should decide as to the surrender of the accused, owing to the latter's Mexican nationality.

Considering that the only motive invoked by the district judge against the extradition, that is, the lack of the certificate of the autopsy of the victim among the proofs, has been disapproved by the governor of Neuvo Leon, according to the powers vested in him by Article X of the extradition treaty between the United States and Mexico;

Considering that the decision of the governor on this point is proper, and that no right of Jimenez has been infringed aside from the reasons expressed by said officer, on the ground that article 116 of the Code of Federal Penal Procedure declares that, in cases of murder, when it may be impossible to secure the remains, the crime will be held as proven when there may be full proof as to the elements which constitute the crime, according to article 540 of the Penal Code; and in this case there is such full proof by the declarations made by the witnesses, Hensen and Vega, and by the judicial attestation of the body of Maria Hernandez, mistress of Jimenez, rendered by the justice of the peace of precinct 5, of Medina County, State of Texas;

Considering that it has not been proved that the laws of Texas demand the autopsy as an element of proof of murders committed there, and that in this country the district judge could not have seen the body of Maria Hernandez; therefore, article 116 of the Code of Federal Penal Procedure shall lie in the present case;

Considering that according to article 16 of the law of May 19, 1897, and section 1 of Article III of the extradition treaty the laws of this Republic should be borne in mind to decide whether the arrest and indictment of the fugitive would have lain had the crime been committed in this country, and that these laws can be but those of criminal procedure in federal cases, since section 20 of article 48 of the law of December 16, 1908, which is the organic law of the federal judicial power, conferring jurisdiction on district judges in matters of extradition provided by law;

Considering that the Executive of Mexico does not think that there is any especial reason to deny the extradition of Jimenez because of his Mexican nationality;

Considering that while it is true that section II of article 10 of the law of May 19, 1897, forbids, with the exception of especial cases, the surrender of Mexicans requested by a foreign power, it is also true that such provision, according to article 1 of the same law, is only applicable in the absence of an international agreement, and in this case there is article IV of the extradition treaty, which leaves to the discretion of the Executive the delivery of Mexican citizens, it being worthy of note that the preceding considerations are sufficient to facilitate the indictment and the punishment, if any, of the party charged with the murder of Maria Feliz Hernandez, by the authorities of the place where the crime was committed, because it is at that place where the public law was infringed and where the necessary evidence can be had.

I. Therefore, the Executive decides that the extradition of Teodosio Jimenez should be granted and that he must be surrendered to the authorities who have asked for him.

II. Transmit this decision to the governor of Nuevo Leon, in order that he may execute the decision he passed in the same sense.

III. Transmit this decision also to the American embassy in this Republic, to the end that it may bring the same to the attention of its Government as a precedent for reciprocity in accordance with article IV of the treaty.

IV. Publish the same in the bulletin of the department.

IGNACIO MARISCAL.

MEXICO, *March 11, 1909.*

MOROCCO.

RECOGNITION OF MOULEY HAFID AS SULTAN OF MOROCCO.

[Continued from Foreign Relations, 1908, p. 642, et seq.]

File No. 2151/313.

Minister Gummeré to the Secretary of State.

AMERICAN LEGATION,
Tangier, January 6, 1909.

SIR: I have the honor to report as follows: As reported to the department in my telegram [1] of the 4th instant, on the 3d of January the dean of the diplomatic corps circulated a letter among that body announcing that the representatives of all the powers, signatory to the act of Algeciras had informed him that their respective Governments approved of the note to be presented to Mouley Hafid through his representative at Tangier, and requesting that the interpreters of the various legations should meet at the Portuguese legation on the afternoon of the 4th instant for the purpose of translating the said note into Arabic preparatory to its presentation. The meeting of the interpreters was held and, as reported in my telegram [1] of this date, on the 5th instant the dean of the diplomatic corps circulated another letter among the corps announcing that he had, on that day, delivered the note from the powers, recognizing Mouley Hafid as Sultan of Morocco, to his representative at Tangier.

I am, etc.,

S. R. GUMMERÉ.

ACQUISITION OF PROPERTY FOR AMERICAN MISSIONARIES IN MOROCCO AND RENTAL OF A HOUSE IN MOORISH QUARTER OF MEQUINEZ.

[Continued from Foreign Relations, 1908, p. 638, et seq.]

File No. 594/27–35.

Minister Gummeré to the Secretary of State.

[Extract.]

AMERICAN LEGATION,
Tangier, March 16, 1909.

SIR: I have the honor to acknowledge the receipt of instruction No. 171, of February 19, 1909,[1] inclosing copy of a letter from the

[1] Not printed.

Rev. George S. Fisher, inquiring whether a suitable house at Mequinez can now be obtained for the missionaries; and requesting me to report as to the present situation of the matter.

As the department is aware, in the month of January, 1909, Mouley Abdel Hafid was recognized as Sultan of Morocco by the powers signatory to the act of Algeciras, and on the 18th of that month I addressed a letter to his vizier of foreign affairs at Fez, setting forth what had been done in the matter of securing a house at Mequinez for the American missionaries, and requesting the immediate fulfilment of the solemn pledges given to me regarding the same. This letter, together with one addressed to Sid Omar Barrada was inclosed in a letter addressed to Rev. George Reed on the aforesaid 18th of January, 1909.

Early in the month of February, 1909, I received a letter from the Rev. George Reed, dated January 29, 1909, acknowledging the receipt of the letter addressed to him, with inclosures, and informing me that accompanied by Sid Omar Barrada he had presented my letter to the Vizier, and that later they were informed that the letter requested would not be granted.

On receipt of Mr. Reed's letter I wrote to him on February 8, 1909, acknowledging his letter and informing him that after waiting a suitable time for the reply to my letter to the vizier, I should report the matter to the Department of State, and recommend that strong action be taken, etc.

As I received no acknowledgment at all to my letters to the vizier, I thought it best to make representations on the subject to Sid Mohamed Ben Guebbass, the Sultan's representative at Tangier, before reporting to the department, and had made an appointment with him for so doing on the day of my reception of the department's instruction No. 171. I expressed myself very strongly on the matter to Sid Guebbass, not only as to the nonfulfilment of the promises given in regard to the house, but as to the discourtesy shown in not acknowledging my letter. Sid Guebbass expressed great regret and surprise at what I had to tell him, and requested that I state the whole matter in a letter to himself, which he would forward to the court, with a strong remonstrance from himself. I have accordingly addressed such a letter to Sid Guebbass.

As the department will see, I have acted in this matter with all possible speed and energy, previous to the reception of instructions on the subject.

The reply of Sid Guebbass and of the court will be at once forwarded to the department, and in the meantime I would be very glad to receive further instructions from the department.

S. R. GUMMERÉ.

[Inclosure 1.]

Minister Gummeré to the Minister for Foreign Affairs.

No. 1.] AMERICAN LEGATION,
Tangier, January 18, 1909.

I have the honor to request that your excellency will bring the following matter to the notice of His Majesty the Sultan.

For some time past some American citizens living at Fez and Mequinez have been endeavoring to secure a suitable dwelling house in Mequinez, outside of

the Mellah which was not healthy, and by direction of my Government I have from time to time urged the matter upon the Maghzen, and during my late mission to the Shereefian court this matter of a house at Mequinez for my citizens was the first one presented for adjustment. I was then solemnly promised that the Basha of Mequinez should receive a strong letter from the Maghfen instructing him not only to throw hindrance in the way but to aid these American citizens in every way to secure a suitable house in that city. This promise, however, was not carried out to the great surprise of my Government, and then, as the Morocco Government became unstable, it was allowed to rest until a more propitious time.

I am now directed by my Government to inform your excellency that a stable government having been happily established they request the carrying out of the solemn pledge given to me, and that a strong Shereefian letter be addressed to the Basha of Mequinez instructing him to aid these American citizens to secure a suitable house in Mequinez.

I am informed by my citizens that a responsible man named Sid Hamed Ben Zakor, of Fez, is ready to supply such a house in Mequinez, and that a letter to the Basha of Mequinez was promised to them regarding the same, but was never sent as promised. In view of all this I have requested Sid Omar Barrada to assist my citizens in bringing this matter to the notice of His Majesty the Sultan and yourself and again request that orders be at once given to carry out the solemn promises of the Maghzen, regarding the securing of a house for American citizens in Mequinez.

S. R. GUMMERÉ.

[Inclosure 2.]

Minister Gummeré to Sid Omar Barrada.

AMERICAN LEGATION,
Tangier, January 18, 1909.

For sometime past Mr. George Reed and other American citizens have been endeavoring to secure a suitable dwelling house in Mequinez and a solemn promise was given to me by the Maghzen during my late mission to the Shereefian Court that orders should be given to the Basha of Mequinez to aid in securing such a house, but the promise was never carried into effect, and as the Government became unstable it was allowed to rest. Now, however, that a strong Government has been established, by direction of my Government I have written a letter to the Maghzen demanding the immediate carrying into effect of the said promise. If you are able to assist Mr. Reed in any way in this or other matters I will be exceedingly obliged to you.

S. R. GUMMERÉ.

[Inclosure 3.]

Minister Gummeré to the Minister for Foreign Affairs.

No. 10.] AMERICAN LEGATION,
Tangier, March 15, 1909.

As your excellency is aware, for some years past the matter of securing a house at Mequinez outside of the Mellah for some American citizens has been a matter of negotiations between the Moorish Government and myself. At the time of my mission to his majesty, the Sultan, at Fez, some two years since, this by direction of my Government, was the first matter to be brought to the notice of the Maghzen and I was instructed to demand the immediate fulfillment of my request for such a house. In reply to such request I received not only the solemn promise of the Vizier Ben Sliman and of his majesty, the Sultan himself, but a written pledge as well, that a strong letter should be addressed to the governor of Mequinez directing him not only not to put any obstacle in the way of the American citizens' efforts to secure a house, but to treat them kindly and to do everything possible to assist them to secure such a house as they required. Such a letter was delivered to me and handed by the Americans themselves to the governor of Mequinez, who, however, paid no attention to it, notwithstanding my strong remonstrances to Ben Sliman. As shortly afterward the country began to be in a disturbed condition nothing more was done in the

matter until the 5th of March, 1908, when, by direction of my Government, I wrote again to Ben Sliman and requested an explanation of the nonfulfillment of the solemn pledges of the Sultan and himself regarding the securing of the said house. To this the vizier replied on 17th of March, 1908, that he brought the matter to the notice of His Majesty, the Sultan, and that His Majesty commanded him to reply that he had not forgotten to carry out as soon as possible the promises made on the subject, but that it would be necessary to wait until order was reestablished at Mequinez when strict orders would be given so as to fulfill what had been agreed with myself. Since that time, as your excellency is aware, there has been a change of government in Morocco, and His Majesty, Mouley Abdelhafid, now occupies the throne and, having been recognized by the great powers as Sultan of Morocco, the country once more is tranquil under a strong government. In view of this and having received word from my citizens that they had found a suitable house at Mequinez, the owner of which was ready to rent it to them, I wrote to the vizier of foreign affairs at Fez on the 16th of January last, setting forth the matters as herein stated and requested that Shereefian orders be at once given for the carrying out of the solemn promises given to me regarding the securing of a house for the American citizens at Mequinez. This letter was duly delivered, but not only have no such orders, as requested, been given, but not the slightest notice or acknowledgment of my letter has been made. I must inform your excellency that this is a very great discourtesy to the representative of a great power and can not be tolerated. I therefore address this letter to your excellency, not only that you may be aware of the matter, but that you may bring it at once to the notice of His Majesty, the Sultan, with the request for the immediate fulfillment of the promise regarding the house at Mequinez as well as an explanation of and apology for the manner in which my letter to the vizier of foreign affairs has been treated. As my Government is pressing regarding this matter I have to request immediate action on your excellency's part, with the suggestion that there are limits to patience.

S. R. GUMMERÉ.

File No. 594/36–37.

Minister Gummeré to the Secretary of State.

AMERICAN LEGATION,
Tangier, March 20, 1909.

SIR: Referring to my unnumbered dispatch of the 16th instant regarding the house for American missionaries at Mequinez, I have received from Sid Mohamed Ben Guebbass, the Sultan's representative at Tangier, a reply to my letter addressed to him on the 15th instant, a copy of which was inclosed in my said dispatch, and have the honor to inclose herewith a translation of the said letter for the department's information.

I am, etc.

S. R. GUMMERÉ.

[Inclosure—Translation.]

The Sultan's representative at Tangier to Minister Gummeré.

TANGIER, *March 17, 1909.*

We have received your excellency's letter of the 22d of Safaar (March 15, 1909), regarding the permission requested by your citizens to secure a house at Mequinez, outside the Mellah, explaining the course taken in this case under the former Government, and pointing out what happened with the communication addressed by your excellency to the vizier of foreign affairs and of the delay in answering the same. Your excellency requests us to bring this matter

to the knowledge of His Shereefian Majesty, and to demand explanation as to the delay in answering your said communication.

We have taken note.

We beg to inform your excellency that we have immediately forwarded a copy of your excellency's said letter to His Shereefian Majesty, begging His Shereefian Majesty at the same time to urge the sending of His Majesty's answer which, if God pleases, will prove satisfactory to your excellency.

Yet we beg your excellency to admit our apologies concerning that delay which is of course caused by the pressure of business, the carrying out of which must have postponed what is of greater importance.

Your excellency will show a great kindness by admitting our sincere apology.

MOHAMED BEN GUEBBASS.

File No. 594/36–37.

The Acting Secretary of State to Minister Gummeré.

No. 181.] DEPARTMENT OF STATE,
Washington, April 9, 1909.

SIR: I have to acknowledge the receipt of your unnumbered dispatch of the 20th ultimo transmitting the reply of Sid Mohamed ben Guebbass to your letter of the 15th of the same month in regard to the desire of certain American missionaries to obtain a house in the Moorish quarter of Mequinez.

Ben Guebbass should be urged to make clear to His Majesty the importance this Government attaches to the fulfilment of the Moorish promise.

Awaiting something more definite, I am, etc.,

HUNTINGTON WILSON.

File No. 594/27–35.

The Acting Secretary of State to Minister Gummeré.

No. 182.] DEPARTMENT OF STATE,
Washington, April 13, 1909.

SIR: I have to acknowledge the receipt of your unnumbered dispatch of the 16th ultimo transmitting correspondence with the Shereefian Government concerning its promise to allow American missionaries to reside in the Moorish quarter of Mequinez.

It is not seen how the matter can be more strongly presented than by your letter to the Sid Mohamed of March 15th. You should press for a prompt and favorable response. You may take occasion to support your demand by oral representation, emphasizing the attitude of the United States toward the Shereefian Government and people as one of consistent and benevolent good will, abundantly justifying the expectation of reciprocal manifestation of friendly consideration on the part of His Majesty and the responsible exponents of His Majesty's will.

Any other course would not comport with the friendly spirit which the United States so earnestly desires should control the relations between the two Governments.

I am, etc.,

HUNTINGTON WILSON.

File No. 594/49.

Minister Dodge to the Secretary of State.

No. 122.] AMERICAN LEGATION,
Tangier, December 3, 1909.

SIR: Referring to my dispatch, No. 85, of October 7 last [1] in regard to my action to secure permission for the Gospel Missionary Union, of Kansas City, to rent a house in the Moorish quarter of Mequinez, I have the honor to inform you that I have now received from Sid Mohamed ben Mohamed El Guebbass, the Sultan's representative here, a note inclosing a communication from Kaid Sid Aissa ben Omar, the grand vizier, in reply to my note to him, of which a copy was inclosed in my dispatch above referred to. I inclose translations of both the note from Sid Guebbass and that from Sid Aissa. It will be seen that the grand vizier states that he has brought my note to the Sultan's knowledge, and that the Sultan ordered that instructions should be issued to the governor of Mequinez urgently commanding him to secure there a house to be rented by these missionaries. The note adds that these instructions have already been sent to the governor.

In a conversation recently with Sid Guebbass, he spoke of this matter, and told me that he had transmitted to the grand vizier not only my note, but a faithful statement of my verbal arguments and remarks to him, according to my request, and that all had been brought to the Sultan's attention.

I have informed the Reverend George C. Reed, who is at Mequinez, of the above, and I trust that he may now be able to secure such a house as the Gospel Missionary Union desires. Should any further difficulties arise, however, I will do all I can to have them removed. As yet I have heard nothing from Mr. Reed.

I have, etc.,

H. PERCIVAL DODGE.

[Inclosure 1.—Translation.]

The Sultan's Representative at Tangier to Minister Dodge.

TANGIER, *November 30, 1909.*

We beg to inform your excellency that His Shereefian Majesty has granted permission to your citizens to rent a suitable house at Mequinez, in accordance with your excellency's request of Ramadan 21 last (October 6, 1909).

The answer to your excellency's letter from the vizier for foreign affairs of His Shereefinan Majesty is herewith inclosed.

MOHAMED BEN MOHAMED EL GUEBBASS.

[Inclosure 2.—Translation.]

The Grand Vizier to Minister Dodge.

NOVEMBER 19, 1909.

We have received your excellency's letter explaining regarding the house at Mequinez which your excellency had formerly requested to be rented to certain

[1] Not printed.

citizens of yours and requesting that Shereefian orders be issued to the governor of Mequinez to assist and do his best in securing the same.

We have brought your excellency's letter to His Majesty's knowledge and he (may the Almighty preserve him) has issued orders to the said governor urgently commanding him to secure there a house to be rented to them. The said orders have already been sent to the Basha. May you remain with joy and in peace.

AISSA BEN OMAR.

EXECUTION OF PROVISIONS OF THE ACT OF ALGECIRAS.

File No. 295/274.

Memorandum from the French Embassy.[1]

[Translation.]

FRENCH EMBASSY,
Washington, January 23, 1909.

The French and Spanish Governments advise the signatory powers that they propose to apply to the Shereefian Government for a one-year renewal of the commission with which they had been intrusted last year by that Government in the matter of watching over the smuggling of arms as provided in the Algeciras act.

France and Spain, referring to their previous communication as to the conditions under which they will discharge this duty, trust that they will obtain, as before, the signatory powers' assent to this proposition.

File No. 295/274.

Memorandum to the French Embassy.[2]

DEPARTMENT OF STATE,
Washington, January 28, 1909.

The Government of the United States will have no objection to France and Spain being intrusted for another year with the duty of preventing the introduction of contraband into Moroccan territory, under the same conditions as last year, provided the other signatory powers give their consent and the commission of the Maghzen is obtained, the understanding of the United States being that the officers of the French and Spanish warships are to participate in the search of the various merchant vessels which may be suspected of introducing contraband into Moroccan territory, within the territorial waters, merely in the capacity of representative pro tempore of the customs service in Morocco, in accordance with what is deemed to be the true meaning and intent of articles 24, 25, 80, and 91 of the Algeciras act.

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[1] Similar note received from the Spanish Legation.
[2] Mutatis mutandis to the Spanish Legation in Washington.

File No. 295/307–310.

The Acting Secretary of State to Minister Dodge.

No. 12.] DEPARTMENT OF STATE,
Washington, August 18, 1909.

SIR: I have to acknowledge the receipt of your No. 21, of the 17th ultimo,[1] transmitting reports of three conferences held at Fez in March last by the French and Spanish ministers and the delegates of the Sultan in regard to the execution of some of the provisions of the act of Algeciras. It would seem that the matters considered at these conferences in which this Government may be regarded as having a direct concern are as follows:

1. That portion which has to do with the regulation of the right of foreigners to hold real property in Morocco. The department understands from the discussion of this matter that American citizens will be accorded the same rights in this matter that will be extended to the citizens of the other powers. If this be true it would seem that as to this there would be nothing concerning which the department would care to object.

2. Regarding the suggestion of the delegates of the Sultan that parcels received at Tangier by the ministers of the powers should be examined, apparently by the customs authorities, in order to ascertain whether or not they contain contraband, and the reply of the ministers to this suggestion that "the contents of such parcels can be ascertained from the customs declarations, that this is a customary diplomatic privilege, and that the Maghzen, if it desired, should address the diplomatic corps through its dean," the department is inclined to regard the answer thus stated as sufficiently setting forth the views of the department on this matter.

A third point in which the department is interested is that which indicates that the representatives of the other powers seem to be under the impression that the expenses of the delegates of the various powers to the Casablanca Claims Commission should be paid by the Shereefian Government. The United States has heretofore proceeded on the assumption that it was to pay the expenses of its delegate and accordingly has made provision for the retention of 5 per cent of the amounts awarded by the commission to American citizens, or so much thereof as might be necessary, in order to defray the expenses of its representative on that commission. It would seem, however, that if the other powers are to have the expenses of their delegates paid by the Shereefian Government, the United States should receive similar treatment. The department feels, however, that this matter might well be left for the arrangement of the powers more interested in it, the department contenting itself with demanding the treatment accorded to the most-favored nation when the matter shall be finally settled.

You are requested to keep yourself informed regarding any phase of the discussion which could in any way directly affect American citizens, and particularly regarding the expenses of the various delegates to the Casablanca Claim Commission.

I am, etc.,

ALVEY A. ADEE.

[1] Not printed.

File No. 295/329.

Minister Dodge to the Secretary of State.

No. 62.] AMERICAN LEGATION,
Tangier, September 6, 1909.

SIR: I have the honor to acknowledge the receipt of your instruction No. 12 (File No. 295/307–310) of the 18th ultimo concerning the conferences held at Fez in March last by the French and Spanish ministers and delegates of the Sultan in regard to the execution of certain of the provisions of the act of Algeciras and other matters, and I will not fail to keep myself informed upon this subject as directed. The discussion of these questions has been resumed and is still proceeding at Paris and Madrid with the Moorish missions, which are now there, but nothing is as yet known as to any results which may have been reached.

Referring to paragraph 1 of your instruction in regard to the regulations of the right of foreigners to hold real property in Morocco, there would seem to be no doubt as to the correctness of the department's understanding "that American citizens will be accorded the same rights in this matter that will be extended to the citizens of other powers."

Referring to paragraph 2 the question of the payment of the expenses of the various delegates to the Casablanca Mixed Claims Commission has not yet been settled. The department's directions as to this matter have been duly noted.

I have, etc.,

H. PERCIVAL DODGE.

NETHERLANDS.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND THE NETHERLANDS.

Signed at Washington, May 2, 1908.
Ratification advised by the Senate, May 6, 1908.
Ratified by the President, January 8, 1909.
Ratified by the Netherlands, March 5, 1909.
Ratifications exchanged at Washington, March 25, 1909.
Proclaimed, March 25, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Arbitration Convention between the United States of America and Her Majesty the Queen of the Netherlands was concluded and signed by their respective plenipotentiaries at Washington on the second day of May, one thousand nine hundred and eight, the original of which Convention being in the English and Dutch languages, is word for word as follows:

The Government of the United States of America and Her Majesty the Queen of the Netherlands, signatories of the Convention for the pacific settlement of international disputes, concluded at The Hague on July 29, 1899:

Taking into consideration that by Article XIX of that Convention the High Contracting Parties have reserved to themselves the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment;

Have appointed as their Plenipotentiaries to conclude the following agreement, to wit:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

Her Majesty the Queen of the Netherlands, Mr. W. A. Royaards, Counselor of Legation and Chargé d'Affaires ad interim of the Netherlands at Washington;

Who, after communicating to each other their respective full powers, found in good and due form, have agreed on the following articles:

ARTICLE I.

Differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established

at The Hague by the Convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting States, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States, by and with the advice and consent of the Senate, and on the part of the Netherlands they will be subject to the procedure required by the constitutional laws of the Netherlands.

ARTICLE III.

This Convention is concluded for a period of five years, counting from the date of the exchange of ratifications, which shall take place as soon as possible.

Done in duplicate at Washington, in the English and Dutch languages, this second day of May, 1908.

ELIHU ROOT. [SEAL]
W. A. ROYAARDS. [SEAL]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the twenty-fifth day of March, one thousand nine hundred and nine.

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-fifth day of March in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States of America the one hundred and thirty-third.

WM. H. TAFT.

[SEAL.]

By the President:

P. C. KNOX,
Secretary of State.

TERMINATION OF COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND THE NETHERLANDS.

File No. 2350/52B.

The Acting Secretary of State to the Netherlands Minister.

DEPARTMENT OF STATE,
Washington, April 30, 1909.

SIR: The Congress of the United States has effectively declared its intention to supersede the present customs tariff law of the United States by a new law which is now under discussion, and which will probably be enacted within a few weeks.

One of the necessary results of this change will be that the commercial agreements made by the President under the authority of the act of July 24, 1897, will no longer be applicable to the conditions which will exist under the new law. The Government of the United States accordingly finds it necessary to give notice of the intention to terminate all of these agreements.

By direction of the President I have therefore the honor hereby to give through you to the Government of the Netherlands formal notice on behalf of the United States of the intended termination of the commercial agreement signed on May 16, 1907. Further communication on this subject will be made after the passage of legislative measures affecting the bases on which this agreement was concluded.

Accept, etc.,

HUNTINGTON WILSON.

File No. 2350/52A.

The Acting Secretary of State to Minister Beaupré.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 30, 1909.

For your information and for immediate communication to the Netherlands Government I quote the following letter of notification addressed to-day to the Netherlands minister here.[1]

WILSON.

File No. 2350/57B.

The Secretary of State to the Netherlands Minister.

DEPARTMENT OF STATE,
Washington, August 7, 1909.

SIR: Referring to the department's note to your legation dated April 30, 1909, relative to the termination of the existing commercial agreement between the United States and the Netherlands and stating

[1] Supra.

that a further communication on this subject would be made after the passage of legislative measures affecting the bases on which that agreement was concluded I have now the honor to inform you that the new tariff law approved August 5, 1909, contains the following provisions respecting the commercial agreements of the United States:

That the President shall have power and it shall be his duty to give notice, within ten days after the passage of this act, to all foreign countries with which commercial agreements in conformity with the authority granted by section three of the act entitled "An act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, have been or shall have been entered into, of the intention of the United States to terminate such agreement at a time specified in such notice, which time shall in no case, except as hereinafter provided, be longer than the period of time specified in such agreements respectively for notice for their termination; and upon the expiration of the periods when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importations from said countries shall be subject to no other conditions or rates of duty than those prescribed by this act and such other acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the terms of said commercial agreements shall remain in force: *And provided further*, That in the case of those commercial agreements or arrangements made in accordance with the provisions of section three of the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, which contain no stipulations in regard to their termination by diplomatic action, the President is authorized to give to the Governments concerned a notice of termination of six months, which notice shall date from April thirtieth, nineteen hundred and nine.

By the President's direction, in pursuance of the above-quoted provisions of law, I have the honor hereby to give through you to the Government of the Netherlands formal notice on behalf of the United States of the intended termination of the commercial agreement signed on May 16, 1907, to take effect one year from the present date, namely, August 7, 1910, when the said agreement shall cease to be in force.

Accept, etc.,

P. C. KNOX.

NICARAGUA.

EXECUTION OF LEONARD GROCE AND LEE ROY CANNON IN NICARAGUA.

File No. 22372.

Vice Consul Caldera to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN CONSULATE,
San Juan del Sur, November 17, 1909.

Mr. Caldera reports the capture of two Americans, Lee Roy Cannon and Leonard Groce, with the revolutionists, and says they have been sentenced to death at El Castillo. Mr. Caldera says he telegraphed the President at the request of the prisoners pleading commutation, and that the President replied that he would see, but he now says the sentence is final.

File No. 22372/1.

Vice Consul Caldera to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN CONSULATE,
Managua, November 17, 1909.

Mr. Caldera says it is reported that the two Americans captured with the revolutionists have been executed, and says he has reason to believe the report is true.

File No. 22372/1.

The Secretary of State to Vice Consul Caldera.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 18, 1909.

Mr. Knox instructs Mr. Caldera to ascertain immediately and telegraph the department fully positive information as to the fate of the two captured Americans. Says the Government of the United States can scarcely credit the report of the summary execution of two Americans taken with the revolutionary army. Mr. Knox says further that the Nicaraguan chargé d'affaires in Washington has been asked to demand telegraphically full information for this Government which will not for one moment tolerate such treatment of American citizens.

File No. 22372/1.

The Secretary of State to the Nicaraguan Chargé.

DEPARTMENT OF STATE,
Washington, November 18, 1909.

SIR: I have the honor to request you, as the diplomatic channel of communication between the Government of the United States and that of President Zelaya, immediately to telegraph to that Government that the Government of the United States can scarcely believe the report that two Americans captured with the revolutionary army of Gen. Estrada have been summarily executed, and that if this grievous report be true the Government of the United States demands instant information of all the particulars, meanwhile reserving for future decision the measures to be taken in such an eventuality.

You will readily appreciate the urgency of this matter as well as its determinative bearing upon further relations between this Government and that which you represent.

Accept, etc.,

P. C. KNOX.

File No. 22372/3.

The Nicaraguan Chargé to the Secretary of State.

[Translation.]

NICARAGUAN LEGATION,
Washington, November 19, 1909.

Mr. SECRETARY: I have had the honor to receive your important communication dated yesterday and delivered to me at 11 p. m.

In compliance with your wishes I immediately telegraphed to my Government about the fact your excellency is pleased to bring to my notice and having officially received those reports I have the honor to bring the following to your excellency's knowledge.

Two American citizens, Lee Roy Cannon and Leonard Groce, were caught in the act of laying mines in the San Juan River of Nicaragua for the purpose of blowing up two steamers carrying the Government forces. They confessed their guilt and being thereupon tried and offered every means of defense provided in such cases by the laws of my country; they were sentenced to death by the military court, which sentence was executed.

My Government has forwarded to this legation the whole record of the case; that is, the trial of these two Americans which clearly demonstrates the guilt and commission of offense which, under the military laws of Nicaragua, are punished as above stated.

I shall at the proper time have the honor to lay before your excellency the record herein above referred to.

It is to be noted that the sentenced men were well known in Central American revolutions; that they had been arrested for like offenses; that this was not their first offense; and that Cannon was recently sentenced to the penitentiary in Honduras for taking an active part against Nicaragua. All this will be fully substantiated

by the record of the trial which is now on the way and which will, I have no doubt, be the best justification of the action of the Nicaraguan military tribunal.

I avail, etc.,

FELIPE RODRIGUEZ.

File No. 22372/22.

Vice Consul Caldera to the Secretary of State.

No. 253.] AMERICAN CONSULATE,
Managua, November 20, 1909.

SIR: I have the honor to report that on the 15th instant at 3.15 a. m. I received a telegram from El Castillo, Nicaragua, signed by Lee Roy Cannon, informing me that they had been sentenced to death, and imploring their pardon from President Zelaya.

Knowing that Lee Roy Cannon was an American, as he had been identified with previous revolutionary movements in Central America, I immediately telegraphed to President Zelaya transmitting the request, and adding that we should be grateful if he would commute the sentence.

Later, on the morning of the same day, I could find out that the Americans sentenced were above-mentioned Cannon and a Leonard Groce, known by several persons in this city.

So many false reports are circulated daily here that it is very hard to find out actual facts.

I called on General Minister Irias, who has been in bed for several days suffering the consequences of a fall by which his left eye was injured, and upon my inquiring regarding these two Americans he said that he knew nothing except that they had been caught, and that they were the dynamiters of the revolutionists.

He promised me to do all in his power to save their lives; meanwhile Señor Matamoras, the under secretary of foreign affairs, had come to see the minister and, at my request, he was immediately sent to the President to find out for me what was being done with the prisoners.

I could not see Señor Matamoras again until 12 M., when he informed me that the President said that he had already answered my telegram, and that he would decide when he had the details of the case.

I asked Minister Irias and Señor Matamoras to kindly inform me of any new developments in this case, but they seemed to know nothing, and on the evening of the 16th I again asked Minister Irias to please inquire from the President what had been done, whereupon he again sent Señor Matamoras, who could not see the President until late that night.

On the morning of the 17th I called on Señor Matamoras, who informed me that the President said the sentence was final, but not that they had been executed.

It is the opinion of several local lawyers, among whom is one employed by the Government as counsel, and whose name could not be mentioned in this connection without endangering his personal

safety, that there is no law in this country which authorizes the execution of prisoners of war.

Furthermore, I have found out through a member of the Red Cross, who arrived from El Castillo, that Groce and Cannon had already fled from the reach of the troops of the Government after the battle was over, when they were seen at a distance and called by the commander on the river steamer *Diamante* and assured by him that they would not be harmed if they gave themselves up, but when they arrived at El Castillo they say that they confessed that they had laid down mines in the river to blow up the steamers carrying Government's troops.

They were then accused by the fiscal de guerra (military prosecuting attorney), Señor Salomon Selva, tried by court martial, sentenced to the capital punishment, and executed at 10 a. m. of the 17th instant.

I am informed that Gen. Toledo, a Guatemalan revolutionist, now in command of the army operating in the San Juan River, and Gen. Medina, the second in command, in charge of the troops at El Castillo, were not favorable to the execution; Minister Irias told me he was opposed, and I am assured that in a letter written to the President from his sick bed, he expressed his opinion against the execution of the two Americans captured.

It is very seldom that anybody in Nicaragua has dared to express an opinion contrary to that of the President, and many who have done so are now locked up in the penitentiary; nevertheless in this occasion knowing that the execution of these two men was one of his most unpopular acts he hastened to do it, it is believed, not so much because they were revolutionists, but because they were Americans.

After having written the foregoing I received the cablegram from the department instructing me to send full information as to the capture and execution of the two Americans referred to.

In obedience thereto, after making further inquiries from official sources, I cabled the substance of this report.

The general minister showed me the telegram addressed to the President by the authorities at El Castillo reporting the sentence and execution, but not the capture.

In one of the telegrams they report that both Americans wrote letters to their families in which they confess their guilt, and that said letters had been filed with the proceedings.

I remarked that such letters did not belong there, but to this consulate, and I claimed them. The minister replied that they would see when the original proceedings arrive here.

According to Nicaraguan law those letters can not constitute legal proof of any kind, no matter what they may say; furthermore, the letters were addressed to the writers' families and undoubtedly violated by the Government's officials.

Based on well-known practice among officials of this Government, it is not to be doubted, as it is rumored, that the prisoners were compelled to sign declarations and even write letters confessing their guilt, the former dictated by the prosecuting attorney, by promising them that by so doing their lives might be spared.

I have now consulted six of the most prominent lawyers in Managua, and they all agree that the sentence, as executed, is unwarrant-

able and have offered me their written opinion upon examination of the proceedings.

Finally, it is unexceptionably declared by respectable citizens of Nicaragua that the execution of prisoners of war is unprecedented in Nicaragua in the last 50 years.

I have, etc.,

HENRY CALDERA.

[Inclosure 1—Translation.]

Mr. Lee Roy Cannon to Vice Consul Caldera.

[Telegram.]

EL CASTILLO, *November 14, 1909.*

We implore our pardon from Gen. Zelaya, but quick. The council has sentenced us to death.

LEE ROY CANNON.

[Inclosure 2—Translation.]

Vice Consul Caldera to President Zelaya.

[Telegram.]

MANAGUA, *November 15, 1909.*

Americans sentenced to death at El Castillo implore your pardon. We should be grateful to you if sentence is commuted.

H. CALDERA.

[Inclosure 3—Translation.]

President Zelaya to Vice Consul Caldera.

[Telegram.]

CAMPO DE MARTE, *November 15, 1909.*

The Americans to which you refer in your telegram have confessed to be those who set up the mines in the river to blow up our steamers, one of which (mines) exploded at a few yards from the *Diamante*, which had on board 500 men. When I know the sentence dictated I will decide.

PRESIDENT ZELAYA.

[Inclosure 4—Translation.]

Vice Consul Caldera to Mr. Lee Roy Cannon.

[Telegram.]

MANAGUA, *November 15, 1909.*

I have appealed to the President in your behalf. I am awaiting his reply.

AMERICAN VICE CONSUL.

File No. 22372/4 A.

The Secretary of State to Consul Moffat.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 21, 1909.

Mr. Knox says in considering demanding satisfaction from Zelaya for the killing of Groce and Cannon that the department would like from Mr. Moffat full information which will confirm or upset the understanding that Groce and Cannon were regularly participating in the revolutionary movement and were acting in the line of their duty as part of the forces and not as independent individuals. Mr. Knox says that Castillo states that Groce was colonel of engineers and that Cannon was his second in command. Instructs Mr. Moffat to verify from the highest revolutionary sources the exact facts of their status and telegraph them to the department. Says the matter is urgent.

File No. 22372/8.

Consul Moffat to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN CONSULATE,
Bluefields, November 25, 1909.

Mr. Moffat says that Cannon and Groce were regularly enlisted in the revolutionary movement under the command of Chamorro, Groce as colonel of engineers and Cannon as lieutenant colonel of engineers. States that he had an interview with Chamorro, who had arrived that day, and was informed by him that in line of duty Groce, with 10 men, was at an outpost beyond the Chamorro camp, and that Cannon had been sent with two men to make a survey of a new position; that upon his return to Groce outpost was surprised by Toledo forces and both of them captured. Mr. Moffat says that Chamorro further states that it was learned subsequently from an officer of Toledo that Zelaya had ordered both of the men shot, but that Toledo refused to obey the order, and instead took the men to Fort Castillo. Mr. Moffat adds that what happened subsequently is not known.

REVOLUTION IN NICARAGUA AND SEVERING OF DIPLOMATIC RELATIONS BETWEEN THE UNITED STATES AND NICARAGUA.

File No. 6369/199.

Consul Moffat to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN CONSULATE,
Bluefields (undated),
(Received Oct. 7, 1909.)

Mr. Moffat reports that he has received secret information, which he has reason to believe, that a revolution will start in Bluefields on the 8th; that the State, with the present governor proclaimed provisional president, will constitute an independent republic, with Bluefields the capital; appeal will be made to Washington immediately for recognition. Mr. Moffat says the governor and leaders have control over the entire army, which numbers 2,000 on the coast, that they propose to protect property of foreigners. and that there will be no fighting in Bluefields; that the army would proceed south at once, augmented in numbers already arranged for, enter the capital, overthrow the President and consolidate into another republic the Pacific States of Nicaragua. Mr. Moffat adds that Gen. Chamorro, who will lead the army, landed secretly from Costa Rica the night before.

Consul Moffat to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN CONSULATE,
Blufields (undated).
(Received Oct. 12, 1909—10.32 a. m.).

Mr. Moffatt reports that the provisional government was established on the 10th, with Juan Estrada, governor of this State, as Provisional President Republic of Nicaragua. He says that the change was effected through the entire territory of State of Zelaya and Cape Gracias without difficulty, or the firing of a shot; that the entire population is jubilant at the overthrow of the Zelaya control on the coast and are in anticipation of very great prosperity; and that the foreign business interests are enthusiastic. He says leaders will immediately strike down Managua Government; that troops will proceed to interior to-day; that overthrow of Zelaya appears absolutely assured, and that it is intended later to separate Republic of Nicaragua, consolidating Pacific Coast States into a separate Republic, both Republics to be under the control of the conservative party. Mr. Moffatt adds that immediate reduction tariff is assured; also the annulment of all concessions not owned by foreigners. He says new Government here is friendly to American interests and is progressive; that the new President has granted him recognition; has formed new cabinet; and has sent him assurances in writing friendship American Government.

The Acting Secretary of State to Consul Moffat.[1]

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, October 13, 1909.

Mr. Adee instructs Mr. Moffatt to do nothing whatever which might indicate the recognition of provisional administration, and says he should have no official intercourse with it in his representative capacity. Mr. Adee adds that if any action of the temporary power should require interposition to protect American interests Mr. Moffatt should personally and informally address whatever visible local agency may be in a position to afford de facto relief. Mr. Moffatt is directed to confine himself strictly within these limits.

File No. 6369/207.

Minister Merry to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
San Jose, October 14, 1909.

Mr. Merry reports eastern coast of Nicaragua in possession of revolutionists, and says western coast is also in revolt, but that he is without further particulars.

File No. 6369/268.

Minister Merry to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
San Jose, November 11, 1909.

Mr. Merry says that Nicaraguan Army while fighting revolutionists offensively invaded Costa Rica on the southern bank of San Juan River, and that Costa Rica had asked explanation from Managua.

File No. 6369/268.

The Secretary of State to Minister Merry.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 12, 1909.

Mr. Knox informs Mr. Merry that the department hopes that Costa Rica will continue to take every means at her disposal to compel the faithful observance of the treaties of Washington.

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[1] Same to Managua.

File No. 6369/272.

Minister Merry to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
San Jose, November 15, 1909.

Mr. Merry acknowledges department's telegram of 12th, and says President of Costa Rica promises adherence to the Washington conventions, and states that Nicaraguan Government has apologized for invasion.

The Secretary of State to Consul Moffat.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 21, 1909.

Mr. Knox states that in the light of recent occurrences, particularly in regard to cases affecting American interests and property, it is appropriate that the revolutionary party should understand that the United States reserves all claims and rights growing out of acts or omissions of the revolutionary party to which this Government or its citizens may be entitled under international law, and that such timely reservation is not to be deemed to imply admission of a full state of revolutionary belligerency with the rights and obligations attaching thereto under the doctrines of international law. Mr. Knox refers particularly to the reported action of the revolutionary party in respect to the steamer *Dictator* which is under charter of the Bluefields Steamship Co., an American corporation, and says, this Government reserves all rights in respect to the validity of any proceedings against that vessel as a prize of war, and that if the vessel is actually held by the revolutionary party it is suggested that it be released under bond from the charterers to insure her departure from Nicaragua and to engage that she shall not attempt to enter any invested port after due notice and warning of effective investment.

KNOX.

The Secretary of State to Minister Merry.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 21, 1909.

Mr. Knox quotes, for the information of Mr. Merry, the following, which is a note of the verbal reply made November 19 by the Department of State to repeated representations made on behalf of the Governments of Costa Rica, Salvador, and Guatemala:

The aim of the majority of the signatory Governments to reestablish the Washington conventions is laudable.

The principal direct interest in the conventions and the principal direct responsibility to prevent their perversion and their becoming discredited naturally rests with the majority of the signatories.

The Government of the United States does not feel called upon at this time to express precise views as to the measures which the majority of the Governments might wisely take in case the conventions were in their opinion in jeopardy.

It is clearly understood that if the majority of the Governments directly interested should feel compelled to take any joint measures in vindication of the conventions, such measures would only be taken by them in conjunction with a definite accord for the support of the status quo ante immediately upon the accomplishment of the sole aim in view—namely, joint support of the conventions in a manner conducive to the peace of Central America, for which they were framed.

Mr. Merry is further informed that regarding the announced blockade of Greytown the Government of the United States has assumed the attitude indicated in a telegram sent to the Bluefields Steamship Co., reading as follows:

If the announced blockade or investment of the Nicaraguan port of San Juan del Norte (Greytown) is effectively maintained, and the requirements of international law, including warning to approaching vessels, are observed this Government would not be disposed to interfere to prevent its enforcement. A naval vessel will be ordered to Greytown to observe and report whether the blockade is effective.

KNOX.

Other legations in Central America have been informed.

KNOX.

The Secretary of State to the Nicaraguan Chargé.

DEPARTMENT OF STATE,
Washington, December 1, 1909.

SIR: Since the Washington conventions of 1907, it is notorious that President Zelaya has almost continuously kept Central America in tension or turmoil; that he has repeatedly and flagrantly violated the provisions of the conventions, and, by a baleful influence upon Honduras, whose neutrality the conventions were to assure, has sought to discredit those sacred international obligations, to the great detriment of Costa Rica, El Salvador, and Guatemala, whose Governments meanwhile appear to have been able patiently to strive for the loyal support of the engagements so solemnly undertaken at Washington under the auspices of the United States and of Mexico.

It is equally a matter of common knowledge that under the régime of President Zelaya republican institutions have ceased in Nicaragua to exist except in name, that public opinion and the press have been throttled, and that prison has been the reward of any tendency to real patriotism. My consideration for you personally impels me to abstain from unnecessary discussion of the painful details of a régime which, unfortunately, has been a blot upon the history of Nicaragua and a discouragement to a group of Republics whose aspirations need only the opportunity of free and honest government.

In view of the interests of the United States and of its relation to the Washington conventions, appeal against this situation has long since been made to this Government by a majority of the Central American Republics. There is now added the appeal, through the revolution, of a great body of the Nicaraguan people. Two Ameri-

cans who, this Government is now convinced, were officers connected with the revolutionary forces, and therefore entitled to be dealt with according to the enlightened practice of civilized nations, have been killed by direct order of President Zelaya. Their execution is said to have been preceded by barbarous cruelties. The consulate at Managua is now officially reported to have been menaced. There is thus a sinister culmination of an administration also characterized by a cruelty to its own citizens which has, until the recent outrage, found vent in the case of this country in a series of petty annoyances and indignities which many months ago made it impossible to ask an American minister longer to reside at Managua. From every point of view it has evidently become difficult for the United States further to delay more active response to the appeals so long made, to its duty to its citizens, to its dignity, to Central America, and to civilization.

The Government of the United States is convinced that the revolution represents the ideals and the will of a majority of the Nicaraguan people more faithfully than does the Government of President Zelaya, and that its peaceable control is well-nigh as extensive as that hitherto so sternly attempted by the Government at Managua.

There is now added the fact, as officially reported from more than one quarter, that there are already indications of a rising in the western Provinces in favor of a presidential candidate intimately associated with the old régime. In this it is easy to see new elements tending toward a condition of anarchy which leaves, at a given time, no definite responsible source to which the Government of the United States could look for reparation for the killing of Messrs. Cannon and Groce, or, indeed, for the protection which must be assured American citizens and American interests in Nicaragua.

In these circumstances the President no longer feels for the Government of President Zelaya that respect and confidence which would make it appropriate hereafter to maintain with it regular diplomatic relations, implying the will and the ability to respect and assure what is due from one state to another.

The Government of Nicaragua which you have hitherto represented is hereby notified, as will be also the leaders of the revolution, that the Government of the United States will hold strictly accountable for the protection of American life and property the factions de facto in control of the eastern and western portions of the Republic of Nicaragua.

As for the reparation found due, after careful consideration, for the killing of Messrs. Cannon and Groce, the Government of the United States would be loath to impose upon the innocent people of Nicaragua a too heavy burden of expiating the acts of a régime forced upon them or to exact from a succeeding Government, if it have quite different policies, the imposition of such a burden. Into the question of ultimate reparation there must enter the question of the existence at Managua of a Government capable of responding to demands. There must enter also the question of how far it is possible to reach those actually responsible and those who perpetrated the tortures reported to have preceded the execution, if these be verified; and the question whether the Government be one entirely dissociated from the present intolerable conditions and worthy to be trusted to make impossible a recurrence of such acts, in which

case the President, as a friend of your country, as he is also of the other Republics of Central America, might be disposed to have indemnity confined to what was reasonably due the relatives of the deceased and punitive only in so far as the punishment might fall where really due.

In pursuance of this policy the Government of the United States will temporarily withhold its demand for reparation, in the meanwhile taking such steps as it deems wise and proper to protect American interest.

To insure the future protection of legitimate American interests, in consideration of the interests of the majority of the Central American Republics, and in the hope of making more effective the friendly offices exerted under the Washington conventions, the Government of the United States reserves for further consideration at the proper time the question of stipulating also that the constitutional Government of Nicaragua obligate itself by convention, for the benefit of all the Governments concerned, as a guaranty for its future loyal support of the Washington conventions and their peaceful and progressive aims.

From the foregoing it will be apparent to you that your office of chargé d'affaires is at an end. I have the honer to inclose your passport, for use in case you desire to leave this country. I would add at the same time that, although your diplomatic quality is terminated, I shall be happy to receive you, as I shall be happy to receive the representative of the revolution, each as the unofficial channel of communication between the Government of the United States and the de facto authorities to whom I look for the protection of American interests pending the establishment in Nicaragua of a Government with which the United States can maintain diplomatic relations.

Accept, etc.,

P. C. KNOX.

File No. 6369/347C.

The Secretary of State to Ambassador Thompson.[1]

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 2, 1909.

Mr. Knox instructs Mr. Thompson that in order that he may be accurately informed and able intelligently to discuss the present attitude and policy of the United States toward Central America, and particularly toward Nicaragua, the following communication made last night to the then chargé d'affaires of Nicaragua is quoted for his information.[2]

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[1] Same to American Embassy, Brazil, with instructions to repeat to American Legations to the Argentine Republic, Peru, Bolivia, Chile, Uruguay and Paraguay, the American Legations to Costa Rica and Guatemala, the latter to repeat to Salvador and Honduras. Sent also to the American Consulate at Managua.

[2] Supra.

File No. 6369/347B.

The Secretary of State to Consul Moffat.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 2, 1909.

Mr. Knox quotes for the information of Mr. Moffat the note delivered yesterday to the then chargé d'affaires in Nicaragua.[1]

Directs him to make clear to the revolutionary leaders their obligation as expressed above as well as our willingness to hold unofficially communication with them.

File No. 6369/439.

Minister Brown to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Tegucigalpa, December 17, 1909.

Mr. Brown says the Nicaraguan minister states that Zelaya yesterday resigned in favor of Madriz, who should reach Managua on the 19th instant.

File No. 6369/547.

Minister Merry to the Secretary of State.

[Extract.]

No. 1458.] AMERICAN LEGATION,
San Jose, December 18, 1909.

SIR: I have the honor to forward herewith copy and translation of the message of President Zelaya tendering his resignation for the unexpired portion of his term to the Nicaraguan Legislative Assembly. The term will expire in 17 months. I also add translation of article 78, of the Nicaraguan constitution, authorizing the resignation and providing for the successor.

With assurances, etc.,

WILLIAM LAWRENCE MERRY.

[Inclosure 1—Translation.]

[La Informacion, Dec. 17, 1909.]

MANIFESTO OF PRESIDENT ZELAYA TO THE NATIONAL ASSEMBLY. RESIGNS POWER TO DEPOSIT IT IN WHOEVER MAY BE NAMED THEREBY. TELEGRAM RECEIVED AT 12.15 AT NIGHT.

To-day at 11 a. m. was read in the hall of the National Legislative Assembly, Deputy Santiago Arguello presiding, by General Minister Julian Irias, the following document:

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[1] Supra.

"Messrs. Deputies: The difficult circumstances through which the Republic is passing demands acts of true abnegation and patriotism of good citizens who can not contemplate with indifference the sorrows of the common mother unjustly overwhelmed by a hard destiny. You well know that there is burning in the country a revolution immoral and shameful, which even threatens to destroy the sovereignty of the fatherland. You also know the hostile attitude of a powerful nation which, against all right, has intervened in our political affairs and publicly furnished the rebels the aid which they have asked for, upon being conquered everywhere by the heroism of our army, and as the revolutionary chiefs have declared that they will deposit the fratricidal arms when the present ruler leaves power; desiring to avoid increased shedding of blood and to contribute efficiently to the pacification of the country, I manifest to the honorable National Assembly that I am disposed to separate myself from the Government and to deposit consequently the supreme power for the remaining period of my term to the person who may be designated in conformity with article 78 of the constitution.

"I desire that this determination shall contribute to the good of Nicaragua by the establishment of peace and above all, the suspension of the hostility manifested by the American Government to whom I do not desire to be a pretext, that it may continue intervening in any way in the destiny of the country."

MANAGUA, *December 16, 1909.*

Taken in consideration and passed to a special committee formed by the Deputies Luciano Gomez, M. Corones Matus, L. Ramirez, W. Wasmes, and Felix Zelaya R.

[Article 78, Constitution of 1905.]

When the President of the Republic has to resign the power, he shall do so to any of the deputies of the Legislative Assembly. If the assembly is convened, it shall designate the person to whom the resignation shall be made.

File No. 6369/510.

Minister Heimke to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
San Salvador, December 26, 1909.

Mr. Heimke says the commander of the United States cruiser *Albany* telegraphs from Corinto that Zelaya left there on Friday for Salina Cruz on a Mexican warship. Mr. Heimke states that he has telegraphed this information to the embassy at Mexico.

File No. 6369/539.

Chargé Bailey to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Mexico, December 29, 1909.

Mr. Bailey reports the arrival of Zelaya and says about 300 Central Americans and Mexican private citizens tendered him an enthusiastic reception at the train.

(To be continued in Foreign Relations, 1910.)

CLAIM OF THE GEORGE D. EMERY CO., AN AMERICAN CORPORATION, V. NICARAGUA.

File No. 924/256.

PROTOCOL OF AGREEMENT.

The United States of America and the Republic of Nicaragua through their respective plenipotentiaries, Philander C. Knox, Secretary of State of the United States of America, and Señor Doctor Don Pedro Gonzales, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Nicaragua on Special Mission, being duly authorized thereto, and Señor Doctor Don Rodolfo Espinosa, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States, have agreed upon and concluded the following protocol:

Whereas, the United States of America, on behalf of the George D. Emery Company, an American corporation, claims that the annulment by the Government of Nicaragua of a certain concession granted by said Government to one Herbert C. Emery, and by him assigned to said George D. Emery Company, was contrary to law and in contravention of the rights of said corporation, under its concession; and

Whereas, the Republic of Nicaragua maintains both the legality and justice of such annulment, and

Whereas, the two Governments have concluded to submit the determination of the controversy to arbitration it is therefore agreed as follows:

ARTICLE I.

The High Contracting parties will submit to an international tribunal of arbitration, for decision, the questions hereinafter stated in their order, namely:

1. Whether by the decision of June 11th, 1903, rendered by the arbitrators provided for in the concession, said concession was annulled.

2. Whether (a) the annulment of said concession by the Nicaraguan Government; (b) the proceedings and judgment of the Nicaraguan courts for 500,000 silver dollars and the embargo of the property of said corporation and the interference with the work and business of said corporation by the Nicaraguan Government; (c) the sale by the Nicaraguan Government by contract of May 18th, 1905, to Angel Caligaris of forty thousand hectares of national lands in the Department of Zelaya; (d) the grant by the Nicaraguan Government to Lomax S. Anderson of the concession dated February 7th, 1906, were in contravention of the rights of said corporation and of the principles of equity and international law.

If the arbitral tribunal find in the affirmative on any of the foregoing questions contained in Clause 2 of this article, they shall then assess and award damages against the Nicaraguan Government to cover whatever loss, damages, costs and expenses, if any, said corporation has suffered and incurred by reason of such act or acts in contravention of justice, equity and international law; it being understood that for the purposes of any arbitral assessment of damages the Government of the United States recognizes the right of

the Government of Nicaragua to set off by way of reduction of damages any counterclaims against the Company.

ARTICLE II.

Any award that the tribunal may render against said Nicaraguan Government shall be payable in United States gold and shall include interest at the rate of six per cent per annum on all losses or damages from the time they occurred until the award is fully paid.

ARTICLE III.

The said questions shall be referred to a tribunal composed of three arbitrators, one to be named by the President of the United States, and one by the President of Nicaragua, at or before the time of signing this protocol, and the third, who shall be one learned in the law and able to speak, write and understand the English language, to be selected by mutual accord between the two first named arbitrators. In the event no selection of the third arbitrator is made within thirty days after the signing of this protocol, then such third arbitrator, who shall be a citizen of neither the United States nor Nicaragua, is to be selected by the King of Great Britain.

In case of death, absence or incapacity of any arbitrator, or in the event of his ceasing or omitting to act the vacancy shall within thirty days be filled in the same manner as the original appointment, the period of thirty days to be calculated from the date of the happening of the vacancy.

ARTICLE IV.

Within sixty days from the date of the signing of this protocol, the Government of the United States, through the Department of State, shall furnish to the Government of Nicaragua, through its Legation at Washington, and to each arbitrator a copy of its case, stating therein all the claims of the George D. Emery Company against the Government of Nicaragua, together with all correspondence between the two Governments and between said corporation and each of said Governments, respectively, and also all documents, affidavits and other evidence in its possession in relation to the case.

Within sixty days from the signing of this protocol, the Government of Nicaragua, through its Legation at Washington, shall furnish to the Government of the United States through the Department of State, and to each arbitrator a copy of its case, stating therein all its claims against the George D. Emery Company, together with copies of all correspondence between the two Governments and between said corporation and the Government of Nicaragua, respectively, as well as all documents, affidavits and other evidence in its possession in relation to the case.

Within sixty days after filing such cases and the accompanying evidence, each Government shall in the same manner furnish to the other Government and to each arbitrator its counter-case, which shall contain only answers in defense to the other's case, and shall admit of no other charges against each other;

Such counter-cases shall be accompanied with copies of all documents, affidavits and other evidence in support thereof.

The period for submission of evidence shall thereupon be closed; provided that the tribunal may, however, allow or require either Government to furnish such additional evidence as may be deemed necessary, in the interest of justice.

The tribunal shall be at liberty to employ for its information all manner of documents and statements which it shall consider necessary, without being bound by strict judicial rules of evidence.

ARTICLE V.

The arbitrators shall organize and hold their first session in the City of Washington, District of Columbia, U. S. A., as soon as practicable, within one month following the filing of the counter-cases, and shall subscribe as their first act a solemn declaration to examine, consider and decide the questions submitted to them in accordance with justice and equity and the principles of international law. The concurrent action of any two arbitrators shall be adequate for a decision on all matters and questions submitted to the arbitral tribunal.

ARTICLE VI.

The arbitrators shall establish such rules of procedure as they may deem expedient, and shall hear one person as agent on behalf of each Government, and consider such arguments, written or oral, as said agent may present, and may with the consent of either agent hear other counsel on the side such agent represents.

ARTICLE VII.

The arbitrators shall decide the case by taking into consideration every circumstance connected with the Emery concession, the diplomatic correspondence between the two Governments relative thereto, and such documents and other evidence as may be submitted to them by the High Contracting Parties, or as may be required by the Tribunal. Their decision shall be final and conclusive, and shall be rendered within thirty days from the date of the first meeting, unless deferred by the tribunal for the purpose either of allowing or requiring further evidence, or of filling a vacancy in the tribunal.

ARTICLE VIII.

Reasonable compensation to the arbitrators for their services and all expenses incident to the arbitration, including the cost of such clerical aid as may be necessary to and be appointed by the tribunal, shall be paid by the two Governments in equal moieties.

ARTICLE IX.

It is furthermore mutually agreed by the Contracting Parties that the Government of Nicaragua reserves the right at any time within four months after the signature of this protocol to negotiate for a settlement directly with the Company, and it is understood that if

within the said months such settlement is made, approved by the Government of the United States and definitively consummated, the arbitration herein provided for will not be carried out.

IN WITNESS WHEREOF, the respective plenipotentiaries of the two Governments have signed and sealed the present protocol in duplicate in the English and Spanish languages.

DONE at Washington, this twenty-fifth day of May, in the year 1909.

PHILANDER C. KNOX. [SEAL.]
PEDRO GONZÁLEZ. [SEAL.]
RODOLFO ESPINOSA. [SEAL.]

File No. 924/256.

Supplementary protocol.

The United States of America and the Republic of Nicaragua, through their respective Plenipotentiaries, Philander C. Knox, Secretary of State of the United States of America, and Señor Doctor Don Pedro Gonzales, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Nicaragua on Special Mission, being duly authorized thereto, and Señor Doctor Don Rodolfo Espinosa, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Nicaragua to the United States, have agreed upon and concluded the following protocol supplementary to the protocol signed this day for the submission to arbitration of the Emery case.

SOLE ARTICLE.

It is understood and agreed between the High Contracting Parties that for the purposes of arbitration provided for in the protocol signed this day submitting to arbitration the claim of the George D. Emery Company against the Government of Nicaragua, all the dates and periods of time therein indicated, except the period provided for in Article IX, shall for the purposes of such arbitration and for the preparation therefor be computed as if the said protocol of arbitration had been signed four months from this date.

IN WITNESS WHEREOF, the respective plenipotentiaries of the two Governments have signed and sealed the present Supplementary Protocol in duplicate in the English and Spanish languages.

DONE at Washington, this twenty-fifth day of May in the year nineteen hundred and nine.

PHILANDER C. KNOX. [SEAL.]
PEDRO GONZÁLES. [SEAL.]
RODOLFO ESPINOSA. [SEAL.]

File No. 924/256.

Protocol of Settlement.

THE UNITED STATES OF AMERICA and the REPUBLIC OF NICARAGUA through their respective plenipotentiaries, Alvey A. Adee, Acting Secretary of State of the United States of America, and Señor Doctor

Pedro Gonzales, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Nicaragua on Special Mission, duly authorized thereto, and Señor Doctor Don Rodolfo Espinosa, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States, have agreed upon and signed the following protocol or settlement:

WHEREAS under a certain protocol between the United States of America and the Republic of Nicaragua, signed at Washington on the 25th day of May, 1909, it was agreed that the claim of the George D. Emery Company, an American corporation, against the Republic of Nicaragua, should be submitted to the jurisdiction and adjudication of an arbitration tribunal composed of three arbitrators; and,

WHEREAS it was provided in Article IX of said protocol that the Government of Nicaragua reserved the right at any time within four months after the signature of said protocol to negotiate with said company for a settlement of all difficulties existing between them, it being understood that if within the said four months such settlement were made, approved by the Government of the United States, and definitely consummated, that then and in that event the arbitration provided for in said protocol should not be carried out; now

THEREFORE, the respective governments, animated by the spirit of sincere friendship that should exist between the two nations, and actuated by the firmest desire to maintain and continue the good understanding which should exist and increase between them, and to the end of avoiding all possible future differences regarding this matter and of settling existing differences concerning said claim by common accord instead of further proceedings under the said protocol, and in pursuance of the express provision of Article IX of said protocol as above set forth, have now reached an amicable arrangement and settlement of the said claim and have agreed to and do settle the same in the manner and form hereinafter stated:

ARTICLE I.

The United States of America for and in behalf of the George D. Emery Company hereby sells, sets over, and assigns to the Republic of Nicaragua forever all the right, title and interest of the George D. Emery Company in, to, and under the following described property and releases the following claims:

1. A certain timber concession granted to Herbert Clark Emery on July 27, 1894, as well as certain modifications of said concession granted to said Herbert Clark Emery on May 5, 1898 and on August 11, 1900, and by him assigned to the George D. Emery Company, it being understood that all operations under this concession shall cease and determine from and upon the date of the signing of this agreement, provided that this shall not effect the rights of the George D. Emery Company to remove under the conditions hereinafter set forth in this agreement, all timber which, prior to the date of this agreement, the Emery Company has felled.

2. The plant and equipment owned by the George D. Emery Company and located within the territory of the Republic of Nicaragua, including the steamers *Yulu*, *Pioneer*, the launch *Yamni*, the schooner *Atlantic* and all small boats, together with all railroads, tram-roads,

and their equipment, all cattle, tools, and working outfit of camps, work expended in the woods, and all other assets within said territory not herein enumerated but belonging to said company, all said equipment and boats to be delivered to the Government of Nicaragua on or before May 18, 1910, said equipment and boats when so delivered to be in as good condition as they are upon the date of the signing of this protocol of settlement, necessary wear and tear excepted, the Emery Company hereby undertaking and agreeing to execute to the Government of Nicaragua bills of sale for all personal property transferred by said Company to said Government under the terms of this protocol, and said Company also agreeing that for a period of eight months, or until said boat shall on or before the expiration of said period of eight months be delivered to the Government of Nicaragua, it will insure the steamer *Yulu* for the sum of Thirty-five thousand dollars ($35,000), United States Gold, and will assign and deliver the policy to said Government of Nicaragua.

3. All damages of whatsoever name or nature which the George D. Emery Company has suffered or claim to have suffered by reason of any interference, lawful or unlawful, with its operations by the Government of Nicaragua or any of its officials, or by reason of any interruption, lawful or unlawful, of its work by said government or any of its officials.

ARTICLE II.

In consideration of the above premises and for a full, complete and final settlement of all claims of whatsoever name or nature made by the George D. Emery Company against the Government of Nicaragua, and in full and complete payment of all property sold and transferred by this instrument to the Government of Nicaragua by the George D. Emery Company, the Government of Nicaragua promises and agrees:

1. To pay to the United States of America the sum of Six Hundred Thousand Dollars ($600,000) in gold coin of the United States of America of the present standard of weight and fineness at the office of the Secretary of State, Washington, D. C., in the United States of America, in the following installments and at the following times, namely: Fifty thousand dollars ($50,000) in thirty (30) days, Fifty thousand dollars ($50,000) in ninety (90) days, Fifty thousand dollars ($50,000) in one hundred eighty (180) days, One hundred thousand dollars ($100,000) in one (1) year, One hundred thousand dollars ($100,000) in two (2) years, One hundred thousand dollars ($100,000) in three (3) years, One hundred thousand dollars ($100,000) in four (4) years, and Fifty thousand dollars ($50,000) in five (5) years, after the date of the signing of this protocol, the last four of said installments to bear interest beginning one year from the date of the signing of this protocol at the rate of five per cent (5%) per annum, payable annually.

2. The Government of Nicaragua hereby releases all its claims of whatsoever name or nature which it has against the George D. Emery Company no matter upon what act or acts or omissions said claim for damages may be based, the Government of Nicaragua hereby acknowledging itself fully paid and compensated for all such damages of all kinds and descriptions.

3. The Government of Nicaragua hereby agrees to dismiss or cause to be dismissed all suits now pending in the courts of Nicaragua on the part of said government against the George D. Emery Company, and to cause all judgments heretofore secured against said Company by said Government to be set aside.

4. The Government of Nicaragua hereby grants to the said George D. Emery Company the full right and privilege to export from Nicaragua all timbers which the said George D. Emery Company has felled prior to the date of the signing of this protocol of settlement, it being agreed and understood that all timber exported in accordance with this agreement shall be free from the duty of one dollar ($1.00) per log, provided for in the above-named Emery concession, and further that the said company shall not be required to pay the ten thousand dollars ($10,000) annually due the Government, nor any part thereof, as provided in said concession.

5. The Government of Nicaragua hereby undertakes that local municipal taxes of all kinds to which the George D. Emery Company may be subjected shall not be different or other than those hitherto imposed upon the company, and that under no circumstances or upon no excuse shall said taxes be increased or be made payable at any other place, nor in any other currency than those levied or provided by said local authorities at the date of the signing of this protocol of settlement.

6. The Government of Nicaragua undertakes that it will not, prior to May 18, 1910, increase with reference to the Emery Company, the present import duties levied by the Government of Nicaragua upon the articles specfied in the Emery concession as entitled to entrance duty free, nor will it change the kind or nature of said duties, nor make them payable at a different place or in a different currency from that which they are now paid by importers generally.

7. The Government of Nicaragua hereby grants to the George D. Emery Company, its officers and employees, for a period of eight months or until May 18, 1910 ———; (a) free access to all parts of the territory of Nicaragua covered by the concession of the George D. Emery Company; (b) the right to remove from said territory during the period above specified and under the provisions above set forth, all timber which the George D. Emery Company has felled prior to the date of this instrument; (c) the right to the free, undisturbed and unimpeded use of the entire plant and equipment, free of all charges, including the boats *S. S. Yulu*, steam tug *Pioneer* and Schooner *Atlantic*, by this document sold, assigned and transferred to the Government of Nicaragua, for a period of eight months from the date of this protocol of settlement or until the same shall on or before the expiration of the said period of eight months be delivered to the Government of Nicaragua by said Company, said plant and equipment to be used only in connection with the winding up of the Company's business in Nicaragua, as set forth and provided for in this protocol of settlement, *Provided* that it is expressly understood that for a period of eight months (unless sooner delivered), the Emery Company shall be permitted to use the boats *Yulu*, *Pioneer* and *Atlantic* in connection with its business in British and Spanish Honduras and Colombia, and *Provided further* that in case the said Emery Company shall use the steamer *Pioneer* or the schooner *Atlantic* or both

in connection with any other work than that of winding up its business in Nicaragua, the Emery Company shall be liable for all loss or damage occurring during such use, the total value of either or both of said boats, in case of loss or damage, to be estimated at the sum or sums named as the value of such boat or boats in the inventory of the Emery Company.

9.[1] The Government of Nicaragua agrees and undertakes that within fifteen days of written notification thereto by the said George D. Emery Company or its representatives, the said Government or its duly authorized representative will receive, accept and take charge of all such parts of the plant and equipment of the said Company as said Company may indicate its readiness to surrender, as provided in this protocol, and that in the event the said Government or its duly authorized representative fails to accept, take charge of, and receive all or any parts of said plant and equipment within fifteen days from the date of notification as above specified, that then and in that event the George D. Emery Company shall be relieved from all responsibility for the further safe and proper keeping and maintenance of said property thus notified to be delivered.

In witness whereof, the undersigned have hereunto set their hands and seals this eighteenth day of September, 1909.

ALVEY A. ADEE [SEAL]
PEDRO GONZÁLES [SEAL]
RODOLFO ESPINOSA [SEAL]

[1] Paragraph 8 does not appear in original. This paragraph probably inadvertently numbered 9.

PANAMA.

ATTITUDE OF THE UNITED STATES TOWARD REVOLUTIONISTS IN PANAMA.

File No. 5025/76.

The Secretary of State to Minister Squiers.

[Telegram—Paraphrase.]

Washington, March 19, 1909.

Mr. Knox informs Mr. Squiers that Minister Dawson advises the department that information has reached Bogota that Colombian and Venezuelan revolutionists at Panama are preparing expeditions against Colombia and Venezuela. Mr. Knox says that so far as Panama and the United States are concerned if this report should be true it would be most untoward; that the American Government feels it to be the duty of Panama to see to it that her territory be not abused by alien refugees, and that any attempt at organization or any exportation of arms by them for unneutral purposes should be prevented. Mr. Knox says further that the United States naval force at Panamá and Colon will upon occasion cooperate to prevent such acts against the peace of another friendly State.

File No. 5025/85–88.

Minister Squiers to the Secretary of State.

[Extract.]

No. 456.] AMERICAN LEGATION,
Panama, March 25, 1909.

SIR: Referring to department's cipher cable of March 21 [19] last respecting the movements of certain alleged revolutionists against Venezuela and Colombia, I have the honor to advise the department that on receipt of cable I immediately called at the palace and laid before the President your views and apprehensions. The President replied that he already knew of the propaganda through his police authorities, but did not believe the situation was dangerous; that the revolutionists were without influence, standing, or funds. One of them, — — — he thought, was the only man of position. He is reported to have $30,000 for revolutionary purposes.

I pointed out to the President the dangers to his country and their present interests if these men are permitted to remain here, plotting against the Government of friendly, neighboring States.

I advised that those who threatened the peace of one country and the interests of the other merited expulsion, and that that solution would probably be considered by Colombia a very friendly act on the

part of Panama. The President thought well of the suggestion, but feared there was no law that would warrant or justify such action. Since then he has informed me that the question of expulsion will be considered at the next cabinet meeting. He further desired me to assure you that he fully appreciates the situation, and being in close touch, through the police authorities, with the revolutionists, will frustrate any efforts on their part to recruit, to fit out an expedition, or to export arms to Colombia; and also expressed for President Reyes and the Colombian Government the warmest sentiments of friendship and good will.

I have, etc.,

H. G. SQUIERS.

File No. 5025/85–88.

The Secretary of State to Minister Squiers.

[Extract.]

No. 170.] DEPARTMENT OF STATE,
Washington, April 19, 1909.

SIR: I have to acknowledge the receipt of your No. 456, of the 25th ultimo, reporting your interview with the President of Panama regarding the presence in that republic of — — — and other alleged revolutionists against the Governments of Venezuela and Colombia.

In reply I have to say that it is apparently the purpose of revolutionists against both Venezuela and Colombia to make the territory of Panama a headquarters for operations against the respective countries. With a Venezuelan nucleus already established there, as would appear from your dispatch, it is not at all unlikely that Señor Castro had in view the possible establishment of headquarters there where he could receive arms and munitions from any quarter and where he would severely test the ability of the Panaman Government to preserve strict neutrality. In that case it would be pertinent for the United States to consider what relations we would bear to the question in the light of our treaty with Panama. The first article of the treaty in terms guarantees the independence of Panama against all enemies. This being so we have a moral right to prevent Panama from getting into a controversy with any government which might eventually require the United States to take part in the controversy and support Panama. It certainly was not contemplated that Panama was at liberty to enter upon any wrongful quarrel on the assurance that she would have the support of the United States. Moreover, the relation of Panama to the Canal Zone is to be considered as well as our right to protect that zone from any disturbances or violations of international law on its immediate border. We have asserted the right to see that nothing shall occur to disturb the tranquility in the adjacent Panaman territory, as, for instance, in our supervision of the recent elections to insure orderly fairness. If Colombian revolutionists plot in Panama against the peace of Colombia, or if the Castro Venezuelans make Panaman territory a base of operations to disturb the internal tranquility of Venezuela, with which Republic the United States are in relations of peace, and if Panama is unable or unwilling to discharge the duty of neutrality which she owes as much

to the United States as to the law of nations, we should have the moral right to intervene and procure neutrality.

You state that the President of Panama said that he feared that there was no law to warrant or justify the expulsion from the Republic of those who threatened the peace of friendly foreign States and thus imperiled the interests of the State of their asylum.

It is the understanding of this department that the expulsion of such conspirators is recognized by all Latin-American States as an indefeasible right of sovereign self-protection, needing no law for its exercise and prohibited by no law.

From a telegram of April 10 from Col. Goethals to the War Department the department is glad to infer that the administration of President Obaldia is in entirely substantial accord with the view of the United States as to the proper attitude toward revolutionists in such circumstances as Messrs. Castro and Angulo.

I am, etc.,

P. C. KNOX.

PROTEST OF THE MINISTER OF PANAMA AGAINST CERTAIN UTTERANCES MADE IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

File No. 17900/4.

The Panaman Minister to the Secretary of State.

[Translation.]

No. 3.] LEGATION OF PANAMA,
Washington, February 8, 1909.

EXCELLENCY: Under instructions from his excellency the secretary of foreign affairs of my Government and pursuant to resolutions unanimously adopted by the National Assembly of the Republic of Panama on the 1st instant, I am directed to call the attention of your excellency's Government to two public addresses delivered in the House of Representatives of your National Congress by one of its Members on the 26th and 29th days of January last, which addresses constitute a direct attack upon the President of my country, as well as upon the fair name and administration of the Republic of Panama, and to convey to your excellency the solemn and emphatic protest of my Government against said attacks and this violation of international courtesy.

My Government and its people justly and naturally resent the baseless and unwarranted attacks upon their President contained in these public and official speeches of a member of your Government delivered in the National Congress of the United States of America. It is unnecessary for me to say to your excellency that through years of intimacy and association my countrymen have the most implicit faith in the personal integrity, official uprightness, and disinterested patriotism of their present honored President.

My Government and its people also feel that they have additional cause for exception by reason of the publication of the speeches referred to in the official organ of your excellency's Government, the Congressional Record, by which, in addition to their appearance in

the public press, official circulation has been given to these wholly baseless and highly offensive statements, and they have been communicated to the nations of the world with apparently official sanction, to the great humiliation of my Government and its people.

It is with surprise that my Government also notes that measures solely concerning the Republic of Panama and pending before its legislative body were at the same time made the subject of official discussion and opprobrious criticism in a legislative body of your excellency's Government, and this, too, with the declared purpose of inducing action by the House of Representatives of the United States, designed to influence the action of the National Assembly of my country. My Government further deplores the adverse comments contained in said official addresses of said Member of the House of Representatives upon the treaties pending between the United States, Panama, and Colombia which were concluded on January 9 last, and which criticisms tend to affect their ultimate ratification.

The Republic of Panama is bound to that of your excellency, not only by ties of fraternity and by fervid admiration for its institutions, but also by the inseparable bond of a common interest in the Panama Canal located within its boundaries, and it is a source of profound regret to my Government and myself that occasion has arisen for calling attention to the occurrences to which I have referred, but their character is so extraordinary that even the warm devotion of my country to that of your excellency does not permit my Government to disregard them.

Your excellency will note that I am instructed to include in the protest the counsel of this legation and fiscal commissioner of Panama in this country. I have not referred to him in the foregoing protest, solely in deference to his request that I refrain from so doing, since he, as a citizen of the United States, does not desire that any foreign Government should intervene in his behalf. I should, however, fail in my duty if I did not express the perfect confidence of my Government and people in his personal integrity and official uprightness, and, in the name of my Government, absolutely deny the truth of any of the injurious statements in the addresses to which I have referred, concerning his relations or transactions with my Government or any member of it.

In conclusion, I beg to submit to your excellency, with this letter of protest, extract of a cablegram of instructions from his excellency the minister of foreign affairs of my Government and the text of the resolution before mentioned as adopted by the National Assembly of the Republic of Panama on the 1st instant, and copies of the Congressional Record containing the speeches and remarks to which I have referred, and finally I have the honor to request of your excellency's Government such disavowal of the offensive remarks, concerning the President of the Republic of Panama, as may be deemed just and commensurate with the deep and unwarranted injury inflicted on His Excellency Sr. José Domingo de Obaldía, President of the Republic of Panama.

I improve the opportunity,etc.,

C. C. Arosemena.

File No. 17900/4.

The Secretary of State to the Panama Minister.

[Extract.]

DEPARTMENT OF STATE,
Washington, Febbruray 9, 1909.

SIR: The President directs me to say in answer to your communication of February 8, 1909, that the remarks complained of were made in the House of Representatives. Under our Constitution we have for what we regard as wise reasons provided that—

* * * for any speech or debate in either House they (the Senators and Representatives) shall not be questioned in any other place.

This provision we regard as essential to secure full liberty of speech to the elected representatives of the people; and we feel that such liberty of speech should be preserved even though it may occasionally be abused.

It ought to be understood, however, that the utterances of individual Members are not to be taken as expressing the views either of the Government of the United States or of the House in which such remarks are made.

Accept, etc.,

ROBERT O. BACON.

TRIPARTITE TREATIES—UNITED STATES, COLOMBIA, PANAMA.

(See under Colombia, p. 223.)

ASSAULT UPON CERTAIN MEMBERS OF THE CREW OF THE U. S. S. "BUFFALO" IN PANAMA.

File No. 15778/3–4.

Chargé Weitzel to the Secretary of State.

No. 360.] AMERICAN LEGATION,
Panama, October 1, 1908.

SIR: I have the honor to transmit herewith inclosure No. 1, a memorandum containing a brief statement of the facts of an encounter between sailors from the *Buffalo* and natives of Panama, which took place at about midnight Monday the 28th instant in the city of Panama, and which resulted in the fatal stabbing of Charles Rand, boatswain's mate. Rand died at Ancon Hospital early Wednesday morning and was buried the same day at Ancon Cemetery. An armed escort was in attendance, permission for the landing having been granted by the foreign office on my application.

The deceased was a man of quiet and peaceful disposition, and was regarded by his superior officers as the most competent enlisted man on board.

Enough of the facts have already been ascertained to justify the assertion that the conduct of the police was in the highest degree

reprehensible before, during, and after the incipient riot. Because of their sympathy and complicity with the assailants, and further because of the change of administration which takes place to-day, there is going to be considerable difficulty in obtaining a vigorous prosecution of the offenders, several of whom are under arrest.

Mr. Guyant, the deputy consul general, and Mr. Ehrman, the vice consul general in charge of the office, are collecting evidence and taking affidavits of natives and sailors, which I shall be pleased to forward hereafter with other papers in the case including Rand's antemortem statement.

I have, etc.,

GEORGE T. WEITZEL.

[Inclosure.]

Memorandum, being an account of the fight between sailors from the U. S. S. "Buffalo" and natives of Panama, in the city of Panama, September 28, 1908.

On Monday, September 28, 1908, sailors from the U. S. S. *Buffalo* were given shore leave. At about midnight one of them, Charles F. Clark, boatswain's mate, was in the dance hall known as "La Floresta" in the bad-lands district of the city of Panama, sitting at a table drinking beer with a female companion, when two natives of Panama, one of them supposed to be the woman's paramour, came in and spoke to her. After an exchange of remarks the Panaman started for Clark with a knife. The latter defended himself and called for help, several of his shipmates responding, and together they cleared the room. The police appeared on the scene and arrested the sailors. While the latter were waiting on the sidewalk for a cab to take them to the police station several of the Panamans who had been in the fight rushed across the street to the Cairo saloon, which was somewhat crowded, and made straight for Charles Rand, boatswain's mate, who was standing at the bar talking to the proprietor. They stabbed him and another sailor named Ceislick, the latter not seriously. Rand, while attempting to defend himself, was struck over the head by a policeman and floored. He was handcuffed and dragged some distance before being put in a cab for the station. At the latter place he was permitted to lie almost an hour before receiving any medical attention. Later he was removed to San Tomas Hospital in Panama and thence to Ancon Hospital, where he died early the next morning. His injuries consisted of a wound on the head, a cut in the back, and another in the abdominal cavity just below the heart. The surgeons said that any chance he may have had for recovery was lost by lack of prompt and proper first aid.

Meanwhile four other sailors were marooned in the Cairo, being protected by the proprietor with great difficulty from an attack by a crowd on the outside composed of the very rough element. Five petty officers, who had no connection whatever with the fight, were similarly menaced by a crowd in the Coney Island dance hall. The latter paid a boy to deliver a note to Mr. Guyant, the American deputy consul general, who responded promptly and succeeded with the aid of the police in liberating them.

There are, as is to be expected, many conflicting statements made by the several witnesses, some of whom maintain that Rand took no part in the original disturbance, and others to the contrary, but the foregoing seems to be as correct and coherent an account as may be had at this time.

File No. 15778/5–6.

Chargé Weitzel to the Secretary of State.

No. 363.] AMERICAN LEGATION,
Panama, October 6, 1908.

SIR: I have the honor to advise, in continuance of my No. 360 of the 1st instant relative to the fight between sailors and natives in the city of Panama, that on Saturday afternoon a preliminary hearing was had before judge No. 4 of the circuit, at which several enlisted seamen from the *Buffalo* and other witnesses testified with particular reference to the identity of the person who is accused of having stabbed Charles Rand, since deceased. As a result of their testimony one Jacinto Escudero, who has been under arrest since the night of the disturbance, has been charged with the murder and removed to Chiriqui jail for safe-keeping.

I am sending herewith a file containing copies of reports, letters, affidavits, and other papers relating to the case.[1]

No effort, apparently, has been made by the authorities to ascertain the identity of the policeman who is alleged to have assaulted and otherwise brutally mistreated the dying seaman.

I have, etc.,

GEORGE T. WEITZEL.

File No. 15778/7–14.

The Secretary of State to Chargé Weitzel.

No. 125.] DEPARTMENT OF STATE,
Washington, October 23, 1908.

SIR: Referring to the legation's No. 360, of October 1, 1908, and No. 363, of October 6, 1908, reporting upon the encounter between the sailors from the U. S. S. *Buffalo* and natives of Panama, which took place in the city of Panama on September 28 last, the department is now in receipt, through the Secretary of the Navy, of the official report of the matter forwarded by the commanding officer of the U. S. S. *Buffalo*.

From a comparison of the statements of facts received from two sources through official channels there does not appear to be any doubt respecting the brutality displayed by the city police of Panama in clubbing, handcuffing, and dragging through the streets the badly wounded American sailor, Charles Rand; in interfering to prevent him from being sent, as desired and arranged by his shipmates, to the hospital for immediate treatment; in taking him to the police station instead of to the hospital; in refusing to allow a shipmate to get water to bathe his wounds, or to telephone or go for medical help; and in permitting him, while in police custody, to lie suffering and bleeding for more than an hour without medical attention of any kind. Similar treatment appears to have been given to another American sailor, Joseph Ceislik, who was likewise suffering from a knife wound, having also been stabbed in the back. The surgeon who finally dressed

[1] Not printed.

Rand's wounds reports that such chances of life that he may have had were sacrificed by the delay in placing him under medical treatment. Rand died from the effects of his wounds about 24 hours after receiving them.

The attack appears to have been unprovoked and to have been made by natives armed with knives. It does not appear that any of the American sailors were armed, or that they used arms at any time during the riot. When assaulted they seized and wielded chairs in self-defense.

The above occurrence in itself presents such grave features as to justify vigorous representations to the Government of Panama. But the incident does not stand alone. The commanding officer of the *Buffalo* reports that on September 29 the mail orderly of the ship while on shore duty in uniform was repeatedly jostled and insulted by natives, and while waiting for the ship's boat was approached by several who drew and showed their knives in a significant manner, and it is hardly necessary to recall the disgraceful occurrence of the evening of June 1, 1906, in the city of Colon, when First Lieut. Charles A. Lutz, United States Marine Corps; Second Lieut. Edward P. Deiter, United States Marine Corps, and Midshipman Roy Francis Smith, United States Navy, then on shore leave from the U. S. S. *Columbia*, were unwarrantably arrested, roughly handled, and cruelly clubbed by the Panama police, and then incarcerated in a filthy cell, without proper medical attention. A claim for indemnity for the injured officers and a demand for the punishment of the guilty parties have been presented to the Panama Government on account of the barbarous actions of the native police on this occasion.

A mere enumeration of the foregoing incidents involving, as they do, not only threats and attacks by private citizens of Panama upon the naval personnel of the United States, but inexcusable and reprehensible conduct on the part of police authorities of Panama, which shows a tendency to become habitual, is sufficient without further proof to disclose the existence of conditions which render it dangerous to allow the officers and enlisted men of the public ships of a friendly and neighboring nation to go ashore for the purpose of visiting a friendly city. Such a state of affairs very closely approaches, if does not pass, the limits of toleration, and this Government can not countenance its continued existence, nor submit to the recurrence of such incidents as those referred to above.

You will present a copy of this instruction to the minister for foreign affairs of Panama, at the same time courteously but firmly and peremptorily demanding the immediate and adequate punishment of all parties, including police authorities as well as private persons, who were concerned either by criminal acts or negligence in the death of Rand and the maltreatment of Cieslik. You will also demand prompt and full compensation for the death of Rand and injury to Cieslik, and, finally, an appropriate apology to this Government for the insult offered to the uniform of its naval representatives by the police officials of the Government of Panama.

I am, etc.,

ELIHU ROOT.

File No. 15778/25–27.

Chargé Weitzel to the Secretary of State.

No. 386.] AMERICAN LEGATION,
Panama, November 17, 1908.

SIR: I have the honor to acknowledge receipt of your No. 125, dated October 23, 1908, relative to the assault made by natives of Panama on sailors of the U. S. S. *Buffalo* on September 28, last.

In pursuance thereto I sent a copy of the instruction with a note, under date of the 12th instant, to the secretary fo rforeign affairs, making formal demand for the punishment of the assailants, including the police, for indemnity to the injured, and for an apology to the Government of the United States.

My note has not as yet been acknowledged, but for the purpose of completing the record of my action in the matter before turning same over to Mr. Squiers, who is expected to arrive to-morrow, I am transmitting herewith inclosure 1, copy of said note.

I have, etc.,

GEORGE T. WEITZEL.

[Inclosure.]

Chargé Weitzel to the Minister for Foreign Affairs.

No. 156.] AMERICAN LEGATION,
Panama, November 12, 1908.

SIR: I have the honor to address your excellency in the matter of the encounter between the sailors of the U. S. S. *Buffalo* and natives of Panama, which took place in this city on September 28, 1908, and which resulted in the death of Charles Rand and the serious injury of Joseph Cieslik, both of them American seamen.

A prompt and searching investigation of the facts conducted by authorized representatives of my Government disclosed that the assault was made without provocation on our unarmed men by citizens of your excellency's Government, and that the treatment of the sailors after arrest by the police authorities of Panama was in the highest degree reprehensible.

In response to my dispatch to the Department of State at Washington reporting the occurrence in detail, I have just received an instruction, serial No. 125, dated October 23, 1908, a copy of which I am pleased to transmit herewith for your excellency's information.

My Government, deeply solicitous for the perfect security of its citizens and representatives in foreign friendly lands and unalterably determined to maintain the salutary policy of enforcement of a strict and absolute compliance with its purpose in that respect, instructs me to make these representations to your excellency's Government, and to enter a claim for such measure of redress as will be amply compensatory to the persons aggrieved or to their dependents, sufficiently exemplary for the grave offense, and strongly deterrent against similar occurrences in the future.

Accordingly in pursuance to the instruction of the honorable the Secretary of State of the United States, and with all due respect and courtesy, I hereby make formal official demand, which is none the less firm, insistent, and peremptory for that I hold your excellency and your excellency's Government in the highest esteem, that there be immediate and adequate punishment of all parties, including police authorities as well as private persons, who were concerned either by criminal acts or negligence in the death of Charles Rand and the maltreatment of Joseph Cieslik. And I also demand prompt and full compensation for the death of Mr. Rand and the injury to Mr. Cieslik, and, finally, an appropriate apology to my Government for the insult offered to the uni-

form of its naval representatives by the police officials of the Government of Panama.

With renewed assurances, etc.,

GEORGE T. WEITZEL.

File No. 15778/28–29.

Minister Squiers to the Secretary of State.

[Extract.]

No. 390.] AMERICAN LEGATION,
Panama, November 27, 1908.

SIR: Referring to Mr. Weitzel's despatch No. 386 of November 17 last, I have the honor to inclose herewith copy of foreign office note of November 23, 1908, with translation, with respect to an encounter between the sailors of the United States warship *Buffalo* and natives of Panama, which took place in the city of Panama on September 28 last.

I beg to request instructions as to further demands for an indemnity in the *Columbia* cases.

I have, etc.,

H. G. SQUIERS.

[Inclosure—Translation.]

The Minister for Foreign Affairs to Minister Squiers.

No. 1/R.] FOREIGN OFFICE,
Panama, November 23, 1908.

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of the esteemed note of your excellency of the 12th instant, and also a copy of an order of the 23d of October, No. 125, directed to your excellency by the Department of State, containing certain declarations relative to the unfortunate encounter which took place in this capital between some private citizens and sailors from the warship of the American squadron *Buffalo* on the night of the 28th of September of the present year.

In replying to your excellency's communication above referred to, I should begin by stating the painful impression which has been caused to my Government by the extremely severe terms set forth in your excellency's note, characterizing the acts and demanding the punishment of the individuals who took part in the disturbance with the sailors from the cruiser *Buffalo*, as well as the punishment of the authorities and police officials to whom is attributed brutal treatment against said sailors, and negligence in attending to the wounded; indemnity for the death of Charles Rand, and for the maltreatment of Joseph Cieslik; and lastly, an apology to your excellency's Government for the insult which your excellency alleges was offered to the uniform of the naval representatives of your nation by police officials of my country by reason of the unfortunate incident referred to.

It is plainly to be seen that the severity of the charges against citizens and officials of the police force of Panama and the gravity of the demands contained in your excellency's note, and the communication therewith inclosed of the honorable Secretary of State of the United States, have for a basis the belief that among Panaman citizens and the subaltern police authorities of my Government there exists animosity and an aggressive spirit against the sailors of the American squadron and the present time is the opportunity to declare, which I do with a full knowledge of the facts, that there absolutely does not exist among Panamans, and much less among any of the authorities of my country, hostile sentiments against citizens and sailors of the North American Nation; much to the contrary it is to be observed how each day is developed and made firmer the friendly tendency and reciprocal consideration based on a

mutual and sincere regard emanating from a more frequent intercourse between citizens, public officials, and those in the employ of both countries. I will cite as an example the pleasant and uninterrupted harmony which existed between Panamans and Americans in all the social functions during the recent public festivities which took place at the beginning of November in the cities of Panama and Colon and in which American officials and citizens of the Canal Zone took an active part, cordially mixing in the gatherings of Panaman authorities and citizens and between whom there did not occur, without exception, disturbance or friction.

Your excellency should not lose sight of the fact that among sailors of the warships of all nations there generally exists the habit when they enjoy a brief liberty ashore of diverting themselves with orgies, shouts, turbulence, and excesses when relieved from the rigid discipline and privations on board ship. This is why they cause unusual disorders and serious occurrences in ports where they disembark from time to time without it being possible for the local authorities or the immediate superiors of the sailors to prevent said occurrences and disorders at the precise moment when they happen. It is very possible that in the lamentable events of the 28th of September to which your excellency refers there entered a great deal of the bellicose spirit of the marines to which I have alluded when they were under the influence of liquor.

The same ward of the city in which the acts occurred to which I am referring is occupied almost exclusively by brothels and saloons and frequented by persons of the worst type of various nationalities, justifying the assertion that the sailors from the *Buffalo* hunting for diversion in this locality exposed themselves to a danger which exists not alone for them, but for all others who venture there.

This observation does not imply, however, a defense of the individuals responsible for the death of Rand and the wounding of Cieslik. My Government has a vivid interest in clearing up as soon as possible the occurrence and to that end has spared no efforts. For that purpose it has given the necessary orders to make a rigid investigation and will determine with certainty the culpability of the guilty parties, who will be severely punished according to the processes and rigorous forms laid down by the laws of the Nation.

I take pleasure also in communicating to your excellency that it will investigate with equal zeal and activity the conduct of the officials and acts of the police force whom your excellency accuses of cruel treatment against the wounded sailors and carelessness in the securing of medical attention, and although it is to be presumed that the deplorable incidents took place in the closing days of the last administration, none of the police vigilantes and lieutenants who took part in the same, occupy to-day the post which they occupied on the police force, because, generally, the police force has been overhauled, and I assure your excellency that as to these individuals, whatever may be their present condition, there will be applied to them the penalties provided for by the laws, once they have been proven guilty.

The present Government of the Republic vehemently desires that its relations of friendship with the United States of America and the mutual esteem of their respective citizens shall always be distinguished by the best sentiments of cordial fraternity, which is urged by the weighty reasons which from times past have been operating to cause a bringing together of both countries and binding the ties of estimation which unites them.

Moved by these considerations the present administration—hardly inaugurated—gave positive orders to the proper police authorities to the effect that they should give the subaltern officers the standing instruction to prevent in every possible manner all friction with the sailors of the American squadron.

Before closing, I have the pleasure of stating to your excellency that I entertain full confidence that the measures adopted will be strictly and satisfactorily complied with, and the reasonable hope that acts so lamentable as those which occurred during the past administration, and those which with regret I have just referred to, shall not occur in the future.

Trusting that your excellency will accept the declaration contained in this note as sufficient apology from my Government to that of your excellency, I have the honor, etc.,

J. A. ARANGO.

File No. 15778/28–29.

The Acting Secretary of State to Minister Squiers.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 10, 1908.

Mr. Bacon refers to legation's No. 390, of November 27, and instructs Mr. Squiers, by direction of the President, to inform the Government of Panama that the President greatly regrets the unsatisfactory nature of the reply of the minister of foreign affairs to Mr. Weitzel's note of November 12 relating to the unfortunate affair which took place in the city of Panama on September 28 last. Says it is a mistake to describe the affair as merely an encounter between private citizens and the sailors of the American naval vessel *Buffalo;* that the most serious features of the occurrence consisted in the brutal and criminal conduct of the police officers of Panama toward sailors, unarmed, wearing the uniform and entitled to the protection of the United States; that repeated occurrence of criminal injury and brutality to sailors and citizens of the United States on the part of members of the police force of Panama make it necessary that, in the discharge of the highest duty toward its own citizens, and following the dictates of self-respect, the Government of the United States shall, in the most positive manner, insist upon immediate action by the Panaman Government to render a repetition of such occurrences impossible in the future. Says conditions upon the Isthmus are such that United States vessels can not refrain from visiting the ports on either side of the route of transit. Instructs Mr. Squiers to courteously but firmly inform the Government of Panama, that, inasmuch as such visits must necessarily continue, and as the United States cruiser fleet is due to arrive at Panama on Saturday of this week, the United States Government must insist that action be taken immediately for the punishment of the offending members of the police force and for the prevention of further abuses and disorders similar to the occurrences of September 28, in accordance with department's communication of November 12, and to call upon the Government of Panama for explicit assurances before the close of Friday, the 11th instant, that such action will immediately be taken, and before the arrival of the cruiser fleet. Says if such assurances are not given, and such action is not taken before the arrival of the cruiser fleet, the President of the United States will consider it his duty to direct the officer in command of the fleet to land from his ships a sufficient force, under arms, to maintain order in the city of Panama and anywhere else on the Isthmus where necessary, to protect the men while in transit and on shore leave in the exercise of the authority assured to the United States by the terms of the treaty between Panama and the United States.

Mr. Bacon adds that the President hopes that no such action will be necessary, but, failing the proper and necessary action by the authorities of Panama to deal promptly and sternly with their own officers, he deems that his duty in the premises will be clear.

File No. 15778/30.

Minister Squiers to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Panama, December 11, 1908.

Mr. Squiers refers to department's telegram of the 10th and says he has been personally assured by the President of Panama that the police officers who were present or responsible for the treatment of the sailors of the U. S. S. *Buffalo* on the evening of September 28 will be immediately arrested, brought to trial, and adequately punished if found guilty. Says the President further assures him that he will do everything in the power of the Government to prevent recurrence of such incidents, but that he declines to agree in principle to an adequate indemnity payment or to make an appropriate apology until the guilt of the accused persons has been established by trial. Mr. Squiers says that four civilians are now under arrest awaiting trial for the murder of Rand. Adds that none of the fleet ships has as yet arrived.

File No. 15778/31.

Minister Squiers to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Panama, December 12, 1908.

Mr. Squiers says he is personally assured by the President of Panama, the minister for foreign affairs, and cabinet members that immediate action will be taken to punish the police officers as well as private persons, and that further disorders and abuses similar to the occurrence of September 28 will be prevented; that if the police officers are found guilty full and prompt compensation for the death of Rand and injuries of Cieslik will be paid and appropriate apology made to the United States Government for insult offered to the uniform of its naval representatives by the police officers of the Republic of Panama. Mr. Squiers says that the Government of Panama further promises to collect immediately proof against the police officers and give a definite reply within 10 days; that three policemen are now under arrest, and that Panama desires copies of all reports made by naval officers of the occurrences. Mr. Squiers adds that the Government and private individuals are doing everything possible to insure a warm welcome to the fleet which is expected on Sunday. The *Yorktown* has already arrived.

File No. 15778/31.

The Acting Secretary of State to Minister Squiers.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 12, 1908.

Mr. Bacon says the President appreciates the prompt action taken by the Government of Panama and the determination to prevent further abuses by punishing those guilty of misconduct. Says orders will be given to pursue the usual course and also to keep a reserve ready to render assistance if necessary for the preservation of order. Adds that the President feels it to be important that action to determine the culpability of police officials charged, by judicial investigation, decision, and punishment, should be taken without delay.

File No. 15778/32.

The Panaman Minister to the Secretary of State.

[Translation.]

No. 28.] LEGATION OF PANAMA,
Washington, December 14, 1908.

Mr. SECRETARY: Referring to the conversation which I had the honor to have with your excellency on the 11th instant in regard to the publication of rumors concerning certain orders said to have been sent by the United States Government to its agents in Panama to take police measures regarding their sailors during the stay on land of the crews of the warships who are given permission to visit the city of Panama, with a view to avoiding a repetition of the deplorable incident which recently took place between sailors of the cruiser *Buffalo* and some Panamans, I have the honor to inform your excellency that I have received cablegrams from His Excellency President Obaldía and His Excellency Mr. Arango, secretary of foreign relations of Panama, which fully reiterate and confirm the assurances of guarantee which I had the honor to offer t oyour excellency in the name of my Government during the course of our interview, and that, besides, His Excellency Mr. Arango directs me to communicate to the State Department the following extract from a cablegram from his department to this legation, which I transcribe as follows:

> Inform the State Department that the United States minister in Panama is fully aware that the Panama Government has all the resources necessary in order to afford every protection and guarantee to the American sailors, and that it will do this. The deplorable *Buffalo* incident occurred during the administration of President Amador; nevertheless, after a careful investigation, including the police force of that time, which has been discharged, there are now four persons in jail being prosecuted. The investigation continues, for my Government wishes to punish severely every person found to have been implicated in the crime.

In view of the foregoing, the fears entertained by your excellency's Government, that the Government of Panama would not be in a

position to afford every protection and guarantee to any number of sailors of the American vessels about to arrive at the port of Panama who are desirous of honoring our capital with their presence, were unfounded.

I cherish the hope that the foregoing declarations will be entirely satisfactory to the United States Government, and I have the honor, etc.

C. C. AROSMENA.

File No. 15778/32–34.

The Secretary of State to the Minister of Panama.

No. 3.] DEPARTMENT OF STATE,
Washington, December 16, 1908.

SIR: I have the honor to acknowledge the receipt of your two notes of the 14th instant, one official and the other personal,[1] regarding the measures taken by the Government of Panama for the trial and punishment of the persons guilty of the assault committed upon certain members of the crew of the U. S. S. *Buffalo*, and for the future protection of American seamen on shore in Panama.

I have the honor to advise you in reply that the American minister at Panama has been instructed by telegraph that the prompt action taken by the Government of Panama and its determinatiton, by punishing those guilty of the offense, to prevent future abuses are appreciated by the President, who feels it to be important that there should be no delay in the action to determine the culpability of the police officials, charged by judicial investigation, nor in the decision and punishment of the guilty.

The minister was also informed that orders would be given to the naval officers to pursue the usual course, and also to keep a reserve ready to render assistance, if necessary, for the preservation of order.

Accept, etc.,

ELIHU ROOT.

File No. 15778/55–57.

Minister Squires to the Secretary of State.

[Extract.]

No. 443.] AMERICAN LEGATION,
Panama, March 8, 1909.

SIR: I have the honor to transmit herewith copy of foreign office note No. 54/11, February 5, 1909, with translation, transmitting to the legation a report on the investigation made by the Panama Government, under the direction of Mr. Valdez, Secretary of Government, into the charges made against the national police of the city of Panama.

I have, etc.,

H. G. SQUIERS.

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[1] Not printed, *ante*.

[Inclosure 1.—Translation.]

The Secretary for Foreign Affairs to Minister Squiers.

No. 34/11.] FOREIGN OFFICE,
Panama, February 5, 1909.

Mr. MINISTER: The Government of Panama, desirous of fixing the responsibility of the parties involved in the lamentable incident of the 28th of September past, and more especially of determining the conduct of the national police during the affair, ordered the initiation of summary proceedings, with a view to ascertaining the facts of the occurrence and inflicting on the police who had violated the law the penalty imposed for such infraction.

To this end the secretary of government and justice ordered, without loss of time, an extended investigation of the facts, the result of which your excellency may see from the documents transmitted herewith. The Government has pursued its investigation with all due diligence, and with the greatest care, not omitting the slightest detail, and taking into consideration the depositions of all persons who took part in any way in the affair, so that I can well assure your excellency that we have obtained full knowledge of what occurred and affects the charges made against the police force. Of this your excellency will also without doubt be convinced when you have read the contents of the documents, which I have the honor to remit to you, consisting of 102 pages, originals, together with an authenticated copy of a note sent to this office by his excellency the secretary of government and justice.

I repeat to your excellency, etc., J. A. ARANGO.

[Subinclosure.—Translation.]

The Secretary of Government and Justice to the Secretary for Foreign Affairs.

No. 60.] PANAMA, *February 1, 1909.*

SIR: The investigation undertaken under my orders by the señor governor of this Province, to ascertain the conduct of the police during the affray which took place in this city on the 28th of September of the past year between private citizens and sailors from the American ship of war *Buffalo* in order to ascertain the truth of the charges made against the aforesaid police by the Government of the United States, being concluded, I deem it proper to transmit the testimony taken in the case in order that you may be informed of the details, and may have in your possession all the necessary data when the discussion of the matter is reopened with the minister plenipotentiary of the United States. In obedience to my positive instructions the investigation has been carried out in the most scrupulous spirit of impartiality with the most decided purpose to learn the whole truth regarding the charges made against the members of the police force who took any part in the unfortunate incidents of the night of the 28th of September last.

In addition to the depositions of Messrs. Francisco de la Ossa, ex-municipal alcalde; Eduardo Perez, ex-commandante of police; Emelio Linares, officer of the guard on the night of the 28th of September; Dr. Santos J. (and) Aguilera, Señor Raul Revello, respectively doctor and assistant doctor of the force; the ex-vigilante, Indalecio Franco; and the policemen, Paulino Macías, Faustino Alvarado, Abelardo Bustos, Aníbal Rodríguez, and David Jaén, there were taken the depositions of Messrs. Jose Maria, Eliseo and Ezequiel Secane, of Spanish nationality; of Beatriz Melbourne, Hida Nelson, and Carmen Poveda, Jamaicans; Luisa Banderrama, and Julio Diaz A., Colombians; Beatriz Castillo, Elida Escobar, and Christina Vasquez, Pnamns; Sdie Goldskein and Rossie Stemberg, Germans; Fanny Lazar, Roumanian, and Luis Perriere William Husted, Banat Parksky, and Joe Goodman, North Americans; all these latter witnesses absolutely impartial, who have no interest in favoring the police of Panama. From all these numerous depositions it is clearly shown that the accusations made by the two or three sailors of the *Buffalo* against the Panama police, against whom is made the grave charge of having beaten and dragged the wounded sailors Rand and Cieslik on the night of the 28th of September, are positively erroneous and unjust, as also are the charges that they prevented a companion of Rand from washing the wound and calling a doctor by telephone.

The fact is clearly demonstrated that Dr. Aguilero, police surgeon, was called to attend to the wounded as soon as these were brought into the jail dispensary; that he proceded immediately to attend to the wounded, and that before his arrival there had already arrived the assistant surgeon Señor Revello, who treated them without delay.

It is proper to state to the American minister that it is a custom, established by legal mandate in this Republic, to always carry directly to the police station those injured in affrays or by street accidents, so that the official doctor may make the first examination, and may give suggestions which may be useful in the investigation of the facts, and for that reason they proceeded in this manner with Rand and Cieslik.

Notwithstanding the deposition of Mr. Claude E. Guyant, employee of the American consulate, who testified that at the moment in which he saw some of the sailors of the *Buffalo* they appeared to be sober, it is reasonable to suppose that at the time of the affray the greater part of them were under the influence of liquor, and this explains why, in giving their testimony the next day to the commander of the *Buffalo*, they did not remember the facts of the occurrence which took place on land, and charged the Panama police with an attitude absolutely contrary to that which, in reality, it had assumed in this unfortunate emergency.

I see no objection to the American minister personally examining into the proceedings in this matter, and I entertain the confidence that after such examination he will admit the truth of the conclusions which I have herein expressed respecting the failure of proof of the charges made against the police force of Panama, upon which charges was based the claim of an indemnity by the United States now pending in the office of your excellency.

RAMON M. VALDES.

File No. 15778/70A.

The Acting Secretary of State to Minister Squiers.

No. 181.] DEPARTMENT OF STATE,
Washington, June 3, 1909.

SIR: Referring to previous correspondence in the matter of the murder of Charles Rand and the wounding of Joseph Cieslik, members of the crew of the U. S. S. *Buffalo*, at Panama, on September 28, 1908, and especially to the department's instruction of October 23, 1908, I have to instruct you to ascertain what steps are being taken by the Government of Panama to meet the demands upon it contained in the instruction of October 23, 1908, above referred to.

The department considers the outrage to the sailors of the United States and the insult to this Government as serious as when they occurred in September, 1908, and fears that delay in the matter may cause Panama to overlook either the seriousness or the necessity of making complete and adequate satisfaction to the dead and injured and to their Government.

I am, etc.,

HUNTINGTON WILSON.

File No. 15778/2.

Minister Squiers to the Secretary of State.

No. 509.] AMERICAN LEGATION,
Panama, June 17, 1909.

SIR: Replying to department's instructions No. 181, of June 3 last, regarding the murder of Charles Rand and wounding of Joseph Cieslik, members of the crew of the U. S. S. *Buffalo*, at Panama, on

September 28, 1908, I have the honor to say that the foreign office note No. 1/R. of November 23, 1908, copy and translation of which accompanied my dispatch No. 390, of November 27, 1908, was in reply to representations made by this legation to the Panama Government, in accordance with department's instructions No. 125, dated October 23, 1908. Legation's dispatch No. 443, dated February 27 last, transmited foreign office note No. 54/11, of February 5, last, on the same subject.

The legation has made no reply to the above-mentioned notes, awaiting the department's further instructions, as future action might depend upon whether the explanation submitted by the Panama Government is or is not acceptable to the department.

I have, etc.,

H. G. SQUIERS.

File No. 15778/73.

The Acting Secretary of State to Minister Squiers.

No. 189.] DEPARTMENT OF STATE,
Washington, June 24, 1909.

SIR: I inclose for convenient reference a copy of a memorandum prepared by the solicitor of this department relating to the maltreatment of American citizens by the Panaman police.

With the possible exception of the case of the clubbing of W. B. Warner, each of the cases mentioned in the memorandum seems to call for apology, the punishment of the police, and indemnity to the injured or the relatives of the deceased. Moreover, the shocking accumulation of these incidents calls also for such substantial reform in the personnel and discipline of the Panaman police and such peremptory admonition to them by the Government of Panama as shall prove to be effective guaranties against a recurrence of intolerable brutalities of the character described.

In bringing these cases emphatically to the attention of the Government of Panama in this light, you will not conceal the fact that unless the present representations shall, within a reasonable time, have all the effect that is expected, the Government of the United States will scarcely be able to avoid giving careful consideration to the question whether it shall not be then incumbent upon the United States to assume the police control of Panama and Colon and the territories and harbors adjacent thereto, clearly contemplated under given circumstances by Article VII of the treaty of 1903.

I am, etc.,

HUNTINGTON WILSON.

Memorandum, in re maltreatment of American citizens by Panaman policemen.

The first instance brought to the attention of the department of conflicts between the Panaman police and Americans occurred on December 25, 1906. From the reports both of the American vice consul at Colon and the Zone police officer in charge at the time the trouble occurred it would seem that W. B. Warner, an American in the employ of the Isthmian Canal Commission, while intoxicated, engaged in a fight with an unknown person in or near the

Cosmopolitan Hotel in Colon, Panama. A Panaman policeman, in attempting to stop the fight was knocked down by Warner and then thrown out of the hotel. Several other policemen were then called in and finally succeeded in arresting Warner and three other Americans who tried to help him. While the arrest of the American seems to have been justified the clubbing which Warner received at the hands of the police, in consequence of which he was confined to the hospital for several days according to the report of the American vice consul, seems to have been unnecessary and unduly severe. It does not appear, however, that this Government ever took any official notice of the matter, either in calling the attention of the Panaman Government to the apparently reprehensible conduct of its police in clubbing Warner or requesting the punishment of those concerned therein.

A second occurrence of this kind was brought to the attention of the department when, on June 1, 1906, several American officers of the U. S. S. *Columbia* were arrested in a dance hall in Colon, Panama, without sufficient cause and taken to the police station where they were roughly handled and brutally clubbed by the police and finally thrown into jail, where they were left for some hours without proper medical attention. The attack upon these officers appears to have been entirely unprovoked and at the time of the said attack two of the officers were wearing the khaki uniform of the United States Marine Corps. The United States minister to Panama was instructed February 26, 1907, to call this matter to the attention of the Panaman Government and to insist that an indemnity in the sum of $5,000 be paid by that Government as compensation to the officers concerned for the injuries complained of. So far as our records show no steps have yet been taken to comply with this demand, the Republic of Panama seemingly having disclaimed all blame in the matter. Under date of November 27, 1908, Minister Squiers, in reporting upon an encounter between the sailors of the U. S. S. *Buffalo* and natives of Panama which took place in the city of Panama on September 28, 1908, asked to be given "instructions as to further demands for an indemnity in the *Columbia* cases." It does not appear that any further instructions were given him.

On September 28, 1908, a third encounter between the police of Panama and Americans took place, this time several sailors of the U. S. S. *Buffalo* being the victims—Boatswain's Mate Charles Rand was killed and Joseph Cieslik, a sailor, was injured. From the evidence given in this case by the officers and crew of the U. S. S. *Buffalo* "there does not appear to be any doubt," as stated by the Secretary of State in his dispatch of October 21, 1908, to Minister Squiers "respecting the brutality displayed by the city police of Panama in clubbing, handcuffing, and dragging through the streets the badly wounded American sailor, Charles Rand; in interfering to prevent him from being sent, as desired and adranged by his shipmates, to the hospital for immediate treatment; in taking him to the police station instead of to the hospital; in refusing to allow a shipmate to get water to bathe his wounds or to telephone or to go for medical help; and in permitting him, while in police custody, to lie suffering and bleeding for more than an hour without medical attention of any kind. Similar treatment appears to have been given to another American sailor, Joseph Cieslik, who was likewise suffering from a knife wound, having also been stabbed in the back." On March 8, 1909, Minister Squiers inclosed to the department a report made by Mr. Weitzel, secretary of the legation, and in his letter accompanying the report said that the statements made before the legation by disinterested persons who were eyewitnesses of the affair confirm the charges made against the police "That Rand was treated roughly and brutally by the police."

In his dispatch to the Panama Legation, dated October 23, 1908, heretofore referred to, Secretary Root, after referring to the facts as presented to the private citizens of Panama upon the naval personnel of the United States, but of the foregoing incidents involving, as they do, not only threats and attacks by department by the legation at Panama and the officers and crew of the U. S. S. *Buffalo*, as well as to the *Columbia* incident, supra, said: "A mere enumeration inexcusable and reprehensible conduct on the part of the police authorities at Panama, which shows a tendency to become habitual, is sufficient without further proof to disclose the existence of conditions which render it dangerous to allow the officers and enlisted men of the public ships of a friendly and neighboring nation to go ashore for the purpose of visiting a friendly city. Such a state of affairs very closely approaches, if it does not pass, the limits of toleration, and this Government can not countenance its continued existence nor submit to the recurrence of such incidents as those referred to above.

"You will present a copy of this instruction to the minister for foreign affairs of Panama, at the same time courteously but firmly and peremptorily demanding the immediate and adequate punishment of all parties, including police authorities as well as private persons, who were concerned either by criminal acts or negligence in the death of Rand and the maltreatment of Cieslik. You will also demand prompt and full compensation for the death of Rand and injury to Cieslik, and, finally, an appropriate apology to this Government for the insult offered to the uniform of its naval representatives by the police officials of the Government of Panama."

The American Legation at Panama, acting under these instructions, formally demanded of Panama the punishment of the assailants, including the police; indemnity to the injured; and an apology to the Government of the United States. Although considerable correspondence has passed between the two Governments, neither of the demands above enumerated has been complied with by the Panaman Government. The department has recently instructed Minister Squiers to ascertain what steps are being taken by the Panaman Government to meet the demands of the United States in this matter and to say that the department still considers the outrage to its sailors and the insult to itself as serious as when they occurred in September, 1908, and fears delay in the matter may cause Panama to overlook either the seriousness or the necessity of making complete and adequate satisfaction both to the dead and injured and to their Government.

The fourth and last conflict between American citizens and Panaman policemen occurred on May 10, 1909, during the course of which two Americans, Charles M. Abbott (white) and John Williams (colored), were killed, the former by a rock, supposed to have been thrown by a rioter, and the latter by a rifle shot, supposed to have been fired by a member of the Colon police force. Neither of these men appears to have taken any part in the riot, the negro Williams having been shot while standing on the balcony of a house situated near the scene of the riot, while Abbott was hit by a rock while endeavoring to get away from the scene of the riot. It seems from the report made to the chief of police of the Canal Zone by the assistant chief that the riot of May 10 was precipitated by the arrest of three Jamaican laborers and the injury by the Colon policeman of a fourth. Immediately thereafter a large crowd of Jamaicans, Barbadians, and others of that class collected and engaged in a general affray, the police using their guns and the negroes rocks. Neither the American vice consul nor the police officer in charge of the Zone police force at Colon indicates anything that would lead one to believe that the members of the police force of Colon were responsible for the disorder, except that it is alleged, although apparently not proven, that the Jamaicans whose arrest started the riot were in the Canal Zone at the time. If this is so, of course, the Colon police had no authority to make the arrest, and the Jamaicans were justified in resisting arrest, and the clubbing of the Jamaicans was unlawful.

Minister Squiers, in his dispatch of May 19, with which he inclosed a report by our vice consul at Colon on the riot in question, said:

"I might add to these reports an account of a riot which took place at Taboga, where I spend my week ends, in which Americans (white) and Panamas (police) were involved. I happened to be an eyewitness to the whole affair and can testify to the utter inefficiency of the Panama police. On this occasion they were wild with excitement, and were quite ready to strike or kill anything coming within reach of their clubs. Had I not been present and able to check my own people the row would would probably have ended in the death of several persons."

On May 30, 1909, the Secretary to the President forwarded a letter addressed to Minister Squiers by the parents of Charles A. Abbott, who was killed in the riot of May 10, in which it is said: "I hold that the Panama Government is responsible for the death of our son and allege that we should be indemnified for a suitable amount." No action has as yet been taken in reference to this claim.

Article VII of the treaty of 1903 between the United States and Panama provides, inter alia:

"The Republic of Panama agrees that the cities of Panama and Colon shall comply in perpetuity with the sanitary ordinances whether of a preventive or curative character prescribed by the United States, and in case the Government of Panama is unable or fails in its duty to enforce this compliance by the cities of Panama and Colon with the sanitary ordinances of the United

States the Republic of Panama grants to the United States the right and authority to enforce the same.

"The same right and authority are granted to the United States for the maintenance of public order in the cities of Panama and Colon and the territories and harbors adjacent thereto in case the Republic of Panama should not, *in the judgment of the United States*, be able to maintain such order."

In his dispatch to the department of May 19, above referred to, Mr. Squiers says:

"* * * The police (national) of this Republic are utterly inefficient and unfitted for the duties they are supposed to perform. The members of the force are made up of ward strikers who were useful at the last election, who are now without training or capacity.

File No. 15778/76–77.

Minister Squiers to the Secretary of State.

No. 517] AMERICAN LEGATION,
Panama, July 10, 1909.

SIR: Referring to department's instructions No. 189, of the 24th ultimo, relative to the maltreatment of American citizens by the Panaman police, I have the honor to inclose copy of note No. 233, July 10, 1909, containing the substance of the above instruction, which I have addressed to Mr. Lewis, minister for foreign affairs. I shall have a personal interview with the President and Mr. Lewis regarding the matter, and shall urgently insist upon action by this Government in accordance with your wishes. I believe any further delay in complying with our demands would be prejudicial to a satisfactory adjustment of our grievances. Although I have applied for a leave of absence I shall not leave here before this matter is settled to your satisfaction.

I have, etc.,

H. G. SQUIERS.

[Inclosure.]

Minister Squires to the Minister for Foreign Affairs.

No. 233] AMERICAN LEGATION,
Panama, July 10, 1909.

YOUR EXCELLENCY: I have the honor to refer to the correspondence between your excellency's Government and this legation, with regard to the case of the officers of the U. S. S. *Columbia* who were brutally clubbed by the Panaman police at Colon about June 1, 1906, an attack which was entirely unprovoked, for which an indemnity of $5,000 was demanded by my Government as compensation to the officers concerned for the injuries complained of, to which no satisfactory reply has been received or indemnity paid; also respecting an encounter which took place on September 28 last between the Panaman police and sailors from the U. S. S. *Buffalo*, which resulted in the death of one sailor and the wounding of another, for which an apology and adequate indemnity was demanded by this legation, acting under cable instructions of the President of the United States, to which no satisfactory reply has been made. I received a note from your excellency's distinguished predecessor, Mr. Arango, containing a statement of the result of an examination of certain members of the national police on duty in Panama at the time, in explanation and denial of the attack; but your excellency's Government has made no apology, expressed no regret, nor offered in any way to compensate those who may be dependent on the murdered man (Rand) or to compensate the wounded sailor (Cieslik) for his sufferings and injuries.

Another conflict took place between the national police and Americans at Colon May 10, 1909, resulting in the death of two Americans; one was killed by a rifle ball supposed to have been fired by the police, and the other by a stone thrown by parties unknown. Both were bystanders; one was standing on a balcony some distance off.

At the time of the riot in Colon, about Christmas, 1906, when serious results were barely averted, I suggested to Mr. Arias, then minister for foreign affairs, that the rifles be taken away from the police; that rifles in the hands of men untrained and undisciplined in the use of firearms were a constant menace to the community; that persons far removed from the scene of trouble were likely to be injured or killed. My suggestion was never, to my knowledge, given heed or attention, and what I predicted at the time actually happened in the last riot of May.

I am particularly instructed by my Government to emphatically bring these cases to the attention of your excellency's Government, demanding an apology for each case, the punishment of the police, and the payment of an indemnity to the injured or relatives of the deceased; and I am further instructed to say that the shocking accumulation of these incidents call also for such substantial reform in the personnel and discipline of the national police, and such peremptory admonition to them by your excellency's Government, as shall prove to be effective guarantees against a recurrence of the unendurable brutalities of the character above described.

Your excellency is doubtless aware of the provisions of article 7 of the treaty of 1903, making incumbent upon the Government of the United States to assume, under given circumstances, the police control of Panama and Colon and the territories and harbors adjacent thereto.

I have the honor to express to your excellency the hope that these representations made under the express instructions of my Government shall, within a reasonable time, have all the effect that is expected; otherwise my Government will scarcely be able to avoid giving careful consideration to its duties and rights under the above quoted article of the treaty of 1903.

I avail, etc.,

H. G. SQUIERS.

File No. 15778/72.

The Acting Secretary of State to Minister Squiers.

No. 192.] DEPARTMENT OF STATE,
Washington, July 13, 1909.

SIR: I have the honor to acknowledge the receipt of your No. 509 of the 17th ultimo, in which you refer to the notes of the foreign office of Panama of November 23, 1908 (inclosed in your No. 390 of November 27, 1908), and of February 5, 1909 (inclosed in your No. 443 of February 27, 1909), as furnishing the reply of the Government of Panama to the representations of this Government in the matter of the killing of Rand and the wounding of Cieslik.

In reply I have to say that the department does not consider the explanations made by the Panama Government in regard to the murder of Charles Rand and the wounding of Joseph Cieslik, members of the crew of the U. S. S. *Buffalo*, at Panama, on September 28, 1908, at all satisfactory, for the reason that the investigations and reports made by representatives and officials of this Government clearly indicate not only that the offenses above mentioned were committed by citizens of Panama, but also that the police officers of Panama acted brutally and cruelly toward unarmed sailors wearing the uniform and entitled to the protection of the United States.

You are directed, therefore, in accordance with previous instructions, to advise the Panama Government along the lines above outlined and insist courteously but firmly that the assailants, including

the police implicated, be adequately punished; that prompt and full compensation be made for the death of Rand and the injury of Cieslik; and that an appropriate apology be made to this Government for the insult offered to the uniform of its naval representatives by the police officials of the Government of Panama.

I am, etc.,

HUNTINGTON WILSON.

File No. 15778/75.

Minister Squiers to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Panama, July 19, 1909.

Referring to instruction No. 189, of June 24, Mr. Squiers says he has received from the foreign office a reply to his note No. 233, copy of which he forwarded to the department with his No. 517, of July 10, in which the Government of Panama expresses a desire to postpone further consideration and investigation of the case of May 10 last, as the person charged with the murder of Abbott is awaiting trial in the Zone courts. Mr. Squiers says the note contains a general reiteration of the previous denial of facts as presented by the United States, offers no new facts or evidence of any kind, declines to apologize or pay an indemnity, offers no assurance as to police reform or guarantee against a recurrence of like incidents, and suggests "that the mixed commission created by Article VI, of the Hay-Bunau Varilla treaty, composed of two American citizens and two Panama citizens, whose patriotism can not be doubted, can at their next meeting decide the two incidents of the *Buffalo* and the *Columbia*, availing themselves only in rendering their decision of the respective records made up to the present time by both Governments. If a tribunal of the character mentioned decides that the Republic of Panama shall pay the indemnities mentioned by your excellency my Government will comply with pleasure with whatever is set forth in the judgment." Mr. Squiers says the note further states that "if through the means suggested by your excellency, or by reason of pressure, Panama satisfies the wishes of your excellency as set forth in your excellency's above-mentioned note the material triumph thus gained by the American Government will be prejudicial to the great interests which bind you to this Continent and with the Latin race."

Mr. Squiers says if the United States insists upon its demands he requests explicit instructions as to the amount of indemnity to be demanded in each case, and suggests that all members of the national police who were present on either occasion be dismissed by presidential decree, setting forth fully the reason for said dismissal. Says he is verbally advised by the minister for foreign affairs that at a cabinet meeting the day before it was decided to request that an officer of the United States Army be detailed for duty as inspector and instructor of the national police.

File No. 2489/66.

Minister Squiers to the Secretary of State.

[Telegram—Extract—Paraphrase.]

AMERICAN LEGATION,
Panama, July 22, 1909.

Mr. Squiers reports that the minister for foreign affairs has particularly requested him to ask the department for a categorical reply to the proposal of Panama for the settlement of the *Columbia* and *Buffalo* cases, as Panama desires to close the matter.

File No. 15778/86A.

The Acting Secretary of State to Minister Squiers.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, July 24, 1909.

Mr. Adee refers to legation's telegram of July 22 and instructs Mr. Squiers to insist upon a settlement of the case of the *Columbia* in accordance with previous instructions, and says the department is unable to submit *Buffalo* case to a mixed commission as proposed by Panama. Mr. Adee adds that the department's position has been set forth in repeated instructions.

File No. 15778/80.

Minister Squiers to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Panama, July 28, 1909.

Mr. Squiers reports that the Government of Panama agrees to demands of the United States in the *Columbia* and *Buffalo* cases. Says an indemnity of $5,000 will be paid in the *Columbia* case; offers to pay $8,000 indemnity to the relatives of Rand and $1,000 to Cieslik in the *Buffalo* cases, and will dismiss, by presidential decree, all police officers who were present at time of disturbance in case of *Buffalo*. Asks instructions.

File No. 15778/80.

The Secretary of State to Minister Squiers.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, July 29, 1909.

Referring to legation's telegram of 28th, Mr. Knox advises Mr. Squiers that the department accepts the indemnities offered and dis-

missal of police officers involved in the case of the *Buffalo*. Mr. Knox says that persons other than police officers involved should be punished by the courts, and that indemnity payments should be accompanied by a formal expression of regret pursuant to instructions.

Minister Squiers to the Secretary of State.

[Extract.]

No. 531.] AMERICAN LEGATION,
Panama, August 2, 1909.

SIR: Referring to my cipher cable of yesterday regarding settlement of *Columbia* and *Buffalo* cases, I have the honor to advise the department that this Government yielded to your demands in these cases only after long discussion, when I was obliged to speak very plainly and emphatically insisting on the justice of our demands, and that they be complied with without further delay.

I called on the President immediately after I learned the Government's decision, and thanked him for his friendly consideration of the matter.

I inclose copy of foreign office note No. 206/11, of July 30, formally replying to my note No. 235, of the 26th instant, and accepting our demands.

I also inclose copy of my note No. 236, of July 31, and of foreign office note No. 211/11, of July 31, with translation, in reply regarding final settlement of the *Columbia* and *Buffalo* cases. The foreign office note contains a copy of presidential decree No. 89, dismissing from the service certain policemen whose names I had furnished, and who were present at the time of Rand's murder. I also inclose the draft for $14,000, 90 days' sight, covering the indemnities of $5,000 in the *Columbia* case, and $9,000 in *Buffalo* cases. The note states that judicial proceedings are now in progress against Jacinto Escudero, who is charged with Rand's murder. Amabel Aparicio, who was also charged with having taken part in the murder, died sometime ago in the hospital as the result of the wounds he received in the fight with the sailors of the *Buffalo*.

I have, etc., H. G. SQUIERS.

[Inclosure 1—Translation.]

The Minister for Foreign Affairs to Minister Squiers.

No. 206/11.] FOREIGN OFFICE,
Panama, July 30, 1909.

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's esteemed note, No. 235, of the 26th instant, in relation to the incidents of the *Columbia* and *Buffalo*, which occurred during the last administration.

In view of the refusal of your excellency's Government to submit the disagreeable incidents mentioned to the decision of the mixed commission, and of the representations made to your excellency respecting the matter during the past few months, my Government, without admitting the interpretation which has been given to Article VIII, of the Hay-Buneau Varilla treaty, and because of the demands made by your excellency's Government, has agreed to comply

with the conditions demanded by the Department of State, and for that purpose offers $8,000 as indemnity for the dead sailor, and $1,000 for the wounded, both pertaining to the crew of the *Buffalo;* and that to the officials of the *Columbia* is fixed at $5,000, according to the demand of your excellency.

With sentiments, etc.,

S. LEWIS.

[Inclosure 2.]

Minister Squiers to the Minister of State for Foreign Affairs.

AMERICAN LEGATION,
Panama, July 31, 1909.

YOUR EXCELLENCY: I have the honor to acknowledge your excellency's esteemed note No. 206/11, dated July 30, last, in reply to my note No. 235, of the 26th instant, regarding *Columbia* and *Buffalo* cases, formally advising me that your excellency's Government, in view of representations made by me, acting under the particular instructions of my Government, agrees to pay $5,000 in the *Columbia* case, and $8,000 to the heirs of Rand, and $1,000 to Cieslik in *Buffalo* case. Also to comply with other demands made by my Government.

In reply I have the honor to inform your excellency that I have communicated to my Government the substance of your excellency's agreement, and have received the following reply:[1]

The following are the names of the policemen who were present, as shown by the testimony taken by your excellency's Government in their investigation of the case:

Paulino Macias; Faustino Alvardo, No. 343; Abelardo Bustos, No. 347; Emelio Linares, officer of the guard; Indalacio Franco, ex-vigilante No. 8.

Thanking your excellency for your courtesy and consideration in the negotiation and discussion of these cases, I avail, etc.

H. G. SQUIERS.

[Inclosure 3—Translation.]

The Minister for Foreign Affairs to Minister Squiers.

No. 211/11.] FOREIGN OFFICE,
Panama, July 31, 1909.

MR. MINISTER: Referring to your excellency's eseemed note, No. 236, of even date, in which your excellency has a copy of telegram received from the honorable Secretary of State of the United States, accepting the sums, which by note No. 206/11, dated yesterday, the Government of Panama offered as indemnity for the sailors who were maltreated on the night of September 28, 1908, belonging to the U. S. S. *Buffalo,* also the dismissal of the members of the national police, who were in any manner in the incident mentioned. Your excellency has given me the names of the following policemen who were present at the time of the affray between private individuals, Panamans, and the American sailors, who, your excellency states, should be punished by dismissal:

Paulino Macias, Faustino Alvarado, Abelardo Bustos, Emelio Linares, Indalecio Franco.

I transmit herewith note No. 697 from the Secretary of government and justice, which says:

"I inclose to your excellency herewith copy of decree No. 89, issued to-day by his excellency the President of the Republic, and by which various members of the police force are mentioned and orders given for their immediate dismissal, to the chief of police.

"I ask that your excellency will kindly transmit said document to his excellency the minister of the United States of North America to this Republic.

"I also transmit to your excellency decree No. 89 of the 30th of July, 1909, by which the dismissal of various employees of the national police force is ordered, which is as follows:

"'The President of the Republic by virtue of his legal authority decrees:

"'ARTICLE 1. The first chief of police of the national police shall decree and order the immediate dismissal of Lieutenant Emelio Lenares, Vigilante Indalecio

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[1] Supra, telegram of July 29.

Franco, and of Policemen Paulino Macias, Faustino Alvarado, and Abelardo Busto, if they or any of them are members of the corps which he commands.

"'Done in Panama, July 30, 1909.

"'J. D. DE OBALDIA.

"'The Secretary of Government and Justice:

"'RAMON M. VAL DES.'"

The cablegram already referred to says that the other persons not connected with the police force who were implicated in the incident of the *Buffalo* should be punished by the courts. I will inform your excellency, as I have manifested to your excellency in my note No. 193/11 of the 17th instant, my Government has proceeded against the individuals who took part in the affair, and your excellency knows that one of them, Anibal Apraicio, even when a prisoner, died in the Hospital Santo Tomas, as the result of the blows given him by the sailors of the *Buffalo*. In the meantime that another, Jacinto Escudero, who appears to be responsible for the wounds inflicted upon the sailors, remains in jail, and the judicial proceedings against him are in progress.

This office is unable to give any opinion respecting the result of this proceeding, which is in the hands of independent authorities, according to the constitution of this country, and judgment will be rendered according to the proofs adduced.

During the course of these negotiations, and when your excellency officially communicated that the Government of the United States would not agree to submit to the mixed commission the controversy respecting the *Columbia* and *Buffalo* cases, it was proposed to your Government that a new contradictory investigation should be opened regarding the incident of the 28th of September, 1908, a tribunal where the Government of Panama and the United States should have representation, for the purpose of establishing the guilt or innocence of the members of the national police, and of the individuals implicated in the affair, hoping thus to come in possession of all the testimony, either in favor of or against, which could be produced by both parties, but your excellency declined all discussion respecting the matter, so that the judges who have charge of the case to try the individuals referred to in this part of the cablegram mentioned will only act upon the depositions heretofore taken, and will ignore the authentic depositions taken upon the investigation made by your excellency's Government, to which your excellency has made reference upon repeated occasions; nevertheless, as your excellency is aware, the Panaman executive has delivered over to the courts those accused of the crime of the assault and wounds inflicted upon the sailors of the *Buffalo*.

Your excellency will find inclosed herewith a 90-day sight draft, No. 60, upon William Nelson Cromwell, for the sum of $14,000, gold coin of the United States, which represents:

First, $5,000 (gold) indemnity which is to be paid to the officers of the *Columbia*, for the incident which occurred in Colon, the 1st of June, 1906.

Second, $8,000 and $1,000 as indemnity to the heirs of Rand and the sailor Cieslik, members of the crew of the *Buffalo*, one killed and the other wounded on the night of the 28th of September, 1908.

I assure your excellency that my Government deeply deplores as much the occurrence of the *Columbia* as that with the sailors of the *Buffalo*.

I avail, etc.,

S. LEWIS.

PERSIA.

ABDICATION OF HIS MAJESTY MOHAMED ALI MIRZA AND PROCLAMATION OF HIS IMPERIAL HIGHNESS SOLTAN AHMED MIRZA AS SHAH OF PERSIA.

File No. 5931/472.

Chargé de Billier to the Secretary of State.

No. 205.] AMERICAN LEGATION,
Teheran, July 18, 1909.

SIR: I have the honor to report that a force of revolutionists under the Separdar, eluding the royalist forces posted to check their advance, rushed the Yusufabad gate early in the morning of July 13 and took possession of the city. There was little resistance, the greater part of the Persian Cossacks having been sent to reinforce the troops interposed between the city and the advancing forces of the Separdar and the Bakhtiari. July 14 the royalists shelled the city, directing their fire at the Mosque, headquarters of the Bakhtiari. July 15 the shell fire was light and little damage resulted, but there was continual street fighting. The portion of the brigade of Persian Cossacks, under Col. Liakhoff, in the city, maintained their position in their barracks with small loss, but relief was impossible. The Shah took asylum at 9 o'clock a. m., July 16, in the Russian legation at Zetquendeh and was placed under the protection of both the Russian and British flags. Later in the day the Valyad was proclaimed Shah by the revolutionists. July 17 the Shah formally abdicated in favor of the Valyad, the Crown Prince. It is considered probable that the ex-Shah will shortly be removed to the Crimea.

I have, etc.,

FREDERICK DE BILLIER.

File No. 5931/462.

Chargé de Billier to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Teheran July 22, 1909.

Says the British minister on behalf of British Government has recognized the new Shah of Persia on July 21 and asks if he may recognize Government.

File No. 5931/462.

The Secretary of State to Chargé de Billier.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, July 22, 1909.

Mr. Knox instructs Mr. de Billier to notify the minister for foreign affairs of Persia that the legation is ready to enter into full relations with the Government of the new Shah, and to express to him the wishes of the American Government for the prosperity and tranquillity of Persia under this rule.

File No. 5931/465.

The Belgian Chargé to the Secretary of State.

[Translation.]

LEGATION OF BELGIUM,
No. 11.] *Washington, July 22, 1909.*

Mr. SECRETARY OF STATE: In continuation of the oral communication I had the honor to make to your excellency this forenoon I beg leave to confirm hereinafter the information recently forwarded to the legation of Persia at Washington by his excellency Moshar es Saltaneh.

It appears from two telegrams received on the 18th and 19th instant that the disturbances prevailing in the interior of the country made it necessary to restore order and entirely reorganize the administration. His Majesty Mohamed Ali Mirza's unpopularity and his actions in formal opposition to the wishes of the nation made him unworthy of the throne. The Parliament not being in session, the representatives of the nation, assembled in extraordinary Congress at Teheran, at the Baharistan Palace, on Friday, 27 of Djamadidlaler, 1327, consisting of the Ulemas, the chiefs of the Modjaheddia, the princes, the high dignitaries of the Empire, and the former deputies, decided, by a unanimous vote, to proclaim the deposition of His Majesty Mohamed Ali Mirza.

In accordance with articles 36 and 37 of the constitution, His Imperial Highness Soltan Ahmed Mirza, the crown prince, was proclaimed Shah, and the regence was provisionally intrusted to His Highness Azed al Molk until a final decision shall have been reached in this respect by the Chamber of Deputies, in accordance with article 38 of the constitution.

The second telegram adds that the change of government was effected without much bloodshed. Quiet is being restored in all parts and public safety is assured. Foreigners and foreign property are effectively protected and absolutely safe.

I have the honor to bring the foregoing to your excellency's knowledge and embrace this opportunity to renew, etc.,

E. DE CARTIER.

File No. 5931/465.

The Acting Secretary of State to the Belgian Chargé.

No. 29] DEPARTMENT OF STATE,
Washington, July 31, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 22d instant, in which you confirm your oral communication to the Secretary of State on the same day, to the effect that the Persian legation in Washington has been officially informed of the deposition of His Majesty Mohamed Ali Mirza; the proclamation as Shah, in accordance with articles 36 and 37 of the constitution, of His Imperial Highness Soltan Ahmed Mirza, the Crown Prince, and the provisional bestowal of the regency on His Highness Ayed al Molk.

In reply I have to inform you that on the 22d instant the American chargé d'affaires ad interim at Teheran was instructed by telegraph to express the wishes of the United States for the prosperous and tranquil government of Persia by the new Shah, and to assure the minister for foreign affairs of the readiness of the American legation to establish official relations with the new Government.

Accept, etc.,

HUNTINGTON WILSON.

File No. 5931/491.

The President of the United States to the Shah of Persia.

[Telegram.]

THE WHITE HOUSE,
Washington, November 16, 1909.

I tender your majesty congratulations on the opening of the constitutional parliament. The American people wish welfare and peace for Persia under the new order of things.

WM. H. TAFT.

PERU.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND PERU.

Signed at Washington, December 5, 1908.
Ratification advised by the Senate, December 10, 1908.
Ratified by the President, March 1, 1909.
Ratified by Peru, May 3, 1909.
Ratifications exchanged at Washington, June 29, 1909.
Proclaimed, June 30, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Arbitration Convention between the United States of America and the Republic of Peru, was concluded and signed by their respective Plenipotentiaries at Washington on the fifth day of December, one thousand nine hundred and eight, the original of which Convention, being in the English and Spanish languages, is word for word as follows:

The Government of the United States of America, signatory of the two conventions for the Pacific Settlement of International Disputes, concluded at The Hague, respectively, on July 29, 1899, and October 18, 1907, and the Government of the Republic of Peru, adherent to the said convention of July 29, 1899, and signatory of the said convention of October 18, 1907;

Taking into consideration that by Article XIX of the convention of July 29, 1899, and by Article XL of the convention of October 18, 1907, the High Contracting Parties have reserved to themselves the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment;

Have authorized the Undersigned to conclude the following Convention:

ARTICLE I.

Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the convention of the 29th July, 1899, for the pacific settlement of international disputes, and maintained by The Hague Convention of the 18th October, 1907; provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two Contracting States, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement, defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States, by and with the advice and consent of the Senate thereof, and on the part of Peru shall be subject to the procedure required by the Constitution and laws thereof.

ARTICLE III.

The present Convention is concluded for a period of five years and shall remain in force thereafter until one year's notice of termination shall be given by either party.

ARTICLE IV.

The present Convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of Peru in accordance with the constitution and laws thereof. The ratifications shall be exchanged at Washington as soon as possible, and the Convention shall take effect on the date of the exchange of its ratifications.

Done in duplicate in the English and Spanish languages at Washington, this 5th day of December, in the year one thousand nine hundred and eight.

ELIHU ROOT [SEAL]
FELIPE PARDO [SEAL]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the twenty-ninth day of June, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this thirtieth day of June in the year of our Lord one thousand nine hundred and nine, and [SEAL] of the Independence of the United States of America the one hundred and thirty-third.

WM. H. TAFT.

By the President:
P. C. KNOX,
Secretary of State.

NATURALIZATION CONVENTION BETWEEN THE UNITED STATES AND PERU.

Signed at Lima, October 15, 1907.
Ratification advised by the Senate, February 19, 1908.
Ratified by the President, March 9, 1908.
Ratified by Peru, July 23, 1909.
Ratifications exchanged at Lima, July 23, 1909.
Proclaimed, September 2, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Naturalization Convention between the United States of America and the Republic of Peru was concluded and signed by their respective Plenipotentiaries at Lima on the fifteenth day of October, one thousand nine hundred and seven, the original of which Convention being in the English and Spanish languages is word for word as follows:

The United States of America and the Republic of Peru, desiring to regulate the citizenship of those persons who emigrate from the United States of America to Peru, and from Peru to the United States of America, have resolved to conclude a convention on this subject and for that purpose have appointed their Plenipotentiaries that is to say:

The President of the United States of America, Leslie Combs, Envoy Extraordinary and Minister Plenipotentiary of the United States at Lima; and

The President of Peru Señor don Solón Polo, Minister for Foreign Relations of Peru, who have agreed to and signed the following articles.

ARTICLE I.

Citizens of the United States who may be or shall have been naturalized in Peru upon their own application or by their own consent, will be considered by the United States as citizens of the Republic of Peru. Reciprocally, Peruvians who may or shall have been naturalized in the United States upon their own application or with their consent, will be considered by the Republic of Peru as citizens of the United States.

ARTICLE II.

If a Peruvian, naturalized in the United States of America, renews his residence in Peru without intent to return to the United States, he may be held to have renounced his naturalization in the United States. Reciprocally if a citizen of the United States naturalized in Peru renews his residence in the United States without intent to return to Peru, he may be presumed to have renounced his naturalization in Peru.

The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country, but this presumption may be destroyed by evidence to the contrary.

ARTICLE III.

It is mutually agreed that the definition of the word "citizen" as used in this convention shall be held to mean a person to whom nationality of the United States or of Peru attaches.

ARTICLE IV.

A recognized citizen of the one party returning to the territory of the other remains liable to trial and legal punishment for any action punishable by the laws of his original country and committed before his emigration; but not for the emigration itself, saving always the limitation established by the laws of his original country and any other remission of liability to punishment.

ARTICLE V.

The declaration of intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE VI.

The present convention shall go into effect immediately on the exchange of ratifications, and in the event of either party giving the other notice of its intention to terminate the convention it shall continue to be in effect one year more to count from the date of such notice.

The present convention shall be submitted to the approval and ratification of the respective appropriate authorities of each of the contracting parties, and the ratifications shall be exchanged at Lima within twenty-four months of the date thereof.

In witness whereof, the respective Plenipotentiaries have signed the above articles both in the English and Spanish languages, and have hereunto affixed their seals.

Done in duplicate at the city of Lima this fifteenth day of October one thousand nine hundred and seven.

LESLIE COMBS
American Minister in Perú [SEAL.]
SOLÓN POLO [SEAL.]

And whereas the said Convention has been duly ratified on both ports, and the ratifications of the two governments were exchanged in the City of Lima, on the twenty-third day of July, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this second day of September in the year of our Lord one thousand nine hundred and nine, and of

the Independence of the United States of America the one hundred and thirty-fourth.

[SEAL.] WM H TAFT

By the President:

ALVEY A. ADEE

Acting Secretary of State.

BOUNDARY DISPUTE BETWEEN BOLIVIA AND PERU.

File No. 534/143.

Minister Stutesman to the Secretary of State.

[Extract.]

No. 405.]

AMERICAN LEGATION,
La Paz, November 26, 1909.

SIR: I herewith beg to submit a report on the late frontier question between Bolivia and Peru.

The controversy over the boundary between Bolivia and Peru is as old as the Republics themselves. When they were both colonies of Spain the limitations of their respective areas were not exactly defined, and the contention has continued to the present time. There were several futile attempts made to settle the matter, but not until December, 1902, was a treaty signed by both Governments to submit the whole matter to a juris arbitration. In November, 1903, before requesting the arbitrator to accept that position, the treaty of Petropolis was signed, by which Bolivia ceded to Brazil the territory north of parallel 11, Brazil giving in exchange some territory and a money compensation.

In 1905, President Julio A. Roca, of Argentine, was named as the arbitrator and the terms of the arbitration defined in the following treaty. (Inclosure No. 1.)

President Roca turned the matter over, without decision, to his successor, Hon. Manuel de la Quintana, who also failed to make an award, having died in office, thus leaving the matter in the hands of the Hon. José Figueroa Alcorta, who, as vice president, succeeded to the Presidency at the death of President Quintana. President Alcorta reviewed the evidence and promulgated his decision July 9, 1909.

This award was received with angry disapprobation by the Bolivian people, and hostile demonstrations ensued in various cities.

In La Paz, on the night of July 10, 1909, a large mob, composed mainly of students and irresponsible persons, stoned the Argentine and Peruvian legations, but without severely injuring anyone or doing any damage. The next day—Saturday—there was a large parade of substantial citizens, and many speeches were made in the Plaza Murillo by influential men, all of them more or less inflammatory, except that of former President Pando, who counseled moderation and caution. The same night a mob again attacked the Argentine legation and forced Minister Fonseca to flee for safety to the President's palace. Sunday was quiet, but at night the rioting was resumed, and several shops and business houses owned by Peruvians

were attacked and looted. The cavalry finally dispersed the mob. The troops patrolled the city for several nights thereafter, with an especial detail to guard the Peruvian and Argentine legations, and no further outbreaks occurred.

President Montes was eager to reject the award entirely and sent a circular letter to the prefects of the departments urging them to stand by him and reflecting severely upon the President of Argentine. This was indiscreetly disclosed by the prefect of Sucre, and as soon as it came to the knowledge of the Argentine Government, Escalier, the Bolivian minister, was requested to leave Buenos Aires within 24 hours. Bolivia immediately made a similar request to Fonseca, the Argentine minister, and he left La Paz the same day—July 21, 1909—by special train. Minister Escalier had refused to accept President Alcorta's invitation to attend the formal promulgation of the decision, because he had advance information that it was decidedly in favor of Peru. This was an additional reason for requesting the recall of Escalier and the complete severance of diplomatic relations with Bolivia. Escalier was not even permitted to remain long enough to arrange some important business matters, but was required to leave forthwith. He is now in Europe.

I was requested by the Argentine Government to take charge of the legation, and after receiving the consent of the Bolivian Government and instructions from your excellency, I formally took charge of the archives and property July 22, 1909, and am still in possession.

When Congress convened on August 6, 1909, public opinion, inflamed by the press, was generally hostile to any form of acceptance of the award, and in his address President Montes further emphasized his position by severe strictures of Argentine and President Alcorta. The address was received with applause from the galleries and also from the members, indicating the trend of public feeling at that time. In a day or two the appointment of Gen. Pando as minister of foreign affairs was suggested, but it was received with such storm of disapproval that his name was withdrawn and Daniel Sanchez was appointed August 14, 1909.

On August 12, 1909, Eliodoro Villazón was inaugurated President. His inaugural address was received coldly and without applause, while retiring President Montes was wildly cheered and hailed as "the future President of the Republic."

Former President Pando was hooted and jeered when going from the Capitol to the President's palace after the inaugural exercises.

After that the public pulse became less feverish, the press comment less inflammatory, and the Bolivian Government took up with Peru the matter of a modification of the award, independent of Argentine.

At the outset of his administration a majority of the Congress were decidedly hostile to President Villazón's policy.

However, by the exercise of great tact and diplomatic skill by President Villazón, and with the very able assistance of the secretary of foreign relations, Bustamente, and former President Pando, negotiations were carried on with Peru through the resident minister, Polo, which resulted in a protocol, dated September 15, 1909, which formally accepted the decision as made by the President of Argentine, without modification, in the following terms: (Inclosure No. 2) and a second protocol, dated September 17, which designated the bound-

aries of the disputed territory, as agreed upon finally by Polo and Bustamente (Inclosure No. 3).

The matter was then submitted to Congress, and after a full discussion and debate the vote was taken October 25, 1909, at 4.30 p. m., resulting 77 for and only 2 against ratification.

A mooted question for a hundred years has been finally and satisfactorily settled and relations between these Republics have been established of more enduring peace and friendship.

I have, etc.,

JAMES F. STUTESMAN.

[Inclosure 1—Translation.]

Treaty of Arbitration "Juris."

José Manuel Pando,

Constitutional President of the Republic of Bolivia.

Whereas, on the 30th day of the month of December 1902, there was signed in this city, by Plenipotentiaries duly authorized, a treaty of arbitration juris, with the Republic of Peru, in the following terms:

The President of the Republic of Bolivia, and the President of the Republic of Peru, anxious to arrange the question of limits which is pending between the two States, have, with this object, named as their Plenipotentiaries:

His Excellency the President of the Republic of Bolivia names Dr. Eliodoro Villazón, his Minister of Foreign Relations;

And His Excellency the President of the Republic of Peru Doctor Felipe Osma, his Envoy Extraordinary and Minister Plenipotentiary to the Government of Bolivia, who, after having shown their full powers and found them in due form, have celebrated, in conformity with the second clause of the General Arbitration Treaty of November 21, of the last year, the following:

ARTICLE I. The High Contracting Parties submit to the judgment and decision of the Government of the Argentine Republic, as Arbitrator and Judge of Right, the question of limits which is pending between both Republics, with a view to obtaining a definite and unappealable sentence, according to which all the territory which in 1810 belonged to the jurisdiction or district of the ancient "Audiencia de Charcas," within the limits of the "Virreinato de Buenos Aires," by acts of the ancient Sovereign, are of the Republic of Bolivia, and all the territory which in that same date and by acts of equal origin belonged to the "Virreinato de Lima," are of the Republic of Peru.

ARTICLE II. It having been arranged by the Treaty of September 23rd of the present year, the demarcation and landmarking of the frontier that begins within the Peruvian provinces of Arica and Tacna, and the Bolivian province of Carangas, at the East, and up to the snow line of Palomani, this section remains excepted from the present Treaty.

ARTICLE III. The Arbitrator in pronouncing his decision, will conform to the laws of the "Recopilacion de Indias," Decrees and Royal Acts, the Ordinances of the Intendentes, the diplomatic actions relative to the demarcation of frontiers, maps and official descriptions, and in general, to all documents that having official character, had been dictated, to give the true significance and execution to said Royal dispositions.

ARTICLE IV. Whenever the Royal acts and dispositions do not define in a clear manner the dominion of a territory, the Arbitrator will resolve the question equitably, in accordance, as far as possible, with their meaning as indicated by the spirit that prompted them.

ARTICLE V. The possession of a territory by one of the High Contracting Parties, cannot be opposed to nor be allowed to prevail against titles or Royal dispositions to the contrary.

ARTICLE VI. The High Contracting Parties, as soon as the ratifications of this present Treaty are exchanged, will solicit, simultaneously and through their Envoys Extraordinary and Ministers Plenipotentiary, from the Government of the Argentine Republic, the acceptance of the charge of Arbiter,

to assume the jurisdiction for the understanding, substantiation and decision of the controversy, and to establish the proceedings to be followed.

ARTICLE VII. One year after the notice of acceptance, the Diplomatic Representatives referred to, will present their expositions manifesting the rights of their respective States, and the documents supporting them or on which they are based.

ARTICLE VIII. The said diplomatic Agents will represent their Governments at the trial, with all the necessary powers to exchange briefs, offer proofs, present and amplify allegations, provide data to clarify the disputed rights, and finally, to follow the trial to the end.

ARTICLE IX. Once the judgment is given it will become effective from the moment it has been communicated to the said Envoys Extraordinary and Ministers Plenipotentiary of the High Contracting Parties. From that moment the legal delimitation of territory between both Republics will be held as definitely and rightfully established.

ARTICLE X. Whatever is not specially arranged in this Treaty, will be subject to that of November 21, 1901.[1]

ARTICLE XI. The ratifications of this Treaty, after it is duly approved and ratified by the Governments and Legislatures of both States, will be exchanged in La Paz or in Lima, without any delay.

In faith of which, the undersigned sign and seal the present Treaty, made in duplicate, in the city of La Paz, on the thirtieth day of the month of December of the year one thousand nine hundred and two.

(Signed.) ELIODORO VILLAZÓN. [L. S.]
(Signed.) FELIPE DE OSMA. [L. S.]

[Inclosure 2—Translation.]

Protocol of September 15th, 1909.

In the city of La Paz, on the 15th day of September 1909, His Excellency Hon. Solon Polo, E. E. & M. P. of Peru, and H. E. Hon. Daniel Sanchez Bustamente, Minister of Foreign Affairs, assembled in the Foreign Office of Bolivia, in the presence of the Minister from Peru made known: that fulfilling the high charge that was conferred on him by the Government of Peru and Bolivia, in the special treaty of arbitration of the 30th of December 1902, His Excellency the President of the Argentine Republic, by decree given in Buenos Aires the 9th of July last, had fixed in a definite manner and not admitting appeal the Peru-Bolivian frontier, from the river Suches towards the North; that this transcendental act of the illustrious Argentine ruler, closed forever the disagreeable frontier dispute between Bolivia and Peru and opened a new period to their mutual international relations, which under the noble aegis of justice, will be in future even fraternally more cordial than in the past.

His Excellency the Minister of Peru added, that it was not necessary for the parties to estimate the result achieved in order to be able to congratulate each other for the great success won by the humanitarian and noble cause of arbitration in America, and Peru and Bolivia will have the right to claim the honor of having shown so high an example of political development as will enable two sister nations to live side by side without fears or distrusts.

He finished, saying that he was persuaded that His Excellency the Minister for Foreign Affairs of Bolivia and his illustrious Government, with the intelligence and justice that characterizes them, will appreciate in this way the result to which both countries have arrived, and that he does not doubt they will manifest as he has the honor to request, their complete accordance with the decree given in Buenos Aires by His Excellency Doctor José Figueroa Alcorta, the 9th of July last.

His Excellency the Minister of Foreign Affairs of Bolivia declared that he had carefully noted the opinion expressed by His Excellency the E. E. & M. P. of Peru, in the name of his illustrious Government concerning the decree given in the frontier dispute the 9th of July last, at Buenos Aires by His Excellency the President of the Argentine Republic, to whom the treaty of arbitration "juris," of the 30th of December, 1902, was delivered for his wise judgment.

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[1] See Foreign Relations, 1902, p. 891.

He added that the Government of Bolivia had deemed it its duty to present as it did through its E. E. & M. P. at Buenos Aires, for the eminent consideration of the arbitrator, certain reservations based upon juridical considerations, which are known to His Excellency the Minister of Peru; that on the other hand he declared also on several occasions that he would leave nothing undone to continue the hearty relations which always have existed between the Republics of Bolivia and Peru; that fortunately His Excellency the Minister of Peru and his illustrious Government have understood the sincerity of these declarations, thus opening the door to an understanding which permits Bolivia and Peru to ensure the noble principle of arbitration and maintain the traditional harmony between the rights and interests of both countries.

In conclusion he gave, in the name of the Bolivian Government, the assent solicited by His Excellency the Minister of Peru.

By virtue of which, His Excellency the Extraordinary Envoy and Plenipotentiary Minister of Peru and His Excellency the Minister for Foreign Affairs of Bolivia, sign the present Protocol in two copies and seal them with their respective seals.

(Signed) SOLON POLO. [L. S.]
(Signed) DANIEL SANCHEZ BUSTAMENTE. [L. S.]

[Inclosure 3—Translation.]

Protocol dated La Paz, September 17, 1909.

Assembled in the Foreign Office of Bolivia on the Seventeenth of September 1909, for the purpose of coming to an understanding in regard to the decree rendered by H. E. the President of the Argentine Republic, the ninth of July last, according to the special Treaty of the 30th of December 1902, between the Governments of Bolivia and Peru, the undersigned, Dr. Daniel Sanchez Bustamente, Minister for Foreign Affairs, and Sr. Don Solon Polo, E. E. & M. P. of Peru, have agreed as follows:—

I.

In order that the boundaries established by the Arbitrator may conform as nearly as possible with the natural conditions of the land, and with the convenience of both interested parties, the Governments of Bolivia and Peru have resolved, by means of the present pact, to effect the exchanges and concessions of lands which by mutual agreement are considered necessary for the object sought, namely, that the frontiers of each country may remain fixed in accordance with the requirements of its security and any misunderstanding in the future be avoided.

II.

Accordingly, the line of frontier between the territories of Bolivia and Peru shall start from the point where the actual boundaries coincide with the Suches river, shall cross the lake of the same name and run by the mountains of Palomani-Tranca, Palomani-Kunka, the summit of Palomani and the Yagua-yagua chain. Thence it will run along the Huahara Lorini and Ichocorpa mountains, following the line of division of waters between the rivers Lanza and Tambopata as far as the fourteenth degree South Latitude, and thence continue until the same parallel meets the river Mosoj-Huaico or Lanza, the course of which it will follow until its confluence with the Tambopata.

From the confluence of the Tambopata with the river Lanza the boundary shall go to the Western sources of the river Heath and following downwards as far as the river Amarumayo or Madre de Dios. From the confluence of the Heath with the Madre de Dios there shall be drawn a geodetic line, which, starting from the mouth of the Heath will go to the West of the Illampu rubber settlement on the river Manuripi and leaving this property on the side of Bolivia, the boundary line shall go to the confluence of the Yaverija brook with the Acre river, leaving as the definite and perpetual property of Bolivia all the territory situated to the East of the said boundary lines, and as the definite and perpetual property of Peru the territory lying to the West of the same.

III.

The High Contracting Parties bind themselves to exchange ratifications of the present Treaty within thirty days of the date thereof; and within six months both countries will name Boundary Commissions to demarcate on the spot the frontier line in accord with the above stipulations.

The personnel of these Commissions, as well as the instructions by which they shall be guided, will be determined by special agreement between the Governments of Bolivia and Peru, aiming at the greatest possible speed compatible with the precision and accuracy of the work.

Done in duplicate in the city of La Paz on the seventeenth of September of the year 1909.

(Signed) DANIEL SANCHEZ BUSTAMENTE.
(Signed) SOLON POLO.

PROTOCOL SIGNED BY PERU AND COLOMBIA PROVIDING FOR SETTLEMENT OF DISORDERS IN THE PUTUMAYO, AND OTHER QUESTIONS.

File No. 526/14–15.

Minister Combs to the Secretary of State.

No. 223.] AMERICAN LEGATION,
Lima, April 27, 1909.

SIR: I have the honor to enclose a copy of the recent protocol signed between Peru and Colombia for the settlement of the disorder in the region of the Putumayo, and claims and counter claims that have arisen from the dispute that exists over the boundary between the two countries.

It further provides for a renewal of the negotiations regarding the limitations of the frontier immediately after the decision of the arbitration now in progress at Madrid between Ecuador and Peru, and provides for an arbitration of the boundary question if it cannot be solved by negotiation.

I have, etc., LESLIE COMBS.

[Inclosure—Translation.]

The President of the Republic of Peru, Doctor Meliton F. Porras, Minister for Foreign Affairs, and H. E. the President of the Republic of Colombia, Mr. Luis Tanco Argaes, E. E. and M. P. to Peru, have agreed upon the following articles:

I.

The Governments of Peru and Colombia express their sentiments of regret for the events that have taken place in the region of the Putumayo during the past year and as evidence of their mutual satisfaction, agree to appoint, by means of a special convention, to be signed within a period of three months from the date on which the present agreement comes into force, an international commission to establish and examine the occurrences in the above mentioned region, and embody the result of their investigation in a report. If after this report is presented the two governments fail to agree regarding the responsibilities based upon such findings, the matter shall be submitted to arbitration. When the responsibility of those found guilty shall have been determined they shall after due process of law suffer the penalties provided therefor; moreover, adequate indemnity shall be paid to such as have suffered material losses, and to the families of the victims of the acts declared punishable.

II.

The Governments of Peru and Colombia agree to renew their negotiations regarding the delimitation of their frontiers immediately after the decision has been rendered in the case now under arbitration in Madrid, in accordance with the treaty celebrated between Peru and Ecuador in 1887, and hereby likewise agree to resort to arbitration in case they should not succeed in arriving directly at a solution of their differences.

III.

If, within three months from the coming into force of this agreement, the King of Spain should have failed to render his decision in the arbitration between Peru and Ecuador, the two Governments hereby oblige themselves to celebrate a "modus vivendi" agreement with regard to the territories in dispute, so as to prevent in them the possibility of strifes or the clashes of interest between the citizens of the two respective countries.

IV.

With the intention of increasing the trade which exists between Peru and Colombia both in the Eastern region and on the coasts of the Pacific ocean, the two Governments have agreed to celebrate a treaty of commerce and navigation upon the basis of reciprocal convenience.

In witness whereof the present agreement is signed in a double copy, etc., etc.

PORTUGAL.

TERMINATION OF COMMERCIAL AGREEMENTS BETWEEN THE UNITED STATES AND PORTUGAL.

File No. 17147/1A.

The Acting Secretary of State to the Portuguese Minister.

DEPARTMENT OF STATE,
Washington, April 30, 1909.

SIR: The Congress of the United States has effectively declared its intention to supersede the present customs tariff law of the United States by a new law which is now under discussion and which will probably be enacted within a few weeks.

One of the necessary results of this change will be that the commercial agreements made by the President under the authority of the act of July 24, 1897, will no longer be applicable to the conditions which will exist under the new law. The Government of the United States accordingly finds it necessary to give notice of the intention to terminate all of these agreements.

By direction of the President, I have therefore the honor hereby to give through you to the Government of Portugal formal notice on behalf of the United States of the intended termination of the two commercial agreements signed, respectively, on May 22, 1899, and November 19, 1902. Further communication on this subject will be made after the passage of legislative measures affecting the bases on which these agreements were concluded.

Accept, etc.,

HUNTINGTON WILSON.

File No. 5727/272A.

The Acting Secretary of State to Minister Bryan.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 30, 1909.

For your information and for immediate communication to the Portuguese Government, I quote the following letter of notification addressed to-day to the Portuguese minister here:[1]

WILSON.

[1] Supra.

File No. 17147/1.

The Portuguese Minister to the Secretary of State.

[Translation.]

PORTUGUESE LEGATION,
Washington, May 1, 1909.

SIR: I have the honor to acknowledge the receipt of your note of April 30, 1909, giving through me to the Government of Portugal formal notice on behalf of the United States of the intended termination of the commercial agreements concluded between the two countries on May 22, 1899, and November 19, 1902.

A copy of your note has already been forwarded to his majesty's Government.

I avail, etc.,

ALTE.

File No. 17147/4A.

The Secretary of State to Minister Bryan.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, August 6, 1909.

Mr. Knox refers to the department's telegram of April 30, 1909, regarding the tariff act approved by the President August 5, 1909, requiring that notice be given of the termination of all commercial agreements entered into under section 3 of the tariff act of July 24, 1897, and by direction of the President of the United States instructs Mr. Bryan to give notice to the Government of Portugal as of date of August 7 of the intention of the Government of the United States to terminate commercial agreements concluded between the United States and Portugal on May 22, 1899, and November 19, 1902, one year from the date of this notice, namely, August 7, 1910. Mr. Knox adds that formal notice of this intention has been given this day to the Portuguese legation in Washington.

File No. 17147/4B.

The Secretary of State to the Portuguese Minister.

DEPARTMENT OF STATE,
Washington, August 7, 1909.

SIR: Referring to the department's note to your legation dated April 30, 1909, relative to the termination of the existing commercial agreements between the United States and Portugal and stating that a further communication on this subject would be made after the passage of legislative measures affecting the bases on which those agreements were concluded, I have now the honor to inform you that the new tariff law approved August 5, 1909, contains the following provisions respecting the commercial agreements of the United States:

That the President shall have power and it shall be his duty to give notice, within ten days after the passage of this act, to all foreign countries with which commercial agreements in conformity with the authority granted by section three of the act entitled "An act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, have been or shall have been entered into, of the intention of the United States to terminate such agreements at a time specified in such notice, which time shall in no case, except as hereinafter provided, be longer than the period of time specified in such agreements respectively for notice for their termination; and upon the expiration of the periods when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importations from said countries shall be subject to no other conditions or rates of duty than those prescribed by this act and such other acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the terms of said commercial agreements shall remain in force: *And provided further*, That in the case of those commercial agreements or arrangements made in accordance with the provisions of section three of the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, which contain no stipulation in regard to their termination by diplomatic action, the President is authorized to give to the Governments concerned a notice of termination of six months, which notice shall date from April thirtieth, nineteen hundred and nine.

By the President's direction, in pursuance of the above quoted provisions of law, I have the honor hereby to give through you to the Government of Portugal formal notice on behalf of the United States of the intended termination of the commercial agreements signed at Washington May 22, 1899, and on November 19, 1902, respectively, to take effect one year from the present date, namely, August 7, 1910, when the said agreements shall cease to be in force.

Accept, etc.,

P. C. KNOX.

File No. 17147/5.

The Portuguese Minister to the Secretary of State.

[Translation.]

PORTUGUESE LEGATION,
Washington, August 10, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 8th instant in which you give through me to the Government of Portugal formal notice on behalf of the United States of the intended termination of the commercial agreements signed at Washington on May 22, 1899, and November 19, 1902, respectively, to take effect August 7, 1910.

I did not fail to transmit a copy of your note to His Majesty's Government.

I avail, etc.,

ALTE.

RUSSIA.

AGREEMENT BETWEEN THE UNITED STATES AND RUSSIA REGULATING THE POSITION OF CORPORATIONS AND OTHER COMMERCIAL ASSOCIATIONS.

Signed at St. Petersburg, June 25/12, 1904.
Ratification advised by the Senate, May 6, 1909.
Ratified by the President, June 7, 1909.
Proclaimed, June 15, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Agreement between the United States of America and the Empire of Russia to regulate the position of corporations or stock companies and other commercial associations, was concluded and signed by their respective Plenipotentiaries at St. Petersburg on the ~~twelfth~~ twenty-fifth day of June, one thousand nine hundred and four, the original of which Agreement, being in the French language, is word for word as follows:

[Translation.]

AGREEMENT.

The Government of the United States and the Imperial Russian Government having judged that it would be mutually useful to regulate the position of Corporations or Stock Companies and other Commercial Associations, industrial or financial, the undersigned, by virtue of the authority which has been vested in them, have agreed as follows:

1. Corporations or Stock Companies, and other industrial or financial commercial organizations, domiciled in one of the two countries, and on the condition that they have been regularly organized in conformity to the laws in force in that country, shall be recognized as having a legal existence in the other country, and shall have therein especially the right to appear before the courts, whether for the purpose of bringing an action or of defending themselves against one.

2. In all cases the said Corporations and Companies shall enjoy in the other country the same rights which are or may be granted to similar companies of other countries.

3. It is understood that the foregoing stipulation or agreement has no bearing upon the question whether a Society or Corporation organized in one of the two countries will or will not be permitted to transact its business or industry in the other, this permission remaining always subject to the regulations in this respect existing in the latter country.

This Agreement shall go into force on the 25/12 of June 1904, and shall only be discontinued one year after its denunciation shall have been made by one of the parties to the agreement.

Made in duplicate at St. Petersburg, the 25/12 day of June 1904.

COUNT LAMSDORFF. [SEAL]

ROBERT S. MCCORMICK. [SEAL]

And whereas the said Agreement, in accordance with the resolution of the Senate dated May 6, 1909, has been duly ratified with the understanding that the regulations referred to in the third paragraph in the agreement as existing in the several countries refer to and include on the part of the United States the regulations established by and under authority of the several states of the Union;

And whereas the said Agreement is in full force and effect in Russia;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Agreement to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof, subject to the said understanding.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to he hereunto fixed.

Done at the City of Washington this fifteenth day of June, in the year of our Lord one thousand nine hundred and nine, [SEAL] and of the Independence of the United States of America the one hundred and thirty-third.

WM H TAFT

By the President:
P C KNOX
Secretary of State.

APPLICATION FOR THE EXTRADITION OF JAN JANOV POUREN TO RUSSIA.

File No. 10901.

The Russian Ambassador to the Secretary of State.

[Translation.]

RUSSIAN EMBASSY,
Washington, January 6, 1908.

Mr. SECRETARY OF STATE: I have the honor in behalf of the Imperial Government to request the extradition of Jan Janov Pouren, a Russian subject, charged with murder, robbery, and attempted murders, and now at New York, where he lives under the name of W. Kohks, alias Martin Martinson.

The above man's criminal record is in the hands of the consul general of Russia at New York who, as agent of the Imperial Govern-

ment at New York, has charge of the proceedings before the local authorities.

Be pleased, etc.,

ROSEN.

File No. 10901/1.

The Russian Ambassador to the Secretary of State.

[Translation.]

RUSSIAN EMBASSY,
Washington, January 7, 1908.

Mr. SECRETARY OF STATE: In continuation of my note of yesterday, I have the honor to request the provisional detention of Jan Janov Pouren, alias W. Kohks, alias Martin Martinson, living at New York and charged with murder, "robbery" and attempted murders. To that end, I have the honor to have recourse to your excellency's kindness and to ask that you will kindly send me the certificate, provided by Article VII of the Russo-American extradition treaty, testifying that a request for the extradition of the above named person had been addressed to the Federal Government by the Imperial Government.

Be pleased, etc.,

ROSEN.

File No. 10901/1.

The Secretary of State to the Russian Ambassador.

No. 59.] DEPARTMENT OF STATE,
Washington, January 7, 1908.

EXCELLENCY: In compliance with the request contained in your note of the 7th instant, and in pursuance of existing treaty stipulations between the United States and Russia, I have the honor to transmit this department's certificate, stating that the Government of Russia has requested the extradition of Jan Janov Pouren, alias W. Kohks, alias Martin Martinson, charged with murder, robbery and attempt at murder in Russia, and a fugitive from its justice in the United States.

Accept, etc.,

ELIHU ROOT.

File No. 10901.

The Secretary of State to the Russian Ambassador.

No. 60.] DEPARTMENT OF STATE,
Washington, January 9, 1908.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 6th instant, in which you request the extradition of Jan Janov Pouren, alias W. Kohks, alias Martin Martinson, charged in Russia with the crimes of murder, robbery and attempted murder.

I have the honor to say in reply that when the forms of law shall have been complied with the department will issue a warrant for the surrender of the accused.

Accept, etc.,

ELIHU ROOT.

File No. 10901/47A.

The Secretary of State to the Russian Chargé.

No. 99.] DEPARTMENT OF STATE,
Washington, October 7, 1908.

SIR: I have the honor to transmit copies of certain affidavits which have been filed with this department in the matter of the application for the extradition of Jan Janov Pouren, tending to show that the offenses for which extradition is sought, with a view to try the person arrested, are of a political character.

I have the honor to ask whether the Russian Government desires to controvert these affidavits or to offer any observations regarding them.

The period within which the accused can be held in custody under the Statutes of the United States pending the determination of the question whether a warrant shall issue will apparently expire on the 13th of October and it is desirable that action should be taken before that time.

Accept, etc.,

ELIHU ROOT.

File No. 10901/44–45.

The Russian Chargé to the Secretary of State.

[Translation.]

No. 447.] RUSSIAN EMBASSY,
Washington, October 11, 1908.

MR. SECRETARY OF STATE: In continuation of my note of October 9,[1] relative to the extradition of Jan Janov Pouren and in reply to yours the 7th instant, in which your excellency was pleased to inquire of me whether the Imperial Government wishes to submit remarks concerning the inclosed affidavits, I venture to annex hereto a memorandum setting forth the views of the Imperial Embassy on this subject.

I embrace the opportunity, etc.,

B. KROUPENSKY.

[Inclosure.]

Memorandum.

RUSSIAN EMBASSY,
Washington, October 11, 1908.

Further replying to your excellency's note of October 7 in reference to the extradition of Jan Janov Pouren, I desire to say in reply to your inquiry as to

[1] Not printed.

whether the Russian Government desires to controvert the affidavits there referred to, that the embassy does not feel called upon to furnish any proof in addition to that already adduced before the commissioner, even if the very meager time at its disposition permitted it.

The embassy considers that the Russian Government has complied in all respects with the provisions of the treaty and the statutes of the United States relating to extradition. The case after having been for eight months before the commissioner has been decided by him in favor of my Government's contention, and is now before your excellency. The embassy assumes that your review of the decision of the commissioner will be based upon the evidence submitted in the proceeding before him, and that such review can not be affected by any "ex parte" statements of the prisoners or others now for the first time submitted. This assumption is based not only upon the universally accepted principles of law, but also upon the precedents and the international comity which prevails in such matters.

Your excellency's attention is also directed to the fact that the actual hearings before the commissioner continued during a period extending from January 9 to June 17, 1908, and that the matter was held under advisement and only finally determined by the commissioner on the 14th day of August, 1908. During this time the prisoner was represented by several experienced counsel, one of whom at least is an eminent member of the bar as well as a member of Congress of the United States. The prisoner and his several counsel were present at the proceedings and every opportunity offered him to testify and to produce witnesses. In fact, several witnesses were produced before the commissioner who claimed to have participated in the alleged disturbances in the Riga district, and much testimony was furnished on behalf of the prisoner in regard to the nature of such disturbances. The affidavits now produced contain alleged facts the existence of which the prisoner and counsel must have been aware of during the time the case was before the commissioner, and the nonproduction of such proof during that time throws a strong doubt upon the probable truth of the statements themselves and the creditability of the persons making them. Your excellency can not but agree with me that this evidence ought to have been produced, if at all, by the prisoner and his counsel during the proceedings before the commissioner, and that it would be contrary to all equity that the interests of the Russian Government should now suffer because of the adverse party having neglected to take such a course at the right time.

Again, in answer to your courteous invitation to make any suggestions regarding these affidavits, the embassy desires to state that it is unable to understand how such acts as the stealing of articles of clothing, watches, and other personal property from defenseless peasants and women, the beating of women, and the burning of the farmhouses and inhabitable dwellings can be construed as political rather than as common law crimes. Yet the commissioner has found such acts of burglary and arson to have been committed by the prisoner and they are now, in part at least, admitted by him. Furthermore, as your excellency well knows, the prisoner has the right to seek a review of the commissioner's decision in the courts of the United States should your excellency determine to sustain such decision.

Aside therefore from the impossibility of obtaining proof in contradiction before the 13th instant—date previous to which, as is stated in your excellency's letter of October 7, action should be taken—the embassy considers that the Imperial Government has fully complied in all respects with the treaty and the statutes of the United States in this matter and is not called upon to furnish any testimony in addition to that already furnished and forming the basis of the commissioner's decision, and therefore requests that the warrant of extradition be issued in the usual course.

B. KROUPENSKY.

File No. 10901/44–45.

The Secretary of State to the Russian Chargé.

DEPARTMENT OF STATE,
Washington, October 17, 1908.

SIR: I have the honor to acknowledge the receipt of your note of the 11th instant, transmitting a memorandum setting forth the views

of your embassy on the subject of the affidavits in the extradition case of Jan Janoff Pouren, copies of which were inclosed to you with this department's note of October 9.

In reply I have the honor to state that the case has been remitted to Commissioner Shields with instructions to reopen the hearing for the purpose of taking testimony to determine whether the offenses were political in their character and so within the provisions of the treaty, which stipulate that if it be made to appear that extradition is sought with a view to try or punish the person demanded for an offense of a political character, surrender shall not take place.

Accept, etc.,

ELIHU ROOT.

File No. 10901/58.

The Secretary of State to the Russian Chargé.

No. 101.] DEPARTMENT OF STATE,
Washington, October 23, 1908.

SIR: I have the honor to inclose herewith for the information of your Government a copy of a decision which I have this day rendered in the matter of the demand for the extradition to Russia of Jan Janoff Pouren, by which, for reasons therein stated, the issue of the warrant of surrender is refused and the present proceeding dismissed without prejudice to the right of the demanding Government to initiate a new proceeding.

Accept, etc.,

ELIHU ROOT.

[Inclosure.]

DEPARTMENT OF STATE,
Washington, October 23, 1908.

In the matter of the demand for the extradition of Jan Janoff Pouren.

In this case the decision of the committing magistrate in favor of extradition was filed in the State Department on the 11th of September, 1908. Pending the consideration of the record facts were brought to my attention in the form of affidavits tending to show that the case comes under the provisions of Article III of the extradition convention of March 28, 1887, which provides:

"If it be made to appear that extradition is sought with a view to try or punish the person demanded for an offense of a political character, surrender shall not take place."

On the 7th of October these affidavits were transmitted to the Russian embassy. Attention was called to the fact they tended to establish, with an inquiry as to whether the demanding Government desired to controvert the affidavits or to offer any observation regarding them.

On the 13th of October the record was remitted to the commissioner, with instructions to reopen the case and give the parties an opportunity to introduce further testimony upon the matters of fact exhibited in the affidavits.

The counsel for the Russian Government has now invoked the action of the Circuit Court of the United States to prevent the commissioner from taking the testimony which I have indicated, upon the ground that the commissioner's jurisdiction ceased with his original decision and could not be revived by the remission of the case under my direction.

This is a purely technical question and can not be permitted to stand in the way of doing substantial justice in the case. The responsibility of finally determining whether the man is to be extradited or not rests with me, and I am clear that I ought not to direct his extradition without having before me the

testimony upon the matter indicated in these affidavits, which I consider to be necessary to enable me to determine whether the case comes within the provision of the treaty regarding political affairs. I deemed it proper, however, to give to the demanding Government an opportunity, if it saw fit, to cross-examine the witnesses upon the matters to which they have sworn in the affidavits, and to introduce countervailing testimony. For this purpose the matter was remitted to the commissioner. As the demanding Government has not chosen to avail itself of this opportunity and objects to having any testimony taken in the pending proceeding and denies the jurisdiction of the commissioner to take it, and as I do not deem it suitable to discuss with that Government this purely technical question of internal procedure, I shall obviate the necessity of further proceedings in the circuit court and avoid the course to which the demanding Government objects by dismissing the present proceeding without prejudice to the right of the demanding Government to initiate a new proceeding in which the commissioner will have undoubted jurisdiction to take the evidence.

In accordance with these views, I refuse to issue the warrant of extradition.

ELIHU ROOT,
Secretary of State.

File No. 10901/59.

The Russian Chargé to the Secretary of State.

No. 472.] RUSSIAN EMBASSY,
Washington, October 24, 1908.

Mr. SECRETARY OF STATE: Referring to your note of yesterday, by which your excellency advised me that you had directed the termination of the present procedure for the extradition of Jan Janoff Pouren, without prejudice to the right of the Imperial Government to reopen the case, I have the honor to request your excellency to be good enough to direct that a new certificate be issued to me, in conformity with Article VII of the Russian-American extradition treaty of 1887, stating that a request for the extradition of the person above mentioned has been made of the Federal Government by the Imperial Government. The crimes of which Pouren is accused and for which his extradition is asked are murder, arson, burglary, and attempt to commit murder.

I avail, etc., B. KROUPENSKY.

File No. 10901/73–74.

The Russian Ambassador to the Secretary of State.

[Translation.]

No. 589.] RUSSIAN EMBASSY,
Washington, January 9, 1909.

Mr. SECRETARY OF STATE: Referring to a conversation which I had the honor to have recently with your excellency regarding the extradition of one Pouren, I deem it my duty to call your attention to inclosed extract of a judgment rendered by the Swiss Federal court in the matter of the extradition of one Wassilieff, a refugee in Switzerland accused of assassinating the chief of police of Penza.

The considerations on which was based the judgment of this high court, ordering the extradition of the accused, set forth with strict logic and profound learnedness the same idea and arguments which

the Imperial Embassy is endeavoring to impress upon the State Department in connection with the Pouren, Rudewitz, and other cases.

In studying over the documents in these cases, which occurred during my absence on leave, I could not help noticing the persistent efforts, by violent agitation in the press, in public meetings, and by petitions containing thousands of signatures, which certain elements apparently desirous of creating friction between the two Governments have made for the evident purpose of diverting these cases from the purely legal domain into the domain of politics, in a spirit openly hostile to Russia and the Imperial Government.

It therefore appears to me all the more desirable, for the sake of the traditional cordiality of relations between Russia and the United States, which I am sure the two Governments are equally anxious to cultivate, that these matters should be settled in a manner demonstrating the futility of all these efforts.

In taking the liberty to cite a decision of the Swiss Federal court by way of precedent in matters of international jurisprudence, I do so because it is well known that Switzerland has always been extremely solicitous about preserving intact the right of asylum which she has for centuries granted to the really political refugees of all countries.

Please accept, etc.,

ROSEN.

[Inclosure—Translation.]

It can not be seriously contended that the act of which Wassilieff is accused is a purely political crime, that is to say, a crime directed solely against the State, for murder, being committed against the life of a man, is by its very essence and form a common-law crime, and only circumstances foreign to the act itself can lend it the character of a relative political crime. However, the Federal Court has, in all of its decisions (Ro 32 I p. 538 Belenzow, and 33 I p. 187 Keresselidze), admitted that treaties, and particularly the Russo-Swiss treaty, do not confine the exception made in favor of political crimes and offenses to purely political offenses. It has, on the contrary, always considered that it was proper to extend the exception to offenses which, "although appearing among those enumerated in Art. 3 of the treaty and although appearing thus in themselves as violations of the common law, nevertheless bear the character of a political offense" by reason of the circumstances under which they were committed. However, this extension is not unlimited. Every time the Court has faced a complex crime of this nature, it has deliberately judged which factor predominated, the common law criminality or the political criminality, and it has only granted the benefits of the exception made in Art. 6 of the treaty in those cases in which the political character of the offense predominated. This interpretation of the treaty is in accordance with Art. 10, par. 2, of the federal law, which says: "Extradition shall be granted, even when the guilty party alleges a political purpose or motive, if the act for which the extradition is demanded constitutes in the main a common-law crime. The federal court shall freely judge the character of the offense in each particular case according to the facts."

Therefore, in view of this constant system of jurisprudence, which there is no reason for abandoning, it is necessary to examine whether the act committed by Wassilieff bears a predominantly political character. . . .

The principal question to be determined is therefore whether the murder of Kandaourow, chief of police of Pensa, should, in view of the circumstances under which it was committed, be considered, as Wassilieff contends, as an offense bearing a predominantly political character, that is, as a relative political offense.

In order to judge this question, in order to determine whether a complex criminal act constitutes a relative political offense, we must apply the general principles laid down by doctrine, principles which the federal court has observed in a uniform series of precedents. According to these principles an act can not be considered as possessing the character of a relative political offense unless it has been committed for the purpose of helping or insuring the success of a purely political offense, that is, a criminal act directed against the political or social organization of the State. (See, for the general doctrine, and especially the French doctrine, French Pandects: Vo Extradition, Nos. 370 et seq. spec. 376, 378, 386). Lammasch summarizes these principles as follows (translation): The characteristic of a relative political crime consists in this, that the author does not commit the common-law crime which coexists with the political crime for the sake of committing it, nor for the sake of producing the result which the common-law crime immediately entails; he does not kill for the sake of killing somebody . . . the object aimed at by the act goes beyond the immediate results which suffice to determine the existence of a common-law crime; this object consists in the execution of or the preparation for a criminal act against the existence or political organization of a State." (Duty to extradite and right of asylum, page 294.) It is not sufficient that the purpose pursued should possess a "political" character in the extended and unprecise sense of the word, that is, that it should be the purpose of some political party existing in the Nation. As a matter of fact, the official purpose of a party may, in certain cases, serve as a cloak for the most miserable and reprehensible passions. A refusal to grant extradition, and the granting of asylum which it implies, are only warranted when the author of the crime has had a higher ideal, when he has had reason to hope that his act would result in an improvement of the political or social organization of the State. It is only then that, in view of the exalted purpose pursued by the criminal, his act appears in a more favorable light, a circumstance which may go so far as to excuse the common-law crime of which the accused has become guilty. Lammasch, in his aforecited work (p. 295), says on this subject (translation): "However, the words 'political purpose' must not be given a vague and general scope; they must be taken in their plain and exact meaning. These words presuppose an intent to commit or pave the way for a political offense in the restricted sense, that is, a purely political offense."

However, in order that asylum may be granted and extradition refused, a second condition must be fulfilled. Just as the Federal Court decided on May 7, 1907, in the Kilatschitsky case (Ro 33 I p. 406 and 407), there must be a direct connection between the crime committed and the purpose pursued by a party to modify the political or social organization of the Nation. It is not sufficient that this connection should be more or less perceptible, it must be clear and well defined. It is upon the accused, who opposes the extradition, that the necessity devolves of proving the facts from which the judge may infer the existence of this direct connection and conclude that the purpose pursued was a purely political one. If it is shown by the evidence adduced that the political purpose was remote, so remote that the perpetrator of the crime could not reasonably have supposed that his act would or might have a direct political effect equally perceptible to third parties, every ground for granting asylum disappears. "The more distant the connection is between the criminal act itself and the political undertaking in view, the less does the act as a rule appear capable of facilitating the accomplishment of the undertaking, and the less can it be considered as a political offense. For instance, the robbery of public treasuries, committed with the intention of not using the proceeds of the robbery until after several years, is not in our opinion a political offense. Only a fanaticism which takes account of nothing and therefore deserves no consideration could favor the application in this case of the principle that the end sanctifies or at least justifies the means. (See Von Bahr, The doctrine of extradition, court chamber, 1882, p. 500.) It was evidently in accordance with these principles that the Federal Council, in October, 1872, even before the conclusion of the Russo-Swiss extradition treaty now in force, extradited to Russia the individual by the name of Netchaieff, who was being prosecuted for inciting to murder and had opposed extradition on the ground that he had only committed the crime because he feared his victim would reveal the existence of a revolutionary plot, and consequently for a purely political purpose. (See Journal of private international law, 1880, p. 76.)

There is, finally, a third condition to be fulfilled. Even when the ultimate purpose pursued is a political end, in the narrow sense of the term, the

common-law element may nevertheless still predominate over the political character of the crime, by reason of the atrocity of the means employed to attain the end sought. This element should unquestionably be taken into consideration. This is the intention of the Swiss legislator, as shown from the preliminary works to the Swiss extradition law. It is sufficient, in order to become convinced of this, to read the message of the Federal Council of June 9, 1890 (Swiss Official Gazette, 1890, Vol. III, p. 215 et seq.). This message, it is true, rejects the theory adopted by the International Law Institute at its meeting at Oxford in 1880, according to which no assassination, arson, or robbery should be excepted from extradition for the sole reason that the perpetrator was actuated by a political motive. It also rejects the opinion offered by Lammarsch not only as his own but as that of the majority of writers, according to which every assassin at least should be extradited. (See besides Renault, Journal of Private International Law, 1880, p. 78.) However, the reason the message did not adopt this view was that it was unwilling to declare that certain common-law crimes should, under all circumstances and with no possible exception, be deprived of the immunity granted to political crimes. It wished to leave the way open to exceptions which, though rare, are conceivable, and where the interests at stake are of more value to humanity than the life of an individual. It was only within these limits that the Federal Council admitted that an assassination might have the preponderating character of a poitical offense and be considered as a relative political offense. There is no doubt but that, as shown from the reasons adduced by it in support of the present Art. 10 of the Swiss extradition law, the Federal Council condemns and reproves the partisans of those extreme groups who "do not consider crime as the extreme resource, as the ultima ratio, of a pursued and persecuted party having no other means of defense, but who use it as an ordinary means of combat, and even as the sole weapon for the purpose of terrorizing peoples." In accepting the draft of Art. 10 of the law as it was submitted to them by the Federal Council, the Chambers approved this view of the matter, and therefore did not wish to admit that every common-law offense having a political tinge should be considered as a relative political offense which might justify a refusal of extradition.

It was on the basis of these principles that the Federal Court decided, in the Belenzow case of July 18, 1906 (Ro 32, p. 539), that the foundation of the right of asylum in Switzerland rests on the idea that asylum ought to be granted to a foreigner who is worthy of protection, who has fought for the sake of his political convictions and is being sought for this reason, but that this favor should not be granted to any except persons who are worthy of it. (See besides Beauchet, Extradition treaty, Paris, p. 230 et seq.)

File No. 10901/80.

Memorandum from the Russian Embassy.

RUSSIAN EMBASSY,
Washington, January 18, 1909.

Referring to a conversation recently held with the honorable the Secretary of State on the subject of the Jan Pouren extradition case, the Russian ambassador begs to call to the attention of the Department of State the latest developments that have taken place in this case.

The final hearing of the case before the United States commissioner in New York had been appointed for Saturday last, January 16, when Messrs. Coudert Bros., counsel for the Russian consulate general, requested a further postponement of the hearing for the purpose of enabling them to produce the additional evidence required in rebuttal of the new evidence introduced by the defense, such additional evidence not having yet reached them in spite of every effort put forward on their behalf as well as on behalf of the consulate general and this embassy.

The commissioner did not see his way to granting their request for the said purpose. He gave his consent, however, to a new postponement until Monday, January 25, for the purpose of enabling Messrs. Coudert Bros. to produce further authority in support of a point they had made during the hearing, namely, that United States commissioners sitting in extradition cases were not competent to decide the question whether a state of "political" disturbance had existed at a given time in a foreign country, such having been the contention of the defense in regard to the Province of Livonia in the summer of 1906.

In the meantime this embassy had repeatedly requested the imperial ministry of foreign affairs to use every effort to accelerate the dispatch of the documents containing the additional evidence required.

In reply to these requests the Russian ambassador received in the evening of January 16 a cable dispatch from the minister of foreign affairs informing him that on account of the extremely complicated nature of the additional evidence required the imperial department of justice is unable to fix a date when the documents could be forwarded, and instructing him to take every step possible in order to obtain a further postponement of the final hearing of this case.

In pursuance of such instructions the Russian ambassador has the honor to appeal to the good offices of the Department of State in this matter in support of the renewed request for such postponement, which Messrs. Coudert Bros. have been instructed to submit to the United States commissioners sitting on the case.

Considering that the defense has been granted a rehearing of the case for the purpose of introducing new evidence in the shape of various affidavits, in spite of the fact that the case had been sub judice for about seven or eight months before a decision in favor of extradition was reached, it would seem but just and fair that the demanding Government should be given as ample time as may be required for the purpose of collecting and preparing evidence in rebuttal of such new evidence introduced by the defense.

File No. 10901/80.

Memorandum to the Russian Embassy.

DEPARTMENT OF STATE,
Washington, January 19, 1909.

The Department of State has received the memorandum of the Russian embassy, requesting this department to use its good offices in order to obtain from the United States commissioner, who is examining the extradition case of Jan Pouren, a delay to enable the Russian Government to present evidence in rebuttal of the evidence presented by the fugitive.

The Department of State has at once requested the Attorney General to instruct the United States district attorney at New York to appear before the United States commissioner and to express the hope that the delay required by the Russian Government may be granted.

File No. 10901/84.

The Russian Ambassador to the Secretary of State.[1]

[Translation.]

No. 28.] RUSSIAN EMBASSY,
Washington, January 30, 1909.

Mr. SECRETARY OF STATE: Referring to a memorandum handed at the Department of State on January 18 and confirming my oral communication made day before yesterday, I have the honor to inform your excellency that on the 27th instant I received from the ministry of foreign affairs a telegram advising me that the additional documents required in the Pouren case, referred to in the aforesaid memorandum, were mailed on that day from St. Petersburg.

Be pleased, etc.,

ROSEN.

LEGALIZATION OF PAPERS IN EXTRADITION CASES.

File No. 21794/3.

Chargé Schuyler to the Secretary of State.

No. 550.] AMERICAN EMBASSY,
St. Petersburg, September 17, 1909.

SIR: I have the honor to inclose herewith copies of notes exchanged between the foreign office and this embassy on the subject of the legalization of the papers in the case of one Izka Saksonoff, whose extradition from the United States is sought by the Russian Government on the charge of complicity in a forgery.

The original request of the foreign office specified complicity in fraud ("complicité dans le crime de fraude") as the charge upon which the extradition of Saksonoff was demanded. Inasmuch as the prescribed form of legalization for extradition papers includes a statement of the nature of the crime, I felt myself unable to comply with a request for legalization which specified no crime contemplated by the extradition treaty of 1887 between the United States and Russia. I therefore addressed a note to the foreign office in this sense. As the actual wording of the correspondence is alone of importance no translations are inclosed.

To one of the secretaries of the embassy, who returned the documents and pointed out that the case, if within the view of the treaty at all, would seem to fall under section 5 of Article II, a member of the foreign office stated that literal compliance with the embassy's request would be impossible, as Saksonoff was accused not of having committed but of having been implicated in a forgery, whereas the treaty makes no mention of accomplices or accessories to the enumerated crimes. To this objection, it was suggested that a legalization specifying an accusation of one of the crimes enumerated in the treaty of 1887 would present, for decision by the competent

[1] Pouren was discharged from custody by the extradition commissioner in New York City on Mar. 29, 1909.

authorities, the essential question whether a charge of complicity in one of the enumerated crimes would be sufficient for the granting of extradition under that treaty. Though, in view of a distinction that is made in the Russian code, the foreign office felt bound, in its renewed request for legalization, to describe the accusation of complicity in a forgery ("complicité dans le crime de faux"), it was nevertheless agreed that the legalization by the embassy should specify forgery as the crime for which extradition was sought; and the legalization in that form was indorsed upon the documents.

I report this matter both in order that the department may be apprised of the circumstances when the Saksonoff case comes before it and for the purpose of securing the instructions of the department upon the questions raised by the case—particularly as to the inclusion within the purport of the treaty of 1887 of those accused (or convicted) as accomplices or accessories to the crimes enumerated.

I have, etc.,

MONTGOMERY SCHUYLER.

[Inclosure 1—Translation.]

Memorandum to the American Embassy.

MINISTRY OF FOREIGN AFFAIRS,
St. Petersburg, August 27 (September 9), 1909.

In transmitting herewith the documents relating to the matter of Saksonoff, accused of complicity in the crime of fraud (complicité dans le crime de fraude) committed by Alexander Moiśieff, whose extradition the Imperial Government intends to request of the Government of the United States, this person being actually in Chicago, the imperial ministry of foreign affairs has the honor of requesting the embassy of the United States to be so kind as to legalize these documents and to return them as soon as possible to the ministry.

[Inclosure 2—Translation.]

Memorandum to the foreign office.

AMERICAN EMBASSY,
St. Petersburg, August 29 (September 11), 1909.

Referring to the verbal note of the imperial ministry of foreign affairs dated August 27 ultimo, transmitting documents relative to the case of Saksonoff, accused of complicity in the crime of "fraud," committed by Alexander Moiśieff, the embassy of the United States has the honor of informing the imperial ministry of foreign affairs that the crime of "fraude" not being found included in the text of the extradition treaty between Russia and the United States this embassy deems itself unable to legalize the said documents unless the imperial ministry indicates the clause of Article II of the said treaty under which Mr. Saksonoff is accused.

[Inclosure 3—Translation.]

Memorandum to the American Embassy.

MINISTRY OF FOREIGN AFFAIRS,
St. Petersburg, August 31 (September 13), 1909.

In transmitting under this cover the documents relating to the case of Saksonoff, accused of complicity in the crime of forgery (complicité dans le crime de faux) mentioned in Article II, Section V, of the convention relative to the extradition of criminals, concluded between Russia and the United States

of North America March 16 (28), 1887, the imperial ministry of foreign affairs has the honor of requesting the embassy of the United States to be so kind as to legalize these documents and return them as soon as possible to the ministry.

File No. 21794/3.

The Acting Secretary of State to Chargé Schuyler.

No. 11.] DEPARTMENT OF STATE,
Washington, October 25, 1909.

SIR: The department has received your No. 550, of the 17th ultimo, forwarding copies of notes exchanged between the embassy and the Russian foreign office in regard to the legalization of the papers in the case of one Izka Saksonoff, whose extradition is sought by the Russian Government on the charge of complicity in a forgery.

It would seem that in taking up formally with the foreign office the questions discussed in your note to it, you somewhat exceeded the powers which by statute have been conferred upon diplomatic and consular officers in matters of extradition from the United States, as those powers have been defined by our Federal statutes. (Rev. Stat., 5271, and secs. 5 and 6 of the act of Aug. 3, 1882. See Consular Regulations, pp. 512–513, and secs. 423 et seq.; see also Moore on Extradition, vol. 1, sec. 309 et seq.; Moore's International Law Digest, vol. 4, sec. 611.)

These statutes provide for the admission in extradition matters of depositions, warrants, and other papers or copies thereof, where such depositions, warrants, and other papers or copies are properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped "and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant, or other paper, or copies thereof, so offered, are authenticated in the manner required by this act."

It will be observed that this statute confers upon diplomatic and consular officers no power or discretion whatsoever except as to the mere authentication of the documents, and it is the uniform practice to consider that the question as to whether or not a crime specified in the papers and documents submitted by the foreign government comes within the meaning and purview of the treaty is a judicial question for the determination of our Federal courts or of this department; therefore, while in glaring cases it might not be improper for a diplomatic or a consular officer to suggest, unofficially and informally, that the crime specified in the papers appeared not to come within the purview of the treaty, such a statement should be made only in the clearest cases and then with the greatest care and circumspection.

You will understand in this connection that the naming of the crime in the certificate of authentication would appear to serve no other purpose than to identify the papers authenticated, and that it has no determinative or even persuasive effect upon the question as to whether or not the crime specified by the papers falls or does not fall within the terms of the treaty.

Concerning the crime charged in this case and the general question of extradition under the Russian treaty for complicity or participation in a crime, the department is unable to understand how it is possible to have overlooked the initial provision of Article II of the extradition convention of 1877 with Russia, in which it is specifically provided that "persons convicted of or charged with any of the following crimes, as well as attempts to commit or participation in, the same, as an accessory before the fact, provided such attempt or participation is punishable by the laws of both countries, shall be delivered up in virtue of the provisions of this convention." While there may be a question as to whether or not under this provision it would be possible to extradite fugitives for participation in the crimes enumerated, except as accessories before the fact, there would seem to be no reasonable doubt that participants as accessories before the fact could be extradited. But here again the question as to what the treaty really means and whether or not a particular crime charged falls within that meaning, is a question for the determination of the courts and of this department, and not for the embassy.

In this particular case the department has examined the papers submitted by the Russian Government and concluded there was reasonable ground to believe that the crime charged in the papers falls within the purview of the treaty. It therefore issued the preliminary certificate for the apprehension of the fugitive, in order that the matter might be thoroughly considered and determined by the courts.

I am, etc.,

HUNTINGTON WILSON.

RESTRICTIONS ON TRAVEL IN RUSSIAN POSSESSIONS IN CENTRAL ASIA.

File No. 17984/1.

Chargé Schuyler to the Secretary of State.

No. 403.] AMERICAN EMBASSY,
St. Petersburg, January 25, 1909.

SIR: I have the honor to transmit herewith a translation of a circular just received from the imperial ministry for foreign affairs, concerning the admission of foreign subjects to the Russian possessions in central Asia.

The foreign office requests that as much publicity as possible may be given to this circular in order to avoid inconvenience to travelers in those regions.

Attention is drawn to the fact that at least three weeks' notice must be given before the arrival of foreigners at the frontier of Russian central Asia.

I have, etc.,

MONTGOMERY SCHUYLER.

[Inclosure—Translation.]

No. 162.] ST. PETERSBURG, *January 9, 1909.*

Note verbale.

Conforming to the existing rule, the entrance of foreigners into the Russian possessions in central Asia is theoretically forbidden. Exceptions to this rule are nevertheless admitted and authorizations regarding them can be delivered in each special case to foreigners who wish to visit these Provinces and who petition the Imperial Government to this effect through their diplomatic representatives in St. Petersburg.

Although this is the only proper method to obtain access to the districts in question, it sometimes happens that persons, ignoring this rule, travel directly to central Asia, where the local authorities, acting in strict conformity with the prescription of the law, are obliged to forbid them the continuation of their journey. The frequency of these cases has considerably augmented during the last few months, and it is obvious that the unexpected interruptions cause the travelers in question losses of both time and money, which are sometimes considerable. Their forced detention by the authorities becomes the cause of complaints which are devoid of all foundation, considering that the local authorities are merely acting in accordance with their instructions.

As a consequence, the imperial ministry for foreign affairs considers it its duty to beg the embassy to take the necessary steps in order that the above-mentioned regulations may be given as great publicity as possible, in the interest of those travelers who wish to visit the Russian possessions in central Asia, and in order to do away in the future with the inconveniences which result from their revolutionary infraction of the law.

The ministry has the honor to add that in the case where these rules concerning the admission of foreigners to the Provinces in question are not observed by travelers the Imperial Government disclaims all responsibility regarding delays and losses sustained by the former. Added to this the ministry thinks itself obliged to particularly call the attention of the embassy to the absolute necessity of formulating its requests for authorizations in sufficient time, and in any case not later than three weeks before the projected date of the traveler's arrival in central Asia, as the correspondence on this subject with the proper authorities necessitates a certain length of time.

File No. 17984/2.

The Russian Ambassador to the Secretary of State.

RUSSIAN EMBASSY,
Washington, February 22, 1909.

MR. SECRETARY OF STATE: The right of aliens to enter Turkestan for travel or sojourn which was temporarily created in 1902 was limited by an imperial order in 1905 to persons specially authorized to that effect by the Imperial Government.

In order to avoid misunderstandings arising from this limitation being unknown to foreigners coming to Russia I am instructed by the Imperial Government to bring to your excellency's knowledge and to inform you that applications for permits to travel in Turkestan must be made by foreigners desiring to visit those parts through the representatives of their country accredited to the Imperial Government.

Be pleased, etc.,

ROSEN.

File No. 17984/2.

The Secretary of State to the Russian Ambassador.

No. 125.] DEPARTMENT OF STATE,
Washington, March 8, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 22d ultimo, in which you advise the department that applications for permits to travel in Russian Turkestan, made by foreigners desiring to visit that country, should be presented through the representatives of their country accredited to the Imperial Russian Government.

In reply I have the honor to say that the information has been made public.

Accept, etc.,

P. C. KNOX.

SALVADOR.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND SALVADOR.

Signed at Washington, December 21, 1908.
Ratification advised by the Senate, January 6, 1909.
Ratified by the President, March 1, 1909.
Ratified by Salvador, June 14, 1909.
Ratifications exchanged at Washington, July 3, 1909.
Proclaimed, July 7, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Arbitration Convention between the United States of America and the Republic of Salvador was concluded and signed by their respective Plenipotentiaries at Washington on the twenty-first day of December, one thousand nine hundred and eight, the original of which Convention, being in the English and Spanish languages is word for word as follows:

The Government of the United States of America, signatory of the two conventions for the Pacific Settlement of International Disputes, concluded at The Hague, respectively, on July 29, 1899, and October 18, 1907, and the Government of the Republic of Salvador, adherent to the said convention of July 29, 1899, and signatory of the said convention of October 18, 1907;

Taking into consideration that by Article XIX of the convention of July 29, 1899, and by Article XL of the convention of October 18, 1907, the High Contracting Parties have reserved to themselves the right of concluding Agreements, with a view of referring to arbitration all questions which they shall consider possible to submit to such treatment;

Have authorized the Undersigned to conclude the following Convention:

ARTICLE I.

Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the convention of the 29th July, 1899, for the pacific settlement of international disputes, and maintained by The Hague Convention of the 18th October, 1907; provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two Contracting States, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement, defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States, by and with the advice and consent of the Senate thereof, and on the part of Salvador shall be subject to the procedure required by the Constitution and laws thereof.

ARTICLE III.

The present Convention is concluded for a period of five years and shall remain in force thereafter until one year's notice of termination shall be given by either party.

ARTICLE IV.

The present Convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of Salvador in accordance with the Constitution and laws thereof. The ratifications shall be exchanged at Washington as soon as possible, and the Convention shall take effect on the date of the exchange of its ratifications.

Done in duplicate in the English and Spanish languages at Washington, this 21st day of December, one thousand nine hundred and eight.

ELIHU ROOT [SEAL.]
F. MEJÍA [SEAL.]

And whereas the said Convention has been duly ratified on both parts and the ratifications of the two governments were exchanged in the city of Washington, on the third day of July, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this seventh day of July in the year of our Lord one thousand nine hundred and nine,
[SEAL] and of the Independence of the United States of America the one hundred and thirty-fourth.

WM H TATT

By the President:
P C KNOX
Secretary of State.

COMMERCIAL TREATY WITH GERMANY.

File No. 13934/4.

Minister Dodge to the Secretary of State.

No. 85.] AMERICAN LEGATION,
Salvadorean Series.] *San Salvador, May 18, 1908.*

SIR: I have the honor to inclose to you herewith a copy and English translation which I have had made of a treaty of commerce between El Salvador and the German Empire, which was signed at this capital on April 14 last, as well as the text and an English translation of notes, dated April 14 last, exchanged between the acting minister for foreign affairs and the German minister at this capital, relating to this treaty.

I also inclose a copy and English translation of the act of the National Assembly of El Salvador, ratifying this treaty and the notes relating to it.

By the treaty mentioned, El Salvador and the German Empire accord to one another in commercial, maritime, and consular matters most-favored-nation treatment, excepting only the other countries of Central America. By the exchange of notes it is agreed that intervention by the respective diplomatic representatives in either country shall be limited to cases generally recognized as proper for diplomatic action by most civilized nations. The ratification by the German Empire of this treaty has not yet been received.

I have, etc.,

H. PERCIVAL DODGE.

I desire to add to the foregoing dispatch that the provisions in regard to the intervention of diplomatic representatives contained in the notes mentioned above, exchanged between the Salvadorian Government and the German minister, are in compliance with article 6 of the act of the Assembly of Salvador approved April 13 last, a copy and translation of which accompanied Mr. Gregory's dispatch No. 77 of the 21st ultimo.[1] According to this act such a provision as this must appear in all treaties of commerce entered into by El Salvador.

H. P. DODGE.

[Inclosure 1—Translation.]

Treaty of commerce between El Salvador and Germany.

His Excellency the President of the Republic of El Salvador and His Majesty the German Emperor, King of Prussia, in the name of the German Empire, animated by the desire to preserve the relations of good harmony, happily existing between the Republic of El Salvador and the German Empire and to encourage commerce between both countries, have resolved to conclude to this end a Treaty and have designated for that purpose:

His Excellency the President of the Republic of El Salvador: Senor Doctor Salvador Rodriguez Gonzales, Minister for Foreign Affairs;

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[1] See Foreign Relations, 1908, p. 705.

His Majesty the German Emperor, King of Prussia; Count Ulric von Schwerin, Envoy Extraordinary and Minister Plenipotentiary near the Republic of El Salvador, who have agreed on the following articles:

ARTICLE I.

The contracting parties agree to concede reciprocally the most-favored-nation treatment in commercial, maritime, and consular matters; and accordingly any right, privilege or favor one of them may grant to a third nation will ipso facto be granted to the other contracting party.

ARTICLE II.

Any right, privilege, or favor which El Salvador has conceded or will concede in the future to the other Republics of Central America or to any one thereof will not be understood as conceded to the German Empire in accordance with the provisions of Article I, unless the same has been granted to a third nation.

ARTICE III.

The present treaty shall be ratified and the ratifications exchanged at the earliest possible date.

This treaty shall remain in force for ten years beginning on the date of the exchange of the ratifications and unless one of the contracting parties twelve months before the termination of this period has declared to the other its intention of denouncing this treaty, it shall continue in force for one year more and so on successively for one year more until the aforementioned declaration is made.

In witness whereof the respective Plenipotentiaries have signed the present treaty and have affixed thereunto their respective seals.

Made in duplicate in the Spanish and German languages at San Salvador, the fourteenth day of April nineteen hundred and eight.

SS. SALVADOR RODRIGUEZ G.
SS. SCHWERIN.

[Inclosure 2—Translation.]

The Under Secretary for Foreign Relations of Salvador to the German Minister.

EXECUTIVE PALACE,
San Salvador, April 15, 1908.

Having considered the foregoing treaty of commerce concluded in San Salvador the 14th instant between Señor Dr. Salvador Rodriguez G., minister for foreign affairs, duly authorized by this Government, and his excellency Count Ulric von Schwerin, envoy extraordinary and minister plenipotentiary of Germany in this Republic, on the part of His Majesty the German Emperor, King of Prussia, consisting of a preamble and three articles, and finding it in accordance with the instructions given for that purpose to said Señor Dr. Rodriguez G., the executive power decrees: The approval of the same in all its parts and submits the same to the National Assembly for its constitutional ratification.

(Signed by the President.)

The Undersecretary for Foreign Relations,
CAÑAS.

[Inclosure 3—Translation.]

The German Minister to the Minister for Foreign Relations of Salvador.

LEGATION OF THE GERMAN EMPIRE IN CENTRAL AMERICA,
San Salvador, April 14, 1908.

MR. MINISTER: Having agreed to-day upon a treaty of commerce between the German Empire and the Republic of Salvador, I have the honor, in the name of the Imeprial Government, to confirm to the Government of the Republic of El Salvador the following:

"The contracting parties are in accord that, for the exercise of diplomatic protection in case the aforementioned treaty of commerce becomes effective and during its duration, the principles set forth in Article XVIII, paragraph 2, of the German-Mexican treaty of commerce of December 5, 1882, shall be applicable."

I have the pleasure, etc.,

SCHWERIN.

[Inclosure 4—Translation.]

The Minister for Foreign Affairs of Salvador to the German Minister.

EXECUTIVE PALACE,
San Salvador, April 14, 1908.

MR. MINISTER: I have the honor of receiving your excellency's note dated to-day, in which you have been good enough to inform me that, having agreed to a treaty of commerce between the German Empire and the Republic of El Salvador, your excellency confirms, by order of the Imperial Government, to the Government of the Republic of El Salvador the following:

"The contracting parties are in accord that, for the exercise of diplomatic protection in case the aforementioned treaty of commerce becomes effective and during its duration, the principles set forth in Article XVIII, paragraph 2, the German-Mexican treaty of commerce of December 5, 1882, shall be applicable."

This declaration being entirely in accord with the agreement made with your excellency in our verbal conferences, my Government takes note of this, accepting in this respect the stipulation contained in Article XVIII, paragraph 2, of the treaty concluded between Germany and Mexico.

I renew, etc.,

SALVADOR RODRIGUEZ GONZALES.

File No. 13934/5–6.

Chargé Frazier to the Secretary of State.

No. 295.] AMERICAN LEGATION,
San Salvador, May 6, 1909.

SIR: I have the honour to inclose to you herewith a copy of the protocol of exchange of a commercial treaty between Salvador and Germany, as published in the "Diario Oficial" of April 28, 1909, together with an English translation of the same. A copy of the treaty as signed in San Salvador on April 14, 1908, accompanied Mr. Dodge's despatch No. 85, Salvadorean Series, of May 18, 1908.

I have, etc.,

ARTHUR HUGH FRAZIER.

[Inclosure.]

[Executive power. Department of Foreign Affairs, Justice, and Public Charities. Foreign Office.]

Protocol of exchange of a commercial treaty between Salvador and Germany.

PROTOCOL.

The undersigned Doctor Francis G. de Machon, Envoy Extraordinary and Minister Plenipotentiary of Salvador and Count Ulrich von Schwerin, Envoy Extraordinary and Minister Plenipotentiary to his Majesty the Emperor of Germany, King of Prussia, near the Republic of Salvador, met together today to effect the exchange of ratifications of the Treaty of Commerce concluded between the Republic of Salvador and the German Empire on the 14th of April, 1908.

Before performing this act the notes which were exchanged on April 14th, 1908, between Doctor Salvador Rodriguez Gonzalez, Secretary of State of the Department of Foreign Relations, and Count von Schwerin when the said treaty was signed, were confirmed.

The undersigned immediately exchanged the documents, after having examined them and found them to be in due and proper form, and signed the duplicate of the present protocol.

Done in the city of Guatemala, April eighth, one thousand nine hundred and nine.

(S) FRANCIS G. MACHON.
(S) SCHWERIN.

SIAM.

TREATY WITH GREAT BRITAIN.

File No. 10883/32–38.

Minister King to the Secretary of State.

[Extract.]

No. 484.] AMERICAN LEGATION,
Bangkok, May 13, 1909.

SIR: I have the honor to transmit a copy of the Anglo-Siamese treaty with associated papers.

I have, etc.,

HAMILTON KING.

[Enclosure 2.]

His Majesty the King of Siam and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being desirous of settling various questions which have arisen affecting their respective dominions, have decided to conclude a Treaty, and have appointed for this purpose as their Plenipotentiaries:—

His Majesty the King of Siam, His Royal Highness Prince Devawongse Varoprakar, Minister for Foreign Affairs, etc.

His Majesty the King of Great Britain, Ralph Paget, Esq., his Envoy Extraordinary and Minister Plenipotentiary, etc., who, after having communicated to each other their respective full powers, and found them to be in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE 1.

The Siamese Government transfers to the British Government all rights of suzerainty, protection, administration, and control whatsoever which they possess over the States of Kelantan, Tringganu, Kedah, Perlis, and adjacent islands. The frontiers of these territories are defined by the Boundary Protocol annexed hereto.

ARTICLE 2.

The transfer provided for in the preceding article shall take place within thirty (30) days after the ratification of this treaty.

ARTICLE 3.

A mixed commission, composed of Siamese and British officials and officers, shall be appointed within six months after the date of ratification of this Treaty, and shall be charged with the delimitation of the new frontier. The work of Commission shall be commenced as soon as the season permits, and shall be carried out in accordance with the Boundary Protocol annexed hereto.

Subjects of His Majesty the King of Siam residing within the territory described in Article 1 who desire to preserve their Siamese nationality will, during the period of six months after the ratification of the present Treaty, be allowed to do so if they become domiciled in the Siamese dominions. His Britannic Majesty's Government undertake that they shall be at liberty to retain their immovable property within the territory described in Article 1.

It is understood that in accordance with the usual custom where a change of suzerainty takes place, any concessions within the territories described in

Article 1 hereof to individuals or Companies, granted by or with the approval of the Siamese Government, and recognized by them as still in force on the date of the signature of the Treaty, will be recognized by the Government of His Britannic Majesty.

ARTICLE 4.

His Britannic Majesty's Government undertake that the Government of the Federated Malay States shall assume the indebtedness to the Siamese Government of the territories described in Article 1.

ARTICLE 5.

The jurisdiction of the Siamese International Courts, established by Article 8 of the Treaty of 3rd September, 1883, shall under the conditions defined in the jurisdiction Protocol annexed hereto, be extended to all British subjects in Siam registered at the British Consulates before the date of the present Treaty.

This system shall come to an end, and the jurisdiction of the International Courts shall be transferred to the ordinary Siamese Courts after the promulgation and the coming into force of the Siamese codes, namely, the Penal Code, the Civil and Commercial Codes, the Codes of Procedure, and the Law for Organization of Courts.

All other subjects in Siam shall be subject to the jurisdiction of the ordinary Siamese Courts under the conditions defined in the Jurisdiction Protocol.

ARTICLE 6.

British subjects shall enjoy throughout the whole extent of Siam the rights and privileges enjoyed by the natives of the country, notably the right of property, the right of residence and travel.

They and their property shall be subject to all taxes and services, but these shall not be other or higher than the taxes and services which are or may be imposed by law on Siamese subjects. It is particularly understood that the limitation in the Agreement of 20th September, 1900, by which the taxation of land shall not exceed that on similar land in Lower Burmah, is hereby removed.

British subjects in Siam shall be exempt from all military service, either in the army or navy, and from all forced loans or military exactions or contributions.

ARTICLE 7.

The provisions of all Treaties, Agreements, and Conventions between Great Britain and Siam, not modified by the present Treaty, remain in full force.

ARTICLE 9.

The present Treaty shall be ratified within four months from its date.

In witness whereof the respective Plenipotentiaries have signed the present Treaty and affixed their seals.

Done at Bangkok in duplicate the tenth day of March in the year one thousand nine hundred and nine.

(Signed) DEVAWONGSE VAROPRAKAR [SEAL]
(Signed) RALPH PAGET [SEAL]

[Enclosure 2]

Protocol concerning the Jurisdiction applicable in the Kingdom of Siam to British Subjects and annexed to the Treaty, dated March 10, 1909.

SECTION 1.

International Courts shall be established at such places as may seem desirable in the interests of the good administration of justice; the selection of these places shall form the subject of an understanding between the British Minister at Bangkok and the Siamese Minister for Foreign Affairs.

SECTION 2.

The jurisdiction of the International Courts shall extend—

1. In civil matters: To all civil and commercial matters to which British subjects shall be parties.

2. In penal matters: To breaches of law of every kind, whether committed by British subjects or to their injury.

SECTION 3.

The right of evocation in the International Courts shall be exercised in accordance with the provisions of Article 8 of the Treaty of the 3rd September, 1883.

The right of evocation shall cease to be exercised in all matters coming within the scope of codes or laws regularly promulgated as soon as the text of such codes or laws shall have been communicated to the British Legation in Bangkok. There shall be an understanding between the Ministry for Foreign Affairs and the British Legation at Bangkok for the disposal of cases pending at the time that the said codes and laws are communicated.

SECTION 4.

In all cases, whether in the International Courts or in the ordinary Siamese Courts, in which a British subject is defendant or accused, a European adviser shall sit in the Court of First Instance.

In cases in which a British-born or naturalized subject not of Asiatic descent may be a party, a European adviser shall sit as a judge in the Court of First Instance, and where such British subject is defendant or accused, the opinion of the adviser shall prevail.

A British subject who is in the position of defendant or accused in any case arising in the provinces may apply for a change of venue, and should the Court consider such change desirable, the trial shall take place either at Bangkok or before the Judge in whose Court the case would be tried at Bangkok. Notice of any such application shall be given to the British Consular officer.

SECTION 5.

Article IX of the Treaty of September 3, 1883, is repealed.

Appeals against the decisions of the International Courts of First Instance shall be adjudged by the Siamese Court of Appeal at Bangkok. Notice of all such appeals shall be communicated to His Britannic Majesty's Consul, who shall have the right to give a written opinion upon the case, to be annexed to the record.

The judgment, on appeal from either the International Courts or the ordinary Siamese Courts, shall bear the signature of two European Judges.

SECTION 6.

An appeal on a question of law shall lie from the Court of Appeal at Bangkok to the Supreme or Dika Court.

SECTION 7.

No plea of want of jurisdiction based on the rules prescribed by the present Treaty shall be advanced in any Court after a defence on the main issue has been offered.

SECTION 8.

In order to prevent difficulties which may arise in future from the transfer of jurisdiction contemplated by the present Treaty and Protocol, it is agreed:

(a.) All cases in which action shall be taken subsequently to the date of the ratification of this Treaty shall be entered and decided in the competent International or Siamese Court, whether the cause of action arose before or after the date of ratification.

(b.) All cases pending in His Britannic Majesty's Courts in Siam on the date of the ratification of this Treaty shall take their usual course in such Courts and in any Appeal Court until such cases have been finally disposed of, and the

jurisdiction of His Britannic Majesty's Courts shall remain in full force for this purpose.

The execution of the judgment rendered in any such pending case shall be carried out by the International Courts.

In witness whereof the respective Plenipotentiaries have signed the present Protocol and affixed their seals.

Done at Bangkok in duplicate the 10th day of March 1909.

(Signed) DEVAWONGSE VAROPRAKAR [SEAL]
(Signed) RALPH PAGET [SEAL]

[Enclosure 3]

Boundary Protocol annexed to the Treaty dated March 10, 1909.

1.

The frontiers between the territories of His Majesty the King of Siam and the territory over which his suzerain rights have by the present Treaty been transferred to His Majesty the King of Great Britain and Ireland are as follows:

Commencing from the most seaward point of the northern bank of the estuary of the Perlis River and thence north to the range of hills which is the watershed between the Perlis River on the one side and the Pujoh River on the other; then following the watershed formed by the said range of hills until it reaches the main watershed or dividing line between those rivers which flow into the Gulf of Siam on the one side and into the Indian Ocean on the other; following this main watershed so as to pass the sources of the Sungei Patani, Sungei Telubin and Sungei Perak, to a point which is the source of the Sungei Pergau; then leaving the main watershed and going along the watershed separating the waters of the Sungei Pergau from the Sungei Telubin, to the hill called Bukit Jeli or the source of the main stream of the Sungei Golok. Thence the frontier follows the thalweg of the main stream of the Sungei Golok to the sea at a place called Kuala Tabar.

This line will leave the valleys of the Sungei Patani, Sungei Telubin, and Sungei Tanjung Mas and the valley on the left or west bank of the Golok to Siam and the whole valley of the Perak River and the valley on the right or east bank of the Golok to Great Britain.

Subjects of each of the parties may navigate the whole of the waters of the Sungei Golok and its affluents.

The island known as Pulo Langkawi, together with all the islets south of midchannel between Terutau and Langkawi and all the islands south of Langkawi shall become British. Terutau and the islets to the north of midchannel shall remain to Siam.

With regard to the islands close to the west coast, those lying to the north of the parallel of latitude where the most seaward point of the North bank of the estuary of the Perlis River touches the sea shall remain to Siam, and those lying to the south of that parallel shall become British.

All islands adjacent to the eastern States of Kelantan and Tringganu, south of a parallel of latitude drawn from the point where the Sungei Golok reaches the coast at a place called Kuala Tabar shall be transferred to Great Britain, and all islands to the north of that parallel shall remain to Siam.

A rough sketch of the boundary herein described is annexed hereto.

The above-described boundary shall, be regarded as final, both by the Government of His Britannic Majesty and that of Siam, and they mutually undertake that, so far as the boundary effects any alteration of the existing boundaries of any State or province, no claim for compensation on the ground of any such alteration made by any State or province so affected shall be entertained or supported by either.

3.

It shall be the duty of the Boundary Commission, provided for in Article 3 of the Treaty of this date, to determine and eventually mark out the frontier above described.

If during the operations of delimitation it should appear desirable to depart from the frontier as laid down herein, such rectification shall not under any circumstances be made to the prejudice of the Siamese Government.

In witness whereof the respective Plenipotentiaries have signed the present Protocol and affixed their seals.

Done at Bangkok, in duplicate, the 10th day of March 1909.

(Signed) DEVAWONGSE VAROPRAKAR. [SEAL]
(Signed) RALPH PAGET. [SEAL]

[Enclosure 4.]

The British Minister to the Siamese Minister for Foreign Affairs.

BRITISH LEGATION,
Bangkok, March 10, 1909.

Mr. MINISTER: In view of the position of British possessions in the Malay Peninsula and of the contiguity of the Siamese Malay Provinces with British protected territory, His Majesty's Government are desirous of receiving an assurance that the Siamese Government will not permit any danger to arise to British interests through the use of any portion of the Siamese dominions in the peninsula for military or naval purposes by foreign powers.

His Majesty's Government would therefore request that the Samese Government shall not cede or lease, directly or indirectly, to any foreign Government any territory situated in the Malay Peninsula south of the southern boundary of the Monthon Rajaburi, or in any of the islands adjacent to the said territory; also that within the limits above mentioned a right to establish or lease any coaling station, to build or own any construction or repairing docks, or to occupy exclusively any harbours, the occupation of which would be likely to be prejudicial to British interests from a strategic point of view, shall not be granted to any foreign Government or company.

Since this assurance is desired as a matter of political expediency only, the phrase "coaling station" would not be held to include such small deposits of coal as may be required for the purposes of the ordinary shipping engaged in the Malay Peninsula coasting trade.

I avail etc.,

RALPH PAGET.

[Enclosure 5.]

The Siamese Minister for Foreign Affairs to the British Minister.

FOREIGN OFFICE,
Bangkok, March 10, 1909.

Mr. MINISTER: I have the honour to acknowledge receipt of your note of this date, in which you express the desire of your Government that the Siamese Government shall not cede or lease, directly or indirectly, to any foreign Government any territory situated in the Malay Peninsula south of the southern boundary of the Monthon of Rajaburi or in any of the islands adjacent to the said territory; aso that within the limits above mentioned a right to establish or lease any coaling station, to build or own any construction or repairing docks, or to occupy exclusively any harbours, the occupation of which would be likely prejudicial to British interests from a strategic point of view, shall not be granted to any foreign Government or company.

In reply, I beg to say that the Siamese Government gives its assurance to the above effect, taking note that the phrase "coaling station" shall not include such small deposits of coal as may be required for the purposes of the ordinary shipping engaged in the Malay Peninsula coasting trade.

I avail, etc.,

DEVAWONGSE VAROPRAKAR.

[Enclosure 6.]

The Siamese Minister for Foreign Affairs to the British Minister.

FOREIGN OFFICE,
Bangkok, March 10, 1990.

Mr. MINISTER: With reference to the provision contained in Article 4 of the jurisdiction protocol to the effect that in all cases in which a British subject is defendant or accused a European adviser shall sit in court, I would express the hope, on behalf of His Majesty's Government, that His Britannic Majesty's Government will be prepared in due course to consider the question of a modification of or release from this guarantee when it shall be no longer needed; and, moreover, that in any negotiations in connection with such a modification or release, the matter may be treated upon its merits alone, and not as a consideration for which some other return should be expected.

The Siamese Government appreciates that a treaty like the one signed to-day marks an advance in the administration of justice in the kingdom. The conclusion of such a treaty is in itself a sign of progress. It is the intention of the Siamese Government to maintain the high standard in the administration of justice which it has set before it, and towards which it has been working for some time.

In this connection I take pleasure in acknowledging the contribution which Mr. J. Stewart Black has made to this work.

I wish also to say that provision will be made for the treatment of European prisoners according to the standard usual for such prisoners in Burmah and the Straits Settlements.

I avail, etc.,

DEVAWONGSE VAROPRAKAR.

[Inclosure 7.]

The British Minister to the Siamese Minister for Foreign Affairs.

BRITISH LEGATION,
Bangkok, March 10, 1909.

Mr. MINISTER: With reference to the guarantee contained in the first paragraph of article 4 of the jurisdiction protocol, I have the honour to state that His Majesty's Government will be prepared in due course to consider the question of a modification of, or a release from, this guarantee when it shall no longer be needed. His Majesty's Government are also willing that, in any negotiations in connection with such a modification or release, the matter shall be treated upon its merits alone and not as a consideration for which some other return should be expected.

His Majesty's Government learn with much satisfaction that it is the intention of the Siamese Government to maintain the high standard in the administration of justice which it has set before it and toward which it has been working for some time, and I may assure your royal highness that it will be the aim of His Majesty's Government in every manner to second the efforts of His Siamese Majesty's Government in this direction.

I wish also to say that the international courts referred to in section 1 of the protocol on jurisdiction, annexed to the treaty signed to-day, need not necessarily be courts specially organized for this purpose. Provincial ("monthon") courts or district ("muang") courts may constitute international courts, according as British subjects may be established in greater or less number within the jurisdiction of those courts. The fact that an ordinary court is designated as an international court will have, as a consequence, the introduction into that ordinary court of all the provisions relating to international courts secured by the protocol on jurisdiction.

I avail, etc.,

RALPH PAGET.

DIPLOMATIC OFFICERS ACTING AS EXECUTORS IN ADMINISTRATION OF ESTATES.

File No. 22160.

Minister King to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
Bangkok, November 1, 1909.

Minister King says he has been asked by British court to act as executor in will of deceased British subject and asks instructions.

File No. 22160.

The Acting Secretary of State to Minister King.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 4, 1909.

Mr. Wilson informs Mr. King that the department considers that it would not be advisable, in view of his diplomatic privileges and immunities, for him to act as executor under will as reported in his telegram of the first instant.

DECORATIONS CONFERRED UPON AMERICAN DIPLOMATIC OFFICERS.

File No. 8291/31.

Minister King to the Secretary of State.

[Extract.]

No. 435.] AMERICAN LEGATION,
Bangkok, November 18, 1908.

SIR: I have the honor to report that on the occasion of the celebration of the fortieth anniversary of his reign His Majesty the King of Siam was pleased to confer upon Mr. Jens I. Westengard, an American citizen, acting general adviser to the Siamese Government, the second class of the Ratanabhorn medal.

We are informed that this order is given only in recognition of personal services to the King and held by very few foreigners indeed.

I have the honor to report also that His Majesty conferred upon the American minister at this post a gold medal commemorative of the occasion, but in no way of special significance, as I understand all of the colleagues of like rank were given similar recognition. This medal is held in safe-keeping subject to the orders of the State Department but, in accordance with my understanding, not to be worn in public.

I have, etc.,

HAMILTON KING.

File No. 12293/2.

The Acting Secretary of State to Minister King.

No. 171.] DEPARTMENT OF STATE,
Washington, January 2, 1909.

SIR: The department acknowledges the receipt of your No. 435, of November 18, 1908, reporting concerning the conferring of orders upon Jens I. Westengard, an American citizen, acting as general adviser to the Siamese Government, and the American Minister at Bangkok, on the occasion of the celebration of the fortieth anniversary of the King's reign.

The department is pleased that Americans should be so honored by the King of Siam, but regrets that without permission of Congress diplomatic officers may not accept decorations.

I am, etc.,

ROBERT BACON.

File No. 8291/32–34.

Minister King to the Secretary of State.

No. 461.] AMERICAN LEGATION,
Bangkok, February 13, 1909.

SIR: Replying to department despatch of January 2, 1909, serial No. 171, I have the honor to enclose the copy of department despatch No. 112, January 27, 1904, and the copy of my reply thereto.

If it be in accordance with the wisdom of the department, I shall forward to the Department of State the medal referred to through the kindness of Hon. Jens I. Westengard, a citizen of the United States and an official of the Siamese Government.

The department will please keep the same for me to be delivered to me or to my assigns at such date and under such circumstances as I may direct.

I have, etc.,

HAMILTON KING.

[Inclosure 1.]

The Acting Secretary of State to Minister King.

No. 112.] DEPARTMENT OF STATE,
Washington, January 27, 1904.

SIR: I have to acknowledge the receipt of your No. 172 of November 21, 1903, in regard to the medal presented to you by the King of Siam as a souvenir of the King's jubilee.

Your dispatch presents for the department's consideration:

1. Whether this medal comes within the prohibition of the Constitution and the act of Congress approved January 31, 1881; and

2. Whether it may be displayed on your person.

The first of these questions the department answers in the affirmative, and the second in the negative.

It has been held by the Acting Attorney General (Opinions of the Attorney General, Vol. XXIV, p. 116) that a simple remembrance of courtesy, even if merely a photograph, falls under the inclusion of any present of any kind of article 1, section 9, clause 9, of the Constitution.

Even were it permissible for you to accept the medal, the wearing of it would be prohibited by section 2 of the act of January 31, 1881.

Section 3 of the same act provides "That hereafter any present, decoration, or other thing, which shall be conferred or presented by any foreign Government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by an act of Congress."

It would seem to be proper for you, under this provision, in order that it may be constructively complied with, to transmit the medal to the department which will, as you may desire, either apply to Congress for permission to deliver it to you, or hold it until such time as you may be no longer in the service.

I shall be pleased if you will make the contents of this instruction known to your secretary of legation, Mr. Nash, and to the vice consul general, Mr. Selden, each of whom your dispatch states, is aso the recipient of a medal from the King.

I am, etc., FRANCIS B. LOOMIS.

[Inclosure 2.]

Minister King to the Secretary of State.

No. 195.] LEGATION OF THE UNITED STATES,
Bangkok, April 1, 1904.

SIR: Replying to the department dispatch No. 112, dated January 27, 1904, in regard to the medals presented to myself, Consul General Paul Nash and Vice Consul General Joseph P. Selden, as a souvenir of the King's jubilee, permit me to say that I am forwarding the same to the State Department through the kindness of Dr. George B. McFarland, a citizen of the United States and an official of the Siamese Government. The department will please keep the same for us to be delivered to us severally or to our assigns at such date and under such circumstances as we may direct.

I have, etc., HAMILTON KING.

File No. 12293/3–5.

The Secretary of State to Minister King.

No. 180.] DEPARTMENT OF STATE,
Washington, April 5, 1909.

SIR: The department acknowledges the receipt of your No. 461, of February 13, 1909, inclosing copies of correspondence between the department and your legation relative to your acceptance of a medal presented to you by His Majesty the King of Siam, and stating that, if desired, you will forward the medal through the kindness of Mr. Jens I. Westengard, a citizen of the United States and an official of the Siamese Government, to be held for you.

In reply you are informed that if you will transmit the medal to the department it will be held for you pending such action as Congress may be disposed to take in the matter.

I am, etc.,

P. C. KNOX.

SPAIN.

SUPPLEMENTAL COMMERCIAL AGREEMENT EFFECTED BY EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND SPAIN.

Signed at Washington, February 20, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas the Government of the United States of America and the Government of Spain have, by an exchange of notes at Washington on February 20, 1909, agreed to supplement the Commercial Agreement which they concluded at San Sebastian on August 1, 1906, to the end that sparkling wines produced in and exported from Spain may be admitted on their importation into the United States at the reduced rates authorized by Section 3 of the United States Tariff Act of July 24, 1897, which action, in the judgment of the President, is compensated by reciprocal and equivalent concessions on the part of Spain in favor of the products of the soil or industry of the United States;

Now, Therefore, be it known that I, Theodore Roosevelt, President of the United States of America, acting under the authority conferred by the third section of said Tariff Act, do hereby suspend, during the continuance in force of the said Commercial Agreement of August 1, 1906, the imposition and collection of the duties imposed by the first section of said Act upon the articles hereinafter specified, being the products of the soil or industry of Spain; and do declare in place thereof the following rates of duty provided in the third section of said Act to be in force and effect from and after the date of this, my Proclamation, as follows:

On all sparkling wines, in bottles containing not more than one quart and more than one pint, six dollars per dozen; containing not more than one pint each and more than one-half pint, three dollars per dozen; containing one-half pint each or less, one dollar and fifty cents per dozen; in bottles or other vessels containing more than one quart each, in addition to six dollars per dozen bottles on the quantities in excess of one quart, at the rate of one dollar and ninety cents per gallon.

In testimony Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 20th day of February, in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States of America the one hundred and thirty-third.

[SEAL.] THEODORE ROOSEVELT

By the President:

ROBERT BACON
Secretary of State.

The Secretary of State to the Spanish Minister.

Serial No. —.] DEPARTMENT OF STATE,
Washington, February 20, 1909.

SIR: In order to meet the wishes of your Government in the matter of the extension to Spain of the authorized reduction in the tariff duties of the United States on Spanish sparkling wines, and in order to remove any possible ground for the exercise by your Government of the right under Article III of the commercial agreement signed between the two countries on August 1, 1906, to rescind any of its concessions made therein to the United States, I have the honor to inform you that the President of the United States deems the concessions made by Spain in favor of the products and manufactures of the United States as reciprocal and equivalent to the grant by the Government of the United States of the reduced duties on all the articles of Spanish production and exportation enumerated in section 3 of the tariff act of the United States approved July 24, 1897.

I have therefore the honor to inform you that the President of the United States will issue his proclamation suspending the duties on sparkling wines produced in and exported from Spain and substituting therefor the reduced duties authorized by section 3 of the Dingley tariff.

I should be glad to be informed by you as to whether this action, supplementary to the agreement of August 1, 1906, will meet completely the wishes of your Government in the matter.

Accept, etc.,

ROBERT BACON.

Señor Don RAMON PIÑA,
Minister of Spain.

The Spanish Minister to the Secretary of State.

[Translation.]

SPANISH LEGATION,
Washington, February 20, 1909.

MR. SECRETARY: I have the honor to acknowledge the receipt of your note of this date, in which, while advising me that in order to meet the wishes of your Government in the matter of the extension to Spain of the authorized reduction in the tariff duties of the United States on Spanish sparkling wines, and in order to remove any possible ground for the exercise by my Government of the right under Article III of the commercial agreement signed between the two countries on August 1, 1906, to rescind any of its concessions made therein to the United States, you also informed me that the President of the United States deemed the concession made by Spain in favor of the products and manufactures of the United States as reciprocal and equivalent to the grant by the Government of the United States of the reduced duties on all articles of Spanish production and exportation enumerated in section 3 of the tariff act of July 24, 1897,

will issue his proclamation suspending the present duties on sparkling wines produced in or exported from Spain and substituting therefor the reduced duties authorized by section 3 of the Dingley law. I thank your excellency for the proposed action which you were pleased to make known to me and I agree in every particular of the way suggested by your excellency for this additional part of the agreement of August 1, 1906. I avail myself of this occasion to reiterate to your excellency the assurance of my highest consideration.

R. PINA Y MILLET.

EXTENSION TO SPAIN OF BENEFITS OF ARTICLE IV OF THE TREATY OF PARIS.

File No. 11274/2.

The Spanish Chargé to the Secretary of State.

[Translation.]

SPANISH LEGATION,
Washington, October 30, 1908.

MR. SECRETARY: The term of 10 years accorded to Spain by the treaty of Paris[1] for the special treatment of her merchandise and vessels in the Philippine Islands nearing its termination, I am instructed by His Majesty's Government to inquire whether the Federal Government would see fit to extend the term for a reasonable period and continue the duties of No. 311 of the present tariff of the archipelago on Spainsh red and white common wines; that is to say, 5 cents per liter when imported in barrels or casks and 10 cents, also per liter, when imported in flasks, demijohns, bottles, or other similar receptacles. As regards still fine wines, included in No. 310 of the said tariff, that is to say, all fine wines, red or white, including the so-called generous wines and all red or white dessert or liqueur wines (except those mentioned in No. 311), Spain should wish that the duties placed on the said wines by the commercial agreement concluded by Spain and the United States on August 1, 1906,[2] be applied in the Magellanic Archipelago, viz, 35 cents per gallon on wines imported in casks and $1.25 per case of 12 bottles or jugs containing "each not more than one quart" and more than one "pint," or per case of 24 bottles or jugs containing each not more than one "pint," any excess beyond these quantities in the said receptacles being subject to a duty of 4 cents per pint or fractional part thereof, but no separate or additional duty being assessed upon the bottles or jugs.

In return for these concessions Spain would be disposed to grant to articles coming from the Philippine Islands the minimum rates of duty of her present tariff or those that may be hereafter fixed, as well as the benefits flowing from her commercial treaties now existing or hereafter concluded, exception being made only as to what appertains exclusively to Portugal and Morocco, with which countries Spain entertains special relations based on proximity and contiguity.

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[1] See Foreign Relations, 1898, p. 831.
[2] See Foreign Relations, 1906, p. 1341.

Spain would further use every means in her power to promote the introduction of Filipino articles into the peninsula.

The bonds of close friendship which unite our two countries, the foundation of cordiality upon which their commercial relations stand, and the material benefit derived by the United States from the difference of 1898, lead me to hope that I may be given the opportunity to terminate my provisional mission in reporting to my Government that this matter has been given a solution consonant with its wishes.

I avail, etc., L. PASTOR.

File No. 11274/3.

The Spanish Minister to the Secretary of State.

[Translation.]

SPANISH LEGATION,
Washington, December 19, 1908.

MR. SECRETARY: Upon leaving Madrid to return to this city I was specially directed by my Government to negotiate with the United States Government for the purpose of securing an extension, for a reasonable period of time, of the benefits granted to Spain by the treaty of Paris.

These negotiations have already been begun by Mr. Pastor in my absence, but as no answer has been received to the note of October 30 last written by the chargé d'affaires for this purpose, I take the liberty of calling your excellency's attention to the subject and of asking you to state whether these wishes have been favorably received by the Federal Government; and if so, what are its intention in this important matter, Spain being willing, in return for this favorable treatment which she asks, to grant other advantages to the products of the Philippine Archipelago.

I avail, etc.,

R. PIÑA Y MILLET.

File No. 11274/3.

The Secretary of State to the Spanish Minister.

No. 116.] DEPARTMENT OF STATE,
Washington, January 4, 1909.

SIR: I have the honor to acknowledge the receipt of your note of December 19 inquiring whether this Government is disposed to grant the extension of the benefits which accrued to Spain by Article IV of the treaty of Paris, as requested in Señor Pastor's note of October 30, 1908.

Circumstances prevented earlier response to Señor Pastor's note. He refers therein to the early termination (on Apr. 11 next) of the 10-year period accorded to Spain by the treaty of Paris for equality of treatment with the United States for ships and merchandise entering the islands, and he inquires whether the Federal Government is willing to extend this term for a reasonable period and continue the duties of section 311 of the present Philippine tariff in favor of Span-

ish exportations to the islands, and suggests an amendment of section 310 of that tariff in the sense of a reciprocal arrangement applicable to the trade in still wines exported by Spain to the Philippine Islands, and offering to return a minimum rate of tariff for Philippine merchandise entering Spain.

The provisional military administration of the islands was formerly charged with the raising of revenues for the insular government. The present tariff was framed by the Philippine Commission and enacted by Congress. It is local and special, bearing no relation to the tariff of the United States proper. For obvious reasons, and particularly to avert intricate international questions under the most-favored-nation clause of foreign treaties, the tariff was framed on a single basis, not containing or contemplating differential treatment of the United States, or of any other nation. The merchandise entering the Philippines from the United States pays the same duties as are paid upon entries from any and every country. In this way Spanish merchandise has enjoyed the benefit of the stipulation expressed in Article IV of the treaty of Paris of December 15, 1898—being admitted to the ports of the Philippine Islands on the same terms as merchandise and ships of the United States.

Although the treaty stipulates for the continuance of that equal treatment for 10 years from the date of the exchange of ratifications—that is, until April 11, 1909—it does not follow that such equality is to cease after that date. Under existing circumstances, equality of treatment continues as long as a single tariff applies in the Philippine Islands; and until a new tariff system shall be framed for the islands with the approval of the Congress, there is no occasion for any formal extension of the 10-years' privilege stipulated by the treaty. On the contrary, formal extension by conventional arrangement for any certain period would be, as matters now stand, inexpedient, because tending to limit the freedom of the national Congress in considering and establishing future customs relations between the United States and the Philippine dependencies.

The determination of those relations, besides being necessarily a part of the organic legislation to fix the status of the Philippine Islands and provide for their administration, is closely allied with the pending problem of recasting the Federal tariff. It will be for the Congress to decide whether the islands shall come within the general system, or have a distinct customs tariff, framed to meet their local needs and providing for differential treatment of commercial interchanges between the islands and the United States proper. The Philippine Commission could not deal with such a question on a reciprocal basis—that is, it could not grant special favor to imports from the United States in exchange for favor to the products of the Philippines entering the United States. It could deal with only one of the dual phases of the problem and it could not well deal with that single phase without prejudice to the larger action of the Congress.

Hence, while it is not practicable or expedient to covenant with Spain for the extension, for a specific—or as the note of October 30 styles it, a reasonable period, of the equal treatment now accorded to Spanish merchandise in the Philippine ports of entry, it is seen that this treatment continues after the 11th of April until such time as a new tariff system sanctioned by the Congress may be established

in the islands whereby differential treatment of the products of the United States may be accorded.

Your Government's second proposition invites a reciprocal agreement whereby the favored specific duties scheduled in section 3 of the current tariff act shall be assessed in the Philippine Islands upon the fine still wines now classified under section 310 of the insular tariff, in return for the extension by Spain of the benefits of her minimum tariff to products of the islands entering peninsular ports.

Without any disposition to question the desirability of some such reciprocal understanding, beneficial alike to Spain and to the Philippine Islands, the Government of the United States is without authority, under section 3 of the current tariff act, to consider such an arrangement. That section applies only to certain enumerated articles when dutiable under the existing Federal tariff, and the permitted reduction from the general tariff rate bears precise relation thereto. This Government could not find under section 3 authority for the arbitrary substitution of other specific differential rates than those provided by the insular tariff. I am therefore, with some reluctance, constrained to pass by the friendly proposal of the Spanish Government in this regard. It is proper, however, to express this Government's high appreciation of the spirit in which this mutually beneficial suggestion is made, and I am not without hope that the pending consideration by Congress of the administrative and revenue questions involved alike in framing an organic law for the Philippines and in revising the Federal tariffs, may result in the bestowal upon the Executive of authority to enter into larger reciprocal relations of trade with friendly countries.

Be pleased, etc.,

ELIHU ROOT.

TERMINATION OF COMMERCIAL AGREEMENTS BETWEEN THE UNITED STATES AND SPAIN.

File No. 48/93B.

The Acting Secretary of State to the Spanish Minister.

DEPARTMENT OF STATE,
Washington, April 30, 1909.

SIR: The Congress of the United States has effectively declared its intention to supersede the present customs tariff law of the United States by a new law which is now under discussion and which will probably be enacted within a few weeks.

One of the necessary results of this change will be that the commercial agreements made by the President under the authority of the act of July 24, 1897, will no longer be applicable to the conditions which will exist under the new law. The Government of the United States accordingly finds it necessary to give notice of the intention to terminate all of these agreements.

By direction of the President I have therefore the honor hereby to give through you to the Government of Spain formal notice on behalf of the United States of the intended termination of the two commercial agreements signed respectively on August 1, 1906, and

February 20, 1909. Further communication on this subject will be made after the passage of legislative measures affecting the bases on which these agreements were concluded.

Accept, etc.,

HUNTINGTON WILSON.

File No. 48/93A.

The Secretary of State to Minister Ide.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 30, 1909.

For your information and for immediate communication to the Spanish Government I quote the following letter of notification addressed to-day to the Spanish minister here:[1]

WILSON.

File No. 48/100A.

The Secretary of State to Minister Ide.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, August 6, 1909.

Mr. KNOX refers to department's telegram of April 30 relative to the tariff act approved by the President on August 5, 1909, requiring that notice be given of the termination of all commercial agreements entered into under section 3 of the tariff act of July 24, 1897, and instructs Mr. Ide, by direction of the President, to give notice to the Spanish Government as of date August 7 of the intention of the Government of the United States to terminate one year from the date of this notice, namely, on August 7, 1910, the commercial agreements concluded between the United States and Spain on August 1, 1906, and February 20, 1909. Mr. Knox adds that the Spanish legation in Washington was to-day given formal notice of this intention.

File No. 48/101A.

The Secretary of State to the Spanish Minister.

DEPARTMENT OF STATE,
Washington, August 7, 1909.

SIR: Referring to the department's note to your legation dated April 30, 1909, relative to the termination of the existing commercial agreements between the United States and Spain and stating that a further communication on this subject would be made after the passage of legislative measures affecting the bases on which those agreements were concluded, I have now the honor to inform you that the new tariff law approved August 5, 1909, contains the following

[1] Supra.

provisions respecting the commercial agreements of the United States:

That the President shall have power, and it shall be his duty, to give notice within ten days after the passage of this act to all foreign countries with which commercial agreements in conformity with the authority granted by section three of the act entitled "An act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, have been or shall have been entered into, of the intention of the United States to terminate such agreement at a time specified in such notice, which time shall in no case, except as hereinafter provided, be longer than the period of time specified in such agreements, respectively, for notice for their termination; and upon the expiration of the periods when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importation from said countries shall be subject to no other conditions or rates of duty than those prescribed by this act and such other acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the terms of said commercial agreements shall remain in force: *And provided further*, That in the case of those commercial agreements or arrangements made in accordance with the provisions of section three of the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, which contain no stipulations in regard to their termination by diplomatic action, the President is authorized to give to the Governments concerned a notice of termination of six months, which notice shall date from April thirtieth, nineteen hundred and nine.

By the President's direction, in pursuance of the above-quoted provisions of law, I have the honor hereby to give through you to the Government of Spain formal notice on behalf of the United States of the intended termination of the commercial agreements signed at Washington on August 1, 1906, and on February 20, 1909, respectively, to take effect one year from the present date, namely, August 7, 1910, when the said agreements shall cease to be in force.

Accept, etc.,

P. C. KNOX.

SWEDEN.

LAW RELATING TO EXEMPTION FROM MILITARY SERVICE IN SWEDEN.

File No. 358.117/1–2.

Minister Graves to the Secretary of State.

AMERICAN LEGATION,
Stockholm, September 8, 1909.

SIR: In compliance with the request in your instruction No. 116 (file No. 19224) of April 28, 1909,[1] I have the honor to inclose herewith printed copy of the law exempting from military service under certain conditions persons of Swedish origin who return to Sweden.

I have, etc.,

CHARLES H. GRAVES.

[Inclosure.—Translation.]

Law revising Section 16 of the law on military duty of June 14, 1901.

We Gustaf, etc., hereby make known that, together with the Parliament, we have seen fit to ordain that Section 16 of the Law on military duty shall be worded as follows:

SECTION 16.

1. Postponement of enrollment till the following year may be granted in the case of any person who is unable or unfit to perform military duty at the date of enrollment owing to some temporary cause such as accidental sickness, retarded bodily development, or the like.

2. Such postponement may also be granted to the only able-bodied son or grandson of a feeble or disabled father or grandfather or of a widow or unmarried woman, and to the only able-bodied adopted son of a feeble or disabled foster father or foster mother, and to the only able-bodied brother of one or more minor or disabled fatherless children, but only insofar as such parents, grandparents, foster parents, or brothers and sisters are essentially dependent on his support for their subsistence.

3. If there is occasion for exempting a person according to this section in the enrollment year in which he attains the age of 24 years, he shall be exempted from the performance of military duty in the militia in time of peace.

4. If an enrolled person becomes unable to perform service in the Nation's defense owing to causes such as mentioned in Section 4, he shall be exempted from further performance of military duty upon application to the proper enrollment board.

5. If a foreigner who was not formerly a Swedish citizen acquires citizenship here by naturalization and has reached the age of 26 years at the date of enrollment, or if he has evidence to prove that he has performed military service in a foreign country for a longer period than mentioned in clause 1 of Section 27, he may be exempted from the performance of military service in the militia in time of peace.

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[1] Not printed.

6. Such exemption shall also be enjoyed by persons who have returned to Sweden after having emigrated therefrom to a foreign land; provided, however, that—

(1) His emigration was not in violation of the regulations in force on the subject at the time.

(2) That he was at least 28 years old when he emigrated.

(3) That at least 9 years intervened between the date of his emigration and his return, without including the time he resided in Sweden before recovering his lost Swedish citizenship.

The provisions of clauses 5 and 6 shall go into force on January 1, 1910. The provisions of clause 6 shall only be applicable until and including the enrollment of 1914; however, the exemptions provided shall also be granted to any persons contemplated in clause 6 who are subject to enrollment in 1914 or before but who are not enrolled until 1915 or later by reason of a valid excuse.

All persons concerned shall be guided by the foregoing.

In witness whereof we have signed it with our own hand and had affixed thereto our royal seal.

Palace of Stockholm, June 11, 1909.

GUSTAF. (L. S.)
O. B. MALM.

(Department of National Defense.)

SWITZERLAND.

TERMINATION OF COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND SWITZERLAND.

File No. 8344.

The Acting Secretary of State to the Swiss Minister.

DEPARTMENT OF STATE,
Washington, April 30, 1909.

SIR: The Congress of the United States has effectively declared its intention to supersede the present customs-tariff law of the United States by a new law which is now under discussion and which will probably be enacted within a few weeks.

One of the necessary results of this change will be that the commercial agreements made by the President under the authority of the act of July 24, 1897, will no longer be applicable to the conditions which will exist under the new law. The Government of the United States accordingly finds it necessary to give notice of the intention to terminate all of these agreements.

By direction of the President I have, therefore, the honor to give through you to the Government of the Swiss Confederation formal notice on behalf of the United States of the intended revocation of the President's proclamation of January 1, 1906. Further communication on this subject will be made after the passage of legislative measures affecting the bases on which this proclamation was issued.

Accept, etc.,

HUNTINGTON WILSON.

File No. 8344A.

The Acting Secretary of State to Minister Clay.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 30, 1909.

For your information and for immediate communication to the Swiss Government I quote the following letter of notification addressed to-day to the Swiss minister here.[1]

WILSON.

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[1] Supra.

File No. 8344/9A.

The Secretary of State to Minister Graves.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, August 6, 1909.

Referring to the department's telegram of April 30 last, Mr. Knox states that the tariff act, signed by the President on August 5, 1909, requires that notice of termination be given of commercial agreements entered into under section 3 of the tariff act of July 24, 1897; that in the case of agreements which contain no stipulations in regard to termination by diplomatic action, the President is authorized to give to the countries concerned notice of termination of six months, which notice shall date from April 30, 1909. Instructs Mr. Graves, by direction of the President, to give formal notice to the Government of the Swiss Confederacy of the intended revocation of the proclamation of the President of the United States dated January 1, 1906, said termination to take effect six months from April 30, 1909, namely October 31, 1909. Mr. Knox adds that formal notice of this intention was to-day given to the Swiss Legation in Washington.

File No. 8344/9B.

The Secretary of State to the Swiss Minister.

DEPARTMENT OF STATE,
Washington, August 7, 1909.

SIR: Referring to the department's note to your legation, dated April 30, 1909, in which, by direction of the President, the department gave through your legation to the Government of Switzerland formal notice on behalf of the United States of the intended revocation of the proclamation of the President of the United States, dated January 1, 1906, and in which it was stated that further communication on this subject would be made after the passage of legislative measures affecting the bases on which this proclamation was issued, I have the honor to inform you that the new tariff act of the United States, approved August 5, 1909, contains the following provisions affecting that proclamation, viz:

That the President shall have the power and it shall be his duty to give notice, within ten days after the passage of this act, to all foreign countries with which commercial agreements in conformity with the authority granted by section three of the act entitled "An act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, have been or shall have been entered into, of the intention of the United States to terminate such agreement at a time specified in such notice, which time shall in no case, except as hereinafter provided, be longer than the period of time specified in such agreements respectively for notice for their termination; and upon the expiration of the periods when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importations from said countries shall be subject to no other conditions or rates of duty than those prescribed by this act and such other acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall

have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the terms of said commercial agreements shall remain in force: *And provided further*, That in the case of those commercial agreements or arrangements made in accordance with the provisions of section three of the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, which contain no stipulations in regard to their termination by diplomatic action, the President is authorized to give to the Governments concerned a notice of termination of six months, which notice shall date from April thirtieth, nineteen hundred and nine.

By the President's direction in pursuance of the foregoing provisions of law, I have now the honor to inform you that the said proclamation of the President of the United States will be abrogated and cease to be in force at the expiration of six months dating from April 30, 1909, namely, on October 31, 1909.

Accept, etc., P. C. KNOX.

TURKEY.

INTERVENTION IN BEHALF OF THE ARMENIANS.[1]

File No. 19274/22–23.

The Acting Secretary of State to Chargé Einstein.

No. 529.] DEPARTMENT OF STATE,
Washington, July 7, 1909.

SIR: I inclose for the embassy's files a copy of a letter [2] from the Hon. William S. Bennett, M. C., transmitting a petition [2] relating to the recent massacres in Asia Minor, which the Armenian Evangelical Alliance of America has addressed to the President. I also inclose a copy of the department's reply to Mr. Bennett.

I am, etc.,

ALVEY A. ADEE.

[Inclosure.]

The Acting Secretary of State to the Hon. W. S. Bennett.

DEPARTMENT OF STATE,
Washington, June 28, 1909.

SIR: I have the honor to acknowledge your letter of the 18th, inclosing a petition from the representatives of the Armenian Evangelical Alliance, addressed to the President, urging the influence of the United States for the amelioration of the condition of the Armenians.

The petition has been read with attention and interest. This question has from time to time had the earnest consideration of this Government for many years, and the recent terrible events in Asia Minor have served to further manifest the deep sympathy of the American people and the abhorrence of the President over the atrocities perpetrated. While the Government of the United States, not being a signatory to the Berlin treaty engagement, deems itself—as the petitioners seem not unaware—precluded from any consideration on its part of a question of intervention in the present circumstances, or of sharing in those treaty responsibilities, the sentiments of this Government and its earnest desire that the Armenians shall possess absolute security of life and property are common knowledge to the concert of great powers who by the treaty compact aimed to accomplish that result.

Every thinking American deplores the antagonism, differences, and opposing ambitions which have arrayed the racial and religious elements of the Turkish population against each other. The sufferings of the innocent victims in the late outrages have deeply touched American sympathies. Neither in these events nor in times past has this Government looked on unmoved. It has always wished that it had the power to prevent such sufferings, but it is convinced that, in the obvious impossibility of intervention, it is powerless. The broader tendencies developing in the Near East and the moral suasion of the Christian treaty powers must be trusted finally to prevail to reconcile the opposing factions.

It is no longer a question of dealing with a government implicated in the Armenian massacres. It is earnestly believed that the best course now for the

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[1] See also Foreign Relations, 1902, p. 42, and 1906, p. 1417.
[2] Not printed.

betterment of the unfortunate people concerned is to exhibit a degree of confidence in the newly established constitutional Government, whose Sultan has solemnly proclaimed to Parliament his horror over the awful slaughter among his subjects, his firm intention to punish the guilty, and his purpose to use his fullest power to maintain peace, justice, and tranquillity throughout his dominions and among all races and religionists. The magnitude and difficulty of the task of the new régime should win the sympathy of all well-wishers of peace and justify a fair opportunity of accomplishment without interference.

The hopeful promise of reforms seems to be confirmed by the recent official reports from Turkey that the constitutional Government is taking vigorous measures for the complete restoration of order in Asia Minor, for a rigid investigation of the massacres, and for the effective military protection of the disturbed districts. All of which, it is hoped, will prevent a recurrence of the recent lamentable events, which are deplored as keenly by the President as they can be by any citizens.

A copy of the petition of the Armenian Evangelical Alliance will be communicated to the American ambassador to Turkey, who is fully aware of the President's views in the premises.

I have, etc.,

HUNTINGTON WILSON.

REMOVAL OF RESTRICTIONS ON FREEDOM OF TRAVEL OF FORMER OTTOMAN SUBJECTS RETURNING TO TURKEY.

File No. 18150.

The Secretary of State to the Turkish Ambassador.

DEPARTMENT OF STATE,
Washington, February 20, 1909.

EXCELLENCY: I have the honor to transmit herewith a copy of a letter[1] from Mr. Joseph Boyajian, a naturalized American citizen of Ottoman nativity, stating that the Turkish consul general at New York declines to sign his passport. A copy of Mr. Boyajian's application for a passport is also inclosed.

The department would be glad to learn that Mr. Boyajian's passport could be viséd, and will esteem it a favor if you will inform it whether anything can be done toward bringing this about.

Accept, etc.,

ROBERT BACON.

File No. 18150/2.

The Turkish Ambassador to the Secretary of State.

TURKISH EMBASSY,
Washington, February 24, 1909.

Mr. SECRETARY OF STATE: I have had the honor to receive, together with its inclosure, the note which your excellency was pleased to address to me on the 20th instant, under No. 3, respecting the refusal of the consul general of Turkey at New York to visé the passport of Mr. Joseph Boyajian, a naturalized American citizen of Ottoman birth.

As your excellency is aware, every Ottoman subject who wishes to change his nationality must first comply with certain provisions in force in the Empire; the established rule also requires that an Otto-

[1] Not printed.

man subject who, after fulfilling all the formalities prescribed to that effect, shall have obtained permission to change his nationality shall formally engage never to return to Turkey and, in the event of his returning, not to avail himself of his foreign nationality and to agree to receiving the same treatment as an Ottoman subject.

Under the circumstances, your excellency will admit that in not acting on Mr. Boyajian's request our consul general at New York but strictly carried out the consular regulations.

Be pleased, etc.,

H. KIAZIM.

File No. 18150/2.

The Secretary of State to Ambassador Leishman.

No. 474.] DEPARTMENT OF STATE,
Washington, March 19, 1909.

SIR: The department recently had occasion to address the Turkish ambassador at Washington concerning the refusal of the Turkish consul general at New York to visé the passport of a naturalized American citizen of Turkish birth.

In his reply, dated February 24, 1909, the ambassador states as follows:

As your excellency is aware, every Ottoman subject who wishes to change his nationality must first comply with certain provisions in force in the Empire; the established rules also require that an Ottoman subject who, after fulfilling all the formalities prescribed to that effect, shall have changed his nationality shall formally engage never to return to Turkey, and, in the event of his returning, not to avail himself of his foreign nationality and to agree to receiving the same treatment as an Ottoman subject.

In your No. 785, of September 28 last,[1] you reported that "the establishment of constitutional government in Turkey removes the restrictions against free travel and renders it possible for everyone to emigrate or immigrate at pleasure."

The department would be pleased to have you report to what extent, if any, the removal affects the status upon the return to Turkey on visits of former Turkish subjects who emigrated under the old régime and have acquired foreign nationality.

I am, etc.,

P. C. KNOX.

File No. 18150/3.

Ambassador Leishman to the Secretary of State.

No. 925.] AMERICAN EMBASSY,
Constantinople, April 3, 1909.

SIR: I have the honor to acknowledge the receipt of your instruction No. 474, of the 19th ultimo, directing the embassy to report with regard to the removal of former restrictions against the free right of travel in connection with the status, upon their return to Turkey, on visits, of former Turkish subjects who emigrated under the old régime and have acquired foreign nationality.

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[1] See Foreign Relations, 1908, p. 758.

Two separate questions are, of course, involved in this, the one concerning the free right of travel which was denied under the old régime, the other the law of nationality, which has continued unchanged. As the department is aware, it was formerly impossible to travel in the Ottoman Empire from one province to another without securing a Turkish passport which, while as a rule freely accorded to foreigners, was often denied Ottoman subjects. To-day, while the same regulations exist, the practice is entirely different, and the free right of travel, whether in the Empire or abroad, is accorded to all Ottoman subjects. The objection raised by the Turkish consul general at New York to visé the passport of a naturalized American citizen of Ottoman origin was due to the fear lest by so doing the Turkish Government might be regarded as tacitly acknowledging his acquisition of American citizenship, which the Ottoman law of nationality of 1869 would deny. At the same time any naturalized citizen of Ottoman origin can freely reenter Turkey without fearing arrest as before, the only drawback being that while here the Turkish Government will refuse to recognize his American citizenship. Of course, if willing to revert to his former Ottoman allegiance such individual would experience no difficulty or hindrance of any kind in returning to Turkey. While by the same law of 1869 the Turkish authorities claim the right of refusing admittance to anyone who may have relinquished his Ottoman subjection in order to acquire foreign citizenship, this right is not at present exercised, and it may safely be said that since the promulgation of the constitution thousands of individuals of Ottoman origin have returned to Turkey.

I have, etc.,

JOHN G. A. LEISHMAN.

File No. 18150/3.

The Secretary of State to Chargé Einstein.

[Extract.]

No. 532.] DEPARTMENT OF STATE,
Washington, July 14, 1909.

SIR: Referring to your despatch No. 925 of April 3, 1909, reporting that the formerly stringent regulations in regard to entering or traveling in Turkey have been greatly relaxed, and stating that "any naturalized citizen of Ottoman origin can freely reenter Turkey without fearing arrest as before," you will please inform the department if, under the existing system, foreigners, whether of Ottoman or other origin, are permitted to enter Turkey without previously having their passports viséed by a diplomatic or consular representative of that country.

I am, etc.,

P. C. KNOX.

File No. 18150/4.

Chargé Einstein to the Secretary of State.

No. 1085.] AMERICAN EMBASSY,
Constantinople, August 11, 1909.

SIR: I have the honor to acknowledge the receipt of the department's instruction No. 532, of the 14th ultimo, concerning passport regulations in respect to former Ottoman subjects reentering Turkey.

I beg to state in reply that the Ottoman law of nationality of 1869 still remains in force unamended. According to Article V of this, if an Ottoman subject "should acquire a foreign nationality without being authorized by the Imperial Ottoman Government his (or her) new nationality shall be considered as null and void, and he (or she) shall be treated exactly as Ottoman subjects are treated. In any case the abandonment by an Ottoman subject of his (or her) nationality depends on a document to be granted in virtue of an imperial iradé."

Article VI states, "If the Ottoman Empire should so wish it can reject from its subjection the person who without authorization from the Imperial Ottoman Government changes his nationality in a foreign country or enters into the military service of a foreign government. The return into the imperial dominions (the Ottoman Empire) of persons of this category whose nationality has been rejected is forbidden."

It would appear from the above texts that in no case is the foreign naturalization of an Ottoman subject recognized by the Ottoman Government unless such Ottoman subject should previously have obtained special authorization; and that in case an Ottoman subject should change his Ottoman nationality the Ottoman Government reserves the right to reject him from its subjection in which case the return of such person into Turkey is forbidden. In practice under the old régime and before July 24, 1908, passport regulations were enforced very strictly. Every difficulty was raised when an Ottoman subject wished to obtain a passport to leave the country—more especially in the case of Turks and Armenians, and in case such Ottoman subjects were able to obtain foreign naturalization, whether they were specially rejected from Ottoman subjection or not, their entry in Turkey was prohibited by administrative police measures. For many a naturalized American citizen of Ottoman origin, the embassy had to work patiently for days to obtain special permission as a favor to enable him to visit the country for a limited period of time.

With the proclamation of the constitution all these formalities were greatly relaxed. In the first place, the formalities for an Ottoman subject who wishes to obtain a passport to travel abroad have been reduced to being almost nominal. He can go personally or send his paper of identity to the bureau of passports and there ask for a passport which is granted without any other formality except the payment of the fee. As to those who enter or reenter Turkey, they should have passports duly viséed by some Ottoman consul. If they are not bearers of such passports, in practice, their entry is not forbidden but a fine is imposed. Many naturalized citizens of Ottoman origin have returned to Turkey of late, some bearing viséed passports, others stating that the Ottoman consul had refused to visé their pass-

ports. In Constantinople they have no difficulty, and in a large number of cases our consulate general has applied and obtained for them traveling permits for the interior in which permits they are described as American citizens, and the embassy is not aware that any of them have met with trouble in the Provinces. But so long as the law of 1869 remains unamended, however, and we do not have a special naturalization convention, the embassy is not in a position to state whether the actual practice will continue as at present.

I think that it will be in the interest of American citizens of Ottoman origin to know that the Ottoman constitution has not suppressed or modified the former law of nationality. That although under a constitutional Government wishing to respect personal liberty and freedom of travel, many such citizens have reentered Turkey as easily as they would enter any free civilized country, yet they are still considered by the Government of this country as Ottoman subjects; and that in case they incur litigations with Ottoman subjects or questions of ownership or inheritance of property are raised, the Ottoman authorities will not consider them as American citizens.

I have, etc.,

LEWIS EINSTEIN.

REVOLUTION IN TURKEY.

File No. 10044/128.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, February 14, 1909.

Mr. Leishman says the divergence between the grand vizier and Parliament, together with the persistent rumors of intrigues to dethrone the Sultan, have caused considerable uneasiness and fears of disorders in Constantinople, and that the general state of security is not what it should be. He says disturbances have already occurred in the interior and at any time they may spread to the capital, where they are likely to be especially dangerous because of the absence of authority to suppress them. Adds that, while he is hopeful that anything of a serious nature may be avoided, thinks it advisable that the *Scorpion* return to Constantinople as soon as convenient.

File No. 10044/139.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 14, 1909.

Ambassador Leishman reports violent reactionary movement which has resulted in overthrow of the cabinet and forced the resignation of president of Chamber of Deputies. Says intense excite-

ment prevailed yesterday, the city being practically in hands of armed mob, the Constantinople troops having revolted and joined the reactionary forces; that it is difficult to estimate the number of killed and wounded, but it will probably reach several hundred, including two cabinet officers, a prominent deputy, and a number of military officers. He adds that concessions having been made and the insubordination of the troops condoned by the Sultan, comparative calm prevails, although difficulty is being experienced in forming new cabinet, and considerable anxiety exists as to final outcome. Mr. Leishman says he does not consider that foreigners are in any grave danger at present, except from stray bullets, which are rather too plentiful for comfort, as indiscriminate firing continues, even in the district occupied by the embassies.

File No. 10044/179.

Ambassador Leishman to the Secretary of State.

[Extract.]

No. 941.] AMERICAN EMBASSY,
Constantinople, April 15, 1909.

SIR: With further reference to my several telegraphic dispatches, I have the honor to bring to your notice a further account of recent political events at Constantinople.

As the department is aware, the revolution of last July and the new constitutional régime had been brought about by the so-called committee of union and progress, whose headquarters are at Salonica. The success of the revolution was so sudden and encountered so little resistance that the transition from the old order to the new was effected almost without bloodshed, even the partisans of the old régime curbing before the storm and expressing outward sympathy with a constitutional movement they were powerless to resist. The revolutionaries of one day became the Government party of the next, and the whole of Turkey appeared to have entered into a new era of liberty and progress.

At the same time the committee realized that their own strength, as well as the salvation of Turkey, lay in the army, and with that idea in view they labored to increase the efficiency of the military forces and to place the command of the troops under officers devoted to the new order.

The personal troops of the Sultan, composed in large part of Albanians and Arabs, had hitherto enjoyed a privileged position, but now their former prerogatives were abolished and little by little their officers were changed for new ones devoted to the committee. Several of the Palace battalions were dispatched to the distant provinces, and in their place the famous regiment of sharpshooters of Monastir, who had begun the revolution, were sent to the capital as the instruments of the committee. Two mutinies occurred on the part of the old soldiers, but these were promptly and efficaciously suppressed. Hardly a week ago the last of the Albanian troops, after having been disarmed, were sent away, and it was generally supposed that the old Pretorian Guard was a thing of the past, and that with

it has gone the last vestige of the Sultan's power. The hold of the committee which controlled Government, Parliament, and army appeared more absolute than ever.

The first era of universal good will and general fraternity among all the races and creeds of the Empire was succeeded by the rise of a new so-called liberal party in Parliament, which stood for decentralization and local autonomy as opposed to the centralizing and nationalist tendencies of the committee.

The constitutional victory of last summer had been sudden and universal. It had not been achieved step by step in the face of long contested opposition, but had been won, so to speak, overnight. The power of the Sultan had been shattered, and he had wisely bent before the storm and assumed the new part of a constitutional monarch. The "Softas," or theological students, began to take alarm at the extension given to western ideas, which they regarded as hostile to the Mohammedan faith, and, although the Sheik-ul-Islam declared the constitution entirely compatible with Koranic law, the Masonic affiliations and free-thinking tendencies of many of the leaders of the committee in parliament and their disregard of religious observances were too well known among the fanatical element not to excite distrust. A short time ago a great meeting of the "Softas" occurred at Stamboul, where a political program tending to enforce the "Cheri" or sacred law was proclaimed. With this party who were the Liberals allied themselves to overthrow the party of union and progress. The midnight murder on the Galata Bridge of a journalist who made himself notorious by his attacks on the committee, became a burning question. It was taken up by the Liberals as a political assassination, though probably without foundation, and the failure of the police to discover the assassin made an enormous impression and lent color in the minds of the people that the crime had been perpetrated by order of the committee. On Monday last, at midnight, in several of the barracks the soldiers, led by their sergeants, bound and in many cases killed their officers and marched to take possession of the square in front of parliament, where they demanded the enforcement of the Cheri law, the retirement of the existing Government, the reinstatement of the dismissed officers, and a general amnesty. They were commanded by a sergeant and in their ranks were numerous "Softas," who appeared to control their action.

Mahoud Moukhtar Pasha, the commandant of the First Army Corps, and an officer of energy and ability, hastily gathered four loyal battalions with some cavalry and artillery at the ministry of war, where he held them in readiness, awaiting the orders of the cabinet to charge the mutineers. The grand vizier had called an extraordinary cabinet meeting to deliberate, but they decided to temporize, and then handed in their resignations. When the victory of the mutineers became apparent, they were joined by all the soldiers in the capital, and, in view of the anarchy that reigned, the only surprising feature is that there were no more excesses.

In the late afternoon a new cabinet was formed under the former minister of foreign affairs, Tewfik Pasha, as grand vizier, a very respectable and worthy dignitary of the old régime. The city was, and still is, in the hands of the troops who have savagely pursued their former officers suspected of committee affiliations. On Tuesday they killed, amid circumstances of the utmost brutality, the

minister of justice and also a prominent Syrian deputy, in each instance mistaking the unfortunate victims for others whom they wished to murder. And since then there has been a reign of terror and a succession of murders going on. All Tuesday night and Wednesday pandemonium was let loose, the headquarters of the committee and the offices of their papers were sacked and the streets were filled with soldiers, many of whom were drunk, firing off their rifles in the air; numerous accidents of course occurred. But the hounding and murder by the soldiery of their former officers is the most serious feature of the present crisis. The forces of anarchy are unchecked, and murders have even taken place in the open street. The official proclamations thus far made all announce the continuance of Parliament and constitutional forms, but with the late president and vice president of the chamber and many prominent deputies in flight to escape assassination, it is hardly doubtful if any Parliament would dare to manifest the slightest independence. The best indication of the chamber's frame of mind can be seen in its proclamation of yesterday praising the soldiers for their "constitutional" action and reinstating the retired officers as desired by the mutineers.

The excitement of the capital is of course likely to spread to the Provinces, where of late there has been considerable effervescence and unrest. The situation is indeed one out of which anything may develop. The guards around the other embassies have of late been increased in the contingency of an antiforeign outbreak.

I have, etc.,

JOHN G. A. LEISHMAN.

File No. 10044/141.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 16, 1909.

Mr. Leishman says recent uprising in Constantinople is having sequel in other districts and that further trouble seems to be brewing. He adds that massacres at Adana, where there is an American missionary establishment, have been reported, but that he has not been able to confirm the report that two Americans have been killed.

File No. 10044/142.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 17, 1909.

Mr. Leishman says owing to interrupted telegraphic communication he has not received report from vice consul at Mersina, whom he instructed to go to Adana, but fears rumors are true, as the infor-

mation which leaks through indicates serious disturbances which have extended to surrounding towns, including Tarsus. He adds that he is bringing all pressure possible to bear on Porte, and that French and English Governments are sending ships to Mersina.

File No. 1144/143.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 17, 1909.

Mr. Leishman says population remains terror stricken, although the excesses of the troops have greatly diminished. He states that it is quite possible that the constitutional party may endeavor to regain the control which has been wrested from them, in which event very serious trouble may be expected, although much depends upon the action of the Third Army Corps, which was the main instrument last summer in bringing about the reestablishment of constitutional government. Mr. Leishman adds that while reports are conflicting, belief that the army corps remains faithful to the constitutional party and is preparing to march on Constantinople is pretty general, and the developments of the next few days will no doubt clear the situation very much.

File No. 10044/144.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 18, 1909.

Mr. Leishman says he has no details, but the two Americans killed at Adana were named Maury and Rodgers. Says situation at Adana is improved.

File No. 10044/144.

The Acting Secretary of State to Ambassador Leishman.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, April 18, 1909.

Mr. Wilson refers to the two Americans who lost their lives at Adana and says the department feels no little anxiety on account of the many American teachers and missionaries in Turkish dominions. Asks if British or other warships are being sent to Mersina and other dangerous points for the protection of lives of foreigners in general, including Americans. Adds that it would probably take American vessels too long to arrive if it were desirable to send them to give assistance and refuge if necessary.

File No. 10044/144.

The Acting Secretary of State to Ambassador Reid.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, April 18, 1909.

Mr Wilson quotes telegram of April 18 to the American embassy at Constantinople for guidance and information of embassy at London.[1]

File No. 10044/145.

Ambassador Leishman to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 19, 1909.

Mr. Leishman says that while the situation at Adana is calmer, similar trouble is extending to the neighboring districts; that about 20,000 troops of the Third Army Corps, which is supporting the constitution, are within 20 miles of Constantinople and more arriving hourly. Mr. Leishman adds that the mutinous troops of the capital and reactionary instigators of the recent revolt fear the consequences of their action and are greatly alarmed.

File No. 10044/147.

Ambassador Leishman to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 19, 1909.

Mr. Leishman says that Americans in Turkey, like all other foreigners, are in more or less danger because of the extraordinary conditions prevailing throughout the country, but that there is nothing to indicate any premeditated attack against them. He says the two Americans killed at Adana during the local disturbance there were shot while endeavoring to save the burning house of an old Turkish widow. Mr. Leishman says further that the central government is naturally not very strong on account of conditions, that the local governments in the Alexandretta and Adana districts are very feeble, with few troops at their command, but that the arrival of Italian, French, and English warships will no doubt have a salutary effect; that, as the European powers have already taken action, he does not see the necessity of sending ships, although the moral effect would be good. He adds that marines from foreign vessels have been landed to guard the different embassies and says it is to be regretted that the *Scorpion* was temporarily detailed for other duty, as times like the present show the need of keeping a guard ship at Constantinople.

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[1] Supra.

File No. 10044/151A.

The Secretary of State to Ambassador Leishman.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, April 21, 1909.

Mr. Knox informs Mr. Leishman that the *Montana* and *North Carolina* will proceed immediately from Guantanamo to the Mediterranean, waiting at Gibraltar for orders.

File No. 10044/152.

Ambassador Leishman to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 23, 1909.

Mr. Leishman says Constantinople is surrounded by besieging forces whose headquarters are at St. Malo, Stefano, where Parliament is sitting. Says there are no disorders in the city, but great uneasiness prevails, and that the situation in Adana and Aleppo district remains bad and massacres continue in many cities, according to report of consul. Missionaries at Hadjin are greatly alarmed, and while no disturbances have occurred the place is menaced. Says the movement does not seem to be directed against foreigners, whose greatest danger is being caught in a mêlée or in harboring refugees.

File No. 10044/152.

The Acting Secretary of State to Ambassador Reid.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, April 23, 1909.

Referring to department's telegram of the 18th, Mr. Wilson asks if a fleet adequate for the protection of foreign life has been sent to the disturbed regions in Turkey, and if American citizens are in jeopardy whether we can rely upon the doing of all that is feasible for their protection. Says, in view of the humanitarian concern felt by the President and because of the distressed interest of naturalized Armenians in the United States, the department would be glad to learn if possible what is being done under the Berlin act to check the massacre of Armenians in Turkey. Quotes telegram of this date from Turkey.

File No. 10044/162.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 25, 1909.

Mr. Leishman says outlying garrisons are surrendering rapidly and that it looks as though occupation of all points would be complete by night, including Yildiz. Says no action taken regarding Sultan, nor has anything definite been decided concerning cabinet, and that a state of siege has been proclaimed in Constantinople and surrounding districts. Mr. Leishman says the able manner in which the entire military movement has been conducted so far furnishes good ground for belief that proper order will be maintained in the capital.

File No. 10044/161.

Ambassador Reid to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
London, April 25, 1909.

Mr. Reid refers to department's telegram of April 23, and says he is assured that the British ships sent to Turkish waters will be adequate for the protection of life and that the commanders will be instructed to protect American citizens as well as British subjects. He adds that representations relative to Armenian massacres have been made by Great Britain to the Turkish Government and that latter had promised to do all in its power to prevent further slaughter, and to that end had dispatched troops to disturbed districts.

File No. 10044/165.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 27, 1909.

Mr. Leishman requests that instructions be sent to cruisers at Gibraltar to go direct to Mersine and Alexandretta, leaving embassy free, if necessary, to send them to other points.

File No. 10044/186.

Ambassador Leishman to the Secretary of State.

No. 949] AMERICAN EMBASSY,
Constantinople, April 27, 1909.

SIR: With further reference to my several dispatches on the recent crisis here, I have the honor to inform you that on the 22d instant

the Senate and the Chamber of Deputies, having constituted themselves as a National Assembly, met at San Stephano, about 10 miles from the capital, and within the lines of the Constitutional forces beleaguering the capital. The fleet, which after their half declaration for the reactionaries had again swerved around to the Constitutional Party, steamed out of the harbor and anchored in the roadstead of San Stephano, where the navy placed itself under the orders of the military commander, Gen. Mahmout Shevket, in charge of the army of occupation.

Considerable anxiety existed for several days as to the intentions of the Macedonian Army, as it was called, and many wild rumors were circulated both as to alleged dissensions in their ranks and reports that they had come to terms with the Sultan. In reality the cause of the week's delay at the gates of Constantinople was their wish to concentrate sufficient forces to make all resistance impossible. The celerity with which this was carried out can best be judged from a forecast of the correspondent of the London Times who estimated that, with the existing inadequate railway facilities, three weeks would be required to convey the number of men considered necessary for such a purpose, namely, about 40,000, while, in reality, eight or nine days in all were consumed. It was realized that the military problem was not only the punitive one of severely punishing the authors of the mutiny of April 13, but also the restoration of order in a city of over a million inhabitants, practically all of whom were armed, and which had been in a virtual state of anarchy for a considerable period of time, as the forces of lawlessness and disorder had been at work long before the rising of the soldiers. It was regarded as especially desirable not to shock Europe by the spectacle of a civil war in the capital. Various motives, some of a military, others of a political, order, contributed to the opening of negotiations between the Sultan and the Macedonian Army. But the cardinal points insisted upon, namely, the punishment of the instigators of the crisis and the removal from Constantinople of the entire garrison, proved insurmountable obstacles.

On Friday night, the 23d instant, the Constitutional forces occupied some barracks in the plain outside Stamboul, and the next morning before dawn they entered the city at four different points. No resistance of any kind had thus far been offered, and it was likewise supposed that the occupation of the capital would be effected without firing a shot. But although the mutineers deprived of their officers had made no concerted plan of defense, they concentrated their efforts in resisting the attacking forces from their barracks and guardhouses. The total garrison of Constantinople, consisting of about 25,000 men, was scattered in large barracks in different parts of the city. Each one of these became a center of attack, and hardly one was captured without loss. The fiercest fighting took place early on Saturday morning in Pera, not far from the embassy. The mutineers had treacherously hoisted the white flag, and when the Macedonians, expecting no resistance, approached to take possession, they were shot down by their opponents from behind the barrack walls. Artillery had to be brought up, and for several hours a severe fight took place in the very center of the foreign residence quarter. It was during this contest that Mr. Moore, corre-

spondent of the New York Sun, was badly wounded in the neck and had to be carried through the firing lines to the nearest hospital, and Mr. Gargiulo, the dragoman of the embassy, was wounded in the forearm. A number of innocent bystanders were also killed, but under the circumstances this was well-nigh unavoidable.

In the early hours of the morning a patrol of three men was sent by the army of occupation to guard the embassy and these were joined an hour later by a dozen more, commanded by an officer in sergeant's uniform. Similar dispositions were taken at all the other foreign missions and establishments, while communications between the different quarters of the city were suspended; the bridges were guarded and traffic stopped, though fortunately, as two steamers were leaving, I succeeded in assisting about a hundred American tourists to leave the city. Perfect order was kept and the city saved from scenes of pillage, which would otherwise almost inevitably have occurred. During the actual fighting cordons of troops barred the streets in order to keep spectators outside the firing lines, and it is safe to say that but for the admirable precautions taken to diminish the serious consequences of a battle in the streets of a crowded city the losses suffered by the noncombatants would have proved far more considerable.

While most of the barracks capitulated without great effusion of blood, the capture of the one known as "Tash-Kishla" was the scene of a fierce fight. It was occupied by the battalions of sharpshooters from Monastir, who last July had been the first regiment to rise against the absolute régime and demand the promulgation of the constitution. Hence this regiment was singled out from all the others in being later sent to Constantinople to guard the newly won liberty. It was among these men, however, that the agents of reaction worked most actively. The fight around their barracks lasted the whole day and the greatest loss of life on both sides took place there.

Several of the mosques as well were the scenes of sharp contests. The "softas," or theological students, had been the active instruments of reaction in preparing the late mutiny and the ire of the army of occupation was largely directed against their intrigue which had resulted in such serious consequences. Hence when at the Conqueror's Mosque they attempted with their revolvers to resist the troops many of them were shot down. In the streets, moreover, the soldiers arrested them on sight, while all suspicious characters were searched by the numerous patrols and their weapons taken from them. In the sentry box at the embassy there lay piled up a heap of revolvers, pistols, and dirks which had been removed from passers-by.

After the various barracks had been reduced the investing army surrounded the Sultan's residence at Yildiz, where a garrison of about 4,000 men still held out, but the defeat of their comrades convinced them of the futility of resistance; while as 1,500 men had already perished there was every desire to avoid further loss of life and within 24 hours they surrendered unconditionally to the constitutional forces. The Sultan almost alone has been permitted to remain defenseless in his palace pending the decision as to his ultimate fate, which is now being considered.

The military operations terminated with the capitulation of the garrison at Scutari on Sunday. Since then the victors have been occupied in tracking the fugitives, many of whom have escaped with

their arms. To facilitate this task by permitting a house-to-house search and to insure the maintenance of order, martial law has been proclaimed, and no one is permitted on the streets after dark without a special permission and a military escort. Thus far the order and discipline observed have been perfect and is all the more commendable when it is considered that the army of occupation, in addition to the regular troops, contains numerous volunteers, Greeks, Bulgars, anl Albanians, several of whom are notorious chiefs of bands. But all have taken the oath to restore the constitution, and refrain from committing any acts prejudicial to the high patriotic motives which have thus far animated the Macedonian army.

I have, etc.,

JOHN G. A. LEISHMAN.

File No. 10044/169.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 29, 1909.

Mr. Leishman says now that good order has been restored in capital, troops are being hurried to disturbed provinces, and that the thorough manner in which the reestablished constitutional Government is taking hold of things encourages the belief that the trouble in the Adana and Alexandretta districts will soon disappear. He says martial law will probably be continued for another week or two as a necessary measure, and that trials of offenders are rapidly proceeding and ordinary business is being resumed everywhere. Mr. Leishman adds that the Sultan has been taken to Salonica.

File No. 10044/170.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 30, 1909.

Mr. Leishman says the reports from Hadjin and other points indicate that trouble in disturbed Provinces has almost ceased, the change of Government and arrival of troops having most salutary effect, and expressed opinion that good order soon will be completly restored.

File No. 10044/171.

The Acting Secretary of State to Ambassador Leishman.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, April 30, 1909.

Mr. Wilson says the revenue cutter *Takoma* will proceed to Alexandretta and Mersine, and that the commander has been instructed to place himself in communication with Mr. Leishman upon arrival.

File No. 10044/157.

The Acting Secretary of State to Chargé Carter.

No. 984.] DEPARTMENT OF STATE,
Washington, May 1, 1909.

SIR: The department desires you to make appropriate formal expression of thanks to the British Government, on the part of this Government, for the friendly action of His Majesty's Government in instructing British naval vessels in Turkish waters to afford the same protection to American citizens as to British subjects in the disturbed regions of Asiatic Turkey, pending the arrival of the armored cruisers which this Government has dispatched to Alexandretta and Mersine.

I am, etc.,

HUNTINGTON WILSON.

File No. 10044/172.

Ambassador Leishman to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Pera, May 1, 1909.

Mr. Leishman says as conditions in disturbed districts have improved greatly and as the Government is taking very energetic measures to suppress further attempt at disorder and punish perpetrators of the recent trouble, he suggests holding *North Carolina* and *Montana* at Gibraltar, or some other Mediterranean port, for further orders, instead of sending them to Turkish waters. He says the need for their immediate presence no longer exists, and that if conditions continue to improve, as is probable, their visit might be regarded as unnecessarily offensive to the new Government, which appears to be both desirous and able to restore peace and quiet.

File No. 10044/172.

The Acting Secretary of State to Ambassador Leishman.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, May 4, 1909.

Mr. Wilson says in view of the fact that the *North Carolina* and *Montana* have proceeded so far on their route to Turkey, it is hardly practicable at this late stage to recall their orders. Says it is believed that the embassy will have no difficulty in dispelling any misapprehension of the Turkish authorities as to the object of the visit, which will be purely one of friendly courtesy to the new Government now that good order has been restored and Americans are no longer in jeopardy.

File No. 10044/225–229.

Ambassador Leishman to the Secretary of State.

No. 965.] AMERICAN EMBASSY,
Constantinople, May 12, 1909.

SIR: I beg to inclose herewith for the information of the department copy of correspondence exchanged with the consul general in reference to an order recently issued by the military commander of Constantinople regarding the question of firearms.

While the action of the military commander in disarming the population must naturally be considered as a very proper measure, as the general arming of the masses since the establishment of constitutional government has contributed largely to recent troubles, particularly in the provinces, I am confident that the department will approve the position assumed by the embassy in the matter, as it would be establishing a very dangerous precedent to admit that proclaiming a state of siege could change or alter in any way the rights guaranteed to American citizens by treaties.

From what I can learn the chances of any of our citizens being molested are rather remote, but one must always be prepared for emergencies, and I have further stated to the consul that, in the event of the military authorities insisting upon American citizens being disarmed, it must be done by the consuls and not by the local authorities, and the arms stored in the consulate, and that if any registration be done it must be with the consulates, as we can not recognize any Turkish jurisdiction over American citizens.

The French ambassador has assumed the same position, but the representatives of the other powers appear disposed to accede to the demands to a greater or less extent, although they may later on be compelled to change their attitude; for although they might permit their people to submit themselves to the matter of registration, etc.—as no other power insists upon the right of sole jurisdiction over their nationals—it would be difficult in practice for the military authorities to enforce the registration as far as the possession of arms is concerned without interfering with the sacred right of inviolability of

domicile, and this I do not believe that any foreign Government will agree to.

It is difficult to predict how long the state of siege will be continued, but judging by a few remarks dropped by the military commander I infer that it will be some time before it is raised, and in the meantime I can only hope that our people will exercise sufficient care to avoid unfortunate incidents.

I have, etc.,

JOHN G. A. LEISHMAN.

[Inclosure 1.]

Ambassador Leishman to Consul General Ozmun.

AMERICAN EMBASSY,
Constantinople, May 10, 1909.

SIR: Referring to our recent conversation, I beg to inclose herewith copies of letters addressed to the embassy by Dr. Vivian and Mr. Peet in reference to the recent order issued by the military commander regarding firearms.

While the published orders appear to be quite general, I am inclined to believe that in the application no effort will be made to interfere with the carrying of revolvers by the watchman employed at the girls' college at Scutari, or other similar institutions; but in the event of these being asked to register themselves or to take out a permit, it would be difficult for the consulate to raise any objection in view of the fact that the aforesaid watchmen are not American citizens.

While our people should exercise tact and take every precaution to avoid a controversy with the military authorities, we can not for a moment admit that the declaration of a state of siege can alter or affect in any way the rights guaranteed to American citizens by existing treaties, and in case you should experience the slightest difficulty in maintaining this position, if you will bring the matter to the attention of the embassy I will at once take up the question with the Sublime Porte.

I am, etc.,

JOHN G. A. LEISHMAN.

[Inclosure 2—Translation.]

OFFICIAL NOTICE.

Mahmoud Chevket Pasha, commanding the army of occupation, requests all the inhabitants of the places declared in a state of siege who are carrying or who have in their houses prohibited arms of any kind to carry them to the nearest police station in Constantinople and to the commanders of the army in the sand jacks, and to deliver them to the above authorities against a receipt.

At the expiration of this time, viz, five days from date, any persons who may be found with arms or ammunition in their possession, either on their persons or in their houses, will be considered as disturbers of public order and punished as such by court-martial.

NISSAN, 21, 1325.
(May 5, 1909.)

File No. 10044/250.

Ambassador Leishman to the Secretary of State.

[Extract.]

No. 973.] AMERICAN EMBASSY,
Constantinople, May 20, 1909.

SIR: Conditions in Adana and Aleppo districts are rapidly assuming normal proportions, and as the panic-stricken people who flocked

into Adana and other cities from the surrounding country have commenced to return to their homes, there will soon be nothing left to tell the tale of the recent trouble except the battered and charred buildings and the thousands of widows and orphans who have been robbed of their natural protectors and left homeless and penniless and in hundreds of cases entirely dependent upon a charitable public for their daily existence.

The recent trouble can scarcely be considered in the same light as the massacres of 1895 and 1896, as in the present case both sides appear to have been well armed, the conflict being more in the nature of civil strife between rival races, intensified by the fact that the Armenians armed themselves, as prior to the establishment of constitutional government this was forbidden; and, although in the eyes of the law all races now enjoy the same privileges, it requires time for the old dominant race to become reconciled to the changed conditions.

The estimates of our own and other consuls indicate that from 20,000 to 30,000 Armenians have been killed, but I am inclined to believe that they have allowed themselves to be too much influenced by the terror-stricken people, who very naturally have exaggerated the numbers, and while I have no particular warrant for the statement, I am quite of the opinion that the total number of killed will probably not exceed six or seven thousand, of which a very considerable proportion will be found to be Mussulmans.

Certain outrages were committed on both sides, but as a general rule the women and children were not intentionally harmed and there is no substantial evidence to show that there was any premeditated intention of injuring foreigners. As my telegraphic advices will have indicated, great distress exists throughout the district and charitable assistance is greatly needed.

The new Government appears to be acting in a very proper manner and the presence of the large number of troops sent from here is gradually restoring confidence, many of the terror-stricken people who were threatened with all sorts of disease in the overcrowded compounds where they had sought refuge having been induced to return to their homes or at least to their farms, as many of their houses had been destroyed.

The *North Carolina* arrived at Mersine on the 13th instant and the *Montana* was expected at Alexandretta on the 16th, but so far I have no definite news of her arrival. A number of the foreign vessels have already withdrawn and the balance will be retired as rapidly as the relief work will permit, following the example of the Austrians, who, with a view of leaving the new Government with as free a hand as possible, retired their ships to Piraeus so as to have them within easy range in case any fresh trouble should occur.

A mixed commission, the complexion of which meets with universal approval, has been sent to Adana, composed of two deputies selected by the chamber, two Armenians approved by the patriarchate, and two officers selected by the council of ministers, and their report is awaited with much interest.

I am still awaiting the result of Mr. Nathan's investigations before making my report regarding the death of Mr. Rogers and Mr. Maurer.

Great credit is due to the British vice consul, Maj. Doughty-Wylie, who hastened to Adana from Mersine at the first alarm and, although

he had his arm broken by a bullet early in the fray, he continued to look after matters in the most commendable way and it is thanks to his courage and activity that matters were not worse. The bullet which struck him was fired from an Armenian house, an inmate evidently mistaking him in the excitement for a Turkish officer, as he was wearing his uniform. In this connection I would respectfully suggest that a letter of thanks be sent to the British foreign office acknowledging the invaluable assistance rendered by Maj. Doughty-Wylie to the Americans at Adana, as we owe him a deep debt of gratitude.

In many places outside of the city of Adana the Armenians appear to have offered very stubborn resistance and in some cases quite successfully. At Hadjin, where they were besieged for over two weeks, they held out until relieved by the troops, and at Fekka they not only protected themselves in the city, but actually disarmed a lot of irregulars (Rediffs) who threatened to enter the city with the avowed intention of causing trouble. In a number of cases the Rediffs appear to have joined in the attack against Armenians, but it does not appear that the regular troops took any part and it is reported that at Sis they even protected the Armenian quarter.

With the exception of Messrs. Rogers and Maurer I have not heard of any Americans having been injured and the only property reported damaged was the school building at Kessab, where the Armenians had taken refuge, the American teacher, Miss Effie Chambers, being abent at the time, having gone to Adana like many others to attend the annual conference.

I have, etc.,

JOHN G. A. LEISHMAN.

File No. 10044/277–280.

Ambassador Leishman to the Secretary of State.

No. 997.] AMERICAN EMBASSY,
Constantinople, June 1, 1909.

SIR: Referring further to my dispatch No. 965 of the 12th ultimo, I beg to inclose herewith for the information of the department copy of note received from the Sublime Porte regarding the question of arms.

As the embassy had already covered the question of principle involved in a previous note to the Porte, I deemed it wise not to enter into any further argument, and this course has been generally followed by the other embassies, although with the exception of the English and ourselves the other embassies failed to reply to the first note.

Up to the present no trouble whatever has been experienced, nor do I anticipate any, except, possibly, in the case of some belligerent naturalized citizen of Ottoman origin, and I can only hope that even this may be avoided.

The state of siege will probably be continued at the capital for some time to come and has been extended to the Adana and a number of other districts in the interior, and serves as a first-class guar-

antee for the maintenance of good order, as the military forces drawn from the so-called army of occupation (Second and Third Army Corps) are well disciplined, and have conducted themselves in a manner that has caused universal admiration.

I have, etc.,

JOHN G. A. LEISHMAN.

[Inclosure 1—Translation.]

The Minister for Foreign Affairs to the Dean of the Diplomatic Corps.

MINISTRY FOR FOREIGN AFFAIRS,
Constantinople, April 25, 1909.

Mr. DOYEN AND DEAR AMBASSADOR: I have the honor to inform your excellency that in view of prevailing conditions a state of siege has been proclaimed, beginning with to-day, at Constantinople, this including Ismid, Tchekmedje, Tchataldja the islands, Ghebze, Cartal, and Beyooz.

I will very much appreciate your having the kindness to inform your colleagues of this, and I beg you to accept, etc.,

RIFAAT.

[Inclosure 2.]

AMERICAN EMBASSY,
Constantinople, April 27, 1909.

NOTE VERBALE.

The American embassy has the honor to acknowledge the receipt of the Sublime Porte's communication of the 25th instant announcing the enforcement of a state of seige in Constantinople and the surrounding districts, and trusts that in enforcing martial law, the Ottoman Government will be careful to observe all the treaty rights of American citizens.

[Inclosure 3—Translation.]

The Minister for Foreign Affairs to Ambassador Leishman.

MINISTRY FOR FOREIGN AFFAIRS,
Constantinople, May 12, 1909.

The minister for foreign affairs presents his compliments to his excellency the ambassador of the United States of America, and has the honor to inform him that his excellency, Mahmoud Pasha, commanding the army of operation, has, by special favor, decided not to apply in all their vigor to foreigners established in the zone of the state of siege the measures regarding the disarming of the inhabitants of Constantinople and its outskirts.

Thus they are authorized to send back to their country of origin the prohibited arms in their possession after having first notified the police.

Moreover, they will be allowed to keep in their possession all revolvers not longer than 15 centimeters and all hunting rifles. In order to avail themselves of the above privilege, foreigners desiring to keep in their possession the arms named above will be obliged to produce a certificate of good conduct. In this case the police authorities will deliver to them certificates giving a description of these arms and their numbers.

Rifaat Pasha requests his excellency the ambassador of the United States of America to issue the necessary orders to the proper persons for the carrying out of the above prescriptions.

File No. 10044/225–229.

The Acting Secretary of State to Ambassador Leishman.

DEPARTMENT OF STATE,
Washington, June 3, 1909.

SIR: I have to acknowledge the receipt of your No. 965 of the 12th ultimo, inclosing copies of the correspondence exchanged with the American consulate general in Constantinople, relative to the application to Americans in Turkey of an order issued by the military commander of Constantinople prohibiting the possessing of firearms, and reporting that you have instructed the consul general that if Americans are to be disarmed it must be done by consular officers, and that if registration is required it must be done at the consulate general.

Your action in the matter has the commendation of the department.

I am, etc.,

HUNTINGTON WILSON.

File No. 10044/288.

Ambassador Leishman to the Secretary of State.

[Extract.]

No. 1008.] AMERICAN EMBASSY,
Constantinople, June 8, 1909.

SIR: There has been very little change in the general situation during the past fortnight, and, although alarming rumors are not lacking, fairly normal conditions continue to prevail, and while troubles of more or less importance may naturally be anticipated from time to time in a country that is passing through a crucial period consequent to a revolution it is not very probable that the serious events of the past few months will be repeated.

Genuine progress has been made at the capital in the matter of public security by the creation of a well-disciplined gendarmerie which supplements a very much improved police force, and this service will be extended to other districts as rapidly as circumstances will permit.

The present state of siege will probably be continued for a long time to come, at least in practice if not in name, as the necessity of keeping the city under strong control is fully appreciated.

Much remains to be done, and it will take time to straighten out the tangled meshes.

So much depends upon the manner in which matters may be conducted that it would be rather venturesome to hazard an opinion as to the near future, as many of the troubles experienced by the French during the first few years following the revolution may be repeated here; but as my previous dispatches will have indicated I am disposed to take a rather hopeful view regarding the final outcome and will be surprised if Turkey does not eventually emerge from her present difficulties and assume her proper place in the congress of

nations, although it may require a decade or two for her to accomplish this very formidable task.

I have, etc.,

JOHN G. A. LEISHMAN.

File No. 10044/250.

The Secretary of State to Ambassador Reid.

No. 1020.] DEPARTMENT OF STATE,
Washington, June 9, 1909.

SIR: In his dispatch No. 973 of the 20th ultimo, reporting in regard to affairs in the Adana and Aleppo districts, the American ambassador at Constantinople refers in high terms to the assistance rendered American citizens in that region by the British vice consul, Maj. Doughty-Wylie.

I shall, therefore, be pleased to have you convey to His Majesty's Government an appropriate expression of this Government's appreciation of the aid extended to its citizens by Maj. Doughty-Wylie.

I am, etc.,

P. C. KNOX.

File No. 10044/266.

The Acting Secretary of State to Ambassador White.[1]

No. 389.] DEPARTMENT OF STATE,
Washington, June 19, 1909.

SIR: I inclose copy of a dispatch from the American consul general at Beirut, relative to the aid extended by French and British officers in the protection of American interests in Syria.

The department will be pleased to have you convey to the French Government an appropriate expression of this Government's appreciation of and thanks for the courtesies and assistance rendered in this connection by the French consul general at Beirut.

An instruction similar to this has been addressed to the American ambassador at London, with respect to the British consul general in Syria.

I am, etc.,

HUNTINGTON WILSON.

Consul General Ravndal to the Assistant Secretary of State.

No. 260.] AMERICAN CONSULATE GENERAL,
Beirut, May 19, 1909.

SIR: Respectfully referring to my dispatch No. 250[2] of the 27th ultimo, regarding the relief of Latakia through the timely arrival of the French cruiser *Jules Ferry*, I have the honor to state that the British cruiser *Diana*, also in

[1] Mutatis Mutandis to the American Embassy at London, No. 1043.
[2] Not printed.

port here at the time, was preparing to proceed to Latakia, in reply to my unofficial representations, when it was learned that the French cruiser had decided to start forthwith. I had privately conferred with my British and French colleagues here on the subject of the dangers threatening American lives and property at Latakia, and both acted with most gratifying promptness and sympathetic interest. If agreeable to the department I would respectfully request that an expression of our Government's appreciation of these services be addressed to the British and French Governments, special mention being made of the courtesy shown by H. A. Cumberbatch, C. M. G., His Britannic Majesty's consul general in Syria, and Monsieur A. Fouques Duparc, consul general de France, Beyrouth. Dr. Balph, in behalf of the Americans at Latakia, writes me that "it was very fortunate that you were able to send us a frigate," as threats freely were being offered, the town was full of refugees, and there were no soldiers with whom to oppose an attack from the mountains on the part of tribes bent upon pillage and murder.

I have, etc.,

G. BIE RAVNDAL.

DEPOSITION OF SULTAN ABDUL HAMID AND ACCESSION TO THE THRONE OF MOHAMMED V.

File No. 10044/167.

Ambassador Leishman to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Pera, April 27, 1909.

Mr. Leishman says the Sultan has been dethroned, and that his brother, Rechad, who will reign under the name of Mohammed Fifth, has been placed on the throne.

File No. 10044/174.

The Turkish Ambassador to the Secretary of State.

[Translation.]

TURKISH EMBASSY,
Washington, April 27, 1909.

Mr. SECRETARY OF STATE: I have the honor to make known to your excellency that, in compliance with the national will and in accordance with the Fetwa rendered by the Sheik-islam, the National Assembly, consisting of the Senate and Chamber of Deputies, in the presence of the members of the cabinet, to-day unanimously proclaimed the fall of the Sultan Abdul Hamid and the accession to the imperial throne of the lawful heir under the name of his Imperial Majesty the Sultan Mohammed V.

His Majesty solemnly swore by the constitution. The ministers, senators, deputies, and high dignitaries were accorded the honor of deposing at the foot of the imperial throne the expression of their devotion and fidelity.

Please accept, etc.,

H. KIAZIM.

File No. 10044/168A.

The President of the United States to the Sultan of Turkey.

[Telegram.]

THE WHITE HOUSE,
Washington, April 28, 1909.

I offer to Your Imperial Majesty my congratulations of your accession to the throne with such universal acclaim, voiced by the people's representatives, and at a time so propitious to the highest aspirations of the great nation over which you rule as the august head of a constitutional Government. I assure you of the friendship of the Government and people of the United States, who earnestly wish for Your Majesty's happiness and for that of the people within your dominions, and I add my own wishes for Your Majesty's health and welfare.

WM. H. TAFT.

File No. 10044/169A.

The Acting Secretary of State to the Turkish Ambassador.

DEPARTMENT OF STATE,
Washington, April 28, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 27th instant by which you inform the Government of the United States that in compliance with the national will and in accordance with the fetwa rendered by the Sheik-Islam, the national assembly, consisting of the Senate and Chamber of Deputies, in the presence of the members of the cabinet, on April 27th unanimously proclaimed the fall of Sultan Abdul Hamid and the accession to the imperial throne of the lawful heir under the name of His Imperial Majesty the Sultan Mohammed V.

Your note was duly communicated to the President who has this day been pleased to extend, by telegram, his congratulations to His Imperial Majesty in the following words:[1]

In seizing this occasion to express to your excellency my felicitations I take, etc.,

HUNTINGTON WILSON.

File No. 10044/188.

Ambassador Leishman to the Secretary of State.

[Extract.]

AMERICAN EMBASSY,
No. 953.] *Constantinople, April 28, 1909.*

SIR: I have the honor to report to the department with regard to the recent deposition of Sultan Abdul Hamid and the accession to the throne of his brother, Reshad Effendi, under the title of Mehemed the Fifth.

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[1] Supra.

Already at the time of the revolution of last July there had been a strong sentiment in favor of removing the late Sultan from the throne. But his ready compliance in meeting all the demands made upon him by the party in power led many to believe that he had frankly accepted his new rôle as a constitutional sovereign and was contented to reign and no longer to govern. The suddenness of the mutiny of April 13 and the restoration of the Sultan's power in the capital proved a surprise to everyone.

When the constitutional forces marched on the capital it was generally understood that the deposition of the Sultan formed part of their demands. But in the negotiations which were attempted prior to their entry all reference to this was avoided. His deposition, however, became a foregone conclusion after the resistance offered by the troops at Constantinople in the fight of April 24.

Once the garrison had capitulated, the fate of Yildiz was no longer open to doubt. But instead of storming the palace precincts, which had been deprived of the greater part of their defenders, the invading army preferred to reduce the Sultan's last stronghold by famine. The water supply, gas, and electric light were cut off, and all food intended for the palace was intercepted. With starvation confronting them even passive resistance became impossible. Shortly after dawn yesterday, the 27th instant, the Sultan surrendered unconditionally to the constitutional army.

Parliament, which had met as a national assembly in secret surrender, was informed by the general in command of the surrender. It had been awaiting such notification in order to proceed to the Sultan's deposition, which all members had for some days agreed upon. In accordance with previous precedent the Sheikh-ul-Islam, as the highest exponent of the sacred law, was asked to issue the decree regarding the unworthiness of Abdul Hamid to resign. The decree, or "fetva," as it is termed, may be rendered as follows:

When the commander of the faithful suppresses certain important provisions of the "sheri" in the sacred books; when he forbids, tears, or burns such books; when he spends or impairs the public treasure or seizes it contrary to sheri law; when, after having without legitimate cause killed, imprisoned or exiled his subjects and acquired the habit of committing other kinds of tyrannical acts, he has sworn to return to the path of righteousness, but has violated his oath and persists in creating great sedition capable of completely disturbing the situation and the affairs of Islam, and causes massacres;

If the Moslem community reduces him to a state of helplessness; if from all parts of the Moslem world there continually come reports that he is considered as dethroned; if there is grave danger in maintaining him on the throne; and if to remove him would be for the public welfare;

Then is the decision binding of those who are competent to solve affairs of state, in the event of their deciding his abdication or deposition?

The reply is: Yes.

(Signed) ZIAEDDINE, SHEIKH-UL-ISLAM.

This decision having been communicated to the national assembly, the latter, rejecting the proposition for his abdication, unanimously and amid a scene of great enthusiasm decided for his deposition. The motion dethroning him reads as follows:

The 7th Rébi-ul-Akhir, 1327, that is to say Tuesday the 14th Nissan, 1325, at half past 6 o'clock (i. e., April 27th, 1909, at about 1.30 p. m.), in a session of the Ottoman National Assembly composed of the Senate and the Chamber of Deputies, upon a proposition to choose between the dethronement and the voluntary abdication, two solutions indicated in the "fetva," bearing the signature of the Sheikh-ul-Islam Mehmed Ziaeddin Effendi and read in the session,

it was decided to dethrone Sultan Abdul Hamid II, and call to the Sultanate and Khalifate, the prince heir to the throne, Mehemed Reshad Effendi, under the name of Mehemed V.

Two delegations were at once appointed, the one to notify Abdul Hamid of his deposition, the other to escort the new sovereign. On learning the news of his downfall Abdul Hamid asked that his life and family be respected, and was assured that this would be done. He further requested to be permitted to pass his remaining days in the Palace of Tcheragan on the Bosphorus, where he had been born, and where his brother, Mourad, had so long been kept a prisoner. But this wish was refused him, and early this morning he was sent by special train to Saloniki.

Sultan Mehemed V learned the news of his accession to the throne with calm. Escorted by the delegation from Parliament he drove to the ministry of war, where he held his first official reception, and met the nation's representatives. The firing of 101 cannon in different quarters of the city announced the change in reign, and Constantinople at once joyfully prepared to celebrate the holiday of an accession, and of a delivery from the former tyranny. The Sultan passed through the streets of his capital amid the enthusiastic cheers of the constitutional army and of the populace. Not a discordant note has thus far been struck. The calm dignity of the new ruler produced an excellent impression.

I have, etc.,

JOHN G. A. LEISHMAN.

File No. 10044/173.

The Sultan of Turkey to the President of the United States.

[Translation.]

PERA, *April 30, 1909.*

I received with real pleasure the telegram of congratulation which Your Excellency was pleased to send me on the occasion of my accession to the throne. I thank you cordially for the sentiments contained therein, as well as for the assurances of friendship which you give me in the name of the Government and the great Nation of the United States, and to which I attach the highest value. I beg of Your Excellency to believe in the cordial wishes which I cherish both for your happiness and prosperity and for those of the great, noble American people.

MOHAMMED V.

File No. 10044/187.

Ambassador Leishman to the Secretary of State.

[Telegram.]

AMERICAN EMBASSY,
Pera, May 10, 1909.

The coronation ceremony passed off very quietly to-day amidst great enthusiasm.

LEISHMAN.

CONSTITUTION OF THE OTTOMAN EMPIRE.

File No. 10044/376.

Ambassador Straus to the Secretary of State.

No. 41] AMERICAN EMBASSY,
Constantinople, November 19, 1909.

SIR: I have the honor to transmit herewith for the files of the department the copy, in duplicate, of the Ottoman Constitution, together with unofficial French and English translations of the same as such copies do not appear to have been previously transmitted by the embassy.

I have, etc., OSCAR S. STRAUS.

[Inclosure.]

Constitution of the Ottoman Empire.

[As revised August 5/18, 1909.]

ART. 1. The Ottoman Empire comprises the actual countries and possessions and the privileged provinces.

It forms an indivisible whole no part of which can ever be detached for any reason whatsoever.

ART. 2. Constantinople is the capital of the Ottoman Empire.

This city possesses, to the exclusion of the other cities of the Empire, no privilege or immunity peculiar to itself.

ART. 3. The sovereignty of the Ottoman Empire, which unites in the person of the Sovereign the supreme Caliphate of Islamism, belongs to the eldest of the princes of the Osman dynasty, in accordance with the rules established *ab antiquo*. When he ascends the throne, the Sovereign swears before the General Assembly, or, if it is not in session at its first meeting, to respect the provisions of the Constitution and to remain faithful to the fatherland and the nation.

ART. 4. His Imperial Majesty the Sultan is, in his character of supreme Caliph, the protector of the Mohammedan religion.

He is the Sovereign and Padishah of all the Ottomans.

ART. 5. His Imperial Majesty the Sultan is irresponsible; his person is sacred.

ART. 6. The liberty of the members of the Imperial Ottoman dynasty, their personal goods whether movable or immovable, their civil list throughout their lives, are under the guarantee of all.

ART. 7. His Imperial Majesty counts among his sovereign prerogatives: the mention of his name in the mosques during public prayer; the coining of money; the bestowal according to special regulations of grades and decorations; the nomination to the high public offices, according to the special laws; the choice and nomination of the grand vizier and the sheik-ul-islam as well as the investiture of the members of the cabinet in their offices, which cabinet the grand vizier forms and presents for his approval, and, in case of necessity, the dismissal and change of ministers according to the rules; the sanction, the promulgation, and the putting into force of the general laws; the elaboration of the rules concerning the operations of the departments of the State and the method of enforcing the laws; the maintaining and execution of the prescriptions of the civil and religious laws; the investiture of the chiefs of the privileged provinces according to the forms which have been granted to them; the command of the land and naval forces; the declaration of war; the making of peace; the commutation or remission of the penalties imposed by the criminal courts; the proclamation of general amnesties approved by the national assembly; the opening and closing of the sessions of parliament; the convocation of the national assembly which is anticipated under extraordinary circumstances; the dissolution of the chamber of deputies, with the consent of the Senate in accordance with Article 35, but only for the purpose of proceeding to new elections and to the convocation of the new assembly within three months; the conclusion of all treaties.

However, the approval of Parliament is necessary for the conclusion of treaties which concern peace, commerce, the cession or annexation of territory, the fundamental and personal rights of Ottoman subjects, or which require an expenditure by the State. Should any change of ministers be made while Parliament is not in session, the responsibility resulting from this change shall belong to the new cabinet.

CONCERNING OTTOMAN PUBLIC LAW.

ART. 8. All subjects of the Empire are called Ottomans without distinction, regardless of the religion which they may profess.

The quality of Ottoman is acquired and lost according to the rules specified by law.

ART. 9. All Ottomans enjoy individual liberty on the condition of not making attempts against the liberty of others.

ART. 10. The liberty of the individual is absolutely inviolable. No one can, under any pretext, be arrested or made to suffer any penalty except according to the forms and in the cases prescribed by the religious and civil laws.

ART. 11. Islamism is the religion of the State.

While maintaining this faith, the State protects the free exercise of all the creeds recognized in the Empire and upholds the religious privileges granted to the different communities, subject to the condition that public order and decency are not disturbed.

ART. 12. The press is free within the limits prescribed by law. It can, in no way, be submitted to censorship previous to publication.

ART. 13. Ottoman subjects have the right to organize commercial associations, whether industrial or agricultural, within the limits set by the laws and regulations.

ART. 14. One or more persons of Ottoman nationality have the right to present petitions to the competent authorities upon the subject of infractions of the laws or regulations, committed either to their personal injury or to the prejudice of public welfare; and may likewise present to the Ottoman General Assembly, in the form of a claim, signed petitions to complain of the conduct of the officials or employes of the State.

ART. 15. Education is free.

Every Ottoman subject may pursue public or private courses of instruction, upon the condition that he conform to the laws.

ART. 16. All schools are placed under the supervision of the State. It will endeavor, in the proper ways, to unify and systematize the education given to all Ottoman subjects, but there shall be no infringement upon the religious education of the various communities.

ART. 17. All Ottoman subjects are equal before the law. They possess the same rights and owe the same duties toward the country, without distinction of religion.

ART. 18. Admission to the public service is upon the condition of a knowledge of Turkish, which is the official language of the State.

ART. 19. All Ottoman subjects are admitted to the public service in accordance to their ability, merit and capacity.

ART. 20. The assessment and apportionment of taxes are determined, conformably to the law and special enactments, in proportion to the wealth of each taxable.

ART. 21. The right of ownership in real and personal property, when regularly established, is guaranteed.

No condemnation may take place except for duly established reasons of public utility and upon a previous payment, according to law, of the value of the property to be condemned.

ART. 22. Domicile is inviolate.

The authorities may not forcibly enter the domicile of any person except in cases determined by law.

ART. 23. No one may be compelled to appear before any other than the competent tribunal, following the law of procedure which may be imposed.

ART. 24. The confiscation of property, forced labor, and the "djéroemé" (extortion under the form of a pecuniary penalty) are prohibtied.

However, the contributions legally levied in time of war and the measures necessitated by a state of war are exempted from this provision.

ART. 25. No sum of money may be collected under the name of impost or tax, or under any other denomination, except by virtue of a law.

ART. 26. Torture and examination by torture, in all forms, are entirely and absolutely forbidden.

CONCERNING MINISTERS.

ART. 27. Just as His Imperial Majesty the Sultan invests the persons whom his high confidence calls to them with the offices of Grand Vizier and Sheik-ul-Islam, so also he confirms in their functions by Imperial iradé the other ministers whom the Grand Vizier, charged with the formation of the cabinet, chooses and proposes.

ART. 28. The Council of Ministers meets under the presidency of the Grand Vizier, and has among its attributes the important interior and foreign affairs of the state. Those of its decisions which must be submitted to the sanction of His Imperial Majesty the Sultan are rendered executory by imperial iradé.

ART. 29. Each chief of a ministerial department, within the limits of his functions, administers the affairs which fall within the province of his department, and those which lie beyond this limit are referred to the Grand Vizier. The Grand Vizier acts upon the reports which are sent to him by the heads of the various departments, either in submitting them, if there is occasion, to the Council of Ministers and then in presenting them for the imperial sanction, or, in the opposite case, in confirming them himself or submitting them to the decision of His Imperial Majesty the Sultan. A special law will determine these different categories for each ministerial department. The Sheik-ul-Islam submits directly to the Sultan for his approval such matters as do not require ministerial consideration.

ART. 30. The ministers are collectively responsible to the Chamber of Deputies for the general policy of the government, and individually for their individual acts. Decisions which require imperial approval are effective only if they bear the signature of the Sultan and are countersigned by the Grand Vizier as well as by the proper minister, who thus assumes the responsibility for them. The decisions taken by the Council of Ministers shall bear the signatures of all the Ministers, and should these decisions require imperial approval they shall be preceded by the signature of the sovereign.

ART. 31. If one or more members of the Chamber of Deputies desire to bring complaint against a minister, because of his responsibility and on the ground of acts which the Chamber has the right to know, the demand containing the complaint is given to the president, who returns it, within three days, to the bureau empowered, in virtue of an internal regulation, to examine the complaint and to decide whether there is occasion to submit it to the deliberations of the Chamber.

The decision of the bureau is by a majority vote, after the necessary information has been secured and explanations furnished by the Minister concerned.

If the bureau is of the opinion that the complaint should be submitted to the Chamber, the report containing this decision is read in a public session, and the Chamber, after having heard the explanations of the Minister concerned, summoned to be present at the session, or his delegate, votes by an absolute majority of two-thirds upon the findings of this report.

In case of the adoption of these findings, an address, demanding the trial of the Minister concerned, is transmitted to the Grand Vizier, who submits it to the sanction of His Imperial Majesty the Sultan, and its return before the High Court is by virtue of imperial iradé.

ART. 32. A special law will determine the procedure to be followed in the trial of ministers.

ART. 33. There is no difference between Ministers and private persons as far as suits which are of a private nature and separate from their official functions are concerned.

Suits of this kind are prosecuted before the usual courts.

ART. 34. The Minister whose trial has been authorized by the High Court is suspended from his functions until such time as he may be discharged from the accusation against him.

ART. 35. In case of disagreement between the Ministers and the Chamber of Deputies, if the Ministers persist in their proposal and if the Chamber opposes to it a formal and repeated refusal the ministry is obliged to submit to the decision of the Chamber or to resign. In case of such resignation, if the new ministry persists in the project of the former one, and if the Chamber again rejects it by a statement of its reasons duly voted, H. I. M. the Sultan can dissolve the Chamber of Deputies in order to cause new elections to be held,

according to the rules stated in Art. 7. But if the new Chamber persists in the decision taken by the former one, the acceptance of this decision becomes obligatory.

ART. 36. In case of urgent necessity, if the General Assembly is not in session, and if there is not time enough to convoke the Chamber that it may pass a law destined to guard the State against a danger or to maintain public security, the ministry may adopt measures which have the force of a provisional law until the convocation of Parliament, provided that these are not contrary to the provisions of the Constitution, and provided that they are sanctioned by imperial iradé and submitted to the General Assembly as soon as the latter is assembled.

ART. 37. Each Minister has the right to be present at the sessions of the Senate and of the Chamber of Deputies, or to be represented by one of the higher officials of his department.

He has also the right to be heard before any member of the Chamber who has asked permission to speak.

ART. 38. Whenever he is requested, by a majority, to appear before the Chamber of Deputies to furnish explanations, he is obliged to answer the questions addressed to him, either in person or by delegating the duty to a superior official of his department. Nevertheless he has the right to postpone his answer if he considers it necessary, taking upon himself the responsibility for this postponement. Every vote of lack of confidence passed by the majority of the deputies, following the interpellation of a minister, compells his fall; just as, if this vote of lack of confidence is passed against the president of the Council, it causes the fall of the entire ministry.

CONCERNING PUBLIC OFFICIALS.

ART. 39. All nominations to the different branches of the public service shall be made in accordance with the regulations which will determine the qualifications of merit and ability required for admission to the service of the State.

No official appointed under these conditions may be dismissed or changed unless it be proved that his conduct legally justifies his dismissal; unless he has presented his resignation; or unles his dismissal be considered indispensable by the government.

Officials who may have given evidence of good conduct and of honesty, as well as those whom the government considers it indispensable to place on the unattached list, will be entitled, either to promotion, to a retirement pension, or to the salary allowed to those on the unattached list, conformably to the provisions which may be determined by special enactment.

ART. 40. The duties of the different positions shall be fixed by special laws. Every official is responsible within the scope of his duties.

ART. 41. Every official is required to obey his superior; but obedience is due only to orders given within the limits prescribed by law.

For acts contrary to law, the fact that he has obeyed a superior will not remove responsibility from the official who has executed them.

CONCERNING THE GENERAL ASSEMBLY.

ART. 42. The General Assembly is composed of two houses, the Chamber of Lords or Senate, and the Chamber of Deputies.

ART. 43. The two chambers composing the Assembly will convene upon November 1st of each year without being called. The opening will take place by imperial iradé. The closing, set for the first of the following March, will also be made by virtue of an imperial iradé. Neither of the two chambers may assemble outside of the period of session of the other chamber.

ART. 44. According to circumstances H. I. M. the Sultan may, either on his own initiative or on the written demand of the absolute majority of the Deputies, advance the date of opening of the General Assembly, or he may extend the length of the session, either of his own accord or on the decision of the Assembly itself.

ART. 45. The ceremony of opening takes place in the presence of H. I. M the Sultan, either in person or represented by the Grand Vizier, and in the presence of the ministers and members of the two chambers.

An imperial address is read, showing the domestic condition of the Empire and the state of its foreign relations, in the course of the preceding year, and suggesting the measures the adoption of which is considered necessary for the following year.

ART. 46. All the members of the General Assembly take oath to be faithful to H. I. M. the Sultan and to the country, to observe the Constitution, to fulfill the obligation resting upon them, and to refrain from all acts contrary to their duties.

The administration of the oath takes place, in the case of new members, at the opening of the session, in the presence of the Grand Vizier; and, after the opening, in the presence of the respective presiding officers, and in public session of the Chamber to which they belong.

ART. 47. The members of the General Assembly are free in the expression of their opinions and in their votes.

None of them may be bound by instructions or promises, nor influenced by threats.

No member may be held accountable for the opinions expressed or the votes given by him in the course of the deliberations of the Chamber to which he belongs, unless he has transgressed the rules and regulations of that chamber; in which case the provisions contained in its rules and regulations are applicable.

ART. 48. Every member of the General Assembly, who is accused, by an absolute majority of two-thirds of the Chamber to which he belongs, of treason, of an attempt to violate the constitution, of extortion, or who has been legally sentenced to imprisonment or exile, is deprived of his office of senator or deputy.

The judgment and the application of the penalty lies with a competent tribunal.

ART. 49. Each member of the General Assembly votes in person. He may absent himself at the time of a vote.

ART. 50. No one may be a member of both chambers at the same time.

ART. 51. No session may be held in either chamber unless a majority of the members be present.

Except in cases where a majority of two-thirds is required, all resolutions are taken by an absolute majority of the members present.

In case of equal division, the president casts the deciding vote.

ART. 52. All petitions relating to matters of private interest, presented to either chamber, are rejected, if the investigations to which they give rise result in establishing that the petitioner did not address himself in the first place to the public officials concerned, or to the authority represented by these officials.

ART. 53. The initiative in the proposition of a law or in the modification of an existing law lies with the ministry, the Senators and the Deputies. Every new law and every change of a law by one of the two chambers is sent to the other, whence after approval it is presented to H. I. M. the Sultan for his sanction.

ART. 54. Proposed laws are first submitted to the discussion and decision of the Chamber of Deputies and of the Senate; but they have the force of law only if after having been adopted by the two chambers they are sanctioned by imperial iradé. Every law presented to the sovereign must be sanctioned by him within two months or be returned for reconsideration. A law returned to Parliament for reconsideration must receive there a majority of two-thirds. Laws whose urgency has been declared are sanctioned or returned to Parliament within ten days.

ART. 55. A bill is not considered as passed unless it has been voted successively by the Chamber of Deputies and the Senate by a majority vote, article by article, and unless the complete bill has received a majority in each of the two chambers.

ART. 56. With the exception of the Ministers, their representatives and officials summoned by special invitation, no one may be introduced into either chamber nor be permitted to make any communication, whether he presents himself in his own name or as the representative of a group of individuals.

ART. 57. The deliberations of the Chambers are conducted in the Turkish language.

The bills are printed and distributed before the day set for their discussion.

ART. 58. Votes are expressed (1) by roll call, (2) by outward signs, or (3) by secret ballot. The taking of a vote by secret ballot is subject to the decision of the Chamber, requiring a majority of the members present.

ART. 59. The function of maintaining order within each chamber is exercised by its presiding officer.

CONCERNING THE SENATE.

ART. 60. The president and the members of the Senate are directly appointed by H. I. M. the Sultan.

The number of Senators may not exceed one-third of the number of the members of the Chamber of Deputies.

ART. 61. To be eligible for the office of Senator it is necessary to have shown oneself, by one's acts, worthy of public confidence, or to have rendered signal services to the State; and to be at least forty years of age.

ART. 62. Senators are appointed for life.

The office of Senator may be conferred upon persons unattached but having exercised the functions of minister, governor general (vali), commander of an army corps, cazasker (superior judge), ambassador or minister plenipotentiary, patriarch, khakhambashi (grand rabbi), generals of a division of the land and naval forces, and, in general, upon persons possessing the necessary qualifications.

The members of the Senate appointed, upon their own request, to other positions, lose their quality of senator.

ART. 63. The compensation of a Senator is fixed at the monthly sum of ten thousand piasters ($390.00).

A Senator who receives from the Treasury a salary or emoluments on other grounds has a right to the difference only, if their amount is less than ten thousand piasters.

If this sum total is equal or superior to the compensation of a Senator, he will continue to receive the amount.

ART. 64. The Senate considers the bills or the budget transmitted to it by the Chamber of Deputies.

If, in the course of the consideration of a bill, the Senate discovers a provision prejudicial to the sovereign rights of His Majesty the Sultan, to liberty, to the Constitution, to the territorial integrity of the Empire, to the domestic security of the country, to the public defense, to good morals, it will reject this provision by a direct vote, or it will return it, together with its comments, to the Chamber of Deputies, demanding amendment or modification in the line of these suggestions.

The bills adopted by the Senate are invested with its approval and transmitted to the Grand Vizier.

The Senate considers the petitions which are presented to it; it transmits to the Grand Vizier those petitions which it finds worthy of such transmission, adding its own recommendations.

CONCERNING THE CHAMBER OF DEPUTIES.

ART. 65. The number of Deputies is fixed at the rate of one representative for 50,000 male inhabitants of Ottoman nationality.

ART. 66. Elections take place by secret ballot. The rules regulating elections will be determined by special enactment.

ART. 67. The commission of a deputy is incompatible with other public offices, except that of minister.

Every public official, elected as a deputy, is free to accept or to refuse, but in case of acceptance he must resign his office.

ART. 68. The following persons may not be elected to the office of deputy.

1. Those who are not of Ottoman nationality.
2. Those who, by virtue of a special rule in effect, enjoy the immunities attached to the foreign service with which they are connected.
3. Those who cannot speak and understand Turkish.
4. Those who are not over 30 years of age.
5. Those attached to the service of a private individual.
6. Bankrupts who have not been reinstated.
7. Those who are disbarred by reason of their notorious conduct.
8. Those who have received a judicial sentence, as long as this sentence has not been cancelled.
9. Those who do not enjoy their civil rights.
10. Those who claim to belong to a foreign nation.

After the expiration of the first period of four years, one of the conditions of eligibility for the position of deputy will be the ability to read, and as much as possible, to write Turkish.

ART. 69. The general election of deputies takes place every four years.

The commission of each deputy continues in force for four years only, but he is eligible to reelection.

ART. 70. The general elections commence, at the latest, four months before the first of November, which is the date fixed for the meeting of the Chamber.

ART. 71. Each member of the Chamber of Deputies represents the Ottoman nation in its entirety, and not only the district which has elected him.

ART. 72. The electors are restricted in the choice of their deputies to the inhabitants of the province to which they belong.

ART. 73. *In case of the dissolution of the Chamber by Imperial iradé, the general elections must begin in sufficient time for the Chamber to be able to reassemble, at the latest, within six months after the date of dissolution.*

ART. 74. In case of death, of judicial interdiction, of prolonged absence, of the loss of the position of deputy by a legal sentence or through the acceptance of a public office, a new deputy is chosen, in accordance with the prescriptions of the electoral law, and within such a period that at the latest he may make use of his commission in the following session.

ART. 75. The commission of a deputy elected to fill a vacancy is valid only until the next general election.

ART. 76. Each deputy will be allowed thirty thousand piasters ($1,290.00) per session by the Treasury, as well as travelling expenses determined comformably to the provisions of the law regulating the civil officials of the State, and calculated on the basis of a monthly salary of five thousand piasters. Each deputy will also be allowed a compensation of five thousand piasters [$215.00] per month when the session exceeds its legal duration.

ART. 77. In every session the Chamber of Deputies elects by a majority vote a president and two vice-presidents, whose names it submits to the imperial approval.

ART. 78. The sessions of the Chamber of Deputies are public.

The Chamber may, however, hold a secret session if the question is raised by the Ministers, by the president, or by fifteen members, and if this proposition is voted in secret session.

ART. 79. Except for flagrant offences, during the time of session, a deputy may be arrested or prosecuted only after a decision granting permission to prosecute has been adopted by the majority of the Chamber.

ART. 80. The Chamber examines in detail the general expenses of the government and fixes their sum in the presence of the Ministers, in the same manner as it also determines in their presence the nature and amount of the revenues to be imposed to meet these expenses, their mode of division and of collection.

CONCERNING THE JUDICIAL POWER.

ART. 81. Judges named in conformity with the special law on the subject and provided with the commission of office (Bérat), are irremovable; but they may resign.

The advancement of the judges in their hierarchical order, their transference, their retirement, their recall in case of legal conviction, are subject to the provisions of the same law.

This law shall determine the conditions and qualifications neeessary for the exercise of the functions of judge or the other functions of a judicial order.

ART. 82. The sittings of all the tribunals are public.

The publication of the judgments is authorized.

However, in the cases specified by law, tribunals may hold their sittings in private.

ART. 83. For the purposes of his own defence any person may make use before a tribunal of the means permitted by law.

ART. 84. No tribunal may refuse, under any pretext whatsoever, to hear a case which lies within its jurisdiction.

Neither may it stop or postpone the trial, after it has started the process of examination or of questioning, unless there is renunciation of the suit upon the part of the plaintiff.

However, in penal matters, the action for the public shall be continued in accordance with law, even in the case where the plaintiff has abandoned the suit.

ART. 85. Each case is heard by the tribunal within whose jurisdiction it lies.

Suits between private individuals and the State lie within the jurisdiction of the ordinary courts.

ART. 86. No undue influence may be exercised upon the courts.

ART. 87. Matters concerning the Cheri (Sacred Law) are judged by the tribunals of the Cheri; the trial of civil cases belong to the civil tribunals.

ART. 88. The different categories of the tribunals, their competence, their jurisdiction and the emoluments of the judges are regulated by the laws.

ART. 89. Outside of the ordinary courts, there may not be instituted under any name whatsoever extraordinary tribunals or commissions to judge certain special matters.

However, arbitration (takkin) and the nomination of muvella (delegate judge or special commissioner) are permitted within the forms determined by law.

ART. 90. No judge may combine his functions with other functions remunerated by the State.

ART. 91. Imperial attorneys shall be appointed, charged with the prosecution of actions on behalf of the State.

Their duties and their order (hierarchy) are fixed by law.

CONCERNING THE HIGH COURT.

ART. 92. The High Court is composed of thirty members, of whom ten are senators, ten councillors of State, and ten chosen among the presidents and members of the Court of Cassation and of the Court of Appeals.

All members are selected by lot.

The High Court is called, when there is occasion, by imperial iradé and meets in the Senate building.

Its duties consist of trying

Ministers;

The president and members of the Court of Cassation;

And all other persons accused of the crime of "lésé-majesté" or rebellion.

ART. 93. The High Court is composed of two Chambers: the Chamber of Accusation and the Chamber of Judgment.

The Chamber of Accusation is composed of nine members chosen by lot among the members of the High Court, of whom three are Senators, three Councillors of State, and three members of the Court of Cassation or of the Court of Appeal.

ART. 94. A case may be sent to the Chamber of Judgment by the Chamber of Accusation upon the vote of a majority of two-thirds of its members.

Members of the Chamber of Accusation cannot take part in the deliberations of the Chamber of Judgment.

ART. 95. The Chamber of Judgment is composed of twenty-one members, of whom seven are Senators, seven Councillors of State, and seven members of the Court of Cassation or of the Court of Appeals.

It gives judgment by a majority of two-thirds of its members and in conformity with the laws in force, upon the cases which are submitted to it by the Chamber of Accusation.

Its verdicts are not subject to appeal or to review by the courts.

CONCERNING FINANCES.

ART. 96. No tax for the profit of the State may be established, assessed or collected except by virtue of a law.

ART. 97. The budget contains the provisions regulating the revenues and expenses of the government.

The taxes for the profit of the State are governed by this law, as to their assessment, their division and their collection.

ART. 98. The consideration of and voting upon the law of the budget shall be by articles.

The annexed tables, showing in detail the revenues and expenses, are divided into sections, chapters and articles, in accordance with the model prescribed by law.

These tables are voted upon by chapters.

ART. 99. The proposed budget law is submitted to the Chamber of Deputies immediately after the opening of the session, in order to render possible its execution by the beginning of the period with which it is concerned.

ART. 100. No extra budgetary disbursement may be made from the government funds except by virtue of a law.

ART. 101. In a case of urgency resulting from extraordinary circumstances the ministers may, during the recess of the General Assembly, set aside the required funds and may effect a disbursement not provided for in the budget,

provided that at the beginning of its next session they give notice of the fact to the General Assembly by the proposition of a law.

ART. 102. The budget is voted for the period of one year; it remains in force as a law only for the year with which it is concerned.

However, if by reason of exceptional circumstances the Chamber of Deputies is dissolved before taking a vote on the budget, the ministers may apply, through a measure authorized by imperial iradé, the budget of the preceding year until the time of the next session; but the provisional application of this budget may not exceed one year's duration.

ART. 103. The law confirming the budget shows the amount of the actual receipts and the payments effected upon the revenues, and the expenditures of the year with which it is concerned.

Its form and divisions must be the same as those of the budget.

ART. 104. A proposed law definitely confirming a budget is submitted to the Chamber of Deputies within a period of four years at the latest, beginning from the end of the year with which it was concerned.

ART. 105. There shall be instituted a Court of Accounts, charged with the examination of the operations of the financial accountants as well as with the annual statements presented by the various ministerial departments.

Each year it shall submit to the Chamber of Deputies a special report comprising the results of its labors, accompanied by its remarks.

At the end of every three years it shall present to His Majesty the Sultan, through the Grand Vizier, a report showing the financial situation.

ART. 106. The Court of Accounts shall be composed of twelve irremovable members, named by Imperial iradé.

None of them may be recalled unless the proposition for his recall be approved by a majority vote of the Chamber of Deputies.

ART. 107. The conditions and qualifications demanded of the members of the Court of Accounts, the details of their functions, the rules applicable in case of their resignation, replacement, promotion and retirement, as well as the organization of the bureaus of the Court, shall be determined by a special law.

CONCERNING THE PROVINCIAL ADMINISTRATION.

ART. 108. The administration of the provinces shall be based upon the principle of decentralization.

The details of the organization shall be determined by a law.

ART. 109. A special law will regulate upon a broader basis the election of the administrative council of a province (vilayet), of a district (sandjak), and of a canton (kaza), as well as of a general council, which meets annually at the capital of each province.

ART. 110. The functions of the general provincial council shall be fixed by the same special law, and will comprise:—

The right to consider projects of public utility, such as the establishment of means of communication, the organization of agricultural banks, the development of industry, of commerce and of agriculture, and the propagation of public instruction;

The right to bring complaint before the proper authorities in order to obtain redress for acts committed contrary to law, either in the division or collection of taxes or in any other matter.

ART. 111. In every canton (kaza) there shall be a council for each of the different communities. This council shall be charged with the control of

1. The Administration of the revenues from immovable (real) property or religious foundations (fonds vakoufs) whose special use is fixed by the express disposition of the founders or by custom.

2. The management of funds or property set aside by testamentary disposition for acts of charity or benevolence.

3. The administration of the property of orphans, in conformity with the special law on the subject.

Each council shall be composed of members elected by the community which it represents, in accordance with rules to be established.

These councils shall be responsible to the local authorities and to the general provincial councils.

ART. 112. Municipal affairs, at Constantinople and in the provinces, shall be administered by elected municipal councils.

The organization of municipal councils, their functions, and the mode of election of their members shall be determined by a special law.

MISCELLANEOUS PROVISIONS.

ART. 113. In case of a state of affairs or indications of such a nature as to render disturbances probable at some point in the territory of the Empire, the Imperial Government has the right to proclaim a state of siege.

The effect of a state of siege is the temporary suspension of the civil laws.

The manner of administration of localities declared in a state of siege shall be regulated by a special law.

ART. 114. Primary instruction is obligatory upon all Ottomans. The details of its administration will be fixed by a special law.

ART. 115. *No provision of the Constitution may be suspended or left dormant under any pretext whatsoever.*

ART. 116. In case of necessity, duly established, the Constitution may be amended in certain of its provisions. This amendment is subject to the following conditions:

Every proposed amendment, presented either by the ministry or by one or the other chamber, must be submitted in the first place to the consideration of the Chamber of Deputies.

If the proposition is approved by a majority of two-thirds of the members of this chamber, it is transmitted to the Senate.

Should the Senate likewise adopt the proposed amendment by a majority of two thirds of the Senators, it shall be submitted to the sanction of H. I. M. the Sultan.

If it is sanctioned by Imperial iradé, it shall have the force of law.

Every provision of the constitution which is made the object of a proposed change remains in force until the time when the amendment, after having been submitted to the consideration of both chambers, has been sanctioned by imperial iradé.

ART. 117. The interpretation of the laws belongs to

1. The Court of Cassation, for civil and penal laws;
2. The Council of State, for administrative laws;
3. The Senate, for the provisions of the Constitution.

ART. 118. Laws, enactments, usages and customs actually in force shall continue to be applied in so far as they have not been abrogated or modified by other laws and enactments. In the elaboration of laws and enactments, their basis shall be the religious, civil, and moral prescriptions conformable to the needs of humanity and of the times.

Three other articles have been added to the Constitution, which have received the numbers 119, 120 and 121, in the expectation of their being placed under their special headings at the time of the final examination of the constitutional revision.

These three articles are as follows:

ART. 119. Documents and letters delivered to post offices may be opened without an order from an investigating magistrate or from a court.

ART. 120. Ottoman subjects have the right to assemble in meeting provided they respect the provisions of the law *ad hoc*. The formation of organizations prejudicial to good morals or having as their object an attempt against the territorial integrity of the Ottoman Empire, a change in the form of the Constitution and of the government, an agitation against the provisions of the constitutional law, or the political separation of the different Ottoman peoples is forbidden. The formation of secret societies is also absolutely forbidden.

ART. 121. The deliberations of the Senate are public. However, upon the proposal of the ministers or of five Senators to deliberate behind closed doors upon an important question, the session hall is cleared except of members of the Assembly, and the acceptance or rejection of the proposition is submitted to a majority vote.

ASSISTANCE GIVEN AMERICAN CITIZENS SEEKING CONCESSIONS IN TURKEY.

File No. 5012/29.

The Secretary of State to Ambassador Straus.

[Extract.]

No. 24.] DEPARTMENT OF STATE,
Washington, November 1, 1909.

SIR: The department has received your No. 2, of September 23,[1] regarding the demands made upon the embassy by American citizens seeeking concessions in Turkey and the limits or the scope of the official assistance to be given by the embassy in such matters.

You strongly urge the continuance of the rule which, in accordance with an understanding with the department, you adopted during your ministership at Constantinople, in the past—that in applications for concessions on matters of a financial nature should, in the first instance, be made direct to the department, so that the department would not only be advised but might also give such instructions as to it appeared in accordance with the policy and interests of the Government, and that the action of the embassy be limited to securing for such claimants to concessions who seem to be deserving of it an introduction to the respective departmental chiefs having charge of such matters, and then to leave such persons to depend upon their own efforts, without having any right further to claim or rely upon the embassy's assistance in conducting their negotiations.

As you are aware, the general policy of the department has been to seek to have the same opportunity and facilities for submitting proposals, tendering bids, and obtaining contracts as are enjoyed by concerns of any other foreign country afforded to reputable representatives of American concerns, without espousing the claim of any particular individual or firm to the exclusion of others.

The department could not undertake to investigate the financial responsibility of applicants or to ascertain whether they are entitled to the support of the embassy, and thus make the ambassador a bare agent to state and carry into effect the department's conclusions.

It might be possible, however, and expedient for the department to receive and act upon such applications in the first instance in a routine and pro forma way, in order to have a record here and to initiate action by the ambassador, upon whom must rest the real responsibility for determining by the usual method at his place of residence the credit and standing of applicants.

It appears from your dispatch that you are sufficiently aware that applicants claiming to represent American interests are often irresponsible, and your judgment and experience are such as to enable you to give due weight to the standing of the firms who seek your assistance. You need, therefore, no instructions either to support, as far as possible, all proper American efforts to undertake the

[1] Not printed.

development of railway projects and obtain public contracts or to guard against any support of unworthy people.

The department would be pleased to receive a further expression of your opinion as to the most desirable manner of treating cases of this character, with a view to avoiding delay by forwarding to Washington the applications in Turkey of those who are known to be responsible or to be acting as representatives of reputable concerns.

I am, etc.,

P. C. KNOX.

EXTRADITION OF MEMAR RIZK FROM EGYPT.

File No. 21558/1.

The Acting Secretary of State to Ambassador Straus.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, September 24, 1909.

Mr. Adee advises Mr. Straus that the following telegram has been sent to the American consulate at Cairo, Egypt:

Request of the appropriate Egyptian officials the provisional arrest and detention of Memar Rizk pursuant to the provisions of article 5, 1 and 2, of the extradition treaty of 1874 between the United States and Turkey. The fugitive is wanted for murder in New Jersey and a warrant of arrest has been issued. Turkey recognized the treaty as binding and effective by requesting extradition in April, 1908, pursuant to treaty terms. The Department of State honored the request by granting a preliminary certificate under article 5. The department holds that the treaty applies to Egypt, and considers it improper and not in accordance with present municipal law for American consular officers in extraterritorial countries to follow the practice of consuls of other countries by themselves apprehending and returning, by virtue of their extraterritorial powers and jurisdiction, criminals who are fugitives from justice in this country. Moore's Extradition, volume 1, page 100; Digest, volume 4, page 259. Consult Digest, volume 4, section 606, and following as to preliminary mandate and provisional detention under extradition treaties.

Mr. Adee informs Mr. Straus that the telegram is quoted for his information, and instructs him to hold himself in readiness to render such assistance as may be necessary.

(Repeated also to the embassy at London.)

File No. 21558/3.

Vice and Deputy Consul General Cauldwell to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN CONSULATE,
Alexandria, October 2, 1909.

Egyptian ministry for foreign affairs says it is unable to arrest Memar Rizk, as he is a Syrian, but will arrest him on request of Turkish Government. Meantime Rizk will be searched out and watched.

CAULDWELL.

File No. 21558/3.

The Acting Secretary of State to Ambassador Straus.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, October 7, 1909.

Referring to department telegram of September 24 regarding the extradition of Memar Rizk, Mr. Adee informs Mr. Straus that the consulate at Cairo advised the department on October 2 that, as Rizk is a Syrian, the Egyptian minister for foreign affairs could not cause his arrest, but that he could be arrested on request from the Turkish Government, and in the meantime would be searched out and watched. Mr. Adee says that the governor of New Jersey has telegraphed the department that Rizk was never naturalized as an American citizen. Instructs Mr. Straus to informally and discreetly present the matter to the foreign office and to learn if possible if the Government is willing to surrender Rizk, notwithstanding the provisions of article 7 of the treaty. Mr. Adee instructs Mr. Straus in this connection to explain clearly that American courts have construed a similar clause as forbidding surrender by this Government of its own citizens, and that the surrender of Rizk by Turkey would be an act which the United States might not be able to reciprocate. Directs him, if the Ottoman Government is unwilling to undertake to surrender under these circumstances, to make inquiries as to the possibility of trial and punishment of Rizk in Egypt or wherever he be found. Adds that the department is desirous of securing from Turkey clear recognition of application of extradition treaty to Egypt, irrespective of the outcome of this particular case.

File No. 21558/5.

Ambassador Straus to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Pera, October 9, 1909.

Mr. Straus says that the Porte claims that as Rizk is a Turkish subject, it can not consent to his extradition and can not ask the Egyp-

tian authorities to extradite him. Says Porte has neither admitted nor strenuously denied validity of treaty of 1874, but admits if it is valid in Turkey it is valid in Egypt. Mr. Straus says he will press the matter further. Adds that according to Ottoman law, a Turkish subject who has committed a crime in a foreign country against another Turkish subject and has not been tried in the foreign country can be tried in Turkey. Says he does not know the Egyptian law on this point.

File No. 21558/5.

The Acting Secretary of State to Ambassador Straus.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, October 13, 1909.

Referring to embassy's telegram of October 9, Mr. Adee informs Mr. Straus that there should be no question about Turkey regarding the treaty as binding in view of the fact that the Turkish Legation in Washington on April 8, 1908, requested the issuance of a preliminary extradition certificate "under the extradition treaty existing between the United States of America and the Ottoman Empire" and stated that the crime for which the fugitive was wanted was "enumerated in section 1 of article 2 of the extradition treaty concluded between the United States and the Ottoman Empire August 11, 1874." Mr. Adee says the department issued this certificate with the statement that it did so in "fulfillment of this Government's obligations under the existing treaty of extradition between the United States and the Ottoman Empire." Mr. Adee adds that the department regards this as deciding the point that treaty is now valid and operative as between Turkey and the United States and that nothing should be said to Turkey that would indicate that the department has any doubt upon this question and that the department is now concerned only in securing recognition from Turkey that treaty applies to Egypt. Instructs Mr. Straus to secure such information as may be obtainable regarding Egyptian law as to punishment of Rizk in Egypt.

File No. 21558/10.

Ambassador Straus to the Secretary of State.

[Extract.]

No. 19.] AMERICAN EMBASSY,
Constantinople, October 18, 1909.

SIR: On the 8th instant I received your cable of the 7th, wherein you informed me among other things that the governor of New Jersey has telegraphed the department that Rizk was never naturalized as an American citizen, and asked me to present the matter informally to the foreign office and learn if the Government is willing to surrender Rizk, and at the same time to give it to understand that in a similar case our Government might not be able to reciprocate, also

to inquire as to the possibility of his trial and punishment in Egypt or wherever he should be found. You added further that the department is desirous of securing from Turkey a clear recognition of application of the extradition treaty to Egypt, irrespective of the outcome of this particular case.

I took the matter up informally with the Sublime Porte, and cabled you on the 9th instant to the effect that if Rizk is a Turkish subject it could not consent to his extradition nor could it ask the Egyptian authorities to do so, etc. Under the Ottoman law the Porte claims it can not try one of its subjects for a murder committed in a foreign land, unless the victim was also a Turkish subject. I therefore cabled you on the 12th of October to advise me if the person murdered was a Turkish subject. On the 14th I received your cable of the 13th wherein you informed me that upon the request of the Turkish Legation the department issued an extradition certificate, expressly stating that it was done under the existing treaty of extradition of 1874, and you further state "Department regards this as decisive of point that treaty now valid and operative as between Turkey and United States, and nothing should be said which would indicate to Turkey that department has any doubts upon this question. Department now only concerned in securing recognition from Turkey that treaty applies to Egypt. Secure such information as may be obtainable regarding Egyptian law as to punishment of Rizk in Egypt."

The legal adviser of the Porte made the claim that as the treaty of extradition was negotiated together with and on the same day—August 11, 1874—as the treaty of naturalization, and as the latter treaty was not accepted and proclaimed by our Government, the former treaty fell with it. In 1888 I made a report on extradition (see Moore on Extradition, Vol. I, p. 815), where I referred to this claim of the Porte and stated then that I could see no such connection between the two treaties, and that there is no evidence of such connection in the contents of the treaties themselves. I brush this objection aside as having absolutely no basis.

As to your instruction for "securing recognition from Turkey that the treaty applies to Egypt," the Porte admits that if valid here it is valid there; but the fact is the relationship of the Government of Turkey to the Government of Egypt is so remote that I feel almost sure that the Turkish Government would not make a request which would have any effect upon the Egyptian Government. The most it would or could do would be to say to the Egyptian Government that it would be pleased if so and so could be done. This the Sublime Porte has promised us it will do in this case, in the event the victim is an Ottoman subject. I have learned that at various times the Egyptian Government has refused to deliver up to the Turkish Government persons condemned for political crimes. I have made every effort through sources available here to answer your request to secure information regarding Egyptian law as to the punishment of Rizk in Egypt, but I have been unable to secure the desired information, as Egypt has an entirely different set of laws, and such books as we have been able to consult—among which the Egyptian code of criminal procedure—are silent upon that subject.

Before doing anything further in this matter, I shall await your instructions.

I have, etc.,

OSCAR S. STRAUS.

File No. 21558/8.

Ambassador Straus to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Pera, October 30, 1909.

Mr. Straus states that the Sublime Porte says it has requested the Khedive to prosecute Rizk. Adds that the American Consulate at Cairo has been advised.

File No. 21558/9.

Consul-General Iddings to the Secretary of State.

AMERICAN CONSULATE GENERAL,
Cairo, October 31, 1909.

Mr. Iddings says he is informed by the minister for foreign affairs that it is impossible to try Rizk there as he is not Egyptian local subject, and cites penal code native tribunals title 1, chapter 1, rule 3. Mr. Iddings says that he has been informed that orders have been given to send Rizk, who is under police supervision at present, to Constantinople immediately for such action as the Turkish Government may decide. Says that up to 11 o'clock a. m. to-day the minister for foreign affairs had received no request from the grand vizier to prosecute Rizk in Egypt, though Mr. Straus had informed the consulate that the grand vizier had telegraphed such a request the day before.

File No. 21558/9.

The Secretary of State to Ambassador Straus.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 1, 1909.

Mr. Knox acknowledges embassy's telegram of October 30, and informs Mr. Straus that the department was advised on October 31 that the minister for foreign affairs stated that no request had been received from the Turkish Government to prosecute Rizk in Egypt; that such prosecution was impossible under the Egyptian law, as Rizk was not an Egyptian local subject and that orders had been given to send him to Constantinople for action by the Turkish Government.

File No. 21558/10.

The Secretary of State to Ambassador Straus.

No. 26.] DEPARTMENT OF STATE,
Washington, November 8, 1909.

SIR: The department has received your No. 19 of the 18th ultimo, requesting further instructions in the matter of the desired extradition from Egypt of Memar Rizk.

Regarding your inquiry as to whether or not it would be advisable at this time further to press upon the attention of the Ottoman Porte the question of the recognition of the extradition treaty of 1874, it should be said that the department regards that matter as definitively settled so far as Turkey is concerned, not only because of the attitude taken by this Government in 1886 (see I Moore on Extradition, p. 102; also p. 815, where your own report on the matter is to be found); but also because, as set forth in department's cable to you of October 15, the Turkish Government has itself specifically recognized the validity of the treaty by requesting the extradition under it of a fugitive from its justice, who was supposed to have taken refuge in this country.

The department was, and is, however, anxious to secure from Turkey a recognition that the treaty is also applicable to Egypt, and the Porte's statement that the treaty is valid in Egypt if valid in Turkey is hardly as unequivocal a statement upon this point as the department had hoped to secure. The department would therefore be pleased if you could secure from the Porte an unqualified statement that the treaty is in force in Egypt, though it does not desire you to press this matter further than it would seem to you, under all the circumstances of the case, was at this time wise and desirable.

The department has received and answered your cables regarding the nationality of the person who was alleged to have been murdered by Rizk, and regarding the statement of the Ottoman Porte that it would recommend to the Egyptian Government that it should punish Rizk in Egypt for a crime committed by him in the United States.

I am, etc.,

P. C. KNOX.

File No. 21558/13.

The Acting Secretary of State to Ambassador Straus.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, November 11, 1909.

Mr. Wilson informs Mr. Straus that the American consul at Alexandria advises the department that Memar Rizk was arrested and sent to Constantinople under escort on November 11.

File No. 21558/15–16.

Ambassador Straus to the Secretary of State.

[Extract.]

No. 36.] AMERICAN EMBASSY,
Constantinople, November 12, 1909.

SIR: I have the honor to refer to my No. 19 of October 18 last, in the matter of Memar Rizk, his extradition and punishment. On the 22d of October, I sent a note verbale to the Porte upon the subject, a copy of which is inclosed. I followed this up with several conferences with the minister for foreign affairs, and he promised to have his Government immediately communicate with the Khediviate of Egypt, requesting the arrest and trial of said Rizk. Such request was subsequently sent; and I advised our diplomatic agency at Cairo so that it could follow the matter up. Mr. Iddings, our diplomatic agent, informed me by telegram on November 1, that up to 11 o'clock on that day no directions from the Ottoman Government had been received by the minister for foreign affairs in Egypt, but that Rizk will be sent to Constantinople. From investigations here it is clear that a telegram was sent to the Khediviate, and most probably in pursuance of this the Egyptian Government decided to send Rizk to Constantinople, as he is an Ottoman subject. I requested Mr. Iddings to inform me as soon as Rizk is put aboard, and I have just been advised that Rizk is being sent here by steamer due on the 14th.

Under your telegram of October 7, I understand it is your instruction to endeavor to have the Ottoman Government surrender Rizk, notwithstanding the provision of Article VII of the treaty of extradition, but with the express understanding that we could not reciprocate under a similar instance, because our courts have construed a similar clause as forbidding surrender by our Government of its own citizens. I shall do my best to bring about this result, as I appreciate how difficult it would be for us to produce the witness for trial here. The present régime is inclined to be much more technical and exacting in its legal rights than the old régime. However, I shall do my best. I appreciate from your telegraphic instruction, one of your main purposes was to have me clearly establish that our extradition treaty with Turkey of 1874 be applied to Egypt. In view of the fact that Rizk is an Ottoman subject and not an American citizen, you will probably agree with me that it is not a good case to bring up this question in a concrete way, especially, also, as I stated in my dispatch above referred to, the minister for foreign affairs holds to the claim which has been advanced in the past, that he regards the treaty as abrogated, which, of course, we do not admit, as notices given have not been regarded by our Government as sufficient, nor do we admit the claim made that this treaty depended for its validity upon the confirmation and the promulgation of the treaty of naturalization, for as I explained to the minister for foreign affairs, there is no reference in either of these treaties to the other; and without such reference no such connection can properly be predicated.

I have, etc.,

OSCAR S. STRAUS.

[Inclosure.]

Ambassador Straus to the Minister for Foreign Affairs.

No. 3.] AMERICAN EMBASSY,
Constantinople, October 22, 1909.

Note verbale.

The embassy of the United States of America has the honor to inform the Sublime Porte that a short time ago, in the State of New Jersey, United States of America, an Ottoman subject by the name of Memar Rizk murdered another Ottoman subject and then fled from the United States to escape arrest and trial. The said Rizk has taken refuge in Egypt, and his whereabouts is known to the Egyptian authorities, who have him under surveillance at the request of the American consul general at Cairo.

The American Government, for the sake of law and order, desires to have the said Rizk tried and punished for his outrageous crime, knowing that the Ottoman Government is unwilling that one of its subjects, who has murdered another Ottoman subject, should be allowed to escape the proper punishment for so grave a crime.

As Rizk is an Ottoman subject a request for his extradition is not made. This embassy, however, urgently requests the Sublime Porte to make, as an act of international comity, the necessary communication to the Egyptian authorities to arrest the said Rizk and hold him for trial in accordance with the laws applicable to such crimes, and the embassy hopes that it will be possible for the Sublime Porte to take this action promptly, in order that the criminal may not escape his just punishment.

File No. 21558/15–16.

The Secretary of State to Ambassador Straus.

No. 40] DEPARTMENT OF STATE,
Washington, December 3, 1909.

SIR: The department has received your No. 36 of the 12th ultimo, transmitting a copy of your note verbale of October 22 to the Sublime Porte concerning the case of Memar Rizk, a Turkish subject, who murdered another Turk in New Jersey and escaped to Egypt.

In reply you are referred to the department's no 26 of the 8th ultimo, which appears to cover the points involved in your discussion of the case.

For Mr. Knox:

HUNTINGTON WILSON.

URUGUAY AND PARAGUAY.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND PARAGUAY.

Signed at Asuncion March 13, 1909.
Ratification advised by the Senate July 30, 1909.
Ratified by the President August 10, 1909.
Ratified by Paraguay September 28, 1909.
Ratifications exchanged at Asuncion October 2, 1909.
Proclaimed November 11, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Arbitration Convention between the United States of America and the Republic of Paraguay was concluded and signed by their respective Plenipotentiaries at Asuncion, on the thirteenth day of March, one thousand nine hundred and nine, the original of which Convention being in the English and Spanish languages, is word for word as follows:

Arbitration Convention between the United States of America and the Republic of Paraguay.

The Government of the United States of America and the Government of the Republic of Paraguay, signatories of the convention for the pacific settlement of international disputes, concluded at The Hague on the 29th July, 1899;

Taking into consideration that by Article XIX of that Convention the High Contracting Parties have reserved to themselves the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment;

Have authorized the Undersigned to conclude the following Convention:

ARTICLE I.

Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two Contracting States, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States, by and with the advice and consent of the Senate thereof, and on the part of Paraguay shall be subject to the procedure required by her laws.

ARTICLE III.

The present Convention is concluded for a period of five years dating from the day of the exchange of the ratifications.

ARTICLE IV.

The present Convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of Paraguay, with the previous approval of the Legislative Congress. The ratifications shall be exchanged at Asuncion as soon as possible, and the Convention shall take effect on the date of the exchange of its ratifications.

Done in duplicate in the English and Spanish languages at Asuncion, this thirteenth day of March in the year one thousand nine hundred and nine.

EDWARD C. O'BRIEN [SEAL]
MANUEL GONDRA [SEAL]

And whereas the said convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Asuncion, on the second day of October, one thousand nine hundred and nine;

Now, therefore, be it known that I, WILLIAM HOWARD TAFT, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this eleventh day of November in the year of our Lord one thousand nine hundred and nine, [SEAL] and of the Independence of the United States of America the one hundred and thirty-fourth.

WM H TAFT

By the President:
P C KNOX
Secretary of State.

NATURALIZATION CONVENTION BETWEEN THE UNITED STATES AND URUGUAY.

Signed at Montevideo, August 10, 1908.
Ratification advised by the Senate, December 10, 1908.
Ratified by the President, December 26, 1908.
Ratified by Uruguay, May 14, 1909.
Ratifications exchanged at Montevideo, May 14, 1909.
Proclaimed, June 19, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Naturalization Convention between the United States of America and the Oriental Republic of Uruguay was concluded and signed by their respective Plenipotentiaries at Montevideo on the tenth day of August, one thousand nine hundred and eight, the original of which Convention, being in the English and Spanish languages, is word for word as follows:

Naturalization Convention between the United States of America and the Oriental Republic of Uruguay.

The President of the United States of America and the President of the Oriental Republic of Uruguay, desiring to regulate the citizenship of those persons who emigrate from the United States to Uruguay, or from Uruguay to the United States, have resolved to conclude a convention on this subject and for that purpose have appointed their Plenipotentiaries, to wit:

The President of the United States: Edward C. O'Brien, Envoy Extraordinary and Minister Plenipotentiary of the United States in Uruguay;

The President of Uruguay: Antonio Bachini, Minister for Foreign Affairs of Uruguay;

Who, after the mutual communication of their respective full powers, found in good and due form, have agreed upon the following articles:

ARTICLE I.

Citizens of the United States who may be or shall have been naturalized in the Republic of Uruguay upon their own application or by their own consent, will be considered by the United States as citizens of the Republic of Uruguay. Reciprocally, Uruguayans who may be or shall have been naturalized in the United States, upon their own application or by their own consent, will be considered by the Republic of Uruguay as citizens of the United States.

ARTICLE II.

If a Uruguayan, naturalized in the United States, renews his residence in Uruguay, without intent to return to the United States, he may be held to have renounced his naturalization in the United States.

Reciprocally, if an American, naturalized in Uruguay, renews his residence in the United States, without intent to return to Uruguay, he may be held to have renounced his naturalization in Uruguay.

The intent not to return may be held to exist when the person naturalized in one country resides more than two years in the other country, but this presumption may be destroyed by evidence to the contrary.

ARTICLE III.

It is mutually agreed that the definition of the word citizen as used in this convention, shall be held to mean a person to whom nationality of the United States or Uruguay attaches.

ARTICLE IV.

A recognized citizen of the one party, returning to the territory of the other, remains liable to trial and legal punishment for an action punishable by the laws of his original country and committed before his emigration, but not for the emigration itself, saving always the limitation established by the laws of his original country, or any other remission of liability to punishment.

ARTICLE V.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of citizenship legally acquired.

ARTICLE VI.

The present convention shall remain in force for ten years from the date of the exchange of ratifications; and unless one of the contracting parties shall notify the other of its intention to terminate it one year before the expiration of that period, the said treaty shall continue in force from year to year until the expiration of one year after official notice shall have been given by either of the contracting governments of a purpose to terminate it.

ARTICLE VII.

The present treaty shall be submitted to the approval and ratification of the respective appropriate authorities of each of the contracting parties, and the ratifications shall be exchanged at Montevideo as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the foregoing articles, and have affixed their seals.

Done in duplicate at the City of Montevideo, in the English and Spanish languages this tenth day of August, one thousand nine hundred and eight.

[SEAL.] EDWARD C. O'BRIEN
[SEAL.] ANTONIO BACHINI

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged

in the City of Montevideo on the fourteenth day of May, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this nineteenth day of June in the year of our Lord one thousand nine hundred and nine,
[SEAL.] and of the Independence of the United States of America, the one hundred and thirty-third.

WM H TAFT

By the President:
P C KNOX
Secretary of State.

VENEZUELA.

RESUMPTION OF DIPLOMATIC RELATIONS BETWEEN THE UNITED STATES AND VENEZUELA.

GOOD OFFICES OF BRAZIL.

File No. 4832/68.

The Secretary of State to Special Commissioner Buchanan.

DEPARTMENT OF STATE,
Washington, December 21, 1908.

SIR: You receive herewith your commission to represent the President with full power to confer with the Government of Venezuela in all matters relating to the reestablishment of diplomatic relations between the United States and Venezuela.

The cruiser *North Carolina* will await you at Hampton Roads on Tuesday morning, December 22, 1908, and will take you directly to La Guaira. At that port you will find the *Dolphin*, or other vessel of the United States, to which you can transfer your quarters, allowing the *North Carolina* to return immediately to Hampton Roads.

You will immediately put yourself into communication with Mr. Lorena, the minister of Brazil at Caracas, who, by the courtesy of his Government, is in charge of the interests of the United States in Venezuela, and, exhibiting to him your commission, you will request him to make such arrangements as shall be appropriate to bring about the conference for the purposes of which you are commissioned.

The immediate occasion for your appointment is the following dispatch received by the Government of the United States from the Brazilian minister at Caracas through the Brazilian Embassy at Washington:

> Reaction initiated against Gen. Castro. Minister for foreign affairs saw me today; asked make it known (to) American Government wish (of) President Gomez to settle satisfactorily all international questions. Thinks convenient presence American warship La Guaira in prevision of events. He made similar communications to legations. Please transmit Rio.
>
> LORENA.

Upon the receipt of this dispatch the Secretary of State replied to the Brazilian Ambassador requesting him to cable to the Brazilian minister in Caracas to say to the minister for foreign affairs that the United States would act promptly in the sense of his communication.

The international questions pending between the United States and Venezuela, and which we understand to be referred to in the communication of President Gomez, are shown in the printed volume handed to you herewith containing a copy of the message from the President to the Senate, dated March 31, 1908, and the documents transmitted to the Senate therewith, under the title of " Correspondence relating to wrongs done to American citizens by the Government of Vene-

zuela," being Senate Document No. 413, Sixtieth Congress, first session.

You will see by examining this document that there are five American claimants, as to whose claims, after a long and fruitless attempt to secure settlement through diplomatic channels, the United States made to the Government of Venezuela the following proposal:

> As to each and every one of the aforesaid cases, in case you shall not receive a prompt and favorable reply from the Government of Venezuela, you will expressly and formally propose to the Government of Venezuela that the claims against that Government in respect thereof be submitted to arbitration before the Permanent Court of Arbitration at The Hague; or, if Venezeula shall prefer, before a tribunal of three jurists not members of The Hague Tribunal, to be selected in the usual manner.[1]

To this proposal the Government of President Castro made an unqualified refusal.

On the 13th of June, 1908, the American chargé at Caracas was instructed as follows:

> Inform the Government of Venezuela that in view of the persistent refusal of the present Government of Venezuela to give redress for the governmental action by which substantially all American interests in that country have been destroyed or confiscated, or to submit the claims of American citizens for such redress to arbitration, and in view of the tone and character of the communications received from the Venezuelan Government, the Government of the United States is forced to the conclusion that the further presence in Caracas of diplomatic representatives of the United States subserves no useful purpose, and has determined to close its legation in that capital and to place its interests, property, and archives in Venezuela in the hands of the representative of Brazil, which country has kindly consented to take charge thereof.[2]

The communication from President Gomez to the Brazilian minister is understood by this Government to indicate a purpose of the new administration at Caracas to reverse the policy which was followed by President Castro, and which led to the instruction above quoted. If we are right in this understanding, the United States will welcome the reestablishment of diplomatic relations and a good understanding with the only American country between which and the United States there does not now exist the most cordial possible relations.

The purpose indicated by President Gomez will naturally involve an acceptance of the proposal of the United States for the arbitration of the pending claims and the disavowal of the discourtesies referred to in the instructions to the American chargé.

The latter may be in the most general terms and is not deemed to be of primary importance. Indeed, courteous expressions of respect and good will from the new administration might be deemed a sufficient reversal of the former tone to answer.

It is not deemed necessary that you should complete definitively the signing and submission to arbitration of the pending claims, but it will be sufficient if you receive from the Government of President Gomez an explicit statement committing Venezuela to the arbitration of those claims, referring to my communication to Mr. Russell of February 28, 1907, stating fully the character of the claims and appearing at page 559 of the printed volume above referred to.[3]

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[1] See also Foreign Relations, 1908, p. 804.
[2] See For. Rels., 1908, p. 820.
[3] See also For. Rels., 1908, p. 774.

The arbitration may well be described as being an arbitration in conformity to the provisions for the arbitration of pecuniary claims between the United States and the Argentine Republic, Bolivia, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Mexico, Paraguay, Peru, and Uruguay, and agreed upon by the Second International American Conference at Mexico, January 30, 1902, and which was continued by the convention signed at the third Pan-American conference in Rio in 1906.[1] Although Venezuela was not a party to this convention, nevertheless the fairness and propriety of settling these questions by methods which have been accepted as fair and reasonable by such a great proportion of all the American Republics will be manifest to the Government of that country.

In referring to this convention care should be taken that the arbitrators are not precluded from awarding any relief which may be in accordance with justice, although that relief might consist of restoration of property and not be limited to pecuniary compensation.

The claim in behalf of Mr. Jauret is so exceedingly simple and involves so inconsiderable a sum, and is so entirely without answer, that it is probable that both Governments would conclude that settlement be made and which could probably be done for much less than the cost of arbitration. You should not, however, press this view unduly if the Government of Venezuela prefers the arbitration.

In the case of the Orinoco Steamship Co. there is a preliminary question which has been discussed between the two Governments as to whether a former decision by the arbitral tribunal in which Dr. Barge was umpire should be binding and conclusive, so as to preclude a further examination of the merits of the claims. The United States has deemed it quite plain that the decision referred to was of such a character that under the settled rules of international law, to which both the United States and Venezuela have conformed in the past, the decision should not be held to be binding and conclusive and that the claimants are now entitled to an examination of the merits. This view is powerfully supported by the precedent which arose under a decision of the Venezuelan commission of 1866. In that case awards amounting to very large amounts were made by the arbitral tribunal in favor of the United States and against Venezuela. The Venezuelan Government protested against the awards and claimed a reexamination of the merits, to which the United States eventually assented. Upon the subsequent examination awards were made which resulted in a saving of nearly a million and a half dollars, principal and interest, to Venezuela as compared with the findings of the first commission.

The Government of the United States does not, however, wish to press unduly upon the Government of Venezuela under the existing circumstances for an assent to this position, but is willing to submit to an arbitral tribunal, in the first instance, the question whether, under all the existing circumstances, the finding of the mixed commission of which Dr. Barge was umpire ought to be held binding and conclusive and as precluding a further examination, with the understanding that in case the tribunal shall find that the former decision ought to be held binding and conclusive it shall be so held and the

[1] See For. Rels., 1906, p. 1565.

matter ended; but if the tribunal shall find that the former decision ought not to be held binding and conclusive, then the reexamination of the merits shall proceed.

As to the three other claims, viz, the Orinoco Corporation, the United States & Venezuela Co., and the New York & Bermudez Co., the arbitration should be made as broad and comprehensive as possible, to the end that there may be a final and complete settlement and disposition of all the questions existing between these claimants and the Government of Venezuela.

In case your conference has the result contemplated in the foregoing instructions you will procure the result to be incorporated in the form of a protocol and will notify the United States representative. The minister of the United States to Venezuela will be directed to return to his post and the United States will be ready to receive the diplomatic representative of Venezuela.

I am, etc., ELIHU ROOT.

File No. 4832/75.

Special Commissioner Buchanan to the Secretary of State.

[Telegram—Paraphrase.]

WILLEMSTADT, *December 31, 1908.*

Mr. Buchanan reports that the Brazilian minister has communicated to him a note from the Venezuelan minister for foreign affairs, which states that the contents of Mr. Buchanan's note has been reported to Gen. Gomez, and that Gen. Gomez manifested a desire to reach an equitable and just arrangement of matters pending with the United States, and in this sense celebrates the arrival of the high commissioner, who can immediately enter upon the mission with which he comes invested near the Government of Venezuela. Mr. Buchanan adds that he is leaving for Caracas in the afternoon.

File No. 4832/76.

Special Commissioner Buchanan to the Secretary of State.

[Telegram—Paraphrase.]

WILLEMSTADT, *December 31, 1908.*

Mr. Buchanan says that, accompanied by the Brazilian minister, he called upon the Venezuelan minister for foreign affairs, to whom he presented a copy of his commission, and also delivered to him the communication addressed to him by Secretary Root. Mr. Buchanan adds that the conferences were expected to begin on the following day.

File No. 5082/105.

Special Commissioner Buchanan to the Secretary of State.

[Telegram—Paraphrase.]

WILLEMSTADT, *February 10, 1909.*

Mr. Buchanan says the form of submission of the Orinoco case, which was made contingent on settlement of Bermudez case, having been agreed upon, favorable and final action on both took place to-day.

File No. 5082/106.

Special Commissioner Buchanan to the Secretary of State.

[Telegram—Paraphrase.]

WILLEMSTADT, *February 11, 1909.*

Mr. Buchanan reports the settlement of entire Bermudez case, which has been accepted by Bartlett and ratified by cabinet. Adds that protocol has been equally ratified and that he is leaving for United States.

File No. 5082/106.

The Secretary of State to Special Commissioner Buchanan.

[Telegram.]

DEPARTMENT OF STATE,
Washington, February 13, 1909.

Your No. 49. Heartiest congratulations; great work. You have certainly earned the success which you have obtained. Make suitable expression to the Venezuelan authorities of the department's satisfaction at the completion of negotiations.

BACON.

File No. 5082/107.

Special Commissioner Buchanan to the Secretary of State.

[Telegram.]

WILLEMSTADT, *February 14, 1909.*

Protocol signed yesterday at Miraflores in presence of President and Cabinet. Sail early Wednesday on *Des Moines* for Guantanamo. The *Marietta* will take me from Guantanamo to Washington, where expect to arrive night 26th.

BUCHANAN.

File No. 5082/113.

Chargé Janes to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Petropolis, February 21, 1909.

Mr. Janes says the Brazilian minister for foreign affairs offers his personal congratulations on the signing of the protocol for the settlement of American claims against Venezuela.

File No. 4832.

The Secretary of State to the Brazilian Minister at Caracas.

DEPARTMENT OF STATE,
Washington, February 23, 1909.

SIR: The mission of Special Commissioner Buchanan having been successfully concluded by the signature of a protocol in adjustment of the difficulties between the United States and Venezuela, with a favorable prospect of an early resumption of American diplomatic representation at Caracas, it affords me pleasure to express the cordial appreciation of the Government of the United States for your friendly representation, with the consent of your Government, of the interests of the United States in Venezuela during the cessation of diplomatic relations between the two countries, and also for your friendly assistance to Mr. Buchanan during his recent stay in Caracas.

The Government of the United States has been highly gratified at the efficiency and fidelity which have marked your charge, and its cordial thanks are extended to you for the zeal, intelligence, and ability which you have displayed in looking after its interests.

In making this known to you, I beg to assure you of my personal good wishes for your welfare.

I have, etc.,

ROBERT BACON.

File No. 5082/113.

The Secretary of State to the Brazilian Minister for Foreign Affairs.

[Telegram.]

DEPARTMENT OF STATE,
Washington, February 23, 1909.

In announcing to your excellency the successful conclusion of Special Commissioner Buchanan's mission by the signature of a protocol in adjustment of the difficulties between the United States and Venezuela, and, in view of the favorable prospect for an early resumption of our diplomatic representation at Caracas, I beg to express through you the high appreciation of the Government of the

United States of the cordial favor of the Brazilian Government in permitting its agent at Caracas to act in representation of American interests in the absence of a United States minister from that capital.

ROBERT BACON.

File No. 5082/113.

The Secretary of State to Chargé Janes.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, February 23, 1909.

Mr. Bacon informs Mr. Janes that the department appreciates the congratulations of the Brazilian minister for foreign affairs, who is being cabled direct.

File No. 4832/87B.

The Secretary of State to the Brazilian Ambassador.

DEPARTMENT OF STATE,
Washington, February 23, 1909.

DEAR MR. AMBASSADOR: I have the pleasure to inform you that I am telegraphing to-day to His Excellency Baron Rio Branco to express this Government's high appreciation of the kind offices of Brazil in taking charge of American interests in Caracas during the absence of the American minister. I append copy of the telegram on the overleaf for your convenient information. I am also confirming the telegram by a mail communication to Baron Rio Branco.

I have had pleasure in conveying to Senhor Lorens directly this Government's sentiments of appreciation in a note mailed to-day.

I am, etc.,

ROBERT BACON.

File No. 4832/88.

The Brazilian Minister for Foreign Affairs to the Secretary of State.

[Telegram—Translation.]

PETROPOLIS, *February 25, 1909.*

I thank your excellency for the telegram you were so good as to send me, announcing the early resumption of diplomatic relations between the United States of America and Venezuela, and it is with genuine pleasure that I beg your excellency to accept and be pleased to transmit to the American Government the lively congratulations of the Brazilian Government on the happy outcome of the mission intrusted to Mr. Buchanan.

RIO BRANCO.

File No. 4832/89–91.

Special Commissioner Buchanan to the Secretary of State.

WASHINGTON, *February 26, 1909.*

SIR: In connection with my mission to Venezuela, I received instructions from the department authorizing me to communicate to the Venezuelan Government the conditions under which the United States would return its minister to Caracas.

With regard to the above instruction, I beg to inclose herewith a copy of my note of January 18 addressed to the minister for foreign affairs of Venezuela, together with his original note replying thereto and a translation.

I have, etc.,

WM. I. BUCHANAN.

File No. 4832/89–91.

[Inclosure 1.]

Commissioner Buchanan to the Venezuelan Minister for Foreign Affairs.

CARACAS, *January 18, 1909.*

EXCELLENCY: Complying with my promise, made during one of the recent conferences it has been my pleasure to hold with your excellency, that I would inform you of the purposes of my Government with regard to the reestablishment of diplomatic intercourse between your excellency's Government and the Government of the United States, I have the honor to advise your excellency that I am authorized by the Secretary of State to say that immediately upon my advising my Government of the signing of a protocol satisfactorily arranging for the definitive settlement of the differences existing between our respective Governments, that have been the subject of the numerous friendly conferences I have had the honor to hold with your excellency, the Government of the United States will at once have great pleasure in instructing its minister to return to Caracas, and in the same spirit of mutual good understanding will be most happy to receive a diplomatic officer from your excellency's Government.

I take advantage of this opportunity, etc.,

WILLIAM I. BUCHANAN.

[Inclosure 2.—Translation.]

The Minister of Foreign Affairs to Mr. Buchanan.

No. 49.] FOREIGN OFFICE,
Caracas, January 19, 1909.

SIR: I have the honor to acknowledge the receipt of your esteemed note of the 18th instant in which, in accordance with your kind promise, you are good enough to inform me of your Government's intentions relative to the renewal of diplomatic intercourse between the Government of this Republic and that of the United States.

I have communicated to the First Magistrate what your excellency was kind enough to impart to me relative to those purposes, and it gives me much pleasure to advise you that the general in charge of the presidency has welcomed the information with entire satisfaction.

In thanking your excellency for the generous interest you have taken in this matter, I avail myself, etc.,

F. GONZALEZ GUINAN.

DECISION AND ADJUSTMENT OF CERTAIN CLAIMS—PROTOCOL OF AN AGREEMENT AND EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND VENEZUELA.

Protocol signed at Caracas, February 13, 1909.
Exchange of notes signed at Caracas, September 13–14, 1909.

William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of the United States of Venezuela, duly authorized by General Juan Vicente Gomez, Vice-President of the United States of Venezuela, in charge of the Presidency of the Republic, having exhibited to each other and found in due form their respective powers, and animated by the spirit of sincere friendship that has always existed and should exist between the two nations they represent, having conferred during repeated and lengthy conferences concerning the manner of amicably and equitably adjusting the differences existing between their respective Governments with rgard to the claims pending between them, since neither the United States of America nor the United States of Venezuela aspires to anything other than sustaining that to which in justice and equity it is entitled; and as a result of these conferences have recognized the great importance of arbitration as a means toward maintaining the good understanding which should exist and increase between their respective nations, and to the end of avoiding hereafter, so far as possible, differences between them, they believe it is from every point of view desirable that a treaty of arbitration shall be adjusted between their respective Governments.

With respect to the claims that have been the subject of their long and friendly conferences, William I. Buchanan and Doctor Francisco González Guinán have found that the opinions and views concerning them sustained by their respective Governments have been, and are, so diametrically opposed and so different that they have found it difficult to adjust them by common accord; wherefore it is necessary to resort to the conciliatory means of arbitration, a measure to which the two nations they represent are mutually bound by their signatures to the treaties of the Second Peace Conference at The Hague in 1907, and one which is recognized by the entire civilized world as the only satisfactory means of terminating international disputes.

Being so convinced, and firm in their resolution not to permit, for any reason whatever, the cordiality that has always existed between their respective countries to be disturbed, the said William I. Buchanan and Doctor Francisco González Guinán, thereunto fully authorized, have adjusted, agreed to and signed the present Protocol for the settlement of the said claims against the United States of Venezuela, which are as follows:

1. The claim of the United States of America on behalf of the Orinoco Steamship Company;

2. The claim of the United States of America on behalf of the Orinoco Corporation and of its predecessors in interest, The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited; and,

3. The claim of the United States of America on behalf of the United States and Venezuela Company, also known as the Crichfield claim.

ARTICLE I.

With respect to the first of these claims, that of the Orinoco Steamship Company, the United States of Venezuela has upheld the immutability of the arbitral decision of Umpire Barge, rendered in this case, alleging that said decision does not suffer from any of the causes which by universal jurisprudence give rise to its nullity, but rather that it is of an unappealable character, since the *compromis* of arbitration can not be considered as void, nor has there been an excessive exercise of jurisdiction, nor can the corruption of the judges be alleged, nor an essential error in the judgment; while on the other hand, the United States of America, citing practical cases, among them the case of the revision, with the consent of the United States of America, of the arbitral awards rendered by the American-Venezuelan Mixed Commission created by the Convention of April 25, 1866, and basing itself on the circumstances of the case, considering the principles of international law and of universal jurisprudence, has upheld not only the admissibility but the necessity of the revision of said award; in consequence of this situation, William I. Buchanan and Doctor Francisco González Guinán, in the spirit that has marked their conferences, have agreed to submit this case to the elevated criterion of the Arbitral Tribunal created by this Protocol, in the following form:

The Arbitral Tribunal shall first decide whether the decision of Umpire Barge, in this case, in view of all the circumstances and under the principles of international law, is not void, and whether it must be considered so conclusive as to preclude a reexamination of the case on its merits. If the Arbitral Tribunal decides that said decision must be considered final, the case will be considered by the United States of America as closed; but on the other hand, if the Arbitral Tribunal decides that said decision of Umpire Barge should not be considered as final, said Arbitral Tribunal shall then hear, examine and determine the case and render its decision on the merits.

ARTICLE II.

During the many conferences regarding the matter of the United States of America on behalf of the Orinoco Corporation and of its predecessors in interest against the United States of Venezuela, held between William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of Venezuela, they have found the views and conclusions held and maintained by their respective Governments with respect to the rights and claims of the claimant company so diametrically opposed to each other, as to make it impossible to reconcile them through the medium of direct negotiations between their Governments.

Among these they have encountered the allegation of the United States of America, on behalf of the claimant company, that by the act of the National Congress of Venezuela, and by resolutions and other acts of the Executive Power thereof, the rights and claims insisted upon and claimed by the United States of America on behalf of the claimant company, in and under the Fitzgerald concession, the origin of the present case, are firmly recognized and affirmed as subsistent

and valid, and that the Government of Venezuela has insisted and insists that the decision of Umpire Barge of April 12, 1904, which Venezuela considers irrevocable, and the decision handed down by the Federal Court and of Cassation of Venezuela on March 18, 1908, furnish of and in themselves conclusive proof against the rights and the pretensions of the claimant company, since said company, even though it be accepted as the assignee of the others, has not established itself in accordance with the laws of Venezuela, and even though it had so established itself, it was beforehand subjected to Venezuelan laws and it was agreed that these should govern and decide the contentions and differences that might arise; whereas the United States of America, on behalf of the claimant company, has declined and declines in any manner to admit that said decision of Umpire Barge or that of the Federal Court and of Cassation of Venezuela could terminate or has terminated or extinguished the rights and claims asserted by the claimant company under said Fitzgerald contract, but that on the contrary the rights and claims asserted in connection therewith by the claimant company are valid and subsisting.

In view of these and other equally conflicting conclusions reached and persistently maintained by their respective Governments with regard to this case, the Representatives herein named, animated by a firm resolve to do all in their power to maintain and increase a good understanding between their Governments, and by a fixed desire to provide for the adjustment of the differences existing between them in this case, in justice and equity, can not escape the conclusion that the same cordial spirit which has prevailed in their many conferences already held counsels and points to the expediency and necessity of submitting this case to an impartial International Tribunal in order that the differences arising therefrom may be once and for all determined and concluded in a just and equitable manner. To reach this desirable end, and in accordance with the principles set out:

It is Agreed between William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of the United States of Venezuela, duly authorized to this end by their respective Governments, that the matter of the United States of America, on behalf of the Orinoco Corporation and of its predecessors in interest, The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited, shall be submitted to the Arbitral Tribunal created by this Protocol.

Said Arbitral Tribunal shall examine and decide:

1. Whether the decision of Umpire Barge of April 12, 1904, under the principles of international law is not void and whether it preserves a conclusive character, in the case of the predecessors in interest of the claimant company against Venezuela;

2. If the Arbitral Tribunal decides that said decision shall be considered conclusive, it shall then decide what effect said decision had with respect to the subsistence of the Fitzgerald contract, at that date, and with respect to the rights of the claimant company or those of its predecessors in interest in said contract;

3. If it decides that the decision of said Umpire Barge shall not be considered conclusive, said Arbitral Tribunal shall examine on their merits and shall decide the matters submitted to said Umpire by the predecessors in interest of the claimant company;

4. The Arbitral Tribunal shall examine, consider and decide whether there has been manifest injustice done the claimant company or its predecessors in interest regarding the Fitzgerald contract through the decision of the Federal Court and of Cassation rendered March 18, 1908, in the suit maintained by the Government of Venezuela against the predecessors in interest of the claimant company, or through any of the acts of any of the authorities of the Government of Venezuela.

If the Arbitral Tribunal decides that such injustice has been done, it is empowered to examine the matter of the claimant company and of its predecessors in interest against the Government of Venezuela on its merits, and to render a final decision with respect to the rights and the obligations of the parties, fixing such damages as in its elevated judgment it believes to be just and equitable.

In every event the Arbitral Tribunal shall decide:

(*a*) What effect, if any, said decision of the Federal Court and of Cassation produced and has upon everything relating to the rights of the claimant company as assignee of the Fitzgerald contract;

(*b*) Whether said Fitzgerald contract is in force; and,

(*c*) If it determines that said contract is in force, then, what are the rights and the obligations of the claimant company on the one hand, and of the Government of Venezuela on the other.

Article III.

William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of the United States of Venezuela, have carefully considered in the conferences they have held, the matter of the United States of America on behalf of the United States and Venezuela Company against the United States of Venezuela, also known as the Crichfield case, and have found that while the questions involved therein differ in several aspects from those in the other claims they have considered, the same radically different views held by their respective Governments in those cases exist in the case under consideration.

To the end therefore, that nothing shall be left pending that will not tend to add to the good understanding and friendship existing between the two Governments, their Representatives above-named, William I. Buchanan and Doctor Francisco González Guinán hereby agree that the matter of the United States of America on behalf of the United States and Venezuela Company against the United States of Venezuela shall be submitted to the Arbitral Tribunal created by this Protocol, and they further agree that said Tribunal is empowered to examine, consider, hear, determine and make its award in said case on its merits in justice and equity.

Article IV.

The United States of America and the United States of Venezuela having, at the Second Peace Conference held at The Hague in 1907, accepted and recognized the permanent court of The Hague, it is agreed that the cases mentioned in Articles I, II, and III of this Protocol, that is to say, the case of the Orinoco Steamship Company,

that of the Orinoco Corporation and of its predecessors in interest and that of the United States and Venezuela Company, shall be submitted to the jurisdiction of an Arbitral Tribunal composed of Three Arbitrators chosen from the above-mentioned Permanent Court of The Hague.

No member of said Court who is a citizen of the United States of America or of the United States of Venezuela shall form part of said Arbitral Tribunal, and no member of said Court can appear as counsel for either nation before said Tribunal.

This Arbitral Tribunal shall sit at The Hague.

ARTICLE V.

The said Arbitral Tribunal shall, in each case submitted to it, determine, decide and make its award, in accordance with justice and equity. Its decisions in each case shall be accepted and upheld by the United States of America and the United States of Venezuela as final and conclusive.

ARTICLE VI.

In the presentation of the cases to the Arbitral Tribunal both parties may use the French, English or Spanish language.

ARTICLE VII.

Within eight months from the date of this Protocol, each of the parties shall present to the other and to each of the members of the Arbitral Tribunal, two printed copies of its case, with the documents and evidence on which it relies, together with the testimony of its respective witnesses.

Within an additional term of four months, either of the parties may in like manner present a counter case with documents and additional evidence and depositions, in answer to the case, documents, evidence and depositions of the other party.

Within sixty days from the expiration of the time designated for the filing of the counter cases, each Government may, through its Representative, make its arguments before the Arbitral Tribunal, either orally or in writing, and each shall deliver to the other copies of any arguments thus made in writing, and each party shall have a right to reply in writing, provided such reply be submitted within the sixty days last named.

ARTICLE VIII.

All public records and documents under the control or at the disposal of either Government or in its possession, relating to the matters in litigation shall be accessible to the other, and, upon request, certified copies of them shall be furnished. The documents which each party produces in evidence shall be authenticated by the respective Minister for Foreign Affairs.

ARTICLE IX.

All pecuniary awards that the Arbitral Tribunal may make in said cases shall be in gold coin of the United States of America, or in its

equivalent in Venezuelan money, and the Arbitral Tribunal shall fix the time of payment, after consultation with the Representatives of the two countries.

ARTICLE X.

It is agreed that within six months from the date of this Protocol, the Government of the United States of America and that of the United States of Venezuela shall communicate to each other, and to the Bureau of the Permanent Court at The Hague, the name of the Arbitrator they select from among the members of the Permanent Court of Arbitration.

Within sixty days thereafter the Arbitrators shall meet at The Hague and proceed to the choice of the Third Arbitrator in accordance with the provisions of Article 45 of the Hague Convention for the peaceful Settlement of International Disputes, referred to herein.

Within the same time each of the two Governments shall deposit with the said Bureau the sum of fifteen thousand francs on account of the expenses of the arbitration provided for herein, and from time to time thereafter they shall in like manner deposit such further sums as may be necessary to defray said expenses.

The Arbitral Tribunal shall meet at The Hague twelve months from the date of this Protocol to begin its deliberations and to hear the arguments submitted to it. Within sixty days after the hearings are closed its decision shall be rendered.

ARTICLE XI.

Except as provided in this Protocol the arbitral procedure shall conform to the provisions of the Convention for the Peaceful Settlement of International Disputes, signed at The Hague on October 18, 1907, to which both parties are signatory, and especially to the provisions of Chapter III thereof.

ARTICLE XII.

It is hereby understood and agreed that nothing herein contained shall preclude the United States of Venezuela, during the period of five months from the date of this Protocol, from reaching an amicable adjustment with either or both of the claimant companies referred to in Articles II and III herein, provided that in each case wherein a settlement may be reached, the respective company shall first have obtained the consent of the Government of the United States of America.

The undersigned, William I. Buchanan and Francisco González Guinán, in the capacity which each holds, thus consider their conferences with respect to the differences between the United States of America and the United States of Venezuela as closed, and sign two copies of this Protocol of the same tenor and to one effect, in both the English and Spanish languages, at Caracas, on the thirteenth day of February one thousand nine hundred and nine.

WILLIAM I BUCHANAN [SEAL.]
F. GONZÁLEZ GUINÁN. [SEAL.]

Minister Russell to the Minister for Foreign Affairs.

SEPTEMBER 13, 1909.

MR. MINISTER: Referring to a conversation on the subject, I have the honor to inform your excellency that the Department of State of the United States of America assents to Venezuela's suggestion to modify article 10 of the protocol signed February 13, 1909, by fixing October 15 as the date on or before which the arbitrators must be named, and providing for a meeting at The Hague of the arbitrators so chosen, between January 5 and 15, 1910, to select a third; always provided that Venezuela will also agree to modify article 7 of the above-mentioned protocol by fixing January 1, 1910, as the date for the presentation of the case, and April 30, 1910, as the date for the presentation of the counter case; and to modify article 10 by fixing May 15, 1910, as the date for the meeting of the arbitral tribunal.

I am instructed to inform your excellency that the protocol of February 13, 1909, is approved by the Government of the United States of America, and is in effect in the United States, and that the President of the United States of America transmitted said protocol to the Senate for its information in a message dated April 20, 1909.

I take this occasion to renew to your excellency the assurance of my highest and most distinguished consideration.

WILLIAM W. RUSSELL.

To his excellency Gen. JUAN PIETRI,
Minister for Foreign Affairs.

The Minister for Foreign Affairs to Minister Russell.

[Translation.]

D. P. E. No. 1464.] UNITED STATES OF VENEZUELA,
MINISTRY OF FOREIGN AFFAIRS,
Caracas, September 14, 1909.

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's note of yesterday's date in regard to fixing certain extensions and dates in connection with the protocol of February 13 last, between the United States of Venezuela and the United States of America.

In reply, I am pleased to inform your excellency that the Government of Venezuela assents to the 15th of next October as the date on or before which appointment must be made of the arbitrators referred to in article 10 of the above-mentioned protocol. The Government of Venezuela also agrees that the first meeting of the arbitrators to select a third shall take place between the 5th and 15th of January, 1910; that January 1, 1910, shall be the date for the presentation of the cases of the two Governments; that April 30, 1910, shall be the date for the presentation of the counter case, and May 15, 1910, the date for the meeting of the arbitral tribunal.

Note has been taken of the fact that the protocol of February 13, 1909, has been approved by the Government of the United States,

and is in effect in said Nation, whose President transmitted it to the Senate for its information in a message dated April 20 last.

I take this occasion, etc.,

J. PIETRI.

To his excellency W. W. RUSSELL, *etc.*

SETTLEMENT OF THE CLAIM OF THE UNITED STATES & VENEZUELA CO.—PROTOCOL BETWEEN THE UNITED STATES AND VENEUZELA.

Signed at Caracas, August 21, 1909.

Protocol of settlement between the United States of America, on behalf of the United States and Venezuela Company, and the United States of Venezuela, signed at Caracas, Venezuela, August 21, 1909.

The United States of America and the United States of Venezuela, through their representatives, William W. Russell, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, and General Juan Pietri, Minister for Foreign Affairs of the United States of Venezuela, duly authorized by their respective Governments, have agreed upon and signed the following Protocol of Settlement:[1]

Whereas, under a certain Protocol between the United States of America and the United States of Venezuela for the decision and adjustment of certain claims, signed at Caracas on the 13th day of February, 1909, it was agreed that the claim of the United States and Venezuela Company against the United States of Venezuela, also known as the "Crichfield Case", should be submitted to the jurisdiction and adjudication of three arbitrators to be chosen from the Permanent Court at The Hague, created at the Second Peace Conference, held at The Hague in 1907, the Company fixing the value of said claim at one million five hundred thousand dollars ($1,500,000.00); and

Whereas, the respective Governments, animated by the spirit of sincere friendship that has always existed and should exist between the two Nations, and actuated by the firmest desire to maintain and continue the good understanding which should exist and increase between them, and to the end of avoiding all possible future differences regarding this matter, and of adjusting existing differences concerning said claim by common accord, instead of further proceedings under the said Protocol, and in pursuance of the express provision of Article XII of said Protocol, as heretofore extended by the joint agreement of the said Governments, have now reached an amicable arrangement and adjustment of the said claim and have agreed to and do adjust the same in the manner and form hereinafter stated.

First. The United States of America, on behalf of the United States and Venezuela Company, and on behalf of Ralph T. Rokeby, as Trustee for the mortgage bondholders of the United States and Venezuela Company, hereby releases to the United States of Venezuela forever, all the right, title, and interest of the United States and Venezuela Company, and of said Trustee for the said bondholders, in and to the following described property:—

[1] Spanish text not printed.

1. The mining concession to the mine Inciarte, granted on the 18th day of June, 1900, by the Government of Venezuela to Doctor Pedro Guzmán, and thereafter and on the 5th day of February, 1901, assigned and sold from Pedro Guzmán to George W. Crichfield, and thereafter and on the 2d day of January, 1902, assigned by George W. Crichfield to the United States and Venezuela Company, together with the mine and its appurtenances, subject to the provisions stipulating the right of the said Doctor Guzmán to collect two (2) bolivars per ton on every ton of asphalt exported.

2. A certain concession, bearing date the 20th day of April, 1901, between the United States of Venezuela and George W. Crichfield, as grantee, for a railroad to develop said mining property, which railroad starting from the mine Inciarte ends on the banks of the river Limón, near its confluence with the river Sucuy, said concession being thereafter assigned by George W. Crichfield to the United States and Venezuela Company, by assignment bearing date the 2d day of January, 1902, which transfer was assented to by the Venezuelan Government on the 30th day of January, 1902; together with the railroad, rolling stock, refinery, wharves and personal property and appurtenances connected therewith, as the same exist at present.

Second. In consideration of the premises, and in payment of the above-mentioned release, the United States of Venezuela covenants, promises and agrees to pay to the United States of America therefor the sum of four hundred and seventy-five thousand dollars ($475,000.00), in gold coin of the United States of America, of the present standard of weight and fineness, at the office of the Secretary of State, Washington, D. C., in the United States of America, in eight (8) equal installments at the following times, namely:—

1. The first payment of fifty-nine thousand three hundred and seventy-five dollars ($59,375.00) to be made forthwith upon the signing of this agreement.

2. The second payment of the same amount to be made one year from the date hereof, at the same place, and thereafter the third, fourth, fifth, sixth, seventh, and eighth payments to be made annually, of the same amounts, one year apart, at the same place.

Third. By virtue of the present agreement the United States of America, in the name of the United States and Venezuela Company, and of Ralph T. Rokeby, Trustee for the mortgage bondholders of said Company, declare themselves to be fully paid and satisfied for all claims of the United States of Venezuela Company against Venezuela; and the United States of Venezuela declares itself to be fully paid and satisfied for all claims of the United States of Venezuela against the United States and Venezuela Company.

In witness whereof the undersigned have hereunto set their hands and seals this twenty first day of August, one thousand nine hundred and nine.

[SEAL.] WILLIAM W. RUSSELL
[SEAL.] PIETRI

22591°—F R 1909——40

SETTLEMENT OF THE CLAIM OF THE ORINOCO CORPORATION—PROTOCOL AND EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND VENEZUELA.

Signed at Caracas, September 9, 1909.

The United States of America and the United States of Venezuela, through their representatives, William W. Russell, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, and General Juan Pietri, Minister for Foreign Affairs of the United States of Venezuela, duly authorized by their respective Governments, have agreed upon and signed the following Protocol of Settlement:—

Whereas, under a certain Protocol between the United States of America and the United States of Venezuela for the decision and adjustment of certain claims, signed at Caracas on the 13th day of February, 1909, it was agreed that the claim of The Orinoco Corporation and of its predecessors in interest, The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited, against the United States of Venezuela should be submitted to the jurisdiction of three arbitrators to be chosen from the Permanent Court of The Hague, created at the Second Peace Conference, held at The Hague in 1907, the claimant company fixing the value of said claim at one million seven hundred and fifty thousand dollars ($1,750,000); and

Whereas, the respective Governments, animated by the spirit of sincere friendship that has always existed and should exist between the two Nations, and actuated by the firmest desire to maintain and continue the good understanding which should exist and increase between them, and to the end of avoiding all possible future differences regarding this matter and of adjusting existing differences concerning said claim by common accord, instead of further proceedings under said Protocol, and in pursuance of the express provision of Article XII of said Protocol, as heretofore extended by the joint agreement of the said Governments, have now reached an amicable arrangement and adjustment of the said claim and have agreed to and do adjust the same in the manner and form hereinafter stated.

First. The United States of America, on behalf of The Manoa Company Limited, The Orinoco Company, The Orinoco Company Limited and The Orinoco Corporation, hereby releases to the United States of Venezuela forever all the right, title and interest of The Manoa Company Limited, The Orinoco Company, The Orinoco Company Limited and The Orinoco Corporation, in and to the following described property:—

The concession granted by the Government of the said the United States of Venezuela unto Cyrenius C. Fitzgerald, under date of September 22, 1883, which concession was afterwards transferred and assigned by said Fitzgerald unto the said The Manoa Company Limited, and by that company to the said The Orinoco Company, and by that company to the said The Orinoco Company Limited, and by that company to the said The Orinoco Corporation, including all the rights, privileges, benefits and immunities which are, or have ever been, claimed by said Fitzgerald and said several companies, or by any, or either of them, in or to the aforesaid premises or concession, or any part or parcel thereof, or to the deposits or mines of iron,

asphalt, gold or other minerals or substances of whatever description within the limits of said concession, as well as the administration, saw-mill, and other buildings, and all machinery and other personal property now on said concession belonging to said companies, or either or any of them.

And the said United States of America, on behalf of said companies, and of each and every of them, respectively, waives in favor of the said the United States of Venezuela, all and singular, the claims and demands of the said companies, and of each and every of them which they, or either, or any of them, or the said the United States of America, on their behalf, have made or might make against the said the United States of Venezuela, originating out of, or in any way connected with, or appertaining to said concession, or to the rights, privileges, benefits and immunities thereby granted or conceded or growing out of the alleged seizure and destruction of the steamer the "*Perla*" by the military forces of the said the United States of Venezuela, and from all and singular the other claims and demands, if any, which might be made in behalf of said companies, or any, or either of them, which they or any, or either of them, or the said the United States of America, in their behalf, have made or might make against the said the United States of Venezuela, on any account whatever.

Second. In consideration of the premises, and in compensation for the above-mentioned waiver, the United States of Venezuela convenants, promises and agrees to pay to the United States of America therefor the sum of three hundred and eighty-five thousand dollars ($385,000.00), in gold coin of the United States of America, of the present standard of weight and fineness, at the office of the Secretary of State, Washington, D. C., in the United States of America, in eight (8) equal installments at the following times, namely:—

1. The first payment of forty-eight thousand one hundred and twenty-five dollars ($48,125.00) to be made the day following that on which this Protocol is approved by the Federal Executive of the United States of Venezuela.

2. The second payment of the same amount to be made one year from the date hereof, at the same place, and thereafter the third, fourth, fifth, sixth, seventh and eighth payments to be made annually, of the same amounts, one year apart, at the same place.

Third. By virtue of the present agreement the United States of America, in the name of The Orinoco Corporation and of its predecessors in interest, The Monoa Company Limited, The Orinoco Company and The Orinoco Company Limited, declare themselves to be fully paid and satisfied for all claims of The Orinoco Corporation and of its predecessors in interest, The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited, against Venezuela; and the United States of Venezuela declares itself to be fully paid and satisfied for all claims of the United States of Venezuela against The Orinoco Corporation and its predecessors in interest, The Manoa Company Limited, The Orinoco Company and the Orinoco Company Limited.

IN WITNESS WHEREOF the undersigned have hereunto set their hands and seals this ninth day of September, one thousand nine hundred and nine.

WILLIAM W. RUSSELL. [SEAL]

PIETRI [SEAL]

Minister Russell to the Minister for Foreign Affairs.

SEPTEMBER 9, 1909.

Mr. MINISTER: In connection with the protocol of settlement just signed between the United States of America, on behalf of the Orinoco Corporation and of its predecessors in interest, the Manoa Co. (Ltd.), the Orinoco Co. and the Orinoco Co. (Ltd.), and the United States of Venezuela, I have the honor to state to your excellency that it is the understanding of my Government that the United States of Venezuela also agrees to adjust, satisfy and discharge the fees which may be due the defendant attorneys of the Manoa Co. (Ltd.) and the Orinoco Co. (Ltd.), in the suit instituted by the United States of Venezuela against the Manoa Co. (Ltd.) and the Orinoco Co. (Ltd.) in the Federal court and of cassation, and to forever save harmless the United States of America, the said Manoa Co. (Ltd.) and the Orinoco Co. (Ltd.), the Orinoco Co. and the Orinoco Corporation, from any and all liability to make further compensation for such services.

The United States of America undertakes to pay out of the sum of $385,000 to be received from the United States of Venezuela, in settlement of this case, a reasonable compensation, the amount thereof to be fixed by the Secretary of State of the United States of America, to the defendant attorney or attorneys in the suit brought on or about March 18, 1905, in the Federal court and of cassation at Caracas, by Mr. Padrón Uztariz against the said the Manoa Co. (Ltd.) and the said the Orinoco Co. (Ltd.), as compensation for the professional services of said defendant attorney or said defendant attorneys in said suit.

I take this occasion to renew to your excellency the assurance of my highest and most distinguished consideration.

WILLIAM W. RUSSELL.

To His Excellency Gen. JUAN PIETRI,
Minister for Foreign Affairs.

The Minister for Foreign Affairs to Minister Russell.

[Translation.]

D. P. E. No. 1416.]

UNITED STATES OF VENEZUELA,
MINISTRY OF FOREIGN AFFAIRS,
Caracas, September 9, 1909.

MR. MINISTER: In connection with the protocol of settlement just signed between the United States of Venezuela and the United States of America, on behalf of the Orinoco Corporation and of its predecessors in interest, the Manoa Co. (Ltd.), the Orinoco Co., and the

Orinoco Co. (Ltd.), I have the honor to state to your excellency that it is understood that the United States of Venezuela also agrees to adjust, satisfy, and discharge the fees which may be due the defendant attorneys of the Manoa Co. (Ltd.) and the Orinoco Co. (Ltd.) in the suit instituted by the Republic against the Manoa Co. (Ltd.) and the Orinoco Co. (Ltd.) in the Federal court and of cassation, and to forever save harmless the United States of America and said Manoa Co. (Ltd.), Orinoco Co. (Ltd.), Orinoco Co., and Orinoco Corporation from any and all liability to make further compensation for such services.

It is likewise understood that the United States of America undertakes to pay out of the sum of $385,000 to be received from Venezuela in settlement of this case, a reasonable compensation, the amount thereof to be fixed by the Secretary of State of the United States of America, to the defendant attorney or attorneys in the suit instituted on or about March 18, 1905, in the Federal court and of cassation of the Republic by Mr. Padrón Uztariz against said Manoa Co. (Ltd.) and Orinoco Co. (Ltd.), as compensation for the professional services of said defendant attorney or said defendant attorneys in said suit.

I thus answer the courteous note of your excellency of even date herewith in regard to the foregoing.

Please accept, your excellency, etc., etc., etc.

JUAN PIETRI.

To His Excellency WILLIAM W. RUSSELL,
E. E. and M. P. of the U. S. A.

AGREEMENT BETWEEN THE UNITED STATES AND VENEZUELA FOR THE SETTLEMENT OF THE CLAIM OF A. F. JAURETT.

Signed at Caracas, February 13, 1909.

William I. Buchanan, High Commissioner, Representing the President of the United States of America, and Doctor Francisco Gonzalez Guinan, Minister for Foreign Affairs of the United States of Venezuela, sufficiently authorized by General Juan Vicenta Gomez, in charge of the Presidency of the Republic, having examined and discussed at length the claim of A. F. Jaurett, have reached the following conclusions:

The Government of the United States of America does not deny the right which the United States of Venezuela have reserved to themselves by section 22 of Article 80 of the constitution, which says:

> 22. When it deems it expedient, to prohibit the entry of into the national territory, or to expel therefrom, foreigners who have not their domicile established in the country.

But at the same time, the United States of America bases its support to the Jaurett claim upon the fact that he had lived in Venezuela more than five years and had his domicile in the territory and the seat of certain negociations that produced him a profit which he was compelled forcibly to abandon.

The Government of the United States of Venezuela, on its part, seeks only to uphold its rights in justice, it recognizes that in reality Jaurett had, in accordance with Articles 20 and 22 of the Civil Code,

established his rights of domicile, and that he is entitled to some indemnity on account of the injury caused him by virtue of his forcible expulsion; and, therefore, Messrs. Buchanan and Gonzalez Guinan, animated with the spirit of conciliation which has marked the conferences they have held, agree to fix said indemnity at three thousand dollars American gold, which sum, Mr. Buchanan, duly authorized to that effect, will receive; said claim being thus liquidated and absolutely settled.

Thus Messrs. Buchanan and Gonzalez Guinan have agreed, signing two copies in each of the English and Spanish languages, to a single effect, at Caracas, on February thirteenth, 1909.

[SEAL] WILLIAM I. BUCHANAN.
[SEAL] F. GONZALEZ GUINAN.

DIPLOMATIC RELATIONS BETWEEN VENEZUELA AND THE NETHERLANDS.

File No. 14457/8–11.

Mr. Brewer to the Secretary of State.

[Extract.]

AMERICAN LEGATION,
Caracas, July 25, 1908.

SIR: I have the honor to inform you that on July 20th Mr. J. H. de Reus, minister resident of the Netherlands to Venezuela, was sent his passports by the Venezuelan Government. I so informed the department by cable of the 21st instant.

The reason for this action on the part of the Venezuelan Government is a communication written by Mr. de Reus to a commercial union of Amsterdam, where it was subsequently published in the monthly bulletin of the association, criticizing the political and commercial situation existing in this country.

Mr. de Reus leaves on the arrival of a Dutch warship.

I enclose copy and translation of the communication from the minister for foreign affairs of Venezuela transmitting his passports to Mr. de Reus, together with a copy and translation of a note to the Dutch minister for foreign affairs, which latter Mr. de Reus has returned to the foreign office with the explanation that he is no longer a channel for communication between the two countries.

I have, etc.,

JOHN BREWER.

[Inclosure 1—Translation.]

The Venezuelan Minister for Foreign Affairs to the Minister for Foreign Affairs of The Netherlands.

UNITED STATES OF VENEZUELA,
MINISTRY OF FOREIGN AFFAIRS,
Caracas, July 20, 1908.

YOUR EXCELLENCY: The Supreme Magistrate of the Republic, surprised at learning of the terms expressed in a letter addressed by his excellency, Mr. J. H. de Reus, to the Commercial Association "Hou' en Trouw," dated Caracas,

April 9 of the present year, and published in the Fijdschrift der Vereeniging Hou' en Trouw, No. 5, of Amsterdam, month of May last, under the heading "Informatiebureau," has seen the necessity of declaring Mr. de Reus inadequate to continue serving as a friendly medium in the relations which the Government of Venezuela cultivates with your excellency's Government, and, consequently, has ordered me to send Mr. de Reus his passports in order that he may leave the country.

This measure, made indispensable by an imperious duty to guard the national decorum, only affects the person of Mr. de Reus in his relations with the Venezuelan Government, and in no way alters the good understanding fortunately existing between the two countries and which Venezuela desires to preserve in the highest grade of cordiality, cultivating it with any other organ that may know how to appreciate that good will and employ fit measures, as a messenger of friendship and harmony, for the attainment of the aims of both countries.

I have the honor, etc.,

(Signed) J. DE J. PAÚL.

[Inclosure 2—Translation.]

The Venezuelan Minister of Foreign Affairs to The Netherlands Minister.

UNITED STATES OF VENEZUELA,
MINISTRY OF FOREIGN AFFAIRS,
Caracas, July 20, 1908.

MR. MINISTER: Gen. Cipriano Castro, Constitutional President of the Republic, being acquainted with the views of the letter dated April 9 of the present year, addressed by your excellency to the Commercial Association "Hou' en Trouw," and published in the Fijdschrift der Vereeniging Hou' en Trouw, No. 5 of May last, under the heading "Informatiebureau," fulfills his most obvious duty in shielding the national decorum, to declare your excellency inadequate to continue serving as a friendly medium in the relations which Venezuela maintains with the Dutch Nation, and, consequently, has ordered me to send to your excellency your passports, which I accompany herewith, in order that you may leave the country.

I also inclose you, so your excellency may please see that it reaches the hands of his excellency the minister for foreign affairs of the Netherlands, a note wherein my Government informs that of your excellency of this determination.

I renew to your excellency, etc.,

(Signed) J. DE J. PAÚL.

File No. 14457/7.

Minister Beaupré to the Secretary of State.

[Telegram.—Paraphrase.]

AMERICAN LEGATION,
The Hague, August 1, 1908.

Mr. Beaupré says the Netherlands minister for foreign affairs explains that the sending of a war vessel to Curacao on August 11 is merely a measure of precaution, and that the Netherlands Government has no intention at the present time to take coercive measures against Venezuela, and will defer making decision until the arrival from Caracas of the Dutch minister. Mr. Beaupré says the minister for foreign affairs would like to know whether the Government of the United States would object to coercive measures in Venezuela should the national honor of Netherlands require them.

File No. 14457/7.

The Acting Secretary of State to Minister Beaupré.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, August 6, 1908.

Mr. Adee refers to legation's telegram of August 1 relative to the inquiry of the Netherlands minister for foreign affairs concerning the possibility of coercive action in regard to Venezuela, and says he is directed by the Secretary of State to answer that the Government of the United States should not feel at liberty to object to measures of the character described in the minister's question not involving occupation of territory either permanent or of such a character as to threaten permanency.

File No. 14457/34.

Minister Beaupré to the Secretary of State.

No. 38.] AMERICAN LEGATION,
The Hague, August 11, 1908.

SIR: I have the honor to state that the Netherlands man-of-war *Heemskerck*, which, as reported in my telegram of the 1st instant, was expected to sail for the Caribbean Sea on the 11th instant, is said to have sailed to-day, and, further, it is reported that the *Friesland*, which is expected home shortly from a trip on Norwegian waters, is also to be equipped and under the command of the ex-minister of marine, Capt. Cohen Stuart, will also sail for the Caribbean Sea.

I am, etc.,

A. M. BEAUPRÉ.

File No. 14457/69.

Minister Russell to the Secretary of State.

[Telegram—Extract.]

AMERICAN LEGATION,
Caracas, April 18, 1909.

Minister for foreign affairs informs me that diplomatic relations have been resumed with the Netherlands.

RUSSELL.

File No. 14457/71–73.

Minister Beaupré to the Secretary of State.

No. 133.] AMERICAN LEGATION,
The Hague, April 20, 1909.

SIR: Supplementing my telegram of to-day,[1] I have the honor herewith to transmit a copy of the protocol signed yesterday by the

[1] Not printed.

minister for foreign affairs of the Netherlands and Dr. de Paúl, special delegate for that purpose of the Government of Venezuela. A translation accompanies the same. I inclose further the statement of the minister for foreign affairs that accompanied the protocol to the States General, cut from Het Vaderland, of the 21st instant, with a translation thereof.

I am, etc.,

A. M. BEAUPRÉ.

[Inclosure 1—Translation.]

Protocol.

The Government of Her Majesty the Queen of the Netherlands and the government of the United States of Venezuela, actuated by the genuine desire to prevent in the future new difficulties like those that arose between the two countries in the course of the past year and to lay an enduring foundation for an entente cordial;

in consideration of the fact that the two Governments declare themselves satisfied with the explanations reciprocally furnished in regard to the incidents that have troubled their good relations;

considering that the interests of the two countries demand the prompt conclusion of a treaty of friendship, commerce and navigation, as well as of a consular convention, offering the necessary guarantees for a real commerce between the colonies of the Netherlands in the Antilles and the Venezuelan continent;

considering that the previous re-establishment of diplomatic relations is desirable to this effect;

have agreed as follows:

The diplomatic relations between the kingdom of the Netherlands and the United States of Venezuela shall be re-established from the day of the signing of this protocol and the two Governments shall be able to establish their respective legations at Carácas and at The Hague;

the Government of the Netherlands will continue to observe the protocol of August 20, 1894:

The Venezuelan Government engages:

1°. not to modify in any manner, until the conclusion of a treaty of commerce and a consular convention between the two States the laws and prescriptions actually in force in the Republic of Venezuela, to the detriment of the subjects of the Netherlands or of the commerce and navigation of the Netherlands and its colonies.

2°. to extend immediately and spontaneously to the colonies of the Netherlands in the Antilles every concession to be made in the future to ENGLAND in favor of the island of Trinidad or to any other Power in favor of any other island whatever in the Antilles, especially in the matter of the 30% additional duties at present levied by the Venezuelan Republic in virtue of the law of the month of June 1881, put in force on May 3, 1882.

The Venezuelan Government engages to pay within the three months which follow the signing of the present protocol to the Netherlands Government, as indemnity assessed by common accord for the damages caused by the seizing of the Netherlands vessels "*Estela*," "*Penelope*," "*Justicia*," "*Carmita*" and "*Marion*" the sum of twenty thousand bolivars (bs. 20,000).

As proof of the high appreciation by the Netherlands Government of the sentiments of friendship shown by General Gomez, Vice-President of the United States of Venezuela, since he was charged with the Presidency of the Republic, the Netherlands Government declares that the guardships seized by its warships will immediately be placed at Willemstad at the disposition of a delegate to be appointed for that purpose by the Government of Venezuela.

In witness whereof the undersigned Jonkheer R. De Marees Van Swinderen, Minister of Foreign Affairs of Her Majesty the Queen of the Netherlands, and Doctor J. De J. Paul, special delegate of the Government of the United States of Venezuela, duly authorized by Her Majesty the Queen and by the Vice-President constitutionally charged with the Presidency of the Republic, have affixed

their signatures to the present protocol which shall be submitted to the ratification of the competent powers and of which an exact translation in Dutch and in Spanish shall be made and signed by the two Plenipotentiaries.

(L. S.) R. De Marees Van Swinderen.
(L. S.) J. De J. Paul.

[Enclosure 2.—Translation.]

Statement of the Netherlands Minister for Foreign Affairs.

For the information of the members, the minister for foreign affairs has sent to the Second Chamber of the States General a copy of the protocol signed by himself and Mr. J. de J. Paul, plenipotentiary of Venezuela, on Monday last.

In explanation thereof the minister says:

From the commencement of negotiations with Mr. Paul, in the month of January last, Her Majesty's Government assumed that the restoration of diplomatic relations should only be arranged after the required guarantee had been obtained that Dutch trade should be guarded against special injury in the future and, if possible, the sur-tax of 30% levied by Venezuela on goods coming in the last instance from the Dutch Antilles should be removed and, moreover, some indemnity given for the detention of Dutch vessels.

I therefore submitted a draft of a convention, in a line with these views, to Mr. Paul, who, on receipt of the same and after a preliminary discussion of the contents, temporarily left, while awaiting instructions from his Government, to acquit himself of his mission to other Governments.

On returning hither at the end of last month, Mr. Paul notified me that, to his regret, it was not possible for him to sign the said project in the form presented. He pointed out that the present Venezuelan administration, by abrogating the decree of the 14th of May, has indicated from the very commencement the sincerity of its endeavors for friendly relations with the Netherlands and, of its own accord, has subsequently confirmed this by still further arrangements tending to the benefit of Netherlands trade; that every State has the right to regulate its own fiscal and commercial laws in the manner that it deems most beneficial to its own interests and that England too, that had perhaps still more interest than the Netherlands in the removal of the surtax, has never made that removal a condition to the maintenance of diplomatic relations.

Consequently, Mr. Paul asserted, that under existing circumstances it was simply impossible for General Gomez's Government to proceed to such an extensive revision of the fiscal laws of the country as the removal of the 30 per cent, before it has assured itself of the approval of the Cortes thereto.

This last assertion especially, the justice of which Her Majesty's Government could not entirely deny, and, moreover, the consideration that it was to its own interests to a great extent not to withhold from Gomez's Government, which had given such convincing proofs of its sincerity, that support which was now being shown by all the Powers interested in the conflict, have moved Her Majesty's Government to so far revise its original standpoint, that they should no longer demand, by the removal of the legally levied 30 per cent, an absolute greatest favor, but a similar favor for Curacao as that of the other Antilles and especially that of Trinidad would be sufficient. This revision would on the one hand remove the constitutional objection of Venezuela to the withdrawal of the additional levy on Her Majesty's Government, and on the other hand the Netherlands might be insured of the same desired results through another channel, notwithstanding. This last expectation depends upon the fact that England, in virtue of the existing commercial treaty between that Kingdom and Venezuela, declares that the said levy is illegal in so far as Trinidad is concerned, has during the last few months most strongly insisted upon this view at Caracas, and, as reliable information seems to indicate, not without some chance of success ere long.

Mr. Paul approved of this revised standpoint, and thus by the inclosed protocol the Venezuelan Government has undertaken: 1. to maintain the status quo until a commercial treaty has been agreed upon, and 2°. that if Trinidad or any other of the islands of the Antilles should be accorded a diminution or removal of the 30 per cent surtax, this favor should be at once accorded to Curacao; 3°. to pay an indemnity of 20,000 francs, from which

the owners of the five ships named in the protocol should be compensated for the illegal detention by Venezuelan coast guarders in the years 1907 and 1908.

It is the intention of the Government within a short time to send a plenipotentiary ad hoc to Caracas to treat with the Government there in respect to the conclusion of a commercial treaty.

Finally the minister expresses the hope that the States general will greet the realization of this protocol with the same satisfaction that Her Majesty's Government does, whereby in and in every way satisfactory manner an end has been put to the difficulties that have arisen with Venezuela and every guarantee that could be expected under the given circumstances against a repetition thereof secured.

INTERNATIONAL CONVENTIONS.

SANITARY CONVENTION BETWEEN THE UNITED STATES AND OTHER POWERS.[1]

Signed at Washington October 14, 1905.
Ratification advised by the Senate February 22, 1906.
Ratified by the President May 29, 1906.
Proclaimed March 1, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA,

A PROCLAMATION.

Whereas a Convention between the United States of America, Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, Guatemala, Mexico, Nicaragua, Peru and Venezuela, providing measures to guard the public health against the invasion and propagation of yellow fever, plague and cholera, was concluded and signed by their respective Plenipotentiaries at the City of Washington on the 14th day of October, 1905, the original of which Convention, being in the English and Spanish languages, is word for word as follows:

CONVENTION.

The presidents of the Republics of Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Mexico, Nicaragua, Peru, United States of America, and Venezuela:

Having found that it is useful and convenient to codify all the measures destined to guard the public health against the invasion and propagation of yellow fever, plague and cholera, have designated as their Delegates, to wit:

Republic of Chile, Sr. Dr. D. Eduardo Moore, Professor of the Medical Faculty, Hospital Physician;

Republic of Costa Rica, Sr. Dr. D. Juan J. Ulloa, Ex-Vice-President, Ex-Minister of the Interior of Costa Rica, Ex-President of the Medical Faculty of Costa Rica;

Republic of Cuba, Sr. Dr. D. Juan Guiteras, Member of the Superior Board of Health of Cuba, Director of the "Las Animas" Hospital, Professor of General Pathology and Tropical Medicine of the University of Havana, and Sr. Dr. D. Enrique B. Barnet, Executive Chief of the Health Department of Havana, Member and Secretary of the Superior Board of Health of Cuba;

Republic of Ecuador, Sr. Dr. D. Serafin S. Wither, Chargé d'Affaires and Consul-General of Ecuador in New York, and Sr. Dr. D. Miguel H. Alcívar, Member of the Superior Board of Health of Guayaquil, Professor of the Medical Faculty and Surgeon of the General Hospital of Guayaquil;

[1] See also Foreign Relations, 1906, p. 1127.

Republic of the United States of America, Dr. Walter Wyman, Surgeon General of the Public Health and Marine Hospital Service of the United States; Dr. H. D. Geddings, Assistant Surgeon General of the Public Health and Marine Hospital Service of the United States, and Representative of the United States at the Sanitary Convention of Paris; Dr. J. F. Kennedy, Secretary of the Board of Health of the State of Iowa; Dr. John S. Fulton, Secretary of the Board of Health of the State of Maryland; Dr. Walter D. McCaw, Major, Surgeon in the United States Army; Dr. J. D. Gatewood, Surgeon in the United States Navy; Dr. H. L. E. Johnson, Member of the American Medical Association (Member of the Board of Trustees);

Republic of Guatemala, Sr. Dr. D. Joaquín Yela, Consul-General of Guatemala in New York;

Republic of Mexico, Sr. Dr. D. Eduardo Licéaga, President of the Superior Council of Health of Mexico, Director and Professor of the National School of Medicine, Member of the Academy of Medicine;

Republic of Nicaragua, Sr. Dr. D. J. L. Medina, Member of the Second Pan-American Medical Congress of the City of Havana in 1901;

Republic of Peru, Sr. Dr. D. Daniel Eduardo Lavorería, Professor of the Medical Faculty, Member of the National Academy of Medicine, Physician of the "Dos de Mayo" Hospital, Chief of the Division of Hygiene of the Ministry of Fomento;

Dominican Republic, Sr. D. Emilio C. Joubert, Minister Resident in Washington; and

Rebublic of Venezuela, Sr. D. Nicolás Veloz-Goiticoa, Chargé d'Affaires of Venezuela,

Who, having made an interchange of their powers, and found them good, have agreed to adopt, *ad referendum*, the following propositions:

CHAPTER I. *Regulations to be observed by the powers signatory to the convention as soon as plague, cholera or yellow fever may appear in their territory.*

SECTION I. *Notification and subsequent communications to other countries.*

ARTICLE I. Each government should immediately notify other governments of the first appearance in its territory of authentic cases of plague, cholera or yellow fever.

ARTICLE II. This notification is to be accompanied, or very promptly followed, by the following additional information:

(1) The neighborhood where the disease has appeared.

(2) The date of its appearance, its origin, and its form.

(3) The number of established cases, and the number of deaths.

(4) For plague: The existence among rats or mice of plague, or of an unusual mortality; for yellow fever: The existence of *stegomyia fasciata* in the locality.

(5) The measures taken immediately after the first appearance.

ARTICLE III. The notification and the information prescribed in Articles I and II are to be addressed to diplomatic and consular agents in the capital of the infected country; but this is to be con-

strued as not preventing direct communication between officials charged with the public health of the several countries.

For countries which are not thus represented, they are to be transmitted directly by telegraph to the governments of such countries.

ARTICLE IV. The notification and the information prescribed in Articles I and II are to be followed by further communications dispatched in a regular manner in order to keep the governments informed of the progress of the epidemic.

These communications, which are to be made at least once a week, and which are to be as complete as possible, should indicate in detail the precautions taken to prevent the extension of the disease.

They should set forth: First, the prophylactic measures taken relative to sanitary or medical inspection, to isolation and disinfection; Second, the measures taken relative to departing vessels to prevent the exportation of the disease, and, especially under the circumstances mentioned in paragraph 4 of Article II of this section, the measures taken against rats and mosquitoes.

ARTICLE V. The prompt and faithful execution of the preceding provisions is of the very first importance.

The notifications only have a real value if each government is warned in time of cases of plague, cholera or yellow fever and of suspicious cases of those diseases supervening in its territory. It cannot then be too strongly recommended to the various governments to make obligatory the declaration of cases of plague, cholera or yellow fever, and of giving information of all unusual mortality of rats and mice especially in ports.

ARTICLE VI. It is understood that neighboring countries reserve to themselves the right to make special arrangements with a view of organizing a service of direct information between the chiefs of administration upon the frontiers.

SECTION II. *Conditions showing a given territorial area to be infected, or to have been freed from infection.*

ARTICLE VII. Information of a first case of plague, cholera or yellow fever does not justify against a territorial area where it may appear, the application of the measures prescribed in Chapter II as hereinafter indicated.

Upon the occurrence of several non-imported cases of plague, or a non-imported case of yellow fever or when cases of cholera form a focus, the area is to be declared infected.

ARTICLE VIII. To limit the measures to the affected regions alone, governments should only apply them to persons and articles proceeding from the contaminated or infected areas.

By the word "area" is understood a well determined portion of territory described in the information which accompanies or follows notification, thus, a province, a state, "a government," a district, a department, a canton, an island, a commune, a city, a quarter of a city, a village, a port, a "polder," a hamlet, etc., whatever may be the extent and population of these portions of territory.

But this restriction, limited to the infected area, should only be accepted upon the formal condition that the government of the infected country shall take the necessary measures; 1, to prevent,

unless previously disinfected, the exportation of articles named in 1 and 2 of Article XII, coming from the contaminated area; and 2, measures to prevent the extension of the epidemic; and provided further that there be no doubt that the sanitary authorities of the infected country have faithfully complied with Article I of this Convention.

When an area is infected, no restrictive measure is to be taken against departures from this area if these departures have occurred five days, at least, before the beginning of the epidemic.

ARTICLE IX. That an area should no longer be considered as infected, official proof must be furnished.

First, That there has been neither a death nor a new case of plague or cholera for five days after isolation,[1] death, or cure of the last plague or cholera case. In the case of yellow fever the period shall be eighteen days, but each government may reserve the right to extend this period.

Second, That all the measures of disinfection have been applied; in the case of plague, that the precautions against rats have been observed, and in the case of yellow fever that the measures against mosquitoes have been executed.

CHAPTER II. *Measures of defense by other countries against territories declared to be infected.*

SECTION 1. *Publication of prescribed measures.*

ARTICLE X. The government of each country is obliged to immediately publish the measures which it believes necessary to take against departure either from a country or from an infected territorial area.

The said government is to communicate at once this publication to the diplomatic or consular agent of the infected country residing in its capital as well as to the International Sanitary Bureau.

The government shall be equally obliged to make known through the same channels the revocation of these measures or modifications which may be made in them.

In default of a diplomatic or consular agency in the capital, communications are made directly to the government of the country interested.

SECTION II. *Merchandise—Disinfection—Importation and Transit—Baggage.*

ARTICLE XI. There exists no merchandise which is of itself capable of transmitting plague, cholera or yellow fever. It only becomes dangerous in case it is soiled by pestous or choleraic products, or, in the case of yellow fever, when such merchandise may harbor mosquitoes.

ARTICLE XII. No merchandise or objects shall be subjected to disinfection on account of yellow fever, but in cases covered by the previous article the vehicle of transportation may be subjected to fumigation to destroy mosquitoes. In the case of cholera and plague

[1] The word "isolation" signifies isolation of the patient, of the persons who care for him and the forbidding of visits of all other persons, the physician excepted. By isolation in the case of yellow fever is understood the isolation of the patient in an apartment so screened as to prevent the access of mosquitoes.

disinfection should only be applied to merchandise and objects which the local sanitary authority considers as infected.

Nevertheless, merchandise, or objects enumerated hereafter, may be subjected to disinfection, or prohibited entry, independently of all proof that they may or may not be infected:

1. Body linen, wearing apparel in use, clothing which has been worn, bedding already used.

When these objects are transported as baggage, or in the course of a change of residence (household furniture), they should not be prohibited, and are to be subjected to the regulations prescribed by Article XIX.

Baggage left by soldiers and sailors, and returned to their country after death, are considered as objects comprised in the first paragraph of No. 1 of this article.

2. Rags, and rags for making paper, with the exception, as to cholera, of rags which are transported as merchandise in large quantities compressed in bales held together by hoops.

New clippings coming directly from spinning mills, weaving mills, manufactories or bleacheries, shoddy, and clippings of new paper, should not be forbidden.

ARTICLE XIII. In the case of cholera and plague there is no reason to forbid the transit through an infected district of merchandise, and the objects specified in Nos. 1 and 2 of the preceding article if they are so packed that they cannot have been exposed to infection in transit.

In like manner, when merchandise or objects are so transported that, in transit, they cannot come in contact with soiled objects, their transit across an infected territorial area should not be an obstacle to their entry into the country of destination.

ARTICLE XIV. The entry of merchandise and objects specified in Nos. 1 and 2 of Article XII should not be prohibited, if it can be shown to the authorities of the country of destination that they were shipped at least five days before the beginning of the epidemic.

ARTICLE XV. The method and place of disinfection, as well as the measures to be employed for the destruction of rats, and mosquitoes, are to be fixed by authority of the country of destination, upon arrival at said destination. These operations should be performed in such a manner as to cause the least possible injury to the merchandise.

It develops upon each country to determine questions relative to the payment of damages resulting from disinfection, or from the destruction of rats or mosquitoes.

If taxes are levied by a sanitary authority, either directly or through the agency of any company or agent, to insure measures for the destruction of rats and mosquitoes on board ships, the amount of these taxes ought to be fixed by a tariff published in advance, and the result of these measures should not be a source of profit for either state or sanitary authorities.

ARTICLE XVI. Letters and correspondence, printed matter, books, newspapers, business papers, etc. (postal parcels not included), are not to be submitted to any restriction or disinfection. In case of yellow fever postal parcels are not to be subjected to any restrictions or disinfection.

ARTICLE XVII. Merchandise, arriving by land or by sea, should not be detained permanently at frontiers or in ports.

Measures which it is permissible to prescribe with respect to them are specified in Article XII.

Nevertheless, when merchandise, arriving by sea in bulk (vrac) or in defective packages, is contaminated by pest-stricken rats during the passage, and is incapable of being disinfected, the destruction of the germs may be assured by putting said merchandise in a warehouse for a period to be decided by the sanitary authorities of the port of arrival.

It is to be understood that the application of this last measure should not entail delay upon any vessel nor extraordinary expenses resulting from the want of warehouses in ports.

ARTICLE XVIII. When merchandise has been disinfected by the application of the measures prescribed in Article XII, or put temporarily in warehouses in accordance with the third paragraph of Article XVII, the owner, or his representative, has the right to demand from the sanitary authority which has ordered such disinfection, or storage, a certificate setting forth the measures taken.

ARTICLE XIX. Baggage. In the case of soiled linen, bed clothing, clothing and objects forming a part of baggage or furniture coming from a territorial area declared contaminated, disinfection is only to be practiced in cases where the sanitary authority considers them as contaminated. There shall be no disinfection of baggage on account of yellow fever.

SECTION III. *Measures in ports and at maritime frontiers.*

ARTICLE XX. Classification of ships. A ship is considered as infected which has plague, cholera or yellow fever on board, or which has presented one or more cases of plague or cholera within seven days, or a case of yellow fever at any time during the voyage.

A ship is considered as suspected on board of which there have been a case or cases of plague or cholera at the time of departure or during the voyage, but no new case within seven days; also such ships as have lain in such proximity to the infected shore as to render them liable to the access of mosquitoes.

The ship is considered *indemne*, which, although coming from an infected port, has had neither death nor case of plague, cholera or yellow fever on board, either before departure, during the voyage, or at the time of arrival, and which in the case of yellow fever has not lain in such proximity to the shore, as to render it liable, in the opinion of the sanitary authorities, to the access of mosquitoes.

ARTICLE XXI. Ships infected with plague are to be subjected to the following regulations:

1. Medical visit (Inspection).
2. The sick are to be immediately disembarked and isolated.
3. Other persons should also be disembarked, if possible, and subjected to an observation,[1] which should not exceed five days dating from the day of arrival.

[1] The word "observation" signifies isolation of the passengers, either on board ship or at a sanitary station before being given free pratique.

4. Soiled linen, personal effects in use, the belongings of crew [1] and passengers which, in the opinion of the sanitary authorities, are considered as infected should be disinfected.

5. The parts of the ship which have been inhabited by those stricken with plague, and such others as, in the opinion of the sanitary authorities are considered as infected, should be disinfected.

6. The destruction of rats on shipboard should be effected before or after the discharge of cargo, as rapidly as possible, and in all cases with a maximum delay of forty-eight hours, care being taken to avoid damage of merchandise, the vessel and its machinery.

For ships in ballast, this operation should be performed immediately before taking on cargo.

ARTICLE XXII. Ships suspected of plague, are to be subjected to the measure which are indicated in Nos. 1, 4 and 5 of Article XXI.

Further, the crew and passengers may be subjected to observation, which should not exceed five days, dating from the arrival of the ship. During the same time, the disembarkment of the crew may be forbidden, except for reasons of duty.

The destruction of rats on shipboard is recommended. This destruction is to be effected before or after the discharge of cargo, as quickly as possible, and in all cases with a maximum delay of forty-eight hours, taking care to avoid damage to merchandise, ships, and their machinery.

For ships in ballast, this operation should be done, if done at all, as early as possible, and in all cases before taking on cargo.

ARTICLE XXIII. Ships *indemne* from plague are to be admitted to free pratique immediately, whatever may be the nature of their bill of health.

The only regulation which the sanitary authorities at a port of arrival may prescribe for them consists of the following measures:

1. Medical visit (inspection).

2. Disinfection of soiled linen, articles of wearing apparel, and the other personal effects of the crew and passengers, but only in exceptional cases when the sanitary authorities have special reason to believe them infected.

3. Without demanding it as a general rule, the sanitary authorities may subject ships coming from an infected port to a process for the destruction of the rats on board before or after the discharge of cargo. This operation should be done as soon as possible, and in all cases should not last more than twenty-four hours, care being taken to avoid damaging merchandise, ships, and their machinery, and without interfering with the passing of passengers and crew between the ship and the shore. For ships in ballast, this procedure, if practiced, should be put in operation as soon as possible, and in all cases before taking on cargo.

When a ship coming from an infected port has been subjected to a process for the destruction of rats, this process should only be repeated if the ship has touched meanwhile at an infected port, and has been alongside a quay in such port, or if the presence of sick or dead rats on board is proven.

[1] The term "crew" is applied to persons who may make, or, who have made, a part of the personnel of the vessel and of the administration thereof, including stewards, waiters, "cafedji," etc. The word is to be construed in this sense wherever employed in the present Convention.

The crew and passengers may be subjected to a surveillance, which should not exceed five days, to be computed from the date when the ship sailed from the infected port. The landing of the crew may also, during the same time, be forbidden except for reasons of duty.

Competent authority at the port of arrival may always demand, under oath, a certificate of the ship's physician, or in default of a physician, of the captain, setting forth that there has not been a case of plague on board since departure, and that no marked mortality among the rats has been observed.

ARTICLE XXIV. When upon an *indemne* ship rats have been recognized as pest-stricken as a result of bacteriological examination, or when a marked mortality has been established among these rodents, the following measures should be applied:

1. Ships with plague-stricken rats:

(*a*) Medical visit (Inspection).

(*b*) Rats should be destroyed before or after the discharge of cargo, as rapidly as possible, and in all cases with a delay not to exceed forty-eight hours; the deterioration of merchandise, vessels and machinery to be avoided. Upon ships in ballast, this operation should be performed as soon as possible, and in all cases before taking on cargo.

(*c*) Such parts of the ship and such articles as the local sanitary authority regards as infected, shall be disinfected.

(*d*) Passengers and crew may be submitted to observation the duration of which should not exceed five days dating from the day of arrival, except in special cases where the sanitary authority may prolong the observation to a maximum of ten days.

2. Ships where a marked mortality among rats is observed:

(*a*) Medical visit (Inspection).

(*b*) An examination of rats, with a view to determining the existence of plague, should be made as quickly as possible.

(*c*) If the destruction of rats is judged necessary, it shall be accomplished under the conditions indicated above in the case of ships with plague-stricken rats.

(*d*) Until all suspicion may be eliminated, the passengers and crew may be submitted to observation the duration of which should not exceeding five days counting from the date of arrival, except in special cases when the sanitary authority may prolong the observation to a maximum of ten days.

ARTICLE XXV. The sanitary authorities of the port must deliver to the captain, the owner, or his agent, whenever a demand for it is made, a certificate setting forth that the measures for the destruction of rats have been efficacious and indicating the reasons why these measures have been applied.

ARTICLE XXVI. Ships infected with cholera are to be subjected to the following regulations.

1. Medical visit (Inspection).

2. The sick are to be immediately disembarked and isolated.

3. Other persons ought also to be disembarked, if possible, and subjected, dating from the arrival of the ship, to an observation, the duration of which shall not exceed five days.

4. Soiled linen, wearing apparel, and personal effects of crew and passengers which, in the opinion of the sanitary authority of the port, are considered as infected, are to be disinfected.

5. The parts of the ship which have been inhabited by persons sick with cholera, or which are considered by the sanitary authority as infected are to be disinfected.

6. The bilge-water is to be discharged after disinfection.

The sanitary authority may order the substitution of good potable water for that which is contained in the tanks on board.

The discharge or throwing overboard into the water of a port, of dejecta, shall be forbidden unless they have been previously disinfected.

ARTICLE XXVII. Ships suspected of cholera are to be subjected to measures prescribed under Nos. 1, 4, 5 and 6 of Article XXVI.

The crew and passengers may be subjected to an observation which should not exceed five days, to date from the arrival of the ship. It is recommended during the same time to prevent the debarkation of the crew except for reasons of duty.

ARTICLE XXVIII. Ships *indemne* of cholera are to be admitted to free pratique immediately, whatever may be the nature of their bill of health.

The only regulations which the sanitary authorities of a port may prescribe in their case are the measures provided in Nos. 1, 4 and 6 of Article XXVI.

The crews and passengers may be submitted, in order to show their State of health, to an observation, which should not exceed five days to be computed from the date when the ship sailed from the infected port.

It is recommended that during the same time the debarkation of the crew be forbidden except for reasons of duty.

Competent authority at the port of arrival may always demand, under oath, a certificate from the ship's surgeon, or, in the absence of a surgeon, from the captain, setting forth that there has not been a case of cholera upon the ship since sailing.

ARTICLE XXIX. Competent authority will take account, in order to apply the measures indicated in Articles XXI to XXVIII, of the presence of a physician on board and a disinfecting apparatus in ships, of the three categories mentioned above.

In regard to plague, it will equally take account of the installation on board of apparatus for the destruction of rats.

Sanitary authorities of such countries, where it may be convenient to make such regulations may dispense with the medical visit and other measures toward *indemne* ships which have on board a physician specially commissioned by their country.

ARTICLE XXX. Special measures may be prescribed in regard to crowded ships, notably emigrant ships, or any other ship presenting bad hygienic conditions.

ARTICLE XXXI. Any ship not desiring to be subjected to the obligations imposed by the authority of the port in virtue of the stipulations of the present Convention is free to proceed to sea.

It may be authorized to disembark its cargo after the necessary precautions shall have been taken; namely, First, isolation of the ship, its crew and passengers; Second, in regard to plague, demand for information relative to the existence of an unusual mortality

among rats; Third, in regard to cholera, the discharge of the bilge-water after disinfection and the substitution of a good potable water for that which is provided on board the ship.

Authority may also be granted to disembark such passengers as may demand it, upon condition that these submit themselves to all measures prescribed by the local authorities.

ARTICLE XXXII. Ships coming from a contaminated port, which have been disinfected and which may have been subjected to sanitary measures applied in an efficient manner, shall not undergo a second time the same measures upon their arrival at a new port, provided that no new case shall have appeared since the disinfection was practiced, and that the ships have not touched in the meantime at an infected port.

When a ship only disembarks passengers and their baggage, or the mails, without having been in communication with *terra firma*, it is not to be considered as having touched at a port, provided that in the case of yellow fever it has not approached sufficiently near the shore to permit the access of mosquitoes.

ARTICLE XXXIII. Passengers arriving on an infected ship have the right to demand of the sanitary authority of the port a certificate showing the date of their arrival and the measures to which they and their baggage have been subjected.

ARTICLE XXXIV. Packet boats shall be subjected to special regulations, to be established by mutual agreement between the countries in interest.

ARTICLE XXXV. Without prejudice to the right which governments possess to agree upon the organization of common sanitary stations, each country should provide at least one port upon each of its seaboards, with an organization and equipment sufficient to receive a vessel, whatever may be its sanitary condition.

When an *indemne* vessel, coming from an infected port, arrives in a large mercantile port, it is recommended that she be not sent to another port for the execution of the prescribed sanitary measures.

In every country, ports liable to the arrival of vessels from ports infected with plague, cholera or yellow fever, should be equipped in such a manner that *indemne* vessels may there undergo, immediately upon their arrival the prescribed measures, and not be sent for this purpose to another port.

Governments should make declaration of the ports which are open in their territories to arrivals from ports infected with plague, cholera or yellow fever.

ARTICLE XXXVI. It is recommended that in large seaports there be established:

(*a*) A regular medical service and a permanent medical supervision of the sanitary conditions of crews, and the inhabitants of the port.

(*b*) Places set apart for the isolation of the sick and the observation of suspected persons. In the *stegomyia* belt there must be a building or part of a building screened against mosquitoes, and a launch and ambulance similarly screened.

(*c*) The necessary installation for efficient disinfection and bacteriological laboratories.

(*d*) A supply of potable water above suspicion, for the use of the port, and the installation of a system of sewerage and drainage, adequate for the removal of refuse.

SECTION IV. *Measures upon land frontiers. Travelers. Railroads. Frontier Zones. River Routes.*

ARTICLE XXXVII. Land quarantines should no longer be established, but the governments reserve the right to establish camps of observation if they should be thought necessary for the temporary detention of suspects.

This principle does not exclude the right for each country to close a part of its frontier in case of necessity.

ARTICLE XXXVIII. It is important that travelers should be submitted to a surveillance on the part of the personnel of railroads, to determine their condition of health.

ARTICLE XXXIX. Medical intervention is limited to a visit (inspection) with the taking of temperature of travelers, and the succor to be given to those actually sick. If this visit is made, it should be combined as much as possible with the customhouse inspection to the end that travelers may be detained as short a time as possible. Only persons evidently sick should be subjected to a searching medical examination.

ARTICLE XL. As soon as travelers, coming from an infected locality, shall have arrived at their destination, it would be of the greatest utility to submit them to a surveillance which should not exceed ten or five days, counting from the date of departure, the time depending upon whether it is a question of plague or cholera. In case of yellow fever the period should be six days.

ARTICLE XLI. Governments may reserve to themselves the right to take particular measures in regard to certain classes of persons, notably vagabonds, emigrants and persons traveling or passing the frontier in bands.

ARTICLE XLII. Coaches intended for the transportation of passengers and mails should not be retained at frontiers.

In order to avoid this retention a system of relays ought to be established at frontiers, with transfer of passengers, baggage and mails. If one of these carriages be infected or shall have been occupied by a person suffering from plague, cholera or yellow fever, it shall be detached from the train for disinfection at the earliest possible moment.

ARTICLE XLIII. Measures concerning the passing of frontiers by the personnel of railroads and of the Post Office are a matter for agreement of the sanitary authorities concerned. These measures should be so arranged as not to hinder the service.

ARTICLE XLIV. The regulation of frontier traffic, as well as the adoption of exceptional measures of surveillance should be left to special arrangement between contiguous countries.

ARTICLE XLV. The power rests with governments of countries bordering upon rivers to regulate by special arrangement the sanitary regime of river routes.

ARTICLES RELATING TO YELLOW FEVER.

ARTICLE XLVI. Ships infected with yellow fever are to be subjected to the following regulations:

1. Medical visit (Inspection).

2. The sick are to be immediately disembarked protected by netting against the access of mosquitoes and transferred to the place of isolation in an ambulance or a litter similarly screened.

3. Other persons should also be disembarked if possible, and subjected to an observation of six days, dating from the day of arrival.

4. In the place set apart for observation, there shall be screened apartments or cages where anyone presenting an elevation of temperature above 37.6 degrees Centigrade shall be screened until he may be carried in the manner indicated above to the place of isolation.

5. The ship shall be moored at least two hundred meters from the inhabited shore.

6. The ship shall be fumigated for the destruction of mosquitoes before the discharge of cargo, if possible. If a fumigation be not possible before the discharge of the cargo, the health authorities shall order, either

(*a*) The employment of immune persons for discharging the cargo, or

(*b*) If non-immunes be employed they shall be kept under observation during the discharging of cargo and for six days, to date from the last day of exposure on board.

ARTICLE XLVII. Ships suspected of yellow fever are to be subjected to the measures which are indicated in Nos. 1, 3 and 5 of the preceding article; and, if not fumigated, the cargo shall be discharged as directed under sub-paragraph (a) or (b) of the same article.

ARTICLE XLVIII. Ships *indemne* from yellow fever, coming from an infected port, after the medical visit (inspection), shall be admitted to free pratique, provided the duration of the trip has exceeded six days.

If the trip be shorter, the ship shall be considered as suspected until the completion of a period of six days, dating from the day of departure.

If a case of yellow fever develop during the period of observation, the ship shall be considered as infected.

ARTICLE XLIX. All persons who can prove their immunity to yellow fever, to the satisfaction of the health authorities shall be permitted to land at once.

ARTICLE L. It is agreed that in the event of a difference of interpretation of the English and Spanish texts, the interpretation of the English text shall prevail.

TRANSITORY DISPOSITION.

The governments which may not have signed the present Convention are to be admitted to adherence thereto upon demand; notice of this adherence to be given through diplomatic channels to the government of the United States of America and by the latter to the other signatory governments.

Made and signed in the City of Washington on the 14th day of the month of October, nineteen hundred and five, in two copies, in English and Spanish respectively, which shall be deposited in the State Department of the Government of the United States of America, in order that certified copies thereof, in both English and Spanish, may be made to transmit them through diplomatic channels to each one of the signatory countries.

D. EDUARDO MOORE.
JUAN J. ULLOA.
JUAN GUITERAS.
E. B. BARNET.
EMILIO C. JOUBERT.
M. H. ALCIVAR.
WALTER WYMAN.
H. D. GEDDINGS.
JOHN S. FULTON.
WALTER D. MCCAW,
J. D. GATEWOOD.
H. L. E. JOHNSON, M. D.
JOAQUÍN YELA.
E. LICÉAGA.
J. L. MEDINA, M. D.
DANIEL EDO LAVORERÍA.
N. VELOZ GOITICOA.

And whereas the said Convention has been duly ratified by the United States of America, Costa Rica, Cuba, Ecuador, Guatemala, Mexico, Nicaragua, Peru, and Venezuela;

And whereas as provided for in the said Convention notice of adherence to the said Convention has been given through diplomatic channels to the Government of the United States of America by the Governments of Brazil, Colombia, Honduras and Salvador;

Now, therefore, be it known that I, THEODORE ROOSEVELT, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Given under my hand at the City of Washington this first day of March in the year of our Lord one thousand nine hundred [SEAL.] and nine, and of the Independence of the United States of America the one hundred and thirty-third.

THEODORE ROOSEVELT

By the President:
ROBERT BACON
Secretary of State.

FOURTH INTERNATIONAL SANITARY CONVENTION.[1]

SAN JOSE, COSTA RICA, DECEMBER 25, 1909–JANUARY 2, 1910.[2]

File No. 20272/1.

The Acting Secretary of State to Minister Merry.

No. 826.] DEPARTMENT OF STATE,
Washington, July 2, 1909.

SIR: I have to inform you that, at the instance of the Director of the International Bureau of the American Republics, I have transmitted to each diplomatic mission of the United States in the Western Hemisphere copies in English and Spanish of the call issued by the International Sanitary Bureau for the assembling of the Fourth International Sanitary Convention, with a circular instruction, of which I enclose a copy, directing that the mission's good offices be used to induce the Government in whose capital it is situated to be represented at the convention.

I enclose copies of the call, in English and Spanish.

I am, etc.,

HUNTINGTON WILSON.

[Inclosure.]

Call for the fourth international sanitary convention.

In accordance with the resolution adopted at the Third International Sanitary Convention, held in the city of Mexico, December 2–7, 1907, the date December 25, 1909, to January 2, 1910, has been fixed for the assembling of the Fourth International Sanitary Convention in the city of San Jose, Costa Rica.

The following official correspondence in regard to the call and the provisional program of the convention are printed in the interest of the convention:

INTERNATIONAL SANITARY BUREAU,
Washington, U. S. A., June 12, 1909.

Hon. JOHN BARRETT,
Director Bureau American Republics, Washington, D. C.

SIR: In accordance with the resolution adopted at the Second International Sanitary Convention of American Republics authorizing biennial conventions, and in accordance with the action taken at the last convention in Mexico City, December, 1907, I inclose herewith a call for the Fourth International Sanitary Convention of the American Republics to meet in Costa Rica December 25, 1909, to January 2, 1910.

In accordance with paragraph 7 of the resolutions relating to international sanitary police, adopted at the Second International Conference of American States in Mexico, January 29, 1902, I have to request that you take such measures as you deem advisable to make announcement of this call.

It is also requested that the Bureau of American Republics in making this announcement also make representations to the Government of Costa Rica in order that there shall be issued through its Department of Foreign Relations invitations to the several countries to be represented.

Respectfully,

WALTER WYMAN,
Chairman, International Sanitary Bureau.

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[1] The transactions of the Fourth International Sanitary Conference of the American Republics were published and distributed under the auspices of the Pan-American Union, Washington, D. C.

[2] Third International Sanitary Convention, Mexico City, Dec. 2–7, 1907. See Foreign Relations, 1907, p. 840.

FOURTH INTERNATIONAL SANITARY CONVENTION OF THE AMERICAN REPUBLICS, TO BE HELD IN SAN JOSE, COSTA RICA, DECEMBER 25, 1909, TO JANUARY 2, 1910.

INTERNATIONAL SANITARY BUREAU OF THE AMERICAN REPUBLICS,
Washington, D. C., June 14, 1909.

In accordance with the resolution adopted by the Second International Sanitary Convention of the American Republics, which authorizes biennial conventions, and in accordance with the action taken at the Third International Sanitary Convention, it is hereby announced that the Fourth International Sanitary Convention of the American Republics will be held in San Jose, Costa Rico, December 25, 1909, to January 2, 1910.

It is respectfully urged that every Republic of the Western Hemisphere be represented at this convention, both those that have been heretofore represented and those which have not taken part in the previous conventions.

In accordance with resolutions adopted at previous conventions, there will be considered practical means for the adoption of measures intended to obtain the sanitation of cities and especially of ports. This subject has, therefore, been included in the provisional program, which has been prepared by the President-elect of the coming convention with the view to continuing the work of previous conventions.

PROVISIONAL PROGRAM FOR THE INTERNATIONAL SANITARY CONVENTION OF THE AMERICAN REPUBLICS TO BE HELD IN SAN JOSE, COSTA RICA, DECEMBER 25, 1909, TO JANUARY 2, 1910.

1. Reports presented by the different delegates in regard to the sanitary regulations and laws adopted, and in force, in their respective countries, since the last meeting.
2. Special report by each official delegate regarding the manner in which the resolutions adopted in the three previous conventions have been put into practice, in their respective countries.
3. Reports in regard to sanitary conditions in ports, and measures proposed for the improvement of such sanitary conditions (with special reference to the principal ports).
4. Reports relating to the registration of the movement of population and the rate of mortality in each country, specifying those of ports and principal cities.
5. Sanitation of cities and especially of ports.
6. Measures for the protection of passengers that embark in vessels from infected ports.
7. Discussion of measures against the introduction of diseases not included in the Convention of Washington of 1905.
8. Sanitary models or forms to be adopted by Nations forming part of this convention.
9. Discussion on sanitary measures relating to yellow fever, bubonic plague, tuberculosis, malaria, and other diseases, in conformity to new discoveries, or experiences.
10. Discussion on measures relating to venereal diseases.
11. Discussion on the necessity of the adoption, by the European Nations, of the convention of Washington and other sanitary measures subsequently adopted by this convention with respect to such colonies as they have in America.
12. Discussion on new discoveries with respect to the transmission of yellow fever and malaria, besides the mosquito bite.
13. Organization in each country represented at this convention of a commission of three physicians or health officers to act as delegates of the International Sanitary Bureaus of Washington or Montevideo, and to form part of the International Sanitary Information Committee of the American Republics.

By direction of the International Sanitary Bureau of the American Republics.

WALTER WYMAN, *Chairman.*

JUAN J. ULLOA, *Secretary.*

As requested in the communication of Dr. Walter Wyman, chairman of the International Sanitary Bureau, the director of the International Bureau of the American Republics has addressed a letter to the diplomatic representatives of the countries interested in the convention transmitting a copy of the call and the provisional program, which has also been given to the press and will be printed in the Bulletin of the Bureau.

File No. 20272/2-3.

The Secretary of State to the Diplomatic Officers of the United States.

DEPARTMENT OF STATE,
Washington, July 3, 1909.

GENTLEMEN: The Directors of the Bureau of the American Republics, speaking also for the governing board of the bureau, has expressed to the Department of State the opinion that it would be helpful to the adequate representation of the several American Republics at the Fourth International Sanitary Convention, to be held at San Jose, Costa Rica, from December 25, 1909, to January 2, 1910, if the representatives of the United States at the capitals of these Republics should discuss with the ministers for foreign affairs and with local sanitary officers the importance of the gathering in question.

Duplicate copies, in English and Spanish, of a pamphlet setting forth the convocation of the Fourth International Sanitary Convention, and documents relating thereto, are inclosed herewith.

Inasmuch as the convention is to be held at the city of San Jose, the Costa Rican Government has undoubtedly taken all appropriate steps to encourage the attendance of representatives of the Governments concerned. These Governments have doubtless received full information on the subject through the Bureau of the American Republics, their representatives at Washington, and from the chairman of the International Sanitary Bureau here. Nevertheless, you may take a convenient opportunity to discuss the matter in the manner suggested by the Bureau of American Republics, since the project is one which this Government regards as of interest and importance to all American Republics.

I am, etc.,

P. C. KNOX.

File No. 20272/2-3.

The Costa Rican Minister to the Secretary of State.

COSTA RICAN LEGATION,
Washington, July 24, 1909.

Mr. SECRETARY: I have the honor to send to your excellency herein inclosed a note from the secretary of foreign relations of Costa Rica, in which my Government addresses to the Government of the United States a formal invitation to be represented at the Fourth International Sanitary Conference to be held at San Jose, Costa Rica, from December 25, 1909, to January 2, 1910.

Be pleased, etc.,

J. B. CALVO.

[Inclosure—Translation.]

The Costa Rican Secretary of Foreign Relations to the Secretary of State.

REPUBLIC OF COSTA RICA,
DEPARTMENT OF FOREIGN RELATIONS,
San Jose, July 7, 1909.

Mr. SECRETARY: The Third International Sanitary Conference of the American Republics, which held its sessions at Mexico from December 2 to 7, 1907,[1] saw fit to unanimously designate the city of San Jose, capital of this Republic, for the holding of the fourth conference.

The exceedingly great importance of the work accomplished by the previous International Sanitary Conferences can not have escaped the lofty discernment of your excellency's illustrious Government. This work alone demonstrates the unquestionable utility of these periodical meetings of representatives of American medical science to the most vital interests of all the Republics of the Western Hemisphere.

Basing my action on these solid grounds, I have the honor to invite your excellency's Government to the Fourth International Sanitary Conference, which will be held at San Jose from December 25 of this year to January 2, 1910, and I take pleasure in stating to you at the same time that, in view of the humanitarian purpose of the conference, the Government of Costa Rica cherishes the firm hope that all the American nations will be represented at this as well as at the subsequent conferences.

I avail, etc.,

R. FERNÁNDEZ GUARDIA.

File No. 20272/28.

Consul Lee to the Secretary of State.

AMERICAN CONSULATE,
San Jose, December 28, 1909.

SIR: I have the honor to report that on the afternoon of the 25th instant the inaugural session of the Fourth International Sanitary Convention of the American Republics was held in the National Theater of this capital.

The convention is presided over by Dr. Juan J. Ulloa, and the different Republics of this continent were represented yesterday, at the first business session, as follows:

Colombia, Dr. Martin Amador.
Cuba, Dr. Hugo Roberts.
United States, Surg. Gen. Walter Wyman, and Surgs. R. H. von Ezdorf and John William Amesse, of the United States Public Health and Marine-Hospital Service.
Mexico, Dr. Eduardo Liceaga and Dr. Jesus Monjares.
Guatemala, Dr. Nazario Toledo.
Honduras, Dr. Fernando Vasquez.
Panama, Dr. Belisario Porras.
Venezuela, Dr. Pablo Acosta and Dr. Luis Razetti.
Costa Rica, Dr. Juan J. Ulloa, Dr. Carlos Duran, Dr. José Maria Soto A., and Dr. Elias Rojos.

The interesting features of the inaugural session were the addresses of Don Ricardo Fernández Guardia, the Costa Rican Secretary of Foreign Affairs; of Dr. Juan J. Ulloa, Costa Rican consul general at New York and president of the convention, and also the extempo-

[1] See For. Rels., 1907, p. 840.

raneous speech of Surg. Gen. Walter Wyman, which was well received, appreciated, and heartily applauded. During the course of the inaugural session Mr. Albert Hale extended to all present a cordial invitation to visit the home of the International Bureau of American Republics at Washington.

The regular sessions of the convention are now in progress at the Hall of Congress in this capital. There are in attendance representatives of the press and Mr. Albert Hale, who presents credentials as the authorized representative of the International Bureau of American Republics. This force of workers is here to prepare detailed reports of the work of the convention.

I have, etc.,

SAMUEL T. LEE.

THIRD INTERNATIONAL CONFERENCE ON MARITIME LAW.[1]

BRUSSELS—SEPTEMBER 28–OCTOBER 8, 1909.

File No. 66/40.

The Belgian Minister to the Secretary of State.

[Translation.]

No. 432.] BELGIAN LEGATION,
Washington, May 25, 1909.

MR. SECRETARY OF STATE: By a communication dated February 19 last, your honorable predecessor was good enough to let me know that it would be entirely acceptable to the United States Government if the third session of the International Conference on Maritime Law should not be opened until the second half year of 1909, in accordance with the Imperial German Government's desire.

A telegram from the minister of foreign affairs at Brussels instructs me to inform your excellency that, in accordance with the wishes of several Governments, the date of the opening of the Brussels Maritime Conference is finally fixed for September 28 next.[2]

Mr. Davignon in so instructing me asks me to telegraph whether the participation of the United States in the Maritime Conference is assured.

I would be very thankful to your excellency if you would enable me with your customary obligingness to reply in the near future to the inquiry of the minister of foreign affairs.

Thanking you in advance, I gladly embrace, etc.,

BN. MONCHEUR.

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[1] The first two sessions of the International Conference on Maritime Law were held at Brussels, Feb. 21–25, and Oct. 16–20, 1905. See Foreign Relations, 1905, p. 69; see also Foreign Relations, 1906, p. 72.

[2] The date for the holding of the third session was postponed several times since 1907.

File No. 66/40.

The Secretary of State to the Belgian Minister.

No. 514.] DEPARTMENT OF STATE,
Washington, June 2, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 25th ultimo, by which you inform me, under instructions from your Government, that September 28 next has been finally fixed as the date for the opening of the International Conference on Maritime Law at Brussels.

Thanking you for this information, I beg to assure you, in reply to the inquiry contained in your note, that the Government of the United States will be pleased to take part in this conference, the Congress of the United States having at its last session made provision for such representation.

I shall, in due season, be pleased to communicate to you the names of the delegate or delegates who may be selected to represent the Government of the United States in the conference.

Accept, etc.,

P. C. KNOX.

File No. 66/81A.

The Acting Secretary of State to the Belgian Chargé.

No. 569.] DEPARTMENT OF STATE,
Washington, September 20, 1909.

SIR: Referring to previous correspondence I have the honor to inform you that the honorable Walter C. Noyes, United States circuit judge, of New London, Conn.; Mr. Charles C. Burlingham, a prominent admiralty lawyer of New York City; the honorable A. J. Montague, ex-governor of the State of Virginia, and Mr. Edwin W. Smith, of Pittsburgh, Pa., will represent the United States at the international conference on maritime law, which is to meet at Brussels on the 28th of this month.

The American minister at Brussels has been instructed to inform the Belgian Government of these appointments.

Accept, etc.,

HUNTINGTON WILSON.

The American Delegates to the Secretary of State.

SIR: The representatives of the United States designated by you to attend the third international conference on maritime law have the honor to report:

The conference met at Brussels September 28 and continued in session until October 8, 1909. It was attended by us at all its sessions. Twenty-three nations were represented by 61 delegates. These

nations were: Germany, Argentine Republic, Austria-Hungary, Belgium, Brazil, Chile, Cuba, Denmark, Spain, France, Great Britain, Greece, Italy, Japan, Mexico, Nicaragua, Norway, Holland, Portugal, Roumania, Russia, Sweden, and the United States. Mr. Beernaert, formerly Belgian minister of state, presided over the sessions.

On our arrival in Brussels we were handed a letter of instructions by the minister of the United States, of which a copy is attached to this report, marked "Schedule A." At the request of our minister Mr. Gaston de Leval, a Belgian advocate who participated in the last conference, was associated with us. He spoke English fluently and rendered us valuable services, of which we wish to express our appreciation.

At the first meeting we stated that our participation in the conference was ad audiendum et referendum, but that such limitation upon our powers should not be construed as indicating that the Government of the United States was not profoundly interested in the work and success of the conference.

The representatives of the different countries were, in many cases, men distinguished for their knowledge of maritime law or of wide experience in the practical affairs of shipping and commerce. The debates upon the questions which were brought before the conference were thorough and suggestive.

The object of the conference was to secure uniformity in certain branches of maritime law. Two conventions were submitted for consideration—one relating to the law of collisions, the other to the law of salvage. These conventions were approved by the conference and referred to the several Governments.

Two plans for conventions were also submitted—one relating to the law limiting the liability of shipowners and the other to the law of liens. These projets were merely recommended by the conference for examination by the Governments.

The conference adjourned until next April, so that the Governments interested might examine the conventions and projets and determine whether or not, or upon what conditions, they would sign the conventions and what recommendations they would make as to the projets.

The conventions relating to collisions and salvage met, for the most part, with our personal approval, but the expression of such approval in the conference was limited in accordance with our instructions. As to certain articles, we though it our duty to stipulate expressly that reservations in the protocol should be made by the United States if it determines to sign the convention. These reservations are stated and examined in the schedules attached to this report.

The proposal to adjourn the conference was supported by us in accordance with our letter of instructions. This adjournment gave an opportunity for an examination by the Governments of the completed conventions. It was understood also that the committee of the conference would, in the interval, more fully examine the projets, so as to be able to present them in more definite and complete form at the adjourned session.

In the schedules attached to this report and marked "B," "C," "D," and "E," we endeavored to show the changes made in existing law by the conventions and the projets and the reasons offered for

making such changes. Somewhat similar conventions were considered by the diplomatic conference held in Brussels in 1905, and a report was made to the department by the representative of the United States. But as these were in several respects essentially different from the present conventions, we think it desirable to discuss the latter in detail and without regard to previous action. We think it necessary to consider at length only such articles as involve changes in our laws. It will be assumed that when articles follow our present law they will be acceptable.

We think that we should point out, however, the possibility that an examination made in this way may direct especial attention to comparatively unimportant subjects. We assume that by participating in the conference this Government recognized the desirability of securing international uniformity in maritime law. The conventions approved by the conference constitute, as a whole, a marked advance toward uniformity. Several of the articles which follow our law have resulted from concessions made by other nations. Consequently, while some of the changes in our law, to which we shall direct attention, may seem not wholly desirable when examined by themselves, we think that consideration should also be given to the important object to be attained and to the fact that uniformity can only be obtained through mutual concessions.

For convenience, we attach to the annexed schedules translations of the conventions and projets under consideration, but it must be borne in mind that such translations are unofficial and not authoritative. We recommend a careful revision and comparison of the English text with the French original before definite action is taken.

It will give us much pleasure to submit to the department at any time any information within our power which it may desire.

Awaiting your further instructions, we have the honor to be, sir,

Your obedient servants,

WALTER C. NOYES.
EDWIN W. SMITH.
A. J. MONTAGUE.
CHARLES C. BURLINGHAM.

SCHEDULE A.

AMERICAN LEGATION,
Brussels, September 27, 1909.

MESSRS. WALTER C. NOYES, CHARLES C. BURLINGHAM, A. J. MONTAGUE, EDWIN W. SMITH, *American Delegates to International Maritime Conference convening at Brussels September 28, 1909.*

SIRS: I have the honor to inform you that, pursuant to instructions from the Secretary of State, you have duly been accredited through the Belgian foreign office as delegates authoritatively charged with the representations of the interests of the United States at the Inernational Maritime Conference.

The first sitting of the conference will occur on Tuesday, 28th instant, in the Hall of Conferences, No. 17 rue de la Loi, and it will afford me great pleasure to accompany you thither for the purpose of making the usual presentations.

In order to facilitate and simplify the work of the delegation I have, on my own responsibility, attached to it in the capacity of adviser Mr. Gaston de Leval, avocat à la cour d'appel and conseil of the legation here. Mr. de Leval discharged similar functions at the last conference and rendered me most valuable assistance.

The Belgian foreign office has been notified of Mr. de Leval's designation.

By the direction of the Secretary of State, I have further to instruct you that you are not clothed with plenary powers, and that your participation in the conference will be ad audiendum and ad referendum. You are, however, authorized to offer such amendments to the conventions as you may deem essential or desirable.

It is understood that the delegates of Great Britain will propose a division of the conference into two sessions, the forthcoming session being confined to the discussion and decision of the convention drafts in their final form, a recess of two or three months then to be taken, so that in the interval the interested Governments may examine the propositions and decide whether and on what conditions it would be expedient to proceed with the signature of the conventions. The Secretary of State directs me to instruct you to support this proposal, advocating a recess of not less than three months, so that it may be ascertained before signature on the part of the United States whether ratification by the Senate may be depended upon with reasonable probability. I have the honor to be,

Your obedient servant,

HENRY LANE WILSON.

SCHEDULE B.

Convention relating to the law of collision.

The first three articles of this convention seem to require no discussion. Article I defines the scope of the convention and Articles II and III state the law as it now is in the United States.

Article IV is the most important in the convention and involves material changes in existing law. The first paragraph provides that in case of mutual fault the liability of each vessel shall be in proportion to the gravity of the fault, but that if the proportion can not be established the responsibility shall be equally divided. Manifestly, this provision furnishes a flexible rule for the just apportionment of responsibility. The law as at present administered arbitrarily divides the responsibility and the consequent damage in equal parts. The vessel slightly at fault and the vessel grossly at fault bear the same burden. This is obviously unfair. The object of the departure of the admiralty law from the common-law rule that in case of common fault there can be no recovery at all was to do more precise justice between the parties; this is the purpose of the further extension of the principle as proposed in the convention. An objection is made that it is impracticable for a court to assess damages in proportion to the gravity of the fault. We see, however, no reason why a judge competent to pass upon the question of responsibility can not apportion it. Indeed, in continental countries where the proposed rule is the existing law the judges are said to have no difficulty in fairly applying it. It is a matter of common knowledge that private settlements between the owners of colliding vessels are often made upon such a basis. Any difficulty which might arise in applying the rule would seem to be obviated by the provision that if the responsibility can not otherwise be apportioned it shall be borne equally.

The remaining paragraphs of Article IV relate, broadly speaking, to the rights and remedies of third persons against ships mutually at fault in a collision. As the general rule they provide that each ship shall be liable to injured persons in proportion to its degree of fault "but without solidarity," i. e., without the right to recover the whole damage from either. Thus, under this provision, a cargo owner injured by a collision could recover from the noncarrying vessel only such part of his loss as might be proportioned to the gravity of the fault of that particular vessel. He could not hold the noncarrying vessel for the fault of the carrying ship, or vice versa.

These propositions are at variance with elementary principles of the law of torts. One of several tort feasors can be held responsible to an injured person for the whole injury. The right of such tort feasor to contribution from the other wrongdoers depends primarily upon whether the injury inflicted was willful or arose through mere neglect. As a general rule, contribution is permitted in cases of negligence, including cases of collision.

If there were nothing more to be considered than these principles of the law of negligence there would, perhaps, be little reason for making the proposed changes. If an injured cargo owner could recover his whole damage from either the carrying or noncarrying ship and the ship responding could recover contribution from the other, in the end the responsibility would be apportioned and the burden of apportioning it would be, not inappropriately, borne by the wrongdoers themselves. The result would be the same as if the cargo owner recovered from each his proportional share and he would not be obliged to bring two suits. But this is not the situation under the statutes of the United States. Congress has passed the Harter Act, which, as a general rule, relieves the carrying ship from responsibility for injury to the cargo. Consequently, an injured cargo owner can sue only the noncarrying ship. If he does this and recovers his damage, the decisions of the Supreme Court hold that the noncarrying ship can then recover contribution from the carrier, notwithstanding the Harter Act. Thus, the cargo owner may recover his whole damage from the noncarrying ship with which he had no contract and which may have been only slightly at fault, and the carrying ship may then be held responsible indirectly for that for which, under our law, it could not have been directly charged. If the carrying ship is wholly at fault she pays nothing. If she is only partially at fault she is liable in the end for one-half the damage.

So long as the Harter Act defines the policy of the United States to relieve shipowners from direct responsibility for injury to cargo we think this policy should be followed logically to the end and relief afforded against indirect responsibility. Moreover, the proposed provision is supported by other nations which have no statute similar to the Harter Act. Furthermore, the third paragraph of the proposed article provides for liability in solido, with the accompanying right of contribution, in case of personal injuries or injuries resulting in death, and the fourth paragraph leaves the effect of stipulations limiting liability upon the right of contribution to national legislation.

Considering Article IV as a whole, we think its adoption desirable.

The assessment of damages in proportion to the gravity of the fault would, however, for serious reasons, be undesirable and impracticable in actions before a jury in common-law courts. In view of the possibility of such an action being brought for an injury growing out of a collision and of the possible contention therein that the provisions of the convention—it being a treaty—would be applicable and controlling, it was, at our request, agreed that if the United States sign the convention the protocol shall provide that it shall apply only to courts of admiralty and maritime jurisdiction.

Article V provides that responsibility for collision shall exist where it was caused by the fault of a pilot, even if his employment were compulsory. This provision follows the law as it exists in this country, but is contrary to existing law in England. We think the American rule preferable, and approve this article.

The first paragraph of Article VI merely states our existing law—that suits for collision are not subject to a protest or any other formality. The second paragraph, however, requires consideration. It provides that there are no legal presumptions of fault so far as responsibility for collision is concerned. In form this is a broad and sweeping provision, although the narrowness of the subject deprives it of any very serious effect. There are, of course, few legal presumptions, as distinguished from presumptions of fact, which exist in determining the mere question of responsibility in case of a collision. We understand that the object of the provision is to reach certain legal presumptions existing in the laws of England and continental countries which are said to operate unjustly.

But, while the subject is a narrow one, we consider this provision as affecting presumptions created by the laws of the United States inexpedient. Presumptions belong to the law of evidence and really should have no place in a treaty. Furthermore, the sweeping away of all legal presumptions could not fail to leave our law in a state of more or less uncertainty, especially in view of the difficulty in many cases of distinguishing between presumptions of law and presumptions of fact. In our opinion, if the United States should approve the convention, the protocol should contain a provision that the paragraph under consideration should not affect legal presumptions created by the laws of the United States. It was stated by the officers of the conference that such a provision in the protocol reserving the rights of the United States would be satisfactory, and we deem it desirable that it should be inserted. With this pro-

vision we see no serious objection to the article. We think that the citizens of the United States would not be injuriously affected by the elimination of legal presumptions in other countries. If they wish to do so other countries may now remove such presumptions by national laws, and we see no reason why they should not do so by treaty. Moreover, we are not aware of any legal presumptions existing in foreign countries which, from the point of view of this country, should be preserved.

Article VII of the convention provides in substance that actions for collision must be brought within two years after the accident, but that suits for contribution under Article IV must be brought within one year.

A uniform limitation of actions for collision among the maritime powers would be highly desirable and we think the periods proposed fair. From the nature of the case actions for collision are usually brought promptly, and these periods would seem to afford reasonable opportunity for their institution.

The proposed article, however, is not complete. While it definitely prescribes the limitation, it does not, like ordinary statutes of limitation, state the causes which suspend its operation. Notwithstanding the difficulty of the subject, resulting from the differences in the national laws, we think that it would have been preferable, if the matter were dealt with at all, that it should have been dealt with adequately. To fix a definite limitation and leave the causes of suspension to the lex fori, or national law, can not be regarded as a marked advance toward uniformity.

As the laws now stands there is no prescribed limitation of suits in our admiralty courts. The whole question is one of laches. While the courts in applying the doctrine follow equitable principles, these principles can not be regarded as determining the causes which should suspend the operation of a treaty provision. Supplemental legislation by Congress would be necessary, and in case the convention be signed by the United States we think that such legislation should be adopted. With a statute defining the causes of suspension the objections to the article to which we have directed attention would be largely obviated.

Articles VIII and IX do not substantially vary the "standing-by" statute of this country, and we see no objection to them.

Article X provides, in substance, that the present treaty shall not affect the nature or extent of shipowners' liability as at present defined in each country, nor any obligations arising out of the contract of affreightment or other contracts. While it is possible that questions may arise under this article with respect to the effect of the convention upon suits in personam as distinguished from suits in rem, we can not regard it as subject to serious objection.

Article XI provides that the convention shall not apply to ships of war or to other vessels engaged in public service, and seems entirely proper.

Article XIII covers the case where damages are caused by an error in navigation, although there is no actual collision or contact. This substantially recognizes the law as it exists in the United States to-day, and we consider it proper.

The remaining articles of the convention are more or less formal. They relate to the extent of the operation of the convention and to its execution and taking effect.

Subject to the limitations stated herein, we approve the convention relating to the law of collision.

[Translation.]

International Convention for the Unification of Certain Rules in the Matter of Collision.

ARTICLE 1.

In case of collision between seagoing vessels or between seagoing vessels and vessels engaged in internal navigation, indemnity for damage caused to the vessels, property, or persons on board is subject to the following provisions, without regard to the waters in which the collision occurs.

ARTICLE 2.

If the collision is fortuitous, if it is due to *force majeure*, or if there is doubt as to the cause of the collision, the losses are borne by those who have suffered them.

This provision is applicable where the vessels, or one of them are at anchor at the time of the accident.

ARTICLE 3.

If the collision is caused by fault on the part of one of the vessels, indemnity for this damage falls on the one which has committed it.

ARTICLE 4.

If there is mutual fault, the responsibility of each of the vessels is proportional to the gravity of the faults respectively committed; if, according to the circumstances, the proportion can not be established, or if the faults appear equivalent, the responsibility is divided into equal parts.

Damages caused, whether to ships, cargoes, effects or other property of the crew, passengers, or other persons on board, are borne by the ships in fault in said proportion, without solidarity as regards third persons (*i. e.*, without the right to recover the whole from either).

Ships in fault are held *in solido* as regards third persons for damages caused by death or injuries with the right of contribution on the part of the person who has paid a greater portion than he is bound to bear in conformity with the first paragraph of the present article.

The national laws shall determine in respect to this right to contribution the weight and effects of the contractual or legal provisions which limit the liability of shipowners with relation to persons on board.

ARTICLE 5.

The responsibility established by the preceding articles exists where the collision is caused by the fault of a pilot, even when compulsory.

ARTICLE 6.

The action for indemnity for damages sustained in consequence of a collision is subject neither to a protest nor to any other special formality.

There are no legal presumptions of fault as far as responsibility for collision is concerned.

ARTICLE 7.

The limitation period for actions for indemnity for damage is two years from the date of the accident.

Delay in bringing actions for contribution provided by paragraph 3 of article 4 is one year. This prescription runs only from the date of payment.

The causes of suspension and interruption of these periods of prescription are determined by the *lex fori*.

The High Contracting Parties reserve the right to allow in their legislation, as a cause for extending the time heretofore fixed, the fact that the defendant ship could not be seized within the territorial waters of the state in which the plaintiff has his domicile or principal place of business.

ARTICLE 8.

After a collision, the captain of each of the colliding vessels is bound, in so far as he can do so without serious danger to his vessel, the crew, and the passengers, to render assistance to the other vessel, her crew, and passengers.

He is equally bound, so far as possible, to make known to the other ship the name and hailing port of his own vessel, as well as the places from and to which he is bound.

The owner of the ship is not responsible merely by reason of the violation of the foregoing provisions.

ARTICLE 9.

The High Contracting Parties whose legislations do not prohibit violations of the preceding article pledge themselves to take or propose to their respective legislatures the measures necessary to prohibit these violations.

The High Contracting Parties will communicate as soon as possible the laws or regulations which have already been adopted or which shall be adopted in their States in order to carry out the foregoing provision.

ARTICLE 10.

Subject to further conventions, the present provisions do not affect the nature and extent of shipowners' liability as they are regulated in each country, nor the obligations resulting from the contract of carriage or any other contract.

ARTICLE 11.

The present convention has no application to war vessels or other vessels exclusively devoted to public service.

ARTICLE 12.

The provisions of the present convention shall be applied with regard to all persons interested when all the vessels in suit belong to the States of the High Contracting Parties and in the other cases prescribed by the national laws.

It is understood, however:

1. That with regard to persons interested belonging to a noncontracting state, the application of said provisions may be made subject by each of the contracting States to the condition of reciprocity.

2. That, when all persons interested belong to the same State as the court of jurisdiction, national law and not the convention shall be applied.

ARTICLE 13.

The present convention extends to indemnity for damage which through execution or omission of a maneuver or through failure to observe the regulations one ship has caused to another ship or the property or persons on board even though no collision resulted.

ARTICLE 14.

The delegates of the High Contracting Parties shall meet in Brussels three years after the present convention becomes operative in order to consider the improvements which may be suggested, and especially to extend, if possible, the sphere of application.

ARTICLE 15.

The States which have not signed the present convention are permitted to adhere to it upon their request. Notice of this adherence shall be given through diplomatic channels to the Belgian Government, and by it to each of the Governments of the other contracting parties. It shall become effective one month after the sending of the notification by the Belgian Government.

ARTICLE 16.

The present convention shall be ratified and the ratification shall be deposited at Brussels as soon as possible. At the expiration of one year at the latest, from the day of the signing of the convention, the Belgian Government shall confer with the Governments of the High Contracting Parties who shall have declared themselves ready to ratify it, to decide whether the time has come to put it into effect.

The ratifications shall be deposited immediately, and the convention shall take effect one month thereafter.

The protocol shall remain open for one year in favor of States represented at the conference of Brussels. Thereafter they can adhere only in conformity with the provisions of article 15.

ARTICLE 17.

Where one or the other of the High Contracting Parties shall withdraw from the present convention, this withdrawal shall not have effect until one year after the day when notice shall have been given to the Belgian Government, and the convention shall remain in force between the other contracting parties.

In faith of which the plenipotentiaries of the respective High Contracting Parties have signed the present convention and affixed their seals thereto.

Done in Brussels, in one copy only, the ———.

The preceding text has been adopted at the session of the conference at Brussels the fifth October, 1909.

Certified by the president of the conference:

(Signed) BEERNAERT.

N. B.—The delegations of the countries hereinafter mentioned have declared themselves ready to sign the preceding text *ad referendum*, and subject to the reservations of the other Governments represented at the conference:

Germany, Argentine Republic, Austria, Belgium, Hungary, Brazil, Cuba, Denmark, United States of America, France, Great Britain, Greece, Italy, Mexico, Nicaraugua, Norway, the Low Countries, Portugal, Roumania, Russia, Japan, Spain, Sweden.

SCHEDULE C.

Convention relating to the law of salvage.

This convention, except in a few paragraphs, states the law of salvage as it now exists in the United States. We therefore think that it will serve no useful purpose to examine the articles in detail and will confine ourselves to those which have, or may have, the effect of changing existing law.

Article V provides, in substance, that remuneration is due notwithstanding the salved and salving vessels belong to the same owner. This provision would permit the officers and crew of a salving vessel to recover for their services notwithstanding identity of ownership. It might also affect the rights of subrogation of underwriters. The provision would, of course, apply only in a very limited number of cases, and, under our forms of procedure, there might be practical difficulties in the way of applying it at all. Still, we think it a just provision and unobjectionable.

The second paragraph of Article VII is somewhat broader than we would deem desirable. It permits a judge to annul or modify any salvage contract which he may regard as allowing remuneration excessively out of proportion to the services rendered. If this provision applied only to contracts made under the influence of danger, it would be unobjectionable. But these contracts are covered by the first paragraph of the article and the present provision is much broader in scope. So, if this provision applied only in cases of fraud, duress, or concealment, it would be free from objection. But it goes further and grants power to a court to annul a contract freely entered into in good faith with full knowledge on the part of both parties merely because the contract price may seem excessive. But while we consider this provision too broad, the instances in which it would apply would be so few and the possibility of any unjust interference with contractual rights by the courts so remote that we should not consider the presence of this article adequate ground for failing to approve the convention if otherwise unobjectionable.

The second paragraph of Article IX, while not very clearly expressed, must be regarded as giving to salvors of human lives intervening upon the occasion of a common danger the right to share in the salvage due from the property saved. They would not now have this right. We think the provision just and founded upon motives of humanity.

Article X, in prescribing a limitation period for actions of salvage, follows the lines of the similar provision in the conventon relating to the law of collision. What we have said with respect to that provision applies to the present article.

The remaining articles either do not substantially change existing law or are of a formal nature.

As a whole we approve the convention relating to the law of salvage.

[Translation.]

International Convention for the Unification of Certain Rules in the Matter of Assistance and Maritime Salvage.

ARTICLE I.

Assistance and salvage of seagoing vessels in danger, of property on board, of freight and passage money, as well as services of the same nature rendered between seagoing vessels and vessels engaged in internal navigation are subject to the following provisions, without distinguishing between the two kinds of service and without regard to the waters in which the services have been rendered.

ARTICLE II.

Every act of assistance or salvage which has had a useful result gives rise to an equitable remuneration.

No remuneration is due if the aid rendered is without useful result.

In no case can the sum payable exceed the value of the property saved.

ARTICLE III.

Persons who have taken part in operations of assistance against the express and reasonable prohibition of the vessel assisted have no right to remuneration.

ARTICLE IV.

The towing vessel has no right to remuneration for assistance or salvage of the vessel towed by it or the cargo except in case it has rendered exceptional services which can not be considered as the fulfillment of the contract of towage.

ARTICLE V.

Remuneration is due notwithstanding the fact that the assistance or salvage was between vessels belonging to the same owner.

ARTICLE VI.

The amount of the remuneration is fixed by the agreement of the parties, and, in default thereof, by the judge.

The same is the case with the proportion in which this remuneration is to be divided among the salvors.

The division between the owner, master, and crew of each of the salving vessels shall be regulated by the national law of the flag.

ARTICLE VII.

Every agreement of assistance and salvage made in the moment and under the influence of danger may, on the request of one of the parties, be annulled or modified by the judge if he considers the conditions agreed upon inequitable.

When it is proved that the agreement of one of the parties has been vitiated by fraud or concealment, or when the remuneration is excessively, in one way or another, out of proportion to the service rendered, the agreement may be annulled or modified by the judge at the request of the party interested.

ARTICLE VIII.

The remuneration is fixed by the judge, according to the circumstances, on the following basis: (*a*) In the first place, the success attained, the efforts and the merits of those who have rendered assistance, the danger incurred by the salved ship, her passengers and crew and her cargo, by the salvors and the salving ship, the time employed, the expenses and losses sustained, and the risks of liability and other risks run by the salvors, the value of the material exposed to risk by them, taking account, as the case arises, of the special sum appropriated for an assisting vessel; (*b*) in the second place, the value of the property saved.

The same provisions apply to the division provided for in Article VI, paragraph 2.

The judge may reduce or deny remuneration if it appears that the salvors through their own fault have rendered the salvage or assistance necessary, or have been guilty of theft, receipt of stolen goods, or other fraudulent acts.

ARTICLE IX.

No remuneration is due from persons saved, without, however, affecting the provisions of national laws in this respect.

Salvors of human lives are entitled to an equitable share in the remuneration granted to salvors of ship, cargo, and accessories, if they have intervened on the occasion of common dangers.

ARTICLE X.

The limitation period for actions for salvage is two years from the date when the operations of assistance or salvage terminated. The reasons for suspending or interrupting this period of prescription are determined by the *lex fori*.

The High Contracting Parties reserve the right to allow in their legislation, as a cause for extending the time heretofore fixed, the fact that the ship assisted or salved could not be seized within the territorial waters of the State in which the plaintiff has his domicile or principal place of business.

ARTICLE XI.

Every captain is bound, in so far as he can do so without serious danger to his vessel, crew, or passengers, to render assistance to every person, even an enemy, found at sea in danger of destruction.

The owner of the ship is not responsible on account of violations of the foregoing provision.

ARTICLE XII.

The High Contracting Parties whose legislation does not prohibit the violation of the preceding article pledge themselves to take or propose to their respective legislatures the measures necessary to prohibit this violation.

The High Contracting Parties will communicate, as soon as possible, the laws or regulations which have already been adopted or which shall be adopted in their States in order to carry out the foregoing provision.

ARTICLE XIII.

The present convention does not affect the provisions of the national legislation or international treaties with regard to the organization of systems of assistance and salvage by public authority or under their control, and especially with regard to salvage of fishing engines.

ARTICLE XIV.

The present convention does not apply to vessels of war and to vessels of state exclusively devoted to public service.

ARTICLE XV.

The provisions of the present convention shall be applied with regard to all persons interested when either the assisting or salving ship or the assisted or salved ship belongs to a State of one of the High Contracting Parties, as well as in the other cases prescribed by the national laws.

It is understood, however:

1. That with regard to persons interested belonging to the High Contracting Parties, the application of said provisions may be made subject by each of the contracting States to the condition of reciprocity.

2. That when all persons interested belong to the same State as the court of jurisdiction, the national law and not the convention shall be applied.

3. That without prejudice to the more extended provisions of the national laws, Article XI is applicable only between persons belonging to States of the High Contracting Parties.

ARTICLE XVI.

The delegates of the High Contracting Parties shall meet in Brussels three years after the present convention becomes operative, in order to consider the improvements which may be suggested, and especially to extend, if possible, the sphere of application.

ARTICLE XVII.

The States which have not signed the present convention are permitted to adhere to it upon their request. Notice of this adherence shall be given through diplomatic channels to the Belgian Government, and by it to each of the Governments of the other contracting parties. It shall become effective one month after the sending of the notification by the Belgian Government.

ARTICLE XVIII.

The present convention shall be ratified and the ratifications shall be deposited in Brussels as soon as possible. At the expiration of one year at the latest from the day of the signing of the convention, the Belgian Government shall enter into communication with the Governments of the High Contracting Parties which shall have declared themselves ready to ratify it, in order to decide whether the time has come to put it into effect.

The ratifications shall be deposited immediately as the case arises and the convention shall take effect one month after this deposit.

The protocol shall remain open for one year in favor of States represented at the conference of Brussels. Thereafter they can adhere only in conformity with the provisions of Article XVII.

ARTICLE XIX.

Where one or the other of the High Contracting Parties shall withdraw from the present convention this withdrawal shall not take effect until one year after the day when notice shall have been given the Belgian Government, and the convention shall remain in effect between the other contracting parties.

In faith of which the plenipotentiaries of the respective High Contracting Parties have signed the present convention and affixed their seals thereto.

Done in Brussels, in one copy only, the ———.

The preceding text has been adopted at the session of the conference at Brussels the fifth October, 1909.

Certified by the president of the conference.

(Signed) A. BEERNAERT.

N. B.—The delegations of the countries hereinafter mentioned have declared themselves ready to sign the preceding text *ad referendum*, and subject to the reservations of the other Governments represented at the conference:

Germany, Argentine Republic, Austria, Belgium, Brazil, Cuba, Denmark, Spain, Hungary, United States of America, France, Great Britain, Greece, Italy, Mexico, Japan, Nicaragua, Norway, the Low Countries, Portugal, Roumania, Russia, Sweden.

SCHEDULE D.

Plan of convention on limitation of shipowners' liability.

The subject matter of this projet was fully discussed in the plenary sessions of the conference. There was an apparently irreconcilable conflict between the delegates of Great Britain and those of all other countries as to the underlying question whether the shipowner should be permitted to limit his liability to the value of the vessel and her pending freight after the accident, which is in accordance with our statute and the continental system, or should pay a lump sum per ton, as provided by the British statute.

This question has been discussed at several meetings of the International Maritime Committee (unofficial), and a draft treaty or projet was agreed upon at the meeting of that committee held in Venice in September, 1907, which formed the basis of our discussions at Brussels. The projet de Venise gave the shipowner an option: (1) He might limit his liability by abandoning his

vessel, her freight, and certain defined accessories, or substitute for the vessel its value at the end of the voyage; or (2) he might, in lieu of the vessel, freight, and accessories, pay a lump sum of £8 sterling per gross ton of his vessel. These provisions were stated to be a compromise between the continental and American system and the British; but, in our opinion, they merely gave the shipowner an additional privilege. He obtained the benefit of both systems. If his vessel were at the bottom of the sea or so injured as to be of trifling value, presumably he would abandon her or pay her then value; if she were uninjured and worth more than £8 per ton, he would pay that rate.

At the opening of the discussion in the conference the British delegation stated that they had received positive instructions from their Government not to agree to any proposition which limited a shipowner's liability to the value of ship and freight unless that value were taken prior to the accident. In this connection they also said that their system of limiting liability to £8 per ton (except in case of loss of life, where the limitation is fixed at £15) had worked satisfactorily for many years, and that they deemed it superior to the continental system. They further stated that they appreciated the opposition to their system as a substitute for the continental system and, without further defining their position, expressed the hope that the conference would not adjourn without attempting to prepare a projet which might be submitted to the Governments.

The suggestion was made by the French delegation that merely the question of principle should be presented to the Governments, but it was finally decided to prepare a definite text, and the subcommittee was directed to draft one. Subsequently a draft was presented to the conference in the form attached hereto.

Article I states the application of the proposed convention.

Article II declares that the liability of the shipowner is limited to the value of the vessel, freight, and accessories of vessel and freight pertaining to the voyage:

(1) For damage caused to property and rights of any nature belonging to third persons, on land or on water, by the acts and faults of the master, crew, pilot, or any other person in the service of the vessel.

(2) For damage caused to cargo transported and to other goods and objects on board the vessel, as well as for all other damages caused by a fault of navigation, even in the performance of a contract.

(3) For indemnities of assistance and salvage.

(4) For obligations resulting from contracts made by the master by virtue of his legal power, in case of necessity, away from the home port of the vessel, for the preservation of the vessel and the continuation of the voyage, if the necessity has been occasioned by an accident.

It also provides that when the owner is at the same time the master he is entitled to limit his liability, "but only for faults of navigation."

It will be observed that these provisions are far more restricted than those of our own statute. Under our law, an owner may limit his liability for contractual obligations if incurred by the managing owner without his privity or knowledge. Indeed, broadly speaking, the liabilities against which exemption is given by our statute are those for which suit may be brought in rem or in personam, provided they do not arise from the personal fault or act of the owner.

Article III defines the term "freight" as used in the preceding article as hire or freight without deduction, including freight or hire paid in advance, still due, or earned in any event—passage money and demurrage being assimilated to freight.

This article also defines the accessories to be surrendered with the vessel and freight as (1) sums paid or due the shipowner for general average; (2) indemnities paid or due for repairs, etc.; (3) sums paid or due for salvage. Under our law the owner does not have to account for salvage earned during the voyage. The article excludes from the accessories insurance moneys, subventions, and subsidies.

Article IV provides that any claim with regard to which limitation of liability is not permitted must be made good by the owner personally in determining the value of the vessel for the purposes of limitation.

Article V provides that "the owner may substitute for the vessel its value at the end of the voyage." The end of the voyage is defined in Article VII.

Article VI is the provision inserted at the request of the British delegation, which gives the shipowner the option of the Venice projet, to which we have

already directed attention. While not clearly so stated, this article is manifestly an alternative for Article V. The owner has the right to free his vessel, freight, and accessories from liability "by payment of a sum corresponding for the voyage to £8 sterling per gross ton of his vessel."

Article VIII contains two alternative methods of determining the freight to be surrendered in case the owner elects to follow the continental system.

Article IX permits the owner, in the interest of whom it may concern, to take "every useful measure in what concerns the ship without losing the right to exercise the options" above provided, and makes him responsible for all loss which the vessel suffers in consequence of a new voyage in prejudice of creditors with regard to whom limitation is permitted.

Article X declares that the provisions of the convention shall not affect the right of creditors to seize the vessel.

Article XI declares that the previous provisions do not apply to the obligations derived from personal faults of the owner, from contracts made by him, or from those which he has authorized or ratified.

Article XII extends the right of limitation to managers, charterers, and subfreighters of vessels under ceretain conditions.

Article XIII states that the proposed convention shall not apply to claims for loss of life or personal injuries, which shall be regulated by national laws. This article would make a most important change in our law should it be adopted and no supplemental legislation be enacted.

Returning to the underlying question of the option provisions, it is impossible, in our opinion, to reconcile or combine the British system with our own. Of course much may be said in favor of a system of fixed liability. Such a system, broadly speaking, favors the cargo owner. But such a system, with the option of surrendering the vessel, operates more strongly againt the cargo owner than either system alone. Granting the shipowner the alternative is wholly in his favor, although the ton-rate liability might be placed at so high a figure that he would seldom choose that method. Several of the continental delegates, notably the Norwegian and Swedish, stated that £8 per gross ton was far in excess of the average value of their vessels. But still the right to choose the British system would in many cases constitute a privilege of great value to the shipowner, to which, in our opinion, he is not entitled. We think our present limitation of liability statute goes far enough in the direction of favoring the shipowner, and we see no possible reason for giving him any further privileges. On the other hand, the policy of this country is so well established and the statute adopted in 1851 is so generally approved as to make it out of the question that the British system should now be substituted for it. In our opinion, the basis of liability as fixed by our law should remain unchanged. But it is proper to say that we feel certain that no convention upon limitation of liability can be agreed upon unless the Government of the United States is prepared to accede to the option proposed.

In addition to the option clauses there are several of the articles which, were the projet in more complete form, we should deem it necessary to criticize. But as most of these criticisms would relate to matters of form which may be corrected by the committee of the conference, we have thought it desirable at the present time to go no further than to outline the scope of the different articles and especially to call the attention of the department to the operation and effect of the option provisions.

[Translation.]

Basis of a Plan for a Convention on the Limitation of Shipowners' Liability, Submitted to the Study of the Governments Interested.

(6–7 October, 1909.)

ARTICLE I.

The provisions of the present convention shall be applied in each contracting State when one of the interested parties belongs to another contracting State, as well as in the other cases provided for by the national laws.

Nevertheless, the principle formulated in the foregoing paragraph does not affect the rights of the contracting State not to apply the provisions of the present convention in favor of persons belonging to a noncontracting State.

ARTICLE II.

The owner of a vessel is liable only to the value of the vessel, freight and accessories of vessel, and freight relating to the voyage:

1. For damage caused to property and rights of any nature belonging to third persons, on land or on water, by the acts and faults of the master, crew, pilot, or any other person in the service of the vessel.

2. For damage caused to cargo transported and to other goods and objects on board the vessel, as well as for all other damages caused by a fault of navigation, even in the performance of a contract.

3. For indemnities of assistance and salvage.

4. For obligations resulting from contracts made by the master by virtue of his legal powers, in case of necessity, away from the home port of the vessel, for the preservation of the vessel and the continuation of the voyage, if the necessity has been occasioned by an accident.

When the owner of the vessel is at the same time master, the same limitation applies, but only for faults of navigation.

ARTICLE III.

The freight mentioned in Article II is hire or freight without deduction, whether freight or hire paid in advance, freight or hire still due, or freight or hire earned in any event.

Passage money and demurrage are, from the point of view of the present convention, assimilated to freight.

The accessories mentioned in Article II are:

1. Indemnities paid or due to the owner of the vessel for general average, in so far as they make good either material damage, sustained by vessel and not repaired, or losses of freight.

2. Indemnities paid or due for the repair of damage, whether sustained by the vessel and not repaired, or losses of freight.

3. Sums paid or due the owner of the vessel for assistance or salvage, deduction being made of sums awarded to the master and crew.

Indemnities due or paid by virtue of contracts of insurance, premiums, subventions, or other national subsidies are not considered accessories of the vessel.

ARTICLE IV.

If a right of preference on the vessel or the freight exists in favor of creditors with regard to whom limitation of liability is not permitted, the owner of the vessel shall be held liable personally to make good in cash, up to the amount deducted by these creditors, the value forming the limit of his liability.

ARTICLE V.

The owner may substitute for the vessel its value at the end of the voyage.

ARTICLE VI.

The owner has the right to free the vessel, freight, and accessories mentioned in Article II by payment of a sum corresponding for the voyage to £8 sterling per gross ton of his vessel.

This provision is not applicable to indemnities of assistance and salvage, nor to the cases provided in paragraph 4 of Article II.

ARTICLE VII.

The voyage is deemed finished for the vessel at the first port of call or discharge which it reaches after the event which gives rise to the claim, or at the port in which it is found when this event happens.

If the place where the event is produced is not determined, the voyage is deemed finished at the point where the execution of the obligation giving rise to the claim ought to terminate.

ARTICLE VIII.

For the freight different formulæ have been indicated:

1. The freight and accessories mentioned in Article III and the freight and accessories earned from the beginning of the voyage to the port determined in Article VII.

2. *Substitute for the freight, passage money, demurrage and accessories mentioned in Article III, a lump sum calculated per ton, taking account of the part of the voyage already performed and the nature of the vessel.*

ARTICLE IX.

The owner may take, in the interest of whom it may concern, every useful measure in what concerns the ship, without being deprived of the right of exercising the options provided by the foregoing provisions.

He is responsible for all deterioration or loss which, in consequence of a new voyage, may come to the vessel in prejudice of the creditors with regard to whom limitation is permitted.

ARTICLE X.

The foregoing provisions do not affect the right of the creditors to seize the vessel.

ARTICLE XI.

The foregoing provisions do not apply to the obligations derived from personal faults of the owner, from contracts made by him, or from those which he has authorized or ratified. They are applicable to the obligation to remove the wreck of a sunken vessel and to the responsibilities attaching thereto, whether there has been fault on the part of the master or not.

ARTICLE XII.

If the manager of a vessel who is not the owner is responsible for the obligations with regard to which the liability of the owners is limited, according to the present convention, he has a right to the same limitation.

If the subfreighter is responsible for obligations resulting from contracts of subaffreightment, he has a right to this limitation, so far as the captain is charged with the execution of these contracts by the receipt of the merchandise or the signing of a bill of lading.

ARTICLE XIII.

The present convention does not apply to claims for loss of human lives or for personal injuries, which continue to be regulated exclusively by national laws.

Nothing in the foregoing proceedings affects the competence of tribunals, procedure, and methods of execution prescribed by national laws.

SCHEDULE E.

Plan of convention on hypothecations and maritime liens.

This projet was discussed fully in the subcommittee (sous commission), but not to any considerable extent in the plenary session of the conference, and is now submitted to the several governments for consideration and study.

In the discussions in the subcommittee the British delegation sought to reduce and limit the liens, while the German delegation was in favor of correlating the treaty on liens with that on limitation of liability, giving the shipowner the right to limit his liabilty only in those cases where a lien exists and not elsewhere.

Article I provides that hypothecations, mortgages, and pledges on vessels, regularly proved according to the law of the flag and properly recorded, shall be respected in all other countries and shall have the same force as in the

country of origin. The Italian delegation, supported by delegates from Austria, Belgium, and other countries, suggested that mortgages should be noted on the ship's papers, but this suggestion was not adopted.

Article II provides that all formal hypothecations are subordinated to liens, which is in accordance with our law.

Article III represents many compromises. It defines and limits the number of liens and fixes their rank. It would, of course, be advantageous to shipowners if there were uniformity in the law as to maritime liens. As in many countries, these liens require no formality for their creation and are therefore secret in their nature; a shipowner is greatly prejudiced by the practical impossibility of knowing to what liens his vessel will be subjected in the various ports which she enters. Subdivision 4 of this article marks a radical departure from our law. It is as follows:

"Obligations for furnishing and repairing and other obligations for the same purpose contracted by the master in case of necessity away from the home port for the preservation of the vessel, or the continuation of the voyage, in so far as the acts have been necessitated by an actual need, whether the master is or is not at the same time owner of the vessel and whether the obligation is his own or that of the furnishers, repairers, lenders, or other contractors."

Under our law repairs and supplies made and furnished to a vessel away from her home port upon the credit of the vessel constitute a lien, but in the proposed convention such repairs and supplies do not give rise to a lien unless they were contracted for by the captain, in a case of necessity, away from the home port, for the *preservation of the ship or the coninuation of the voyage*, in so far as these were necessitated by an actual need. In such case it makes no difference whether the captain is or is not an owner of the ship, nor whether the obligation is his own or that of the furnisher, repairer, or lender or other contractor.

Under this proposed convention if a British vessel were repaired at Newport News the shipwright who made the repairs would not have a lien if the repairs had been ordered by the owner instead of by the captain, or if the repairs were not found necessary for the preservation of the ship or the continuation of the voyage. It is claimed that the shipwright should not be given a maritime lien, except in the circumstances specified, for two reasons: (1) He has his common-law lien and need not part with the possession of the ship which he has repaired until he is paid; (2) when repairs are ordered by the owner it is an easy matter for the shipwright to obtain security for the payment of the debt under modern conditions of business, especially the facility of telegraphic communication.

It is to be observed that no lien is given the cargo against the carrying ship. This would involve a radical change in our law, a cardinal principle of which is that the ship is bound to the cargo and the cargo to the ship. While it is true that the Harter Act affords a complete defense to many claims for cargo damage or loss, still where the negligence of the carrying vessel is due to defective stowage, or where the damage results from unseaworthiness, the cargo owner can recover from the ship and has a lien for his damage.

Again, no lien is given for towage, which is contrary to the settled law of this country. The argument in favor of taking away this right was that claims for towage are of small amounts. This, however, is not true of the United States, where vessels are frequently towed for long distances, as from the West Indies to Atlantic ports, and even from our Atlantic ports to Europe.

Again, no lien is given for bottomry or general average. As to bottomry, it is said that bottomry bonds are very rare, and the provisions of subdivision 4 of Article III give equivalent liens for master's drafts.

Articles IV and V fix the priority of liens, and are substantially in accordance with our law.

Article VI makes the limitation period for bringing an action on a lien two years, except in case of wages and the other claims mentioned in subdivision 3 of Article III, in which case the limitation period is one year.

Article VII defines the kinds of freight subject to lien, as follows:

Hire or freight in the hands of the freighter, loader, consignee, master, agent, or any other third person.

Article VIII provides that liens are subject to no special formality, which is in conformity with the British law and our own.

Article IX declares that liens may be enforced against vessels, even when employed by persons other than the owner.

Article X defines the accessories of a vessel in substantially the same terms as in the projet on limitation of liability.

Article XI relates merely to the application of the proposed convention, and Article XII declares that the convention shall not apply to state vessels.

This projet, as drafted by the subcommittee, is in rather rough form, and will, undoubtedly, be materially changed in the plenary sessions of the conference. While we regard several of its provisions as of doubtful expediency, we think that, as a whole, it marks a long advance toward uniformity; and in no subject of maritime law is uniformity more desirable than in the case of hypothecations and liens.

[Translation.]

Basis of a Plan for a Convention on Hypothecations and Maritime Liens Submtted to the Study of the Governments Interested.

(6–7 October, 1909.)

ARTICLE I.

Hypothecations, mortgages, pledges on ships regularly made according to the laws of the contracting State to which the vessel belongs and registered in a public registry at the home port or in a central office of registration shall be respected in all the other countries *and shall have the same effect as in the country of its origin.*[1]

ARTICLE II.

The rights mentioned in the preceding article are subordinated to liens.

ARTICLE III.

The following are the only liens on the vessel, her accessories, and the hire or freight on the voyage during which the privileged obligation arose, which rank in the order following:

1. Court expenses, rights of tonnage, light-house or port charges and other taxes and public imposts of the same kind; expenses of creating and preserving since the entry of the ship into the last port.

2. Obligations resulting from the contract of engagement of master, crew, or or other persons shipped in the service of the vessel, and pilotage expenses.

3. Indemnities due for salvage and assistance and the contribution of the vessel to general average.

4. Obligations for furnishing and repairing and other obligations for the same purpose contracted by the master in case of necessity away from the home port for the preservation of the vessel, or the continuation of the voyage, in so far as the acts have been necessitated by an actual need, whether the master is or is not at the same time owner of the vessel and whether the obligation is his own or that of the furnishers, repairers, lenders, or other contractors.

5. Indemnities due another ship, her cargo, crew, or other passengers by reason of a collision or any other accident resulting from a fault in navigation.[2]

ARTICLE IV.

The rank of liens relating to the same voyage is regulated in conformity with the enumeration set forth in Article III. Obligations mentioned in the same number of this article are prorated.

But obligations enumerated in Article III, numbers 3 and 4, rank in inverse order from the date of their origin, obligations resulting from the same case of necessity being considered as created at the same time.

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[1] NOTE 1.—Certain objections have been made to the words in italics; it is understood, first, that the questions of procedure, second, sovereign rights in case of contraband of war prizes, etc., are not affected by the provisions.

[2] NOTE 2.—The closing protocol shall contain the following provision: It is understood that each State is free by legislation to give to the authorities of the State or other public authorities which have removed a wreck or other object interfering with navigation the right to sell these objects and indemnify themselves from the proceeds for the expenses of removal in preference to other creditors. It is also understood that the national legislation may give a lien to public insurance institutions for the obligations resulting from the insurance of the personnel of vessels.

Where the obligations mentioned in Article III, number 4, arise out of disbursements made or personal engagements contracted by the master, they are preferred to other obligations mentioned in this provision.

ARTICLE V.

If the obligations do not relate to the same voyage, the liens for the obligations of a later voyage are preferred to the obligations of an earlier voyage.

ARTICLE VI.

The lien is extinguished at the expiration of two years from the creation of the obligation.

For obligations mentioned in Article III, number 2, this period of prescription is one year. This period runs from the day when the service terminated.

Causes of suspension and interruption of this period of prescription are determined by the *lex fori*.

The High Contracting Parties reserve the right to allow in their legislation, as a cause for suspending the time heretofore fixed, the fact that the defendant ship could not be seized within the territorial waters in which the plaintiff has his domicile or principal place of business.

ARTICLE VII.

The lien on the hire or freight may be exercised so long as the hire or freight is in the hands of the freighter, loader, consignee, master, or any other third person. It is extinguished when freight is encashed by the owner personally.

ARTICLE VIII.

The liens established by the preceding provisions are subject to no formality and to no special condition of proof.

ARTICLE IX.

The foregoing provisions are applicable to ships managed or employed by persons other than their owner except when the owner has been dispossessed by an illicit act and when, besides, the creditor is not a *bona fide* creditor.

ARTICLE X.

The accessories mentioned in Article III are:

1. Indemnities paid or due to the owner of the vessel for general average in so far as they make good either material damage suffered by the vessel and not repaired or losses of freight.
2. Indemnities paid or due for repairing losses, whether they are losses sustained by the vessel and not repaired or losses of freight.
3. Sums paid or due to the owner of the vessel for assistance or salvage, deducting sums awarded to the master or crew.

Indemnities due or paid by virtue of contracts of insurance, premiums, subventions, or other national subsidies are not considered accessories of the vessel.

ARTICLE XI.

The provisions of the present convention shall be applied in each contracting State when one of the parties interested belongs to another contracting State, as well as in the other cases provided in the national laws.

But the principle formulated in the foregoing paragraph does not affect the right of the contracting State not to apply the provisions of the present convention in favor of persons belonging to a noncontracting State.

ARTICLE XII.

The present convention does not apply to vessels of state.

INTERNATIONAL OPIUM CONFERENCE.

See page 95.

INTERNATIONAL NAVAL CONFERENCE.

See page 294.

FIRST CENTRAL AMERICAN CONFERENCE.

TEGUCIGALPA, JANUARY 1-20, 1909.

See page 379.

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